

**PUBLIC PROSECUTOR**

**-v-**

**DANIEL MILNE**

**Coram:** Sr. Magistrate Moses Peter  
**Clerk:** Sidonie Lubanek  
**Appearances:** Marie Talki for the State  
Harrison Rantes for the Defendant  
Defendant present

**SENTENCING**

1. The Defendant Daniel Milne, on 28<sup>th</sup> November 2016, the police charged you with offences particularized as follows:

**Count 1:** Drunk and Disorderly in Possession of Firearm contrary to Section 25 of the Firearms Act Cap 198.

**Count 2:** Carrying a firearm in a public place contrary to Section 29 of the Firearms Act Cap 198.

**Count 3:** Malicious damage to property contrary to Section 133 of the Penal Code Cap 135.

2. The Law:

**Firearms Act Cap 198**

***"25. Drunk or disorderly in possession of a firearm***

*No person shall be drunk, or behave in a disorderly manner, while carrying a firearm.*

*Penalty: Fine not exceeding VT 100,000 or imprisonment for a period not exceeding 2 years or to both.*

***29. Carrying firearm in a public place***



(1) No person shall, without lawful authority or reasonable excuse (the proof whereof lies on him) have with him in a public place any firearm (whether loaded or not) together with ammunition suitable for use in that firearm.

(2) No person shall have with him in a public place any firearm (whether loaded or not) unless it is covered with a security fastened gun cover so that it cannot be fired.

Penalty: Fine not exceeding VT 250,000 or imprisonment for a period not exceeding 5 years or to both."

**Penal Code Cap 135**

**"Section 133. Malicious damage to property**

No person shall wilfully and unlawfully destroy or damage any property which to his knowledge belongs to another.

Penalty: fine of VT 5,000 or imprisonment for 1 year or both"

**3. Statements of offences**

**Count 1:** Drunk and Disorderly in Possession of Firearm contrary to Section 25 of the Firearms Act Cap 198.

**Statement of offence**

**DANIEL MILNE**, yu gat 19 yia mo yu stap liv long Freshwota. Samtaem long namba 29 June 2013 long main road along Erakor Bridge yu bin drong long alcoholic liquor mo stap hollem wan masket type rifle 12 pump action.

**Count 2:** Carrying a firearm in a public place contrary to Section 29 of the Firearms Act Cap 198.

**Statement of offence**

**DANIEL MILNE**, yu gat 19 yia mo yu stap liv long Freshwota. Samtaem long namba 29 June 2013 long main road along Freshwota kasem Erakor Bridge yu bin stap drivem vehicle blong yu registration namba 11387 mo holem wan masket type rifle 12 pump action mo long taem ia yu bin karem wetem yu 2-3 bullets blong masket ia.

**Count 3:** Malicious damage to property contrary to Section 133 of the Penal Code Cap 135.

**Statement of offence**

**DANIEL MILNE**, yu gat 19 yia mo yu stap liv long Freshwota. Samtaem long namba 29 June 2013 long main road long Erakor Bridge yu bin holem wan masket type rifle 12 pump action mo shutum brekem plate namba blong vehicle registration namba 6570 blong man ia RAY NGUI.

4. You pleaded guilty on all three charges and the Prosecution submitted the brief facts of the case to the following effect:



5. On or around 29 June 2013, the Complainant Ray Ngui was driving his Toyota Hilux registration number 6570 along Erakor Road with five other passengers. While driving along the way, they heard gun shots twice. The Complainant then slowed down his vehicle when your vehicle drove by and bumped into the Complainant's vehicle. The Complainant stopped his vehicle and you approached him and asked whether they were the ones who assaulted you. The Complainant answered negatively and you then realized that you stopped the wrong vehicle so you reversed your vehicle and drove off. The five passengers confirmed the gun shots. The complainant then noticed that the plate number of his vehicle was in pieces. The police apprehended you and cautioned you. You admitted the allegations laid against you.
6. Your lawyer conceded on your behalf to the facts as submitted by the State. I acknowledge the submissions from the Public Prosecutor and Counsel representing you, and I accept the facts as presented.
7. You have to understand that the offences you committed are very serious in nature, considering the fact that you had a weapon which you did not hesitate to fire towards the complainant and his passengers. Your sentencing should mark the seriousness of the offence.
8. The Parliament has imposed heavy penalties for the commission of such offences therefore this Court will provide a sentence that will reflect the intention of the law.
9. I agree with and wish to use the obita dictum made by the Learned Judge in PP v Kathy [2013] VUSC 10 who stated as follows:

*"Due to these aggravating features, it is necessary for the Court to impose sentences that will act as –*

- (a) Deterrence for all three of you and for others;*
- (b) Marking the gravity of these offences;*
- (c) Marking public disapproval and denunciation of your behavior; and*
- (d) Adequate and appropriate punishment.*

*Sentences of fines and imprisonment are therefore appropriate punishments the Court will impose."*

10. The aggravating features of your offending are that:
  - You had a weapon which was loaded;
  - You fired the weapon towards the complainant and his passengers;
  - You were under the influence of alcohol;
  - You fired the weapon on the Complainant's vehicle and destroyed the plate number;
  - You fired the weapon towards a vehicle that was running on a public road.
11. For the offence of Drunk and Disorderly in Possession of Firearm, I refer to the case of PP v Kathy [2013] VUSC 10 and make a starting point of 12 months imprisonment.
12. For the offence of Carrying a firearm in a public place, I refer to the cases PP v Taravaki [2016] VUSC 73 and PP v Matatetere [2016] VUSC 28, and use the starting point of 2 years imprisonment.



13. For the offence of malicious damage to property using a dangerous weapon, I believe the starting point should be an imprisonment sentence to mark the seriousness of the offence. Therefore the starting point here is 6 months imprisonment.
14. I now have to assess the mitigating factors in order to balance them with the aggravating ones:
  - Your young age at the time of the offence (19 years old);
  - You cooperated well with the police and admitted your offending at the earliest opportunity;
  - Your early guilty plea;
  - You showed remorse;
  - You have no previous conviction;
  - The custom reconciliation you performed (1 cow of VT 40,000, 1 pig of VT 25,000, 1 trunk of kava of VT 10,000, foods and mats to the value of VT15,000 and a cheque of VT100,000 for the damage caused to the vehicle).
15. You are entitled to the reduction of one third of your head sentence which is 14 months' imprisonment, for the early guilty plea you entered and thereby preventing a lengthy proceeding by the Court.
16. Another 5 months is deducted, taking into account the other mitigating factors. However, the Court has to add 3 months' imprisonment considering the severity of the aggravating features.
17. Mr. Milne, the Court is imposing on you an end sentence of 3 months' imprisonment for the offence of Drunk and Disorderly in Possession of Firearm, 7 months' imprisonment for the count of carrying a firearm in a public place and 2 months' imprisonment for malicious damage to property.
18. Your sentences are to be served concurrently, which means that you are to serve 7 months in prison.
19. I suspend your sentence on the fact there has been delay in bringing the proceedings against you in court. Your sentence of 7 months' imprisonment is therefore suspended for 2 years.
20. During the period of your suspended sentence, you must not commit any other offence and if you do so, you will serve 7 months in prison.
21. You have 14 days to appeal if you are not satisfied with the sentence.

**DATED at Port Vila this 14<sup>th</sup> day of November 2017**

