

PUBLIC PROSECUTOR

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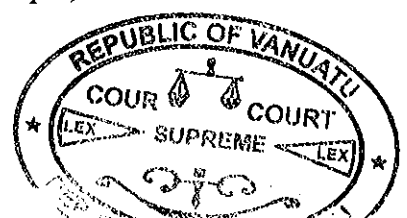
**CHARLIE KEPAL
JOHNATHAN JAMES
CELEP JOHNNY
PHILIP TOM
NEIL PAUL
JOSEPH PETER**

Hearing: *19 April 2013*
Before: *Justice Robert Spear*
In attendance: *Ken Massing for the Public Prosecutor
Less John Napuati for the Defendants*

SENTENCE

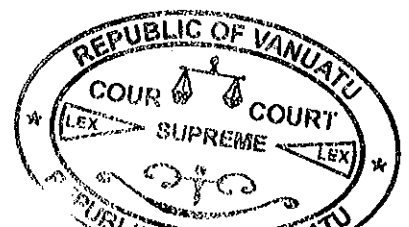
PAROLE BOARD – Please note paragraph 28 in respect of Charlie Kepal

1. The six defendants have each pleaded guilty to 2 counts of assault brought under section 107 (c) of the Penal Code Act [CAP.135]. That is a serious offence that is caused when a person commits an intentional assault on a person with the result of permanent damage. The maximum penalty for this offence is 5 years imprisonment.
2. There is now no dispute in respect of the prosecution's summary of the facts. That was not always the case.
3. Three of the defendants, in their pre-sentence reports, took issue with the prosecution summary of facts and attempted to shift the blame for the tragic events of that night on to the victims. Today, however, those three defendants (Charley Kepal, Jonathan James

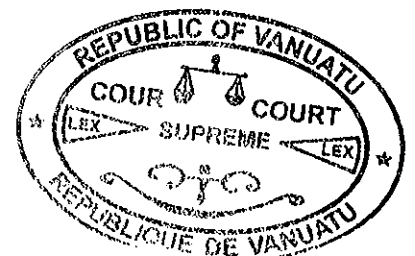


and Celep Johnny) have resiled from that stand. This followed an indication given to Mr Napuati last week (at the date originally set for the sentencing hearing) that a disputed facts hearing would take place today if those three defendants maintained their position that the offending was started or initiated by the male victim.

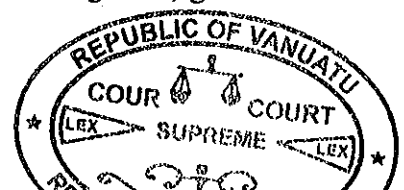
4. This morning, Mr Napuati informs me that he has discussed the matter carefully with the three defendants and they no longer take issue with the prosecution summary of facts. Furthermore, they accept that the offending occurred as the prosecution has stated it.
5. The six defendants range in age from between 15 and 20 years of age; although there is some slight uncertainty in respect of the age of Philip Tom. They had all been drinking spirits that night and they accept that they were heavily intoxicated. I say now that intoxication can never be a matter of mitigation in respect of violent offending. It is just simply part of the background matrix of facts that enables the Court to gain some understand as to how this offending occurred.
6. In the early hours of Sunday, 2 December 2012 the defendants were hanging around a bus stop in Fresh Wota 5 near their homes. A young couple, in their early 20's, had been to a concert and they were on their way home. As they passed the bus stop, Charley Kepal started acting in an intimidatory and lewd manner by making offensive sexual remarks to the young woman and generally sexually harassing her. The young man, recognising that he was well outnumbered, sought help from a relative that lived nearby. That relative arrived and recognised the defendants as his neighbours. However, as the relative approached the defendants, Neil Paul threw a dry coconut at his face and the relative departed the scene. There is no suggestion that the coconut actually collided with the relative but clearly it indicated that he had assessed the situation as being one with the potential for violence and he decided not to remain involved. What happened from that point constitutes the offending.
7. Charley Kepal then threw a stone at the young man which hit him with such force that he fell down onto the road. Charley Kepal and the other defendants then set upon the young man, kicking him and hitting him using stones and lengths of wood.



8. The young woman attempted to stop the defendants from beating her friend whereupon Charley Kepal then turned and attacked her with a stick – hitting her around her arms and body. The other defendants accept by their pleas of guilty that they contributed in some unspecified way to the beating that the young woman received.
9. The violence only stopped when other relatives came out from nearby homes and remonstrated with the defendants.
10. Both the young man and the young woman were left lying unconscious on the road and covered with blood. They had to be taken to the hospital where they ended up in the Emergency Room.
11. The young man suffered a fractured jaw, he lost a number of teeth, other teeth were broken and he suffered other facial injuries. The young woman suffered facial injuries as well and also fractures to her hands and arms - no doubt, defensive injuries caused by trying to deflect the blows from Charley Kepal's stick.
12. This is the summary of facts which the six defendants accept. It is disturbing offending because is it mindless gratuitous violence that cannot be totally explained either by age or the fact that the defendants were intoxicated. It is the type of mindless street brutality that must be stamped out. People must understand that the streets are no place for violence.
13. The aggravating features here are obvious. The offending was initiated solely by the defendants and, in particular, Charley Kepal. It involved six young men against a young man and a woman and that was a serious mismatch.
14. It involved all six defendants attacking the young man while he was on the ground, kicking and hitting him with the weapons, and leaving him unconscious with serious injuries.
15. It involved Charley Kepal in particular being involved initially with the attack on the young woman which was even more cowardly than the six of you attacking the young man. She was left lying on the ground, unconscious and bleeding.



16. In short, these were brutal and cowardly acts. It has resulted in serious injuries being sustained by the two complainants. Beside the physical injuries they suffered, they will have mental scars that they will carry for many years. The Court can expect they will be nervous now about being out in public.
17. There is a compensation report that has been prepared by Correctional Services. It explains that none of you is in a position to pay reparation save perhaps for Joseph Peter who currently has employment. However, the amount of compensation that these two victims would require to equate with the injuries that they sustained is so far beyond the means of any of you that it is pointless making a compensation order. It is significant that in so far as compensation is concerned, none of your parents has been able or prepared to come forward and offer compensation to the complainants, the victims, for the harm done. Instead, what occurred was a custom reconciliation ceremony that took place down on Tanna.
18. That custom ceremony was organised between the chiefs from South Tanna and West Tanna; all as detailed in the pre-sentence reports. This has not been accepted by the victims or their immediate families as satisfactory compensation or indeed as the basis for forgiveness for the harm done to the two young people. It is categorised more as a means by which there could be some semblance of peace between those communities down on Tanna. So, while the custom reconciliation ceremony may have achieved some semblance of peace between those two communities on Tanna, it cannot be treated as compensation for the harm that you have done those two young people or even as an expression of your remorse.
19. The young couple clearly had a bright future. They had both been offered scholarships to go to New Caledonia this year and they would have been there furthering their education but for your untimely intervention in their lives. They both had to spend time in hospital and now they have lost their scholarships. That may well be a life time opportunity lost to them because of your thoughtless, brutal and serious actions.
20. This is offending that must be approached very serious by the Courts. It is offending that requires the emphatic condemnation of this Court which acts, of course, on behalf of the community. If young men feel that the way to have fun is to go out, get drunk and

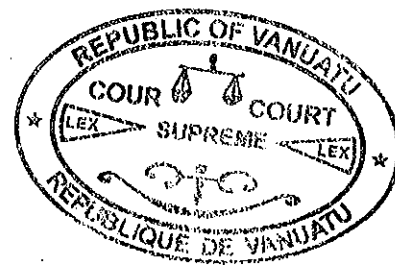


then attack defenceless people, which is what happened here, then there should be little scope for leniency. It is important that the clear message is sent out to the community that those who are involved or involve themselves in mindless street brutality will be dealt with firmly by the Courts. That is necessary to send a message out to the community that it is not worth the risk.

21. Sadly, in respect of the three of you who attempted to minimise the offending and to shift blame onto the young man whom you left unconscious and bleeding on the ground, there appears to have been a personal reliance to admitting what you had done and accepting due punishment for your actions. Charley Kepal, Jonathan James and Celep Johnny, when asked by the probation officer for your version of what happened that night, you all attempted in various ways to shift the blame on to the young man that you attacked. It does you no credit at all that you attempted to minimise your role in it; particularly you, Charley Kepal.

Charley Kepel

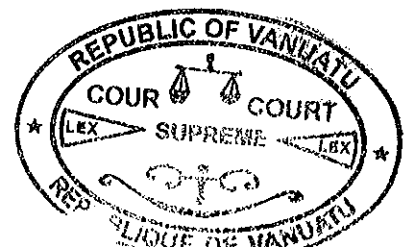
22. Charley Kepal, without question you were the leader of this group. You initiated the violence against the male complainant, you attacked the female complainant initially by yourself and so the sentence that I will impose on you today will reflect your far greater role in this offending than the others.
23. Charley Kepal you are 19 years of age. You come from Letakran village at Lenakel on Tanna. You obtain part time work as a ship's crewman on occasions. You had been residing in the Teouma Area with some family members awaiting the sentence. As I have indicated, this is offending that carries with it a maximum penalty of 5 years imprisonment but, of course, you are to be sentenced on the basis that you led the charge on both the victims.
24. I consider, having regard to all the circumstances of this case, your leading role and the fact that you initiated the violence, the starting point should be one of 4 years' imprisonment. You were 19 years of age at that time and I am prepared to make some allowance for your age although with some reluctance. I allow 6 months to recognise your age.



25. As for the submission that you have not offended before and that you are full of remorse, I tell you now I do not accept that you are remorseful except as to the position that you now find yourself. Your attempt to shift blame onto the victim is despicable. You have, however, pleaded guilty at an early stage and you are entitled to credit for that by a full one third against the sentence that would otherwise have been imposed on you. That leaves me with a sentence of 2 years 6 months imprisonment. That is the appropriate sentence for you.
26. Because of your leading role in this offending I am not prepared to consider suspension for such violent offending as this.
27. So Charley Kepal, you are sentenced to 2 years and 6 months imprisonment.
28. **I ask that the Parole Board, when considering you for parole in due course, to give serious consideration to a parole condition that you requires you to go to and remain at your home village on Tanna during that parole period and particularly that you do not come on to the island of Efate at any time. However, that is a matter entirely for the Parole Board.**

Jonathan James

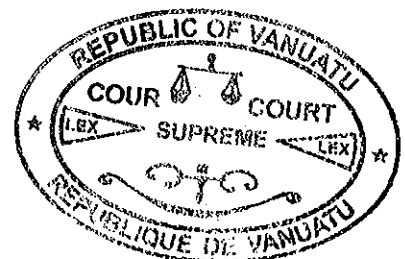
29. Jonathan James, you are 19 years of age. You also come from the Lenakel Area on Tanna. You have been residing in the Rentapau Area of Efate with your family. You have no work except for gardening in the family gardens and otherwise you must be considered as unemployed. Herein, lies the difficulty. You are a young man from Tanna who is up here without education, without job prospects, and by this incident it is clear that you are someone who has been prepared to go out, get drunk and attack defenceless people. This is reprehensible offending that requires a firm response by the Court. Your role, however, was more one of following Charley Kepal but by your age you cannot be considered as someone who was in over his head. You are someone who should have been able to say "No" or to stop the offending.
30. Instead, you attempted to shift blame on to the victim which says a lot about you and your empathy for the victims.



31. For your lesser role you are sentenced to 12 months imprisonment. That recognises your guilty plea and the lesser role that you have taken.
32. I am prepared to suspend that sentence for a period of 2 years and couple it with community work and supervision.
33. So the sentence for you Jonathan James is 12 months imprisonment suspended for 2 years. This means that if you commit another offence in the next 2 years then you will go to prison for 12 months.
34. You will also carry out 200 hours community work.
35. You are placed under supervision for a period of 3 years with these special conditions:
- a) You will undertake the Niufala Rod Program as directed by your Probation Officer;
 - b) You will undertake spiritual counselling with a church pastor as directed by your Probation Officer;
 - c) During the course of your supervision you are to reside on the Island of Tanna at a village approved by your probation officer.
36. You have forfeited the right to remain up here in Port Vila for the next 3 years. You need to go away to your home island and contemplate the opportunity that you have lost, at least for 3 years, to live in Port Vila. You are to go back to your home island and stay there for the next 3 years.

Celeb Johnny

37. Celep Johnny, you were 16 years of age at that time and, like Jonathan James, you attempted to shift the blame for this offending onto the male victim. That does you no credit at all.



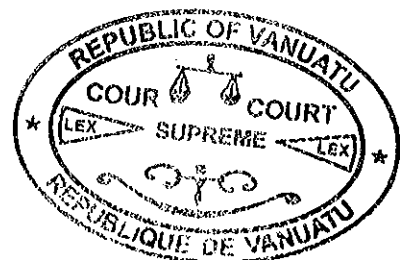
38. The appropriate sentence for you is one of 12 months imprisonment again which I suspend for 2 years particularly because of your age. You have heard me explain the effects of a suspended term of imprisonment.
39. You will carry out 150 hours community work which recognises that you were younger than Jonathan James at that time.
40. You are placed under supervision for a period of 2 years with the same special conditions as Jonathan James. This means that you are also going to be required to reside on Tanna but for 2 years. You have also forfeited your right to stay up here in Port Vila.

Philip Tom

41. Philip Tom, you were 20 years of age at that time. You deserve some credit for the fact that you accepted the summary of facts straight away and that you did not attempt to join with the other three (whom I have already dealt with) by shifting blame onto the victims. However, at 20 years of age you should have known better.
42. You are sentenced to 12 months imprisonment which I suspend for a period of 1 year. You will carry out 150 hours community work. You are also placed under supervision for a term of 3 years with the same conditions as Jonathan James which is going to see you return to the island of Tanna for the next 3 years. You have forfeited your right to remain here.

Neil Paul

43. Neil Paul, you are from Pentecost. You were 16 years of age at that time. I accept that because of your young age it is probable that you were led on by others who were older and more street savvy than you; particularly by Charley Kepal.
44. To recognise your age, I do not impose a term of imprisonment but impose a community based sentence.
45. You are sentenced to carry out 150 hours community work.



46. You are placed under supervision for 2 years with these special conditions:-

- a) That you undertake the Niufala Rod Program as directed by a Probation Officer;
- b) And that you undertake spiritual counselling with a church pastor as directed by a Probation Officer.

Joseph Peter

47. Joseph Peter, you were 14 years of age at that time and, of course, like Neil Paul you would have been led on by older more savvy individuals.

48. A community based sentence is appropriate for you. You are sentenced to carry out 100 hours community work.

49. You are placed under supervision for 2 years on these special conditions:-

- a) That you undertake the Niufala Rod Program as directed by a Probation Officer;
- b) That you undertake spiritual counselling with a church pastor as directed by your Probation Officer.

Finally

50. Each of you has 14 days to appeal this sentence if you do not accept it.

51. The message should go out now that young men who have come in to Port Vila from outer islands, who have no prospects and who just cause trouble can expect to be sent back to their home islands until they learn to behave and respect others. That is necessary to ensure that Port Vila remains a peaceful place.

BY THE COURT

