

BETWEEN: Public Prosecutor

AND: Pascal Kalo
Defendant

Date of Sentence: 7 December 2018
Before: Justice G.A. Andrée Wiltens
Counsel: Mr K. Massing for the Public Prosecutor
Ms J. T. Aru for the Defendant

SENTENCE

A. Introduction

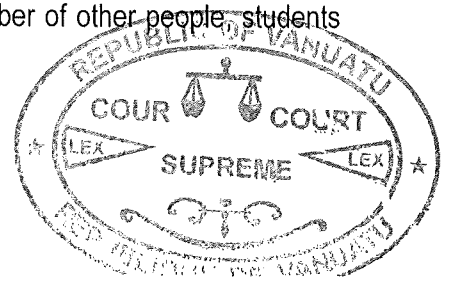
1. Mr Kalo pleaded guilty to one charge of arson. The maximum sentence for that offence is a term of 10 years imprisonment.

B. Facts

2. On the evening of 28 August 2018 Mr Kalo set fire to a double classroom at Mel Worbang Primary School in Luganville. He went there armed with dry coconut leaves and armed with a knife. Once he had set the building on fire, he persuaded the school principal to desist from putting the fire out by threatening him with the knife. The classrooms, valued by the principal at VT 118,000, were largely destroyed by the fire.
3. Mr Kalo left the scene on the arrival of more members of the public. He frankly admitted the offence when questioned by the police.

C. Aggravating and Mitigating Factors of the Offending

4. It is an aggravating factor that Mr Kalo took a knife with him at the time, and used it to prevent others interfering with his intent to burn the building to the ground. The type of building destroyed is a further aggravating factor – it has affected a number of other people, students and staff.



D. Start Point

5. Mr Massing has referred me to some authorities and submitted the appropriate start point for sentence is in the range of 5-7 years imprisonment. Ms Aru has submitted the start point ought to be 3 years imprisonment.
6. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 4 years imprisonment.

E. Personal Factors

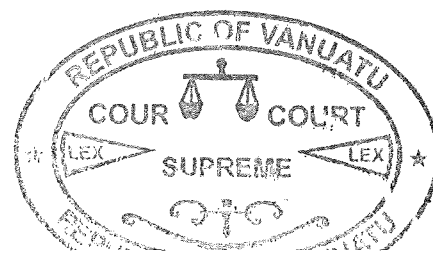
7. Mr Kalo is no longer a young man, being now 31 years of age. He has no qualifications. His behaviour can be best described as anti-social. It appears he has some health issues (diabetes and high blood pressure) which he believes he can overcome by the use of cannabis – even though he has served a 10 month imprisonment sentence for possession of cannabis in 2010. He advised he was under the influence of cannabis at the time of this offending; and also told the PSR writer that on occasions he sells cannabis for cash.
8. Ms Aru submitted that credit should be allowed for the fact that the building was not completely burnt down; as well as the factor that Mr Kalo was angry regarding either some land issues and/or that his Chief had advised him that his partner was being unfaithful. I noted that apart from counsel's submissions there was no concrete evidence of these assertions.
9. There has been no custom reconciliation ceremony. There is no prospect of reparation.
10. I allow no credit for Mr Kalo's personal factors – neither will I impose an uplift of the start point to take into account that this is his second conviction, nor to deal with his continuing cannabis fascination and offending.
11. The final matter to take into account is Mr Kalo's prompt plea. I allow a one-third reduction to the start sentence for his plea.

F. End Sentence

12. The end sentence that I impose is 2 years 8 months imprisonment. The sentence will commence as from 3 September 2018, the date on which Mr Kalo was first remanded in custody.

G. Suspension

13. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.
14. In my analysis, Mr Kalo must serve his time. There is nothing in his circumstances, or those relating to the case, which enables me to take the exceptional step of suspending the sentence in the exercise of my discretion. In making that determination, I am accepting the views of the PSR writer.



15. Mr Kalo has 14 days to appeal this sentence if he disagrees with it.

Dated at Luganville this 7th day of December 2018
BY THE COURT

Andrée Willem
Justice G.A. Andrée Willem

