

PUBLIC PROSECUTOR

V

PETER HOLI VARASMAITE

Hearing: 23 September 2011
Before: Justice Robert Spear
Appearances: Simcha Blessing for the Public Prosecutor
Felix Laumae for the Accused

SENTENCE

1. Peter Holi Varasmaite you are for sentence having pleaded guilty to 2 charges
 - a. count 1: possession of a firearm with intent to injure,
 - b. count 2: attempted intentional homicide.
2. The charge of possession of firearm with intend to injure carries a maximum sentence of 15 years imprisonment. The charge of attempted intentional homicide carries a maximum sentence of 20 years imprisonment.
3. You pleaded guilty to both these charges at the first reasonable opportunity and you are entitled to distinct credit for that. An application was subsequently made to vacate those pleas of guilty and that application was heard and determined two days ago on 21 September 2011. The application was refused and your pleas of guilty remain as having been entered at that first reasonable opportunity. I am not prepared to reduce the credit that you will receive for your early guilty pleas just because you applied to vacate the

pleas. I accepted, in the decision that I gave two days ago, that Mr Laumae, who was overseas when you first appeared in this court, was taken by surprise when the lawyer he engaged to act as his agent advised you to plead guilty to ensure you received the maximum credit available. I accept that Mr Laumae intended to discuss matters with the Public Prosecutor in the hope that a charge of intentional assault causing injury would be preferred to the charge of attempted intentional homicide. That has not been the result but, as I mention in my decision from two days ago, I do not consider that it matters for the purposes of sentencing. Consequently, as a result of your early guilty plea you will receive a full one-third credit against the starting point that I will identify shortly.

4. The facts surrounding this case are not in dispute. They are as set out in a summary presented by the Public Prosecutor. In May 2011, you were a member of a village community, the Moriu Village, on the island of Epi. Your father, Pastor Willie Holi Varasmait,e was the paramount chief of that village. In an order to ensure that the sea food available to the village was maintained in a sustainable way, your father announced on 1 May 2011 that a tabu would apply on the sea and the reef thus ensuring that there would be no fishing and collecting of shell fish from the reefs for a time. This was to enable the stocks of fish and shell fish to recover.
5. This announcement of tabu did not find favour in some quarters and a dispute arose. There were attempts to resolve the differences with the involvement of other chiefs in the village but to no avail come 11 May 2011.
6. On that morning, 11 May 2011, the complainant (Mr Sumare Elia) and his wife (Mrs Lalanauli Sumare - whom I understand from Mr Laumae was your aunt) were passing by your home and they saw your father holding a leaf namele and a nalnal and that you were was holding a krupa. Unfortunately, this assisted to provoke a verbal exchange between Mr Sumare and your father directed towards the reasons why your father was banning all fishing and shell fish gathering. You took exception to the way in which Mr Sumare was talking to your father as you considered that it was disrespectful. You

went in to your home and picked up a shot gun. You came out and, from a distance of between 30 and 50 feet between yourself and Mr and Mrs Sumare, you fired a single shot at them. Mr and Mrs Sumare were strike with the shot. Mr Sumare was strike in two separate places; on the neck and on his jaw or chin. Mrs Sumare was struck just above her left eye causing a laceration of 50 ml by 30 ml.

7. Mr and Mrs Sumare were flown that day to Port Vila hospital. Fortunately, their injuries were not considered serious and they were discharged within 24 hours.
8. Your father was clearly so upset at what you had done that, immediately afterwards, he broke the shot gun. You were arrested shortly afterwards by the police.
9. I have had the benefit of receiving an excellent pre-sentence report from the probation service together with written submissions both from counsel for the public prosecutor and counsel for the defence. I am grateful to them all for the care with which the report and those submissions have been presented as they have been of great assistance in in this difficult matter.
10. The senencing is difficult because it has all been such a tragedy. It is a tragedy that matters had got out of hand to such an extent that you lost your temper and exercised such poor judgment as to pick up the shot gun and fire a shot at someone was showing disrespect to your father. It is a tragedy because your father died the following month. Some senior members of your village believe that this untimely death came about principally because of the stress and strain on your father caused by the shooting incident and your subsequent arrest. That may or may not be correct but nevertheless, it is still a tragedy of course that your father, a highly respected member of your family and your village community, as well as a leading citizen of this country, is no longer with his family. This has added to the guilt that you carry..

11. I need to say this - although it has not expressly addressed in any of the submissions or indeed even the pre-sentence report. However, it can be inferred quite easily from what has been written particularly by the probation officer. It appears that you were the son who was brought back from your job here in Port Vila as mechanic to the village on Epi to assist in the village and effectively learn what was required to take over your father's chiefly responsibilities in due course. In other words, you were being groomed principally by your father to take over from him. I note also that your father was a pastor in the Presbyterian church and that both you and he are deeply religious. I say all this because that helps me to understand the fury that you showed when your father was shown disrespect by Mr Sumare.
12. It is clear that a violent confrontation, such as this, was not what was sought by your father. His actions of breaking the shot gun immediately afterwards points to this.
13. So, this case is tragic on all sorts of fronts including, of course, that your arrest and prosecution for these charges has all comes at a terrible emotional cost for your family - both your mother, who is here today, as well as your wife and your two small children who are deprived off your attendance in their lives.
14. The submissions for the public prosecutor are directed towards a starting point of 5 years imprisonment to recognise the aggravating circumstances surrounding this offending and before consideration is given to your personal situation and circumstances. That, in my view, is an appropriate starting point having regard the need for this Court to mark the seriousness of the offending - that a fire arm was used in a verbal dispute and accordingly introduced the risk of serious harm indeed death to occur. It is necessary to mark society's complete condemnation of the use of fire arms in a dispute and to emphasise how serious the courts will deal with those who take up arms in disputes.

15. I am required to give consideration to your personal situations. I note that you are 25 years of age and a married man with 2 children. You come from a good home and, in all other respects and by all other accounts, you have been a good and contributing member of your village community; someone, indeed, whom the community believed would be a future leader.
16. I accept that what you did was an impulsive act at the time when you were terribly upset at the way in which your father was being treated but that is really more an explanation than an excuse for taking up a firearm to do harm to another person.
17. I accept that you are remorseful for your actions and, of course, that is reflected in a tangible way by the fact that you undertook a reconciliation ceremony with the victims here in Port Vila shortly after your arrest in conjunction with your father. Furthermore, there has been a second reconciliation ceremony involving your family and the victims driven particularly by your mother and assisted by the local chiefs. That second reconciliation ceremony took place on Epi.
18. So, as it were, between the families involved there appears to have been reconciliation. The probation officer specifically records that you have been forgiven by Mr and Mrs Sumare.
19. I should note at this stage that the fire arm that you were using is a 410 shot gun; photos of that shot gun are available. It is not a rifle (as was mentined in some reports) but a shot gun. It fires shot rather than a single cartridge. It has been mis-described as a rifle and the shot gun shell has been mis-described as a cartridge in the forensic report. This is the type of rifle that is well understood to be used for shooting birds and vermin. A 410 shotgun does not present the same stopping power as a 12 gauge shot gun but it is well understood that 410 shot guns are reasonably accurate. I mention all this simply to identify that the shotgun did not present the same risk of harm to Mr adn Mrs Sumare as would have been the case with a rifle or a 12 gauge shotgun. However, I doubt that you fully appreciated that fact.

20. All that notwithstanding, there was still the real risk that one of the pellets or shot could have hit the eye or another vital part of the body. Additionally, the shock of being hit or shot at could have had serious consequences.
21. I mention this solely to address the degree of risk that the victim were in at being shot at with the 410 shot gun from a distance of between 30 and 50 feet. However, I am sure that you did not factor this into your decision to pick up the shot gun and fire it at them. Indeed, the sworn statement that you filed in support of your application to vacate plea stated that you fired the shot gun at the victims "in order to injure them".
22. Mr Laumae, in his submission, attempts to put this slightly differently but your sworn statement puts your intention beyond question.
23. Returning to you personal circumstances, it must be acknowledged that you are entitled to distinct credit for your guilty plea, for your remorse, for your otherwise good character, for the promise you show as a leading member of Moriu village community and for the reconciliation that has taken place already.
24. Taking a starting point of 5 years imprisonment which, in my view, counsel have correctly identified as reflecting the seriousness of the offending, I allow you a full one third or 20 months credit for your guilty plea. I then allow a further 16 months to reflect your remorse, the reconciliation that had been undertaken, the fact that you are a first offender of otherwise good character and the promise you show as someone who has every chance still of becoming a leader in your community. That brings me to a sentence of 2 years imprisonment. It raises the question as to whether that 2 year sentence, or any part of it, should be suspended.
25. Mr Laumae, in his able submissions, responsibly acknowledges that a term of imprisonment is the appropriate response by this Court to an offending as serious as this. He argues, however, that any term of imprisonment should

be suspended to enable you to return to your village which, of course, is what desired by the chiefs of your village as well as your family. I can go part of the way towards accepting that a suspended sentence is appropriate here. I do not consider, however, that offending as serious as this can justify full suspension. Be that as it may, the final outcome, to be calculated by Correctional Service,s is likely to see you released almost immediately.

26. The sentence as I have mentioned is one of 2 years imprisonment. That will be imposed in this way. You will immediately serve 1 year's imprisonment less the 4 months and 11 days that you have been held in custody on remand. There is then a further 1 year's imprisonment which I suspend for a term of 2 years.
27. This means that, after you have effectively served your first year, you will be released but you will be liable to serve the remaining 1 year term of imprisonment if you are convicted of any other offences over that 2 year period.
28. I am prepared to suspend the majority of the sentence because it is abundantly clear that you are a young man who is highly unlikely to come back to this Court. It is clear that you are a young man who has learned a terrible lesson about the use of violence which, of course, you know was completely against your father's standpoint.
29. You are entitled to appeal the sentence within 14 days if you do not accept it.

BY THE COURT

