

PUBLIC PROSECUTOR VS- VICTOR RORY

Coram: Mr. Justice Oliver A. Saksak

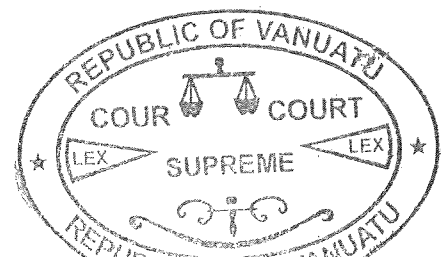
Counsel: Lenry Young for Public Prosecutor
Brian Livo for Defendant

Date of Hearing of Submissions: 28th June 2019

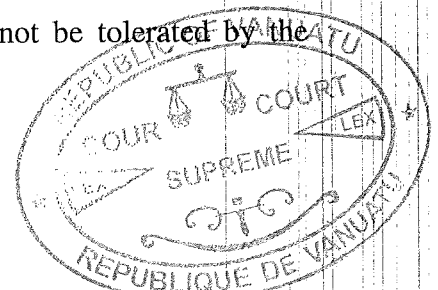
Date of Sentence: 5th July 2019

SENTENCE

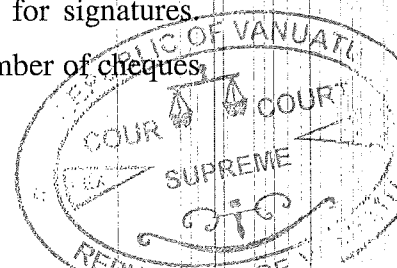
1. Victor Rory you are for sentence today for having been found guilty by the Court on 1st April 2019 to 20 counts of obtaining money by deception and another 20 counts of money laundering.
2. Under section 130B (1) of the Penal Code Act (as amended) the offence of obtaining money by deception carries a maximum penalty of 12 years imprisonment. The offence of money laundering carries a maximum penalty of a fine of VT 10 million or imprisonment for 10 years or both under section 11(2) (a) of the Proceeds of Crime Act No. 13 of 2002.
3. The facts of your offendings are usefully set out in paragraphs 8 to 14 inclusive of the judgment as to verdict and I need not repeat them in detail. I summarise them only in brief. The moneys were aid moneys from the European Union made to the Vanuatu Government for implementing its priority projects. From 4th January 2016, 3, 12, 24 February, 10,15, 23 and 29 March, 11 April,4 May, 8 and 27 June, 3 and 30 August, 29 September, 14 October, 7 November and 5 and 21 December 2016, you took cheques which you signed to other signatories to counter-sign. You then took the cheques to the bank and had the moneys deposited into the account of Lamboung Edition and Translation. You then withdrew those moneys on different dates and used them for your personal benefits. The total amounts of money you misappropriated and lost was VT 14, 996, 427. You did all these intentionally and deliberately, knowing what you were doing was against the law.



4. These moneys were entrusted to you in your official capacity as Principal Aid Negotiator and Aid Co-ordinator at the Department of Strategic Planning and Policy (DSPPAC). These were aid moneys from the European Union in response to the Government's request to assist in the recovery projects after cyclone Pam and other priority projects.
5. You abused your position of trust and swindled more than VT 14 million of aid money over a period of one year into your company account and misused them for your personal benefit. The offences were repeated 39 times. There was a degree of planning on your part. And VT 14 million is forever lost.
6. Taking all these aggravating features into account together with the seriousness of the offences committed, I am of the view that the starting sentence proposed by Mr Livo of 5 ½ to 6 ½ years imprisonment is too low. Your offendings are more serious than in PP.v. Tavdey [2017] VUCA 11 and Apia.v. PP [2015] VUCA 30 as submitted by Mr Livo. Those cases do not assist you. The amount of money you obtained deceitfully and swindled into your personal account and caused losses to are far greater than the amounts of money involved in the cases of PP.v. Steve Bani [2018] VUSC 90 PP.v. Natu [2018] VUSC 11, PP.v. Tari [2017] VUSC 142 and PP.v.Nishai [2018] VUSC 36 the cases submitted by the Prosecution. The starting point in PP.v. Natu was 8 years imprisonment for 2 counts of money laundering involving the sum of VT 9.081.203. The only difference was that the defendant in that case pleaded guilty. By comparison in this case there were 20 counts of money laundering and 20 Counts of obtaining money by deception. In my view this calls for a higher starting point than 6-7 years submitted by the prosecution.
7. It is well established that the offence of money laundering is very serious (PP.v. Bani) [2018] VUSC 36 and State.v. Lata [2017] FSHC 927).
8. Considering those principles, I adopt a starting point of 10 years imprisonment for the offences of obtaining money by deception, and 7 years as the starting sentence for the offences of money laundering. This sentence reflects the seriousness of these offendings which ought to be deterred. These offences cannot be tolerated by the Court. Aid moneys and funds must be protected adequately.



9. I accept the submissions by both Mr Young and Mr Livo that your sentence should be made concurrent. However I do not accept Mr Livo's submissions that your sentence should be suspended. Your medical report is not adequate to make your case an exceptional one. And your chairmanship to the Vanuatu Institute of Technology is not sufficient reason to suspend your sentence. In the case of Kal Andy [2011] VUCA 14 I suspended the defendant on the basis of his medical expertise but the Court of Appeal removed the suspension.
10. Mr Rory, I now convict you on all the 20 charges of obtaining money by deception and on all the 20 charges of money laundering. And I sentence you to a starting sentence of 10 years imprisonment for each of the 20 charges of taking money by deception. And for the 20 charges of money laundering I sentence you to a starting sentence of 7 years imprisonment on each charge from Count 21 to 40 inclusive. All sentences will run concurrently. This means you will serve a total of only 10 years imprisonment for all the 40 charges.
11. I now consider whether I should reduce your sentence of 10 years imprisonment. I have read your pre-sentence report. I do not accept that you are at all remorseful for your unlawful acts. I note you are now 48 years old with a medical condition. You are well educated and skilful in management, computer and administration. You have served in the Public service for over 10 years and you are currently the chairperson of the VIT. You have made some useful contributions to the country and to the VIT as an educational institution. You are a family man with a bus business with which income you maintain your wife and meet loan repayments. For all these personal factors I am prepared to give you a reduction of 12 months. That brings your starting sentence down to 9 years imprisonment.
12. Standing back and looking at the totality of the case, this is a case where there were other persons involved in signing of the cheques. It is hard to understand how any of them could not become suspicious of your actions, especially in February 2016 when you presented 3 cheques and March 2016 you presented 4 cheques for signatures. Surely by this time someone would be asking questions why these number of cheques.



presented in a very short space of time. It shows lack of proper monitoring in the system. Even the bank could have noticed and began asking questions that early. Unfortunately this did not occur until after December 2016.

13. For this reason I am of the view your appropriate end sentence should be 8 years imprisonment. Accordingly I sentence you to 8 years imprisonment as the end and concurrent sentence for all the 40 charges you have been convicted of.
14. As indicated earlier, there is no suspension of sentence. And you are not entitled to any further reductions. The submissions that you should be suspended and to repay the moneys are rejected. The recommendation that you should be sentenced to community work is not a tenable recommendation.
15. Your sentence of 8 years imprisonment is deemed to have begun on 1st April 2019 when you were found guilty on all 40 charges. Your bail is vacated as of today, which means you must go to the Correctional Centre today.
16. That is the sentence of the Court. You have a right of appeal against sentence within 14 days, if you so choose.

DATED at Port Vila this 5th day of July 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

