

PUBLIC PROSECUTOR – VS – TOY MAXIM

Sentencing Hearing: 17 September 2015 at 12.15pm at Navele School, Big Bay

Before: Justice Harrop

Counsel: Mr Ken Massing for the Public Prosecutor

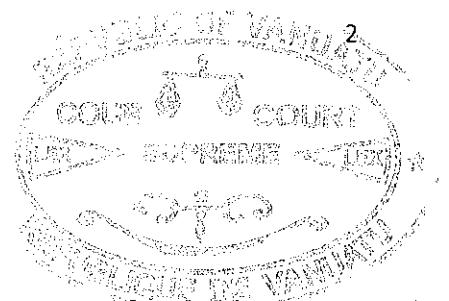
Ms Tari for the Defendant

SENTENCE

1. Mr Maxim, you pleaded guilty at the first opportunity before the Supreme Court to one charge of threatening to kill against section 115 of the Penal Code. There was no sentencing at the time because you also faced to another charge of threatening to kill against another complainant but pleaded not guilty to that charge.
2. There has been quite some delay in trying to arrange a trial of that second count. Because you lived in a remote place it has been very difficult to arrange a trial and Mr Massing says to me that he is not in a position to proceed with the trial today because he has not been able to contact his witnesses. Accordingly he has entered a nolle prosequi and I have discharged you on count 2.
3. So today's hearing has been about the appropriate sentence for you in relation to count 1. The charge was that on 7 March last year so it is more than 18 months ago now, at Waralui village in Big Bay, you threatened to kill Jennita Rosie Toy who is your sister-in-law. She is married to your older brother, Fabrice Toy.
4. The circumstances were that you went to your elder's brother's house to argue with him about a solar panel which was installed at his house and which had belonged to your late father. There were arguments about who should have it and your older brother refused to return it to you. You threatened to remove it and or at least the part of it and some DVD's belonging to his children. That is when the the victim Jennita came in to the argument and said that these items were her children's property.



5. You responded by saying that you would slice her head with the knife and you threatened to do the same to her two children, although I should say that the charge is limited to the threat made to Jennita.
6. After the argument you fled the scene. Mr Massing submits a suspended sentence of imprisonment should be imposed together with some community work. He points out that there are aggravating features in that you made this threat in anger and you had a choice about discussing a matter in a civilized way with your older brother but you chose to threaten his wife. He acknowledges you were not holding a knife at the time so it is not one of those situations where you had the present ability to carry out the threat. But nevertheless the victim was frightened by what you did while not harmed in any physical way. I would add to the aggravating features that, obviously, she is a woman and you are a strong young man aged 26. Not being as strong as you have she must have felt particularly threatened by that more so than a man in that position is likely to have felt.
7. Ms Tari emphasises that you are a first offender, that you pleaded guilty at the first opportunity, that you have apologized to your brother last year and in an informal family gathering, a form of custom reconciliation. Importantly she highlights that there has been no problem between you since then. She also says that the solar panel was given to you and you now using it.
8. You have a young family, including a 3 month old baby and you are the sole breadwinner, you are a subsistence farmer and it seems that you have successful operation because you sell crops at Luganville, and you have also a small cattle holding of six animals so you have a good small farming business.
9. Ms Tari emphasizes that it was a one-off the situation; you did not do anything before or after the incident to carry out the threat and she submits that a community work sentence would be appropriate to punish you. Alternatively, she says that you paid a VT20,000 bail bond to the Magistrate's Court on 30 May last year and that it would be possible for a fine to be imposed using sum of that money.
10. Having taking everything into account, it is first important to mention that threatening to kill someone is a very serious threat to make as Parliament has recognized by the maximum penalty for this offence which is 15 years imprisonment. So normally when there are threats of this kind, the Court would look at a prison sentence although often the circumstances as such that a suspended prison sentence is imposed. That is to encourage



the defendant to behave properly in relation to the victim over a period of time while things settle down.

11. Normally I would have been attracted to Mr Massing's submission that I should impose that a such sentence but I am not going to on this occasion. That is because in reality there has been a period during which you have had the opportunity to show that you will not do this again, that you can behave properly and that is what has happened.
12. I accept that you have made things up with your brother, that you are getting on well now as brothers should and I do not think it is necessary to impose a further period of suspension on you to see if you will behave yourself for a longer period.
13. In my view 18 months is a sufficiently long time for you to have behaved appropriately and for the Court to have confidence that from this point forward you will continue to behave appropriately. So I am not going to impose a suspended sentence of imprisonment even though it would in many respects have been the appropriate sentence.
14. I am not going to impose a fine as was suggested nor I am going to order compensation. This is not a case where the victim suffered any significant consequences or certainly nothing long lasting, beyond the fear that she would have felt at the time. It was a one-off and short incident, not something which carried on for a length of time causing her significant mental trauma, which might properly be met by a compensation order. There is no suggestion of any out of pocket loss of any kind in a case like this.
15. But I do think a sentence of community work is appropriate because that recognizes that you have offended against community stability by acting in this way. Clearly the victim was concerned enough to refer the matter to the police.
16. I am going to impose a short sentence of community work which will technically be supervised by a probation officer in Luganville but in reality I hope by the Chief in your village who can ensure that you do the work which is required.
17. I take into account all of the mitigating factors, notably your good behaviour before this incident and during the 18 months since, in imposing what I think is a short sentence of 50 hours community work.
18. I impose that sentence starting today and you will have 12 months to complete that, but I hope that this sentence can be completed fairly promptly. Once that is done this matter can be put behind everyone in the family who was affected by it.



19. If you wish to appeal against the sentence you have a right to do so but you must lodge any such appeal within 14 days. If you wish to consider appealing you should talk to Ms Tari immediately after the sentencing.

DATED at Navele, this 17th day of September 2015.

BY THE COURT

