

PUBLIC PROSECUTOR

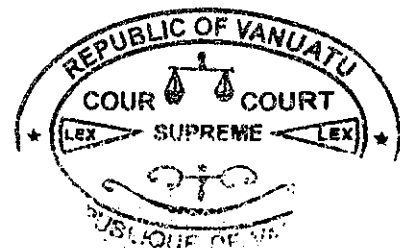
V

SHEM DAVID

Sentence : Thursday 28 April 2016 at 3 pm
Before: Justice JP Geoghegan
Appearances: Tristan Karae for the Public Prosecutor
Bryan Livo (PSO) for the Defendant

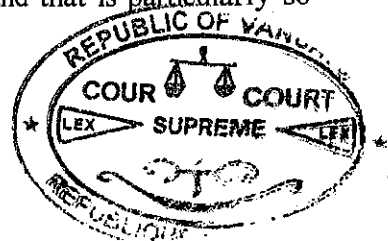
SENTENCE

1. Mr David you appear for sentence today on one charge of threatening to kill. That is a charge which carries a maximum term of imprisonment of 15 years so it is a serious criminal offence. You appear for sentence today without having any previous convictions so this is your first criminal offence.
2. The facts are not in dispute here and so I adopt paragraph 1 to 8 of the prosecutor's submissions in referring to the facts. That tells me that the victims here of this offending are your parents. You have resided with them prior to this offending at Mele Matt village. It is clear that there have been tensions between you and your parents but as far as statements in the prosecution's submissions relating to previous alleged threatening behaviour and the like I want to emphasize that I place no weight on those. I am sentencing you on the basis of this offence and this offence only.
3. The summary of facts tells me that on or about the 5th of December 2015, your parents were at home when you woke up and you approached them and started arguing with them. You have then sworn at your father to the effect of using words as follows;" both of you go fuck each other, both of you go and fuck each other's head, you two are foreskin." After you have sworn at your parents you have then pulled out what is referred to your gun, you have



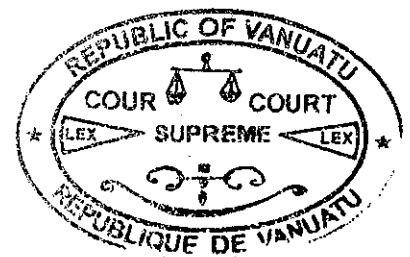
inserted a bullet into the chamber of the gun and you have pointed the gun at your parents. You then said words to the effect, "I will shoot dad,[the prosecution summary tells me], and the bullet would go through and it will go through to you too." Not surprisingly your father was scared and thought that you were going to shoot him. Your mother also has referred to the fact that she felt scared for her life as a result of your actions. You then ~~threatened them again and told them again that if they reported the matter to the police you would return and you would kill them.~~ As a result of that action your parents sought the assistance of the police and you were subsequently arrested.

4. What is depicted in that summary of facts is a very frightening situation for both of your parents where they can genuinely have reasonable course to believe that their lives were in danger.
5. I read your pre-sentence report and I have to say that the description of your family life in the pre-sentence report appears to be at conflict with the summary of facts which I have just referred to.
6. Your father has referred to you as a very good young person who helps when you get income from work and who assists his family in the garden. Clearly your parents see you as a good and positive young man. The report refers to you showing insight into your offending and that you have shown genuine and real remorse for your actions. While no custom reconciliation has occurred it seems that your parents have forgiven you and some arrangements have been made within the village for reconciliation and I certainly hope that that occurs. Your parents have forgiven you and it seems to me that that is a very, very generous thing to do on their part. You now need to do your part.
7. In terms of sentencing I have helped by very thorough submissions from your counsel and also from the Public Prosecutor. A Court of Appeal case called Moli v. PP, has made it clear that when a firearm is presented in a heated argument an operative prison sentence is required and that is particularly so

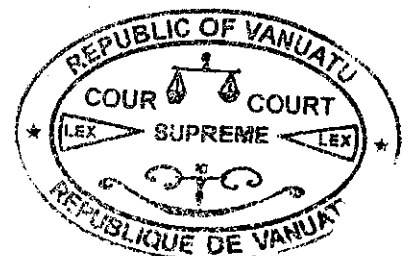


when the firearm is loaded as it was here. In fact it could be said that there is a difference between presenting a loaded firearm to the victims in circumstances where they don't know whether it is loaded or not and a case such as yours where you present a firearm and then in their presence load the firearm so that they have absolutely no doubt that the firearm is loaded. That is a very serious circumstance.

8. As in Moli however no actual harm occurred here other than the psychological harm that you have caused to your parents through this frightening behaviour.
9. Looking at a starting point, the prosecution has correctly identified the aggravating features. They are that a loaded rifle was presented during the offending and that the rifle was pointed at your victims. There are two other aggravating features that are referred to and I will refer to those briefly. They are firstly a reference to the history of threats to the victims and secondly the fact that one of your victims was your father. As to the history of threats, I don't intend to place any weight on that. That would run the risk of effectively sentencing you in respect of matters that you have not faced charges for. As to the issue of one of the victims being your father, I have not considered that an aggravating feature of your offending. The fact is that this would have been a frightening experience for anyone whether it was a member of your family or someone you didn't know.
10. Looking at those aggravating features however, I consider a starting point of 4 years as being appropriate. Your remorse is genuine and I consider that that should justify a reduction of six months. There is nothing apart from your guilty plea that would justify any further reduction.
11. Therefore I deduct one third of your guilty plea which reduces the end sentence by a further 14 months to give me an end sentence of two years and four months imprisonment.



12. The issue then becomes whether I should suspend that sentence or not and in considering that issue I consider the need to take into account the interest of the victim, the need to hold you accountable for your offending, the need to provide for rehabilitation, the need for deterrence in cases of this kind and the provisions of the Penal Code which requires the Court to have regard to the possibility of keeping offenders in the community so far as is practicable and ~~consistent with the safety of the community.~~
13. There are a number of considerations in your case in looking at this aspect of sentencing and those considerations are the following:
- 1) You are a first time offender;
 - 2) You are a young man - 26 years old;
 - 3) There is no reason to believe that the community is at any risk if you were at large;
 - 4) ~~You have shown genuine remorse and a willingness to change;~~
 - 5) Your victims have forgiven you; and
 - 6) You have been in custody since the 7th of December 2015. So for nearly five months already.
14. In my assessment all of those factors are in favour of a suspended sentence combined however, with a period of imprisonment. That period of imprisonment will underline the seriousness of your offending. In addition I intend to impose a supervision order pursuant to section 58 (g) of the Penal Code. I do not intend to impose community work as I believe that you would frankly be more productive putting that time to work in your parent's garden which will also be a way of you showing your remorse in a genuine and more importantly, a meaningful way.
15. Accordingly you are sentenced to two years and 4 months imprisonment. That sentence is deemed to have commenced on 7th of December 2015 when you were taken into custody. 23 months of that sentence will be suspended so accordingly you will be eligible for release very shortly.



16. You are also sentenced to 12 months supervision. Pursuant to section 94 of the Criminal Procedure Code I advise that you have 14 days to appeal this decision.

Dated at Port Vila this Tuesday 28th day of April 2016

BY THE COURT

**JP GEORGEGAN
JUDGE**

