IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Criminal Appeal
Case No 19/3438

BETWEEN: Amos Bong
Appellant

AND: Public Prosecutor
Respondent

DATE OF HEARING:	***Monday 10th February 2020***
DATE OF DECISION:	***Thursday 20th February 2020***
CORAM:	***Hon. Justice J Hansen*** ***Hon. Justice R White*** ***Hon. Justice D Aru*** ***Hon. Justice G Andree Wiltens*** ***Hon. V M Trief***
COUNSEL:	*P. K. Malites for the Appellant* *S. Blessing for the Public Prosecutor*

JUDGMENT OF THE COURT

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[1] The appellant was sentenced to five years' imprisonment on two counts of obtaining monies by deception. He appeals on the ground the sentence is manifestly excessive.

Background facts

[2] The complainant returned from employment in Australia in May 2019. He went to inspect a used vehicle at Carpenters Motors, intending to purchase one. He returned on 17 May 2019 and was met by the appellant. Although not employed by Carpenters the appellant was wearing clothing similar to employees of that firm. He gave a false name, and pretended to be an employee. He convinced the complainant to give him VT50,000 to get the paperwork for purchase of a vehicle started. Later, he told the complainant he

required another VT600,000 for the purchase of the vehicle. He produced no receipts, no vehicle and absconded with the proceeds.

The sentence

[3] The Judge considered the submissions of both parties. Both parties submitted for a starting point of two years imprisonment for the offending involving a total of VT650,000. The Judge, however, taking into account the aggravating features, together with the seriousness of the offences, took a starting point of four years. He then applied an uplift of two years for previous offending, leading to six years. He accepted the only mitigating factor was the early guilty plea, but rather than allowing the normal one-third allowance, he applied only half that amount, which led to the sentence of five years' imprisonment.

Submissions

[4] Mrs Malites submitted that offending involving one complainant with a total amount of money involved of VT650,000 did not warrant the starting point that was used by the sentencing Judge. She referred to the guideline judgment for sentencing, *PP v Mala* [1996] VUSC 22, which was adopted by the Court of Appeal in *Apia v PP* [2015] VUCA 30, where it was stated:

> Where the amount involved cannot be described as small but are less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to about 18 months are appropriate. Cases involving sums of between about 1 million and 5 million vatu will merit a term of about two to three years' imprisonment. Where greater sums are involved, for example those over 10 million vatu, then a term of three and a half years to four and a half years would be justified.

[5] The appellant also submitted that the uplift for the previous offending of two years was manifestly excessive. Counsel referred to comparative decisions such as *PP v Tavdey* [2017] VUCA 11, where a one-year uplift was applied for previous offending. She said the uplift of two years amounted to a re-sentence of the appellant for the previous offending, and that only one year was appropriate.

[6] Finally, she submitted that the 15 per cent discount for the early guilty plea was inadequate. She said there was no reason why the usual allowance of one-third for the early guilty plea did not apply, and she complained the Judge gave no reasons for a lower discount.

[7] Mr Blessing, for the respondent, submitted that with hindsight he was probably in error to suggest a two-year starting point, given the accused's offending and previous record.

[8] He said this was pre-meditated offending against a vulnerable complainant, was well planned and executed over a period of time. He said the victim received nothing by way of reparation, and a starting point of four years was warranted.

[9] He also submitted that this man was a serial fraudster with a string of previous convictions for similar offending against other vulnerable victims. He pointed to the fact that he was released on parole on 16 February 2019, but offended while on parole. He pointed to the fact that within four weeks of this Court's decision,[1] he committed these two offences.

[10] Finally, in relation to the guilty plea, he submitted there was no confession and, given the strong evidence and the total lack of genuine remorse, it was an appropriate case to apply a reduced allowance for the guilty plea.

Discussion

[11] Given the sum involved, the comparable decisions and the passage from *Mala* cited above, we are quite satisfied a starting point of four years' imprisonment is manifestly excessive. Given those decisions, the appropriate starting point is one of two years imprisonment.

[12] We do not consider the uplift of two years for the previous offending, in the circumstances of this appellant, can be said to be manifestly excessive. He has shown that once released from prison he almost immediately starts offending in the same way, targeting some of the most vulnerable members of society. The factors identified by Mr Blessing of premeditation, vulnerable complainants, careful planning, offending over a significant period of time with no reparation being paid, applies to all of the offending that this man has committed within a short space of time. We are quite satisfied the uplift of two years for that previous offending cannot be said to be manifestly excessive.

1 *Public Prosecutor v Bong* [2019] VUCA 40.

[13] The aggravating features in this case of again picking a vulnerable victim, carefully planning the offending, lying repeatedly to the complainant in a significant number of ways warrants a further 12 months' uplift, giving an effective starting point of five years.

[14] We are in complete agreement with the Judge that the only mitigating feature here is the early guilty plea. Nothing else can be said in favour of this appellant. However, his guilty plea came at the earliest possible opportunity, and we cannot discern from the Judge's sentencing notes why he determined to apply only half of the normal allowance.

[15] Although the appellant pleaded guilty at the earliest possible stage, that is against a background where there was no genuine remorse and the case against him was extremely strong. We do not agree with the Judge that the normal allowance should be halved, but feel in the circumstances of this case a 25 per cent allowance would be appropriate.

[16] Accordingly, the appeal is allowed, and the appellant is sentenced to three years, nine months imprisonment on each of the charges, to be served concurrently. As with the sentence in the Supreme Court it is back dated to the 8th June 2019.

Dated at Port Vila this 20th Day of February 2020.

BY THE COURT

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The Hon. Justice John Hansen

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU