

PUBLIC PROSECUTOR

V

KEVIN TARI

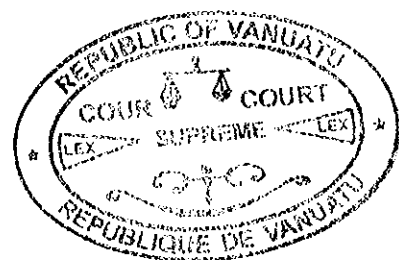
*Hearing:* 16 May 2011  
*Before:* Justice Robert Spear  
*Appearances:* Leon Malantugun for the State  
Eric Molbaleh for the Accused

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SENTENCE

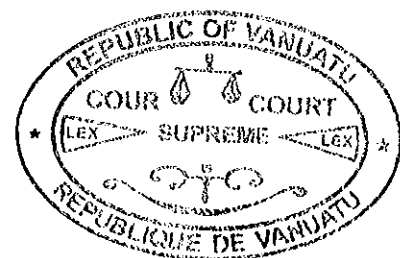
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1. Kevin Tari, you are for sentence having pleaded guilty to one charge of intentional assault. You pleaded guilty back in 2009. The reason that you have not been sentenced before now is because you absconded on bail and that you have been on the run (it would appear) since 20 February 2009 when the warrants to arrest you and your brother Gibson Tari were issued. Your other brother Albert Tari was wise enough not to skip bail and he was sentenced by Dawson J on 2 April 2009 to 6 months imprisonment suspended for 12 months.
2. The facts of the case are set out in Dawson J's sentencing decision and no dispute is taken with them.
3. Your two brothers and you were on the main road between Au Bon Marche No. 2 and the Tropical Market. This was on 25 December 2005. You met up with another two men and something occurred that displeased you and your brothers. You decided to act aggressively towards them and eventually one of the three of you kicked one of the two victims from behind. As it happened, a bus was going passed and some off-duty police

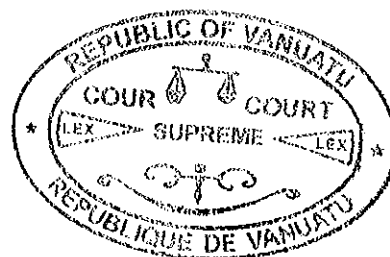


men called out and told you to stop what you were doing and to go home - very good advice that you should have taken.

4. However, after the bus left and the victim and his friends started walking off, you ran after them and the of you attacked again. One of the other men was able to defend himself but the other was quickly over powered by you. That occurred because you had armed yourself with a bottle and you hit that man in the eye with the bottle and seriously injured him. His eye socket was fractured and he still does not have full sight in that eye.
5. I do not have a sentencing report on you as a warrant of arrest was issued after you plea was entered and you were not seen again until the beginning of this month when you are arrested. Your brother Gilbert is still on the run. Eventually he will be caught and he can expect little leniency from the Court.
6. Your brother Albert received a sentence of 6 months imprisonment suspended for 12 months as I have mentioned. That is obviously because of the lesser part he played in the assault, his early plea of guilty and the fact that a reconciliation ceremony was performed.
7. Mr Molbaleh has taken instructions from you. He has asked me to proceed with sentence today and not to delay it further. The opportunity was there of course for you to ask for a pre-sentence report to be prepared. Mr Molbaleh has had the benefit of my indication as to what sentence I consider should be imposed. He has discussed that with you and he says that a pre-sentence report will change nothing.
8. In so far as you are concerned, this was an attack by three men on two other men. If it was simply that then a sentence of 12 months imprisonment could be considered as the starting point for mindless street violence without consequences. Allowance could be given for about 3 for the reconciliation ceremony that has been undertaken and perhaps another 3 months for the plea of guilty.



9. The reconciliation ceremony would usually encourage consideration of a sentence of imprisonment to be suspended. Of course, that is what happened with your brother Albert. The pre-sentence report prepared for him indicates that the reconciliation ceremony was performed between the families, your family and the victim's family, as a sign of "*klinim fes*" and a Mr Collen Kesa acted on behalf of the chief as the Master of the ceremony. He said it was a substantial reconciliation ceremony involving the gift of a pig, a fowl, a mat and some island kakae. The family of the victim accepted the custom reconciliation although the victim himself still could not use his left eye and was less forgiving of you.
10. I can understand and have no difficulty with the sentence imposed on Albert.
11. Your position is different because you took out a weapon and so the level of violence escalated substantially through you.
12. A glassing incident such as this requires the court to adopt a starting point of 3 years imprisonment. There is nothing to suggest that either of your brothers had weapons or were encouraging you to use a bottle as a weapon. So this relates solely to you.
13. I do not consider that there is a need for any uplift here as there are no circumstances in my view that would warrant an uplift from the 3 years. The question then is how much should be allowed for the reconciliation. I consider that the maximum that should allowed here is 8 months imprisonment particularly as the victim of the offending really not got over it. He remains seriously injured and there is still ill feeling there on his part.
14. You would normally expect to receive a discount of 12 months for your early guilty plea against a sentence of 3 years. However, I prune that back to 6 months because you took yourself out of the court system (or at least you have attempted to do so) by running away and that really makes me



question whether you are truly remorseful as this delayed this matter in so far as the victim is concerned. That brings me back to 22 months imprisonment. That is the appropriate sentence that should be imposed on you for this sorry event.

15. I am not prepared to suspend the sentence because you ran away and left this matter outstanding now for over 2 years. That is one of the prices that you have to pay for that. I note that you have spent 41 days in custody on remand. So the sentence of this court is that you serve 22 months imprisonment less 41 days.
16. You are entitled to appeal within 14 days if you do not accept the sentence.

**BY THE COURT**

