

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 17/332 SC/CRML**

PUBLIC PROSECUTOR

V

JIMMY TARI

Date of Sentence: 18th September, 2017

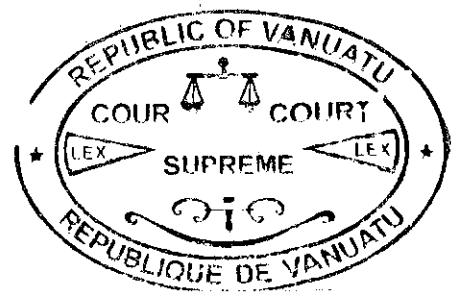
Before: Justice Saksak

Counsel: Damien Boe for the Public Prosecutor
Jane Tari Aru for the Defendant

Date of Plea: 28th July 2017
Date of Submissions Hearing: 2nd August 2017

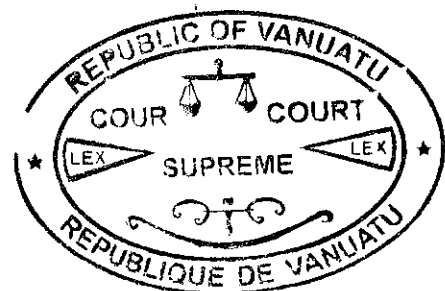
SENTENCE

1. Jimmy Tari, you are here for sentence today after your arraignment on 28 July 2017 when you pleaded guilty to one Count of Obtaining Money by Deception (Count 1) contrary to Section 130B of the Penal Code Act [CAP.135] (the Act); and to one Count of Theft (Count 3) contrary to Section 125(a) of the Act.
2. Initially you were charged with 6 other Counts with charges of Theft (Counts 2, 5 and 7) and Forgery (Counts 4, 6 and 8). These were alternative charges only and which were at the invitation of the Prosecution, withdrawn when you were re-arraigned on 28 July. Originally on 13th March 2017, you had entered Not-guilty pleas to all the 8 Counts.
3. You will be sentenced only for the two main charges of Obtaining Money by Deception and Theft.
4. The offence of Theft carries a maximum penalty of 12 years imprisonment and the offence of Obtaining Money by Deception carries a maximum penalty of 12 years imprisonment also.

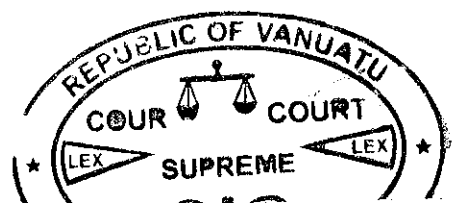


5. You committed these offences during your employment with AFIC Bank in Luganville, Santo as a loans officer. You commenced work on 18th January 2016 and on 28th October 2016 you were terminated from employment as a result of your offendings. During these periods of about 9 months you obtained a total of VT1,729,000 and permanently deprived customers of their money. You did this by taking monies from loan repayments and withdrawing from customers' accounts without their consents and authorisation. You began in your temporary status at VT50,000 on week days and increasing to VT100,000 twice or thrice per week when you were made a permanent employee.
6. You used these monies to buy meals at the Beach Front Resort, Nemo Restaurant and other resorts. You rented cars and made money advances to other people. You bought the following items –
- 2 speakers
 - 1 roll light
 - 2 microphones
 - 1 red yazz mobile phone
 - 1 set canalsat
 - 1 decorder
 - 1 electric fan
 - 1 dexter brown boot
 - 2 xin chen black dressing shoes
 - 1 Tv antenna
 - 1 Toshiba Laptop

From the facts presented it appears these are the items recovered by the Police. But clearly you were in a position of trust and you abused that trust for your personal greed and benefit. And you deprived customers of AFIC permanently of their hard-earned moneys. And your actions were repetitive and planned, and deceptive.



7. In considering what is the appropriate punishment this Court should impose on you, I have seen the submissions made by both the Prosecution and the defence counsels. Both counsel submit that a starting point of 3-4 years imprisonment is appropriate. The only point in issue was raised by Mrs Tari Aru that your term of imprisonment should be suspended based on the cases of Public Prosecutor v. Sharon Melanie Frank [2012] VUSC 159 and Public Prosecutor v. Berry Ishmael [2013] VUSC 128.
8. The appropriate sentencing guidelines are usefully set out in the case of Public Prosecutor v. Mala [1996] VUSC 22. The amounts you took totalled up to VT1,729,000. This amount falls within the range of 2-3 years imprisonment. The case of Public Prosecutor v. Batty [2003] VUSC 107 is also helpful to the Court. The Court adopts the sentencing principles in these two Supreme Court Cases. Further the Court adopts the recent Court of Appeal Case of Public Prosecutor v. Anne Marie Garae [2017] VUCA Criminal Appeal Case No. 849 of 2017 where the Court of Appeal quashed the suspended sentence of the respondent and re-instated the imprisonment sentence but reducing it appropriately.
9. In light of the Garae Case, the Court now has a duty to impose imprisonment term for this category of offendings in order to deter offenders and other like-minded persons employed in positions of trust, in order to protect customers' finances and the integrity of financial institutions in Vanuatu.
10. That said, the appropriate penalty this Court will impose on you is to be an imprisonment term considering the overall offendings and all the circumstances in which the offendings occurred, the regularity and the relatively short period of time within which the offendings occurred and how the monies were used. Therefore in my considered opinion the starting point shall be 3 years imprisonment. This imprisonment term is to –
- (a) Mark the seriousness of your offendings.
 - (b) Mark the Court's disapproval and condemnation of your actions which are greed.
 - (c) Deter you and other persons in positions of trust of other peoples' money.



- (d) Punish you adequately; and
- (e) Protect Banks and other financial institutions.

11. I therefore sentence you as follows:-

- (a) For one Count of Obtaining Moneys by Deception – 3 years imprisonment.
- (b) For one Count of Theft – 3 years imprisonment. I order that these two terms of imprisonment be served concurrently. That means your concurrent sentence is essentially 3 years imprisonment. There will be no suspension of the sentence.

12. In mitigation I note and consider the points raised in your Same Day Report dated 1st August 2017. However the only relevant factors the Court will allow to reduce your sentence are –

- (a) Guilty plea – 1/3 reduction = 12 months deducted.
- (b) Your cooperation with the police;
- (c) Your willingness to repay the money; and
- (d) Your clean past and character.

For these three factors I allow a further reduction of 2 years by 8 months. That leaves the balance at 16 months imprisonment.

13. You are therefore sentenced to an end sentence of 16 months imprisonment as a concurrent sentence to commence with immediate effect as of today. There will be no restitution order.

14. That is the Sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it, however you must begin to serve the sentence today.

DATED at Luganville this 18th day of September, 2017.
BY THE COURT

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OLIVER A. SAKSAK
 Judge

