

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 23 of 2015

PUBLIC PROSECUTOR – VS – **LENETH ISAAC**
SIMON ISAAC
RENOLD PETER
NEBIL SAMSON
SAM PHILIMON
KEVIN MALIU
TIEN MORRIS

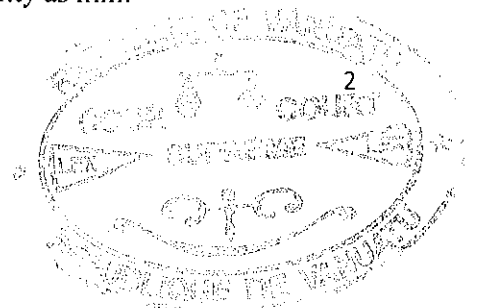
Sentencing Hearing: Friday 11th September 2015 at 2.55pm at Luganville, Santo
Before: Justice Harrop
Counsel: No appearance for the Public Prosecutor
Mr Tom Joe Botleng for the Defendants (excused prior to sentencing)

SENTENCE

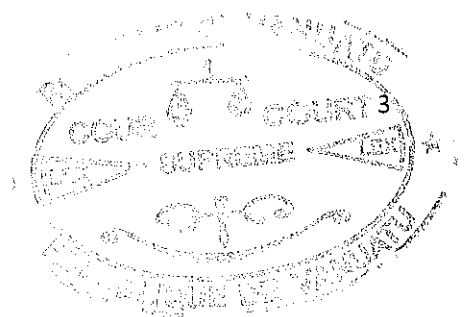
1. This is unusual sentencing because not only is Sam Philimon the defendant is not before the Court but also the public prosecutor Mr Massing is not able to be here and while Mr Botleng has been here I have excused him after indicating what I am going to do and he had no objection.
2. Normally of course the Court would not proceed to sentence without the defendant and the public prosecutor present but there are unusual circumstances here which in my view make it desirable and appropriate.
3. On Tuesday 8 September at Wunpuko, Mr Philimon along with six other defendants pleaded guilty to charges of unlawful assembly, kidnapping, false imprisonment and intentional assault (the only defendant convicted of assault was Lenneth Isaac).
4. All of the defendants were sentenced apart from Sam Philimon and I gave a lengthy sentencing judgment which should be read alongside this one.



5. The reason that Sam Philimon was not sentenced was that it was understood that his offending triggered the implementation of a suspended sentence of imprisonment imposed earlier this year, by me as it happens.
6. I made it clear that had it not been for that he, in common with the others on the lowest level of culpability, would have received a suspended sentence of imprisonment of 18 months with the period of suspension being 2 years and a sentence of 200 hours community work. However, because it was thought that Mr Philimon would have to serve the sentence which had earlier been suspended, it would require a reassessment of what otherwise was the appropriate sentence. I therefore remanded him in custody to appear in Luganville today.
7. When I returned to Luganville yesterday, I had the opportunity to read my sentencing decision on 10 March 2015 when the sentence of imprisonment of 15 months was imposed but suspended for 2 years. I immediately realised that the suspended sentence had been imposed **after** the offending committed by the seven defendants. That offending had been committed between 19 and 25 February 2015. Accordingly the reality is that Mr Philimon is **not** subject to the activation of the suspended sentence , which was imposed on 10 March.
8. Having realized this I arrange for my Associate to contact Mr Massing who was still at Wunpuko, as was Mr Philimon. I advised him that Mr Philimon should immediately be released from custody and I understand that duly occurred.
9. It would be unreasonable to expect Mr Philimon now to attend Luganville for sentencing and it is in his interests that I sentence him in his absence. Although I ought to receive submissions from the public prosecutor in the light of the changed circumstances the reality is I am simply going back to the position that I was in earlier this week when imposing the sentence that I had concluded was appropriate, having received and considered Mr Massing's submissions and those of Mr Botleng. Mr Philimon was present at the Wunpuko sentencing and heard my reasoning both generally and in connection with the four offenders who are on the same level of culpability as him.



10. The other seven defendants were all first offenders whereas Mr Philimon of course as matters stand today is not. He has the conviction for arson which led to this suspended sentence. That offence was committed on 7 June 2013 but of course that was not a conviction he had as at 19 to 25 February 2015. However he had committed the arson itself though he was not convicted for nearly two years.
11. In the circumstances I note that the arson offending is of a different character than the charges with which I am now dealing and if he had been convicted before February 2015 it is not a sort of previous conviction which would have uplifted the sentence by much if at all.
12. In the circumstances the only difference between Mr Philimon and the other four lowest level offenders is that he is not able to claim the same level of good character prior to the offending in February 2015 as the others could. They received their 3 months deduction from their sentence in respect of their good character and in the circumstances what I am going to do is give Mr Philimon only a 2 months credit. I therefore sentence him to 19 months imprisonment, that sentence being suspended for 2 years from today and I also sentence him to 200 hours community work which would need to be carried out under the supervision of the Chief who is supervising the other community work since imposed at Wunpuko.
13. The reality now for Mr Philimon of course is that for a period he will be doubly subject a suspended sentence. There is nothing wrong in principle about that. However he needs to understand that if he commits any offence before the 10 March 2017 he will have to serve the 15 months imprisonment **and** consecutively, rather than concurrently, the 19 months sentence I have just imposed. If he commits any offence between the 11 March 2017 and the 11 September 2017 he will be required to serve the 19 months prison sentence.
14. He should understand that, as I explained to him when imposing the last suspended sentence, that he will also in the event that he commits an offence triggering the



suspended sentence of course be required to serve whatever other sentence the Court imposes for that offence.

15. Mr Philimon will have 14 days from the date of this sentencing to appeal against it if he wishes to do so.

DATED at Luganville this 11th day of September 2015.

BY THE COURT

Robert M. M. M. M.
The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "SUPREME COURT" is written in the center. The outer ring of the seal contains the text "REPUBLIC OF VANUATU" at the top and "REPUBLICQUE DE VANUATU" at the bottom.