

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

LIVO WARAESE

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mrs Kayleen Tavoa – Public Prosecutor
Mrs Marisan P. Vire for the Defendant

SENTENCE

1. Livo Waraese, you pleaded guilty to 1 charge of Arson on 9th February 2010. You acted contrary to Section 134(1) of the Penal Code Act Cap. 135. The maximum penalty under this section is 10 years imprisonment.
2. For your guilty plea, the Court hereby convicts you accordingly.
3. You acted disproportionately to the verbal abuses hurled at you by the victim's relative, the result of which caused you to set fire to 4 buildings completely burnt down to ashes. The victim and his family were displaced by your actions. And those actions were deliberate and it appears from the facts that you were drunk at the time. These are the aggravating features of your offending.
4. Intentional acts of arson must not be condoned by the Court and must be punished accordingly in order to –



- (a) Deter future possible offenders; and
- (b) To punish offenders adequately.

5. I therefore consider that the appropriate sentence should be a custodial one to achieve the above purposes in your case. I have considered the other options raised by the Defence Counsel in light of your Pre-Sentence Report, but the Court is of the view that these options are not appropriate in the circumstances. This includes the sentence of compensation. The victim has not cooperated fully or at all on this aspect, so the Court will not be concerned with the compensation aspect. The victim may choose to pursue a separate civil action but that is entirely a matter for him.
6. I therefore sentence you to imprisonment for 4 years as the starting point. It is increased by 1 year to 5 years for the aggravating features.
7. However, I have also considered the mitigating factors raised by Counsel on your behalf and allow a reduction of 2 years. That is quite a substantial reduction but considering that you yourself have been the victim of an attack which resulted in injury to your arm (still bandaged).
8. You will therefore serve a total of only 2 years imprisonment. However, I suspend this sentence in part under Section 58 of the Penal Code Act as amended. That means that you will in effect serve only 1 year (12 months) of your 2 years sentence. The other 1 year (12 months) is suspended on condition that you do not commit any offences against any Act, Regulation, Rule or Order within the next 12 months thereafter. If you do, the 1 year sentence may be reactivated automatically.



9. Finally, I must make it clear to you that the 1 year (12 months) imprisonment that you must serve is to be without parole. You must serve the whole 12 months and thereafter be released.
10. Your 2 years imprisonment begins today, 18th March 2010.
11. There is a right of appeal available. Notices of appeal should be lodged within 14 days from today.

DATED at Luganville this 18th day of March 2010.

BY THE COURT


OLIVER A. SAKSAK

Judge

