

PUBLIC PROSECUTOR – VS – ROCKY PACKET

Sentencing Hearing: Wednesday 16 September 2015 at 2.00 pm @ Malao, Big Bay, Santo
Before: Justice Harrop
Counsel: Ken Massing for the Public Prosecutor
Tom Joe Botleng for the Defendant

SENTENCE

1. Mr Packet you have pleaded guilty to arson of a sleeping house belonging to Leo Asamalu Aron on Christmas Day last year here in Malao village and you are now for sentence on that offence. That guilty plea was entered on the 30 June 2015 at Luganville and although the Chief Justice recorded your plea then as being not guilty there seems to have been some misunderstanding because both counsel agree that you pleaded guilty then and you confirmed that plea before me yesterday.
2. That was the first opportunity that you had to plead guilty before the Supreme Court and so I am going to proceed on the basis that there was done at the earliest reasonable opportunity and you're entitled to a 1/3 reduction in the sentence I would otherwise have imposed. I will incorporate that in my reasoning at the end of the judgment. I note too that when you were interviewed by the police you are immediately admitted your offending.
3. By way of further background there was a trial which began yesterday but which was aborted part way through the prosecution case today. In that trial you and three others were charged with unlawful assembly and two of the others were charged with aiding and abetting your arson. After some discussion with the bench this morning Mr Massing entered a nolle prosequi in respect of all those matters and all of you were discharged. Accordingly I put to one side the allegations that were made against you in relation to the unlawful assembly charge that you faced and I proceed on the basis that you and you

alone decided to set fire to the sleeping house. I also heard some evidence that you had assaulted at least Mr Leo and perhaps someone else. I put that to one side as well because you were not charged with later alone convicted of assault.

4. The facts of the case are that this was a revenge attack. You have, or had, a copra drier which for reasons I understand relating to a land dispute Mr Leo had burned down on 24 December. Instead of going to the police and complaining about what he had done, you decided to take the law into your own hands and you went and burnt his sleeping house down the next day, which happened to be the Christmas day a special day in the Christian calendar, which may well have been seen as an aggravating factor by the victim and his family.
5. You obviously planned what you did; it was a considered step taken in response to what had happened to you. The house itself was totally destroyed by fire, it was a sleeping house belonging to Mr Leo and I understand that there was property destroyed as follows: pillows, clothing, mattresses, plates and spoons, 10 bags of cement and about VT94,000 in cash. However, this was an unoccupied house at the time and it also occurred during the daytime which is generally speaking far less serious than if it was at night time.
6. And certainly this kind of arson, while totally unacceptable, is less serious than where people are sleeping inside building burnt and lives are put at risk. Arson is a very serious offence, and all too prevalent in Vanuatu. Parliament has set that the maximum penalty is 10 years imprisonment. Apart from the seriousness of the offence here there are some serious aggravating features.
7. Mr Massing has highlighted the amount of damage, the planning involved, the taking of the law into your own hands and the fact that Mr Leo was displaced and had to go and live somewhere else. Those points are all well made but I want to spend a little time talking about taking the law into your own hands because to me that is the most serious thing. You and any victim of a criminal should go to the police if you have a problem, but you decided not to, you decided to take the law into your own hands, you decided who was responsible and you decided to administer the punishment you thought was appropriate. In a civilised country like Vanuatu which is governed by the rule of law this

is totally unacceptable behaviour and the Court must deliver a strong sentence deterring you from ever doing that again and deterring others who might be similarly minded.

8. The Constitution gives everybody who is charged with a criminal offence the right to be tried by fair and impartial court and other rights relating to the interviews by the police and the Court process. You know that because you have been subjected to that process. What you did was to circumvent or get around the Constitution and decided the case and how it should be resolved for yourself. One of the reasons why those protections are in place and why victims must not take the law into their own hands is that sometimes a victim makes a mistake about who is responsible.
9. Now it may be right that in this case Mr Leo did burn your copra drier and I understand that is true because he was prosecuted ultimately and convicted. But what if you were wrong? Unless we have allegations that are properly investigated by the police, mistakes can be made. So I would like you to think about how you might have felt if a gang of people came knocking on your door from the family of a child that had been murdered and who wrongly claimed that you were the person who did it and would not accept your protestations of innocence.
10. What if they then decided to take you out and string you up in a tree and hang you? That would be of course a very serious injustice. If we allow that to happen in arson cases and it will happen in many other cases. In Vanuatu that kind of vigilante conduct is simply not allowed because it means that anarchy results.
11. That factor alone means in my view that a sentence of imprisonment has to be imposed for this offence but of course I need to consider whether it is proper to suspend that sentence and not require you to serve it immediately.
12. Mr Massing's submissions draw my attention to one of the leading cases *Worahese v. Public Prosecutor* [2010] VUCA 11 where although there was a minor adjustment of the sentence on appeal the Court did not criticise the Supreme Court's starting point of 5 years imprisonment including aggravating features and an end sentence of 2 years

imprisonment, one of which was suspended. Also, there was a compensation order made of VT180,000.

13. Mr Massing acknowledges that this case is not a serious is that one because in *Worahese* there were three buildings damaged and not just the one. I have already mentioned the other aggravating features which is Mr Massing has highlighted. He has also helpfully told me that for his offence of burning your copra drier Mr Leo was charged and convicted and earlier this year in the Supreme Court and was sentenced to 1 year's imprisonment suspended for 2 years and no community work was imposed. I infer that no compensation was ordered.
14. Now I accept that as between a copra drier and a sleeping house the loss of copra drier would be much more substantial because not only would it be more valuable in itself but it was also a commercial operation from which you would earn income and which involves a loss greater than value of the property damaged.
15. Mr Massing says that you must of course be given credit for your early guilty plea and I have already acknowledged that. He says there was a custom reconciliation ceremony on 25 January but from the perspective of Mr Leo it was simply to bring peace rather than particularly to compensate them of what happened.
16. Mr Massing submits that a starting point for around 3 to 4 years imprisonment is appropriate and that an end sentence of 1 and ½ to 2 years should result. He says I should not suspend that sentence.
17. On your behalf Mr Botleng notes that you are 40 years of age and I record at this stage of Mr Leo is only 18. From your perspective the customary reconciliation ceremony was much more than simply an agreement as to peace, but instead there was a formal apology, there was a giving of vt10,000 to Mr Leo, 4 bundles of taro, a live chicken and a mat. You shook hands before the Chief and the whole village at the end of the ceremony and I am told, and I am pleased to hear it, that there is there has been no suggestion of a dispute or fighting between you subsequently.

18. Mr Botleng says that the copra drier was destroyed the day before you decided to burn the house down, so you responded immediately to what it happened to you. He says you are the breadwinner for your family, you look after your mother who is 60 years of age and also your wife and four children. What you should understand is that by acting as you did you put their lives at risk because if you go to prison they would be victims as well and there is only one person who would be responsible for that and that is you. So before you leapt into action you should have thought about what consequences there might be for those who depended on you.
19. Mr Botleng submits that a prison sentence is appropriate but that it should be suspended. Normally in a case like this, if it was in Vila, Luganville or Isangel where a prison sentence is contemplated by the Court a pre-sentence report would be obtained to provide background information about the offender and his attitudes and risk of re-offending. In this remote village of Malao that is not possible to have that but I think it is in everybody's interests that the sentencing be finalised today rather than remanding you back to Luganville for the preparation of such a report. I have in any event had the advantage of hearing what Mr Botleng has said on your behalf about your personal circumstances.
20. I have already highlighted the aggravating features but I want to add something I have not mentioned, the mental consequences of arson. It is not just a loss of a property but it is the pain and suffering that goes with it and the fear that can be generated in the mind of the victim. Often that is exactly what is intended by the offending. It is not aimless but directed at frightening and causing personal loss to the victim.
21. A victim may well think : if he is prepared to burn my house down well what next? So there is not just property damage, there is mental anguish as well.
22. Having regard to the *Worahese* case, and other cases with which I am familiar, a starting point of around 3 years is appropriate, that is 36 months imprisonment. From that I will

deduct one third for your guilty plea at an early stage; that brings it down to 24 months or 2 years.

23. I will then deduct another 6 months for the custom reconciliation ceremony which I think has real value not only in Vanuatu culture generally but particularly in a small village, where people have to continue to live with each other and where the issue has arisen through a land dispute, which is certainly not uncommon. So that leaves me with the sentence of 18 months imprisonment.

24. The issue then is whether or not that sentence should be wholly or partly suspended as I have the power to do under section 57 of the Penal Code. I have a wide discretion about what I take into account in deciding whether or not to suspend.

25. I could easily justify sending you to prison for 18 months now and you would have little complaint if I did that. However I think the overriding fact here is that while it was wrong for you to take the law into your own hands, what we have is two related similar offences that were committed close in time to each other and a degree of a proportionality in the sentences is important. Otherwise the law falls into disrepute. I think if I were to send you to prison for burning down the sleeping house whereas Mr Leo got a suspended sentence for burning down a copra drier, that would not be seen as fair and just.

26. For that reason I am going to suspend wholly the 18 month prison sentence. What that means is that you will not go to prison today and as long as you keep out of trouble for the next 2 years (I will suspend it for 2 years) then you will not go to prison at all. However, if you were to commit any offence (it does not have to be arson, it can be anything) during that 2 year period then you will be required to serve the 18 months sentence together with the sentence imposed for the other offence.

27. So there is a considerable incentive for you to keep out of trouble. I might add that even after the period of suspension is finished, you will have a previous conviction for arson and if you ever commit another arson, particularly if it is in a fairly near future after the 2 years, you will almost certainly be sent to prison because you will have had this

conviction. The sentencing judge on that occasion will have access to what I have said and would see that you have not heeded the warning.

28. Normally when I impose a suspended sentence, I impose community work because I usually the suspended sentence is not triggered and so without a community work there is no punishment or sentence actually carried out.

29. I am not going to do that today because Mr Leo did not receive a community work sentence. Again, I think it is a matter of proportionality and fairness. The law would not be well regarded if you had to carry out a significant number of hours of community work when he had none.

30. There also the question of compensation but again because there has been mutual loss here and because you have already given him at least some money back, vt10,000. I understand there was no compensation order made in your favour when he was sentenced. So again for reasons of proportionality I consider it would be wrong to impose a compensation order on you as well.

31. In summary, I impose as the only sentence a sentence of imprisonment of 18 months, suspended for 2 years.

32. If you wish to appeal against this sentence you have a right to do so but you must lodge any notice of appeal within 14 days.

DATED at Malao this 16th day of September 2015.

BY THE COURT