

PUBLIC PROSECUTOR

-V-

WILLIE APIA

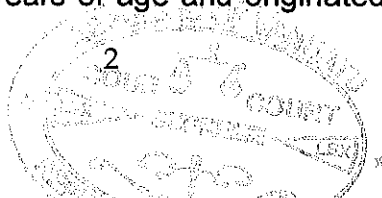
Coram: Mr. Justice Daniel Fatiaki
Counsel: Mr. T. Karae for the State
Mr. S. Stephens the for defendant
Date of Decision: 3 July 2015

SENTENCE

1. Willie Apia, on 12 June 2015 you were convicted after trial on five (5) counts of Forgery and one (1) count of Obtaining Money by Deception involving the sum of VT1,440,880. The maximum penalty for an offence of Forgery is 10 years imprisonment and for Obtaining Money by Deception imprisonment for 12 years. Both are clearly serious offences.
2. After your conviction you were released on bail to allow you time to sort out your personal affairs. I trust you have done so. The two weeks adjournment was also to enable Correctional Services to prepare a pre-sentence report and the Prosecution and defence counsel sentencing submissions to assist the Court. Unfortunately as of today the Court has not received any submissions from your counsel.
3. I am grateful however for the assistance provided in your pre-sentence report and in the written submissions of the prosecutor.
4. The facts that were proven and established beyond a reasonable doubt against you by the prosecution may be briefly summarized.
5. Over a period of 4 months between January and May 2014 you personally made a large number of fake Road Tax Stickers; fake Government Receipts; fake Driving Licences; fake Public Transport Drivers Permits and fake Motor Vehicle Insurance Certificates which you sold to many customers that had been found by "middle-men" recruited by you.
6. This was an intentional fraudulent scheme designed to make as much money as you could from dishonest and naïve drivers. You used inside knowledge and information acquired from being a police officer experienced in conducting vehicle checks and you chose a time when there would be a peak demand for your fake documents.



7. Although you claim that you were "*forced*" into making the fake documents and did it merely to "*expose*" the dishonest drivers, the Court did not believe you. Neither did the Court believe your claim that you had not received any money for the fake documents. Your offence was not prompted by human weakness or public duty, rather, it was pure "*greed*" that caused you to offend.
8. You have only yourself to blame for your criminal activities which were organized and repeated and had a direct and detrimental impact on the government's revenue that was meant to be collected by the Customs and Revenue office. You betrayed your oath to uphold the law and you have brought shame and dishonor to your uniform. Your activities also undermined the general image of the Vanuatu Police Force and the efforts of other honest and hardworking police officers who struggle daily to uphold the law and protect society.
9. Furthermore as a result of your offending a great deal of man-hours and resources had to be diverted in investigating and compiling the case against you.
10. In assessing what is an appropriate sentence in your case I have considered the following past judgments that were drawn to my attention by the prosecutor: Public Prosecutor v. Mala [1996] VUSC 22; Public Prosecutor v. Leo [2008] VUSC 62; Gamma v. Public Prosecutor [2007] VUCA 19; Public Prosecutor v. Mael [2010] VUSC 14; Public Prosecutor v. Tureleo [1995] VUSC 16 and, more recently, Public Prosecutor v. Williams [2015] VUSC 71.
11. I remind myself that the maximum penalty for an offence of Forgery is 10 years imprisonment. Furthermore your offending constituted a serious breach of public trust where you abused your power and position as a long-serving police officer. Also by your "*scheme*" you provided dishonest drivers with an avenue to avoid having to pay the correct fees to the proper collecting authorities thereby committing offences themselves. A sentence of imprisonment is not only justified but necessary to punish you for your criminal behavior and to deter others from committing similar offences.
12. For each offence of Forgery I adopt a starting point of 5 years imprisonment.
13. For the offence of Obtaining Money by Deception I remind myself that the total amount you obtained was a sum just short of VT1.5 million. For this offence I adopt a starting point of 2 years imprisonment.
14. Furthermore I order the sentences on the Forgery counts to be served concurrently making a total of 5 years imprisonment but that sentence is made consecutive to the sentence imposed on the count of Obtaining Money by Deception on the basis that it is a separate and distinct offence that would not have been committed if, indeed, you were truly only interested in exposing dishonest drivers as you claim. The cumulative sentence for all your offences is: **(5 + 2) = 7 years imprisonment.**
15. I turn next to consider mitigating factors in the case. According to your pre-sentence report you are 41 years of age and originated from Yopna village on



Epi Island. You completed year 6 on Epi and then attended Matevulu College up to year 10. You later attended the Institute of National Technology (INTV) before joining the Vanuatu Police Force where you served for 22 years and attained the rank of senior sergeant. You were based at the Bauerfield Airport Police Post at the time of the offences.

16. You have 3 daughters from a failed defacto relationship and have been caring for your daughters single-handedly since your partner left you in 2011. You should be commended for that. I also accept that a prison sentence will have a devastating impact on your daughters but that is an unavoidable consequence whenever a family loses the support of its head and sole bread winner. You should have thought of your family's welfare before committing any offences.
17. Having said that, I accept that this is your first conviction and you told the probation officer that you felt guilty and sorry for tarnishing your good name and reputation and you promise never to re-offend. You also expressed a willingness to perform a kastom reconciliation ceremony and to undertake a community based sentence.
18. Although I am required to take into account any compensation or reparation made, I note that none has been made or offered so far. Nor do I consider that a compensation order is appropriate given your loss of employment and the absence of an independent source of regular income.
19. For mitigating factors I am able to reduce your cumulative sentence by a generous two (2) years giving you an end sentence of **(7 – 2) = 5 years imprisonment.**
20. I have considered and am satisfied that suspension is not justified in your case and accordingly I order that you, Willie Apia, are to serve a term of 5 years imprisonment with immediate effect.
21. You have 14 days to lodge an appeal to the Court of Appeal if you do not agree with your conviction or this sentence.

DATED at Port Vila, this 3rd day of July, 2015.

BY THE COURT

D. V. FATIAKI
Judge.



PUBLIC PROSECUTOR

-V-

WILLIE APIA

Coram: *Mr. Justice Daniel Fatiaki*

Counsel: *Mr. T. Karae for the State*
Mr. S. Stephens the for defendant

Date of Decision: *3 July 2015*

SENTENCE ADDENDUM

(Orally delivered during the sentencing)


I received defence counsels sentencing submissions 40 minutes before delivering the sentence. The submission highlights the evidence led in the case about the amount charged in **Count 6 : Obtaining Money by Deception** and submits that the defendant should only be sentenced for receiving the sum of VT23,000.


I cannot agree. Quantum was never challenged at the trial where the defendant's defence to **Count 6** was a complete denial of receiving any money at all for the fake documents. There is also evidence which was undisputed and which the Court accepted that in excess of 40 fake Road Tax Stickers had been seized during police operations at the main wharf at the relevant time that the defendant was making fake documents. Similarly, **Philip Kemu** was not challenged on his evidence that he had obtained for the defendant "50 – 60 clients".

As for the value of revenue lost or uncollected **Melton Aru** was not challenged that there had been a cash short fall of VT1,400,000 million in their revenue collection. The legislation is also clear that a bus or taxi with an engine capacity of between 1500 cc and 2500 cc is liable to pay an annual motor vehicle tax of between VT19,635 and VT25,245, which computes to between VT1 million and VT1.5 million for 50 vehicles.

DATED at Port Vila, this 3rd day of July, 2015.

BY THE COURT


D. V. FATIAKI
Judge.



The seal of the Supreme Court of Vanuatu is circular, featuring the text 'REPUBLIC OF VANUATU' at the top and 'SUPREME COURT' at the bottom. In the center, there is a stylized emblem. The seal is stamped in a light grey color.

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU



WARRANT OF COMMITMENT UPON A CONVICTION
WHERE THE PUNISHMENT IS IMPRISONMENT

(Section 189)

To: Director of Correctional Services, Port Vila, in the Republic of Vanuatu

WHEREAS on 12 June 2015 **WILLIE APIA** was convicted of the offences of:

- 1) ***Forgery*** contrary to Section 139; and
- 2) ***Obtaining Money by Deception*** contrary to Section 130B

of the Penal Code Act [CAP. 135];

AND WHEREAS on 3 July 2015, the said **WILLIE APIA** was sentenced to be imprisoned for 5 years with immediate effect;

NOW THEREFORE YOU ARE HEREBY COMMANDED to keep the said **WILLIE APIA** in custody for the period of his sentence as above.

DATED at Port Vila, this 3rd day of July, 2015.

BY THE COURT

