

BETWEEN: Public Prosecutor

AND: Yan Jean Claude Kalmet
Defendant

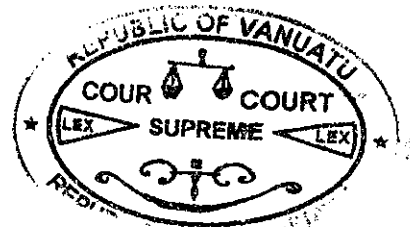
Before: Justice G.A. Andrée Wiltens
Hearing: 24 May 2018
Counsel: Mr S. Blessing for the Public Prosecutor
Mr F. Tasso for the Defendant

Sentence

A. Charges

1. Mr Kalmet pleaded guilty to the following charges:

- 1: Importation of firearms without an Import Licence, contrary to sections 7 and 40 of the Firearms Act [Cap 70]. The maximum sentence for this offence is 12 months imprisonment and/or a fine of VT 50,000.
- 2: Importation of ammunition without an Import Licence, contrary to sections 7 and 40 of the Firearms Act [Cap 70]. The maximum sentence for this offence is 12 months imprisonment and/or a fine of VT 50,000.
- 3: Knowingly making a False Declaration to Customs, contrary to section 170(b) of the Customs Act no. 7 of 2013. The maximum sentence for this offence is 6 months imprisonment and/or a fine of VT 5,000.



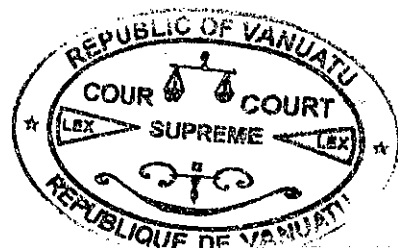
- 6: Failing to Declare the Importation of Firearms, contrary to sections 22 and 40 of the Firearms Act [Cap 70]. The maximum sentence for this offence is 6 months imprisonment and/or a fine of VT 20,000.
- 7: Defrauding the Revenue of Customs, contrary to section 174(1)(a) of the Customs Act no. 7 of 2013. The maximum sentence for this offence is 5 years imprisonment and/or a fine of VT 10 million.

B. Facts

2. In May 2016, Mr Kalmet, a former Regional Seasonal Employment Programme employee was returning to Vanuatu from New Zealand. He and several others used an agent to deal with the return of their belongings to Vanuatu in a container. The agent required a list of the goods being brought into Vanuatu, together with any invoices and receipts in order to supply the necessary information to the Vanuatu authorities.
3. Due to some concerns, the decision was taken to open the container and physically inspect the goods. Prior to that, Mr Kalmet was advised of the risks involved if he had not correctly and fully disclosed everything required, in particular firearms and ammunition – there was the risk of goods being impounded and criminal prosecution. Mr Kalmet did not see the need to supply any further information.
4. Once the examination commenced, Mr Kalmet approached the searching officers and disclosed he had secreted firearms and ammunition in the container. The search later revealed a .22 calibre rifle with telescopic sights, a double-barrelled .12 calibre shotgun, and 500 rounds of .22 calibre ammunition. They had been wrapped in bedding and newspaper, as well as being falsely named, as a means of concealment.
5. The value of the firearms, which are described in one document as "second hand", is noted as \$25. Mr Tasso in his sentencing submissions reports that his client paid VT 225,000 for the items. Customs has calculated the duty payable of VT 76,891 – which is agreed to be correct.
6. Mr Kalmet was interviewed subsequently and made quite damning admissions to the effect that he did this deliberately, thinking he would get away with it, despite knowing that he ought to declare these items and pay duty.

C. Submissions

7. Neither counsel was able to point to helpful precedent authority. Mr Blessing stressed that the main principle of sentencing for this type of case was deterrence – he relied on a number of authorities involving revenue and customs duty evasion, from Vanuatu and overseas (Australia, New Zealand, Samoa and Tonga), to support that submission. Mr Tasso considered the offending to be at a very low level, and he suggested it was akin to going idle and disorderly, which is a criminal offence by virtue of section 148 of the Penal Code [Cap 135], with a maximum sentence of 3 months imprisonment.
8. Mr Blessing sought a term of imprisonment; Mr Tasso submitted an end sentence of community work or a fine would be appropriate.



C. Starting Point

9. Mr Blessing for the prosecution pointed to the following aggravating factors:

- The amount of duty evaded/the extent of the loss
- The breach of responsibility in not declaring the true situation
- Planning – i.e. the steps taken to attempt concealment
- Pre-meditation.

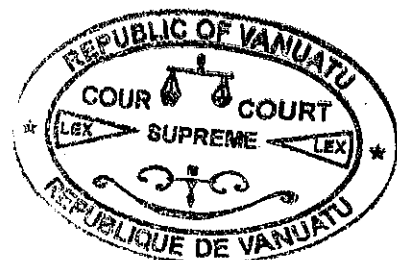
10. Mr Blessing submitted that the appropriate starting point, in terms of Step 1 as set out in *PP v Andy* [2011] VUCA 14, was in the order of:

- For charges 1 and 2: 5 - 7 months imprisonment
- For charges 3 and 6: 3 – 4 months imprisonment
- For charge 7: 2 – 3 years imprisonment.

D. Personal Factors

11. In terms of step 2 of *PP v Andy* Mr Tasso made the following points:

- Mr Kalmet is 38 years old, unemployed, with 4 children and a de facto wife to support by means of running a small kava bar business
- He “co-operated immediately”
- He has no previous convictions, and has a good work history and strong community support
- He is remorseful, and accepts it is highly unlikely he will be permitted to travel overseas for work again
- Mr Kalmet believed he would get away with the offending as on a previous occasion he'd been allowed to simply collect his things from a similar container without any inspection being undertaken – and he thought the same would occur this time
- Mr Kalmet intended to use the weapons, which are not high-powered firearms to hunt birds and flying fox



- Mr Kalmet accepts the items will be forfeited and he has accordingly suffered a financial loss.

E. Pleas

12. Mr Kalmet pleaded guilty at the first available opportunity. The discount available to him for that is a maximum of one-third of the sentence: see *PP v Andy*.

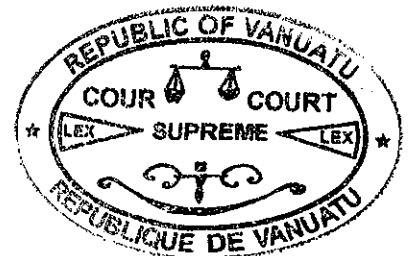
F. Sentence

13. The main purposes and sentencing principles in this type of offending are to:

- hold the offender accountable for his dishonest conduct and the harm done to the community
- promote a sense of responsibility for the harm done
- denounce the conduct
- deter the offender and the public at large from this type of behaviour
- protect the community
- assist in rehabilitation and re-integration
- take into account the gravity of the offending
- take into account the seriousness of the offending in comparison with other offending, and
- consider consistency of sentencing and parity of sentences.

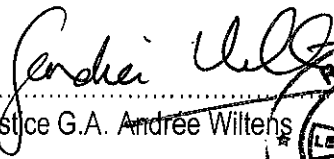
14. Justice Chetwynd in *PP v Yaken and Pel* Criminal Cases 152 and 153 of 2017 discussed some of these principles in relation to firearms and ammunition offending. Although the charges laid in that case are different to those Mr Kalmet faces, with significantly higher maximum sentences available, Justice Chetwynd adopted a starting point for Mr Yaken who had smuggled 2 firearms into Vanuatu of 9 months imprisonment. The concealment he attempted was described as sophisticated and careful – not words I would use to describe the actions of Mr Kalmet. Mr Yaken's end sentence was 5 ½ months imprisonment, suspended for 2 years, plus having to pay the duty evaded and with the weapons being destroyed,

15. Mr Kalmet's criminal culpability for this offending is undoubtedly aggravated by what he imported into Vanuatu without declaring it – there is a substantial difference between smuggling firearms and ammunition, as opposed to less dangerous items, such as household goods. I make that statement regardless of Mr Kalmet's stated purpose for bringing the items into Vanuatu. The difference is that these items could very easily fall into the wrong hands – with possibly catastrophic consequences to the community.



16. I do not accept Mr Kalmet's stated belief that he could get away with the offending as being a mitigating factor – if anything it shows a naivety and lack of understanding of legal requirements. That most probably also explains his delay in coming forward to explain to the searching officers – something he could, and should, have done straight away.
17. The importation charges are the lead offences here, even though the maximum sentences available do not reflect that. Those charges really mark Mr Kalmet's offending. I consider that all the sentences should be concurrent. On that basis, the start point for this offending, seen on a totality basis, is 6 months imprisonment.
18. I give Mr Kalmet credit for lack of any previous convictions and the other personal factors advanced by Mr Tasso – especially now that his prospects of ever travelling overseas again for work have evaporated, which I regard as a self-imposed punitive sanction with real consequences.
19. Lastly, Mr Kalmet is also entitled to one-third further discount for his prompt pleas. The end sentence is therefore something short of imprisonment.
20. Mr Kalmet is sentenced to the following, on all 5 charges concurrently:
 - 150 hours of Community Work, and
 - 12 months of supervision.
21. Mr Kalmet is to pay the duty evaded of VT 76,891 within 6 months. The two firearms and the ammunition are to be destroyed.
22. Mr Kalmet has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 24th day of May 2018
BY THE COURT


Justice G.A. Andrée Wiltens

