

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

BRIGHTLY TIMOTHY

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant

Date of Hearing of Submissions: 3rd August 2012
Date of Sentence: 14th August 2012

SENTENCE

1. You have admitted to one Count of driving while under the influence of alcohol and drugs contrary to section 16 of the Road Traffic (Control) Act Cap 29, and to one Count of unlawful possession of cannabis contrary to section 2 (62) of the Dangerous Drugs Act Cap 12. The traffic offence carries a maximum of fine of not exceeding VT10,000 or imprisonment of not exceeding one month, or to both such fine and imprisonment. The drug offence carries a maximum of a fine not exceeding VT100 Million or imprisonment not exceeding 20 years or to both such fine and imprisonment.
2. The facts which you have accepted show that at about 0630 hours on 31st March 2012 you drove a green taxi in Luganville town while intoxicated. You were stopped once and warned by the Police but you did not heed their warning. When you were apprehended the second time, the Police searched your person and found a quantity of cannabis wrapped up in a white paper inside your taxi. The Police also



found empty bottles of beer in the car. On arrest, the Police have stated you smelt heavily of alcoholic drinks. The amount of cannabis found was 0.449 grams.

3. In considering and assessing your sentences I have been guided by the case of Public Prosecutor v. Sope [2004] VUCA 14 which both the Public Prosecutor and defence counsel referred the Court to. This case is the leading case on drug offences and it was applied in the earlier case of Public Prosecutor v. Robert Solomon: Criminal Case No. 14 of 2012 though with some distinction made.
4. Counsel for the defendant made references also to the cases of Ishmael v. Public Prosecutor [1998] VUSC 3, and Public Prosecutor v. Kanas [2010] VUSC 5. I accept defence counsel's submission that these two cases are somewhat placed on a higher scale than your case.
5. I have seen the information made about you in your Pre-Sentence Report. It appears to suggest that you are a habitual drinker who enjoys hanging out with your friends to drink and smoke. It appears that you have done all these before posing risks to lives of other road users but have escaped being caught. You were caught once by Police that morning and warned. But you ignored that warning and later decided to drive passengers putting their lives at risk. In doing so, you displayed complete disregard for the traffic laws. Your action of driving whilst drunk was deliberate and amounted to a blatant disregard for the traffic laws and to the Police for their warning.
6. For those reasons, the Court will punish you to the maximum punishment of a fine as the appropriate punishment. This is consistent with the sentence imposed on Robert Solomon in Criminal Case No.



14 of 2012. I prefer imposing the same punishment for you in respect to the Drink/Drive charge in Count 1. I disregard the suggestion that you should be disqualified from driving.

7. For the drug charge in Count 2, I will impose a shorter sentence of imprisonment that that imposed on Robert Solomon in view of the very small quantity of cannabis found in your car. The sentence will however be suspended for a period of 12 months.

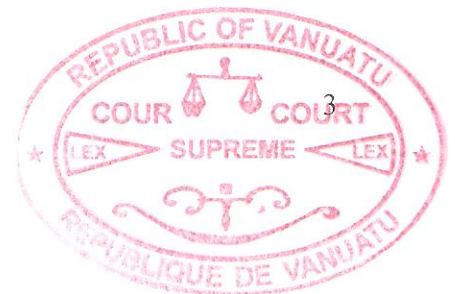
8. In summary, the Court convicts and sentences you on the two counts as follows:-

(a) For Driving Under the Influence of Alcoholic Drinks and Drugs –
You are sentenced to a fine of VT10.000 payable within 14 days from the date of this sentence. In default you will be sent to serve a prison term of one (1) month.

(b) For unlawful possession of cannabis, you are sentenced to a term of imprisonment of two months but this is suspended for a period of 12 months or 1 year.

You must understand that you have to exercise a lot of restraint and self-control and discipline. I have decided to disregard the suggestion that you be disqualified from driving as that would be detrimental to you and your family's livelihood. But you must not abuse this privilege and opportunity by committing these offences or any other criminal offences for which you would be charged and convicted. If you do so within a period of 12 months, you can expect to go to prison to serve out your 2 months imprisonment term.

9. These sentences serve the following purposes:-




- (a) To deter you and others from committing these offences.
- (b) To mark the seriousness of your offendings.
- (c) To mark public disapproval of your actions.
- (d) To protect other road users.
- (e) To punish you adequately.

10. Those are the Sentences of the Court. You have a right of appeal within 14 days if you so choose.

DATED at Luganville this 14th day of August 2012.

BY THE COURT


OLIVER A. SAKSAK*

Judge

