

IN THE SUPREME COURT

OF THE REPUBLIC OF VANUATU

Criminal Case No. 18/1052 SC/CRML

(Criminal Jurisdiction)

BETWEEN: Public Prosecutor

AND: Joshua Collen Torsen
Defendant

Date: Wednesday, 30 May 2018

By: Justice G.A. Andrée Wiltens

Counsel: Mr L. Young for the Public Prosecutor

Mr L. Moli for the Defendant

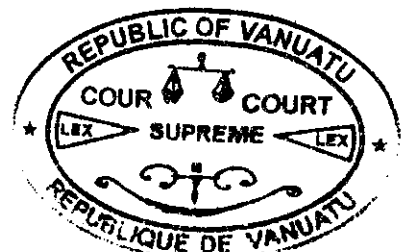
SENTENCE

A. Introduction

1. Mr Torsen has pleaded guilty to one charge of causing loss by deception, laid contrary to section 125(c) of the Penal Code [Cap 135]. The maximum sentence for this offence is a term of 12 years imprisonment.

B. The Facts

2. Mr Torsen accepted the Summary of Facts. This sets out that in 2012 the complainant gave Mr Torsen VT 168,000. The money was advanced so that Mr and Mrs Torsen could travel to Australia in relation to accompanying members of their church to become farm workers – he was an agent finding and sending workers to Australia, and was licensed by the Labour Department. However, that travel did not eventuate, and Mr Torsen kept the funds for his own devices. In fact, there was never a prospect that Mr Torsen would travel, as his licence had expired in 2011 and was not renewed. He had therefore actually obtained the funds well knowing it could not be used for the stated purpose and would be used for other personal purposes. Since 2012, Mr Torsen has repaid VT 67,000 to the complainant.

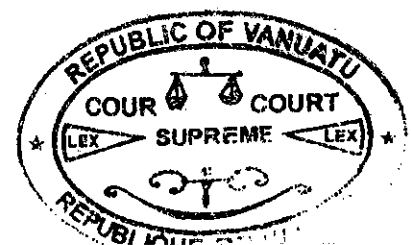


C. Submissions

3. The prosecution submissions as to sentence refer to a number of cases dealing with the principles of sentencing. In the case of *PP v Mala* [1996] VUSC 22, the Court set out a number of circumstances relating largely to the amounts involved and suggested appropriate sentencing levels. It was said that for an amount of less than VT 1 million, the appropriate sentence is up to 18 months imprisonment. In *Boesaleana v PP* [2011] VUCA the Court strongly advocated against arithmetic calculations or formulae in determining appropriate sentences. In *PP v Scott* [2002] VUCA 29 the Court indicated that previous good character was of only minor relevance when considering offending of this type. In *Vuti v PP* [2017] VUAC 14 the Court cautioned against re-sentencing individuals for previous similar offending.
4. The prosecution pointed to two further precedent authorities as to the appropriate level of sentencing for Mr Torsen. In *PP v Tarimiala* [2015] VUSC 78 the defendant obtained VT 100,000 by deception. The Court made no mention of the starting point, but by inference it was likely to be in the region of 12 months imprisonment, as the end point of 8 months imprisonment took into account the one-third deduction available for an early plea - and there were few other discounts available in mitigation. The sentence was suspended for 2 years. In *PP v Mael* [2010] VUSC 14 the amount obtained by deception was VT 452,835. The end point imposed for that offending was 20 months imprisonment plus reparation. In the case of one of the defendants that sentence was not suspended; in the case of the two other defendants the sentences were suspended for 2 years, - but they were additionally ordered to complete 100 hours of Community Work.
5. Mr Moli pointed to a further authority. In *PP v Kemu* [2017] VUSC 165 the defendant obtained VT 300,000 by deception some 4 years earlier. The end sentence imposed was 10 months imprisonment suspended for 2 years plus 100 hours of Community Work.

D. Starting Point

6. The prosecution pointed to the following aggravating factors and I note my comments:
 - Planning – I accept the offending was deliberate, calculated even, but I do not think it involved significant planning
 - Giving false hope to the complainants – no doubt Mr Torsen strung the complainants along with promises to pay back the money
 - The amount involved – the net amount is not large
 - The seriousness of the offending, given the maximum penalty – this is a given and cannot be seen as aggravating
 - Only partial reparation – accepted, but in Mr Torsen's position he has made some efforts and it is hard to see him doing more



- Relevant similar previous convictions – in 1958, Mr Torsen was convicted of 3 similar matters, sentenced to 7 months imprisonment, and ordered to pay reparation of VT 500,000. In 3 separate cases in 1999, one in March and 2 in August, Mr Torsen was convicted of 3 further similar acts and sentenced to what I understand to be a total of 10 months imprisonment. He was also ordered to pay reparation of VT 227,800 and VT 10,000 costs. I note the ages of these cases.

7. The prosecution submitted that the appropriate starting point in terms of Step 1 as prescribed by *PP v Andy* [2011] VUCA 14 was in the order of 14 months imprisonment. Mr Moli did not address the starting point in his written submissions.

E. Personal Factors

8. In terms of step 2 of *PP v Andy*, Mr Moli made the following points:

- Mr Torsen co-operated with the police
- He is 61 years old with health issues – he has diabetes, has had a stroke and has had a leg amputated. He will require further medical treatment in future. He is unable to work, and has a wife and children at home
- There has been no further offending since this event in 2012
- Mr Torsen has made efforts at reparation. He has paid the complainant's children's school fees for 2015 and 2016 – a total of VT 67,000
- Mr Torsen is remorseful
- The offending took a long time to come to Court, which has disadvantaged Mr Torsen.

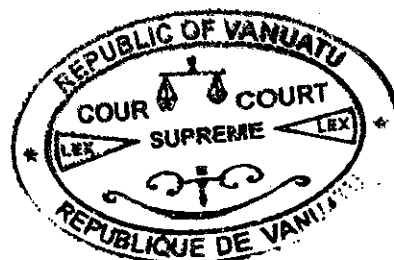
F. Plea

9. Mr Torsen 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*.

G. Sentence

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

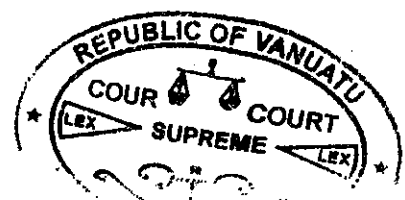
- hold the offender accountable for his dishonest conduct and the harm done to the complainant
- promote a sense of responsibility for the harm done
- provide for reparation



- denounce the conduct
 - deter the offender and the public at large from this type of behaviour
 - protect the community
 - assist in the offender's 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.
11. To my mind, the amount of money involved is not large, especially when considering the net amount remaining outstanding. On the other hand, it appears very unlikely that full reparation will be possible – I note that no offer has been made. The dishonesty involved is obvious – Mr Torsen persuaded the complainants to give him funds on a completely false basis, as his Labour Department licence had already expired and the proposed trip was just a fiction.
 12. I set Mr Torsen's criminal culpability at 10 months imprisonment. There has to be an uplift, due to his 6 previous similar convictions, of a further 4 months imprisonment; and a further 1 month due to the inevitability of incomplete reparation. The sentence start point is therefore 15 months imprisonment.
 13. I am prepared to give Mr Torsen some discounts from the starting point due to his health issues, the lack of further offending since 2012, his stated remorse, his attempts at reparation (taking into account his inability to work), and his co-operation with the police. These discounts cannot however be significant due to the seriousness of his offending. The discount amounts to a reduction of 3 months imprisonment.
 14. Lastly, Mr Torsen is entitled to one-third further discount for his prompt plea. The end sentence is therefore set at 8 months imprisonment.

H. Suspension

15. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate:
 - In view of the circumstances,
 - In particular, the nature of the crime, and
 - The character of the offender.
16. In my analysis, despite Mr Torsen's personal issues with his health and inability to work, suspension of the sentence would be wrong. Despite the significant lapse of time since his previous convictions, this is still his 7th conviction involving dishonesty. Further, I consider his

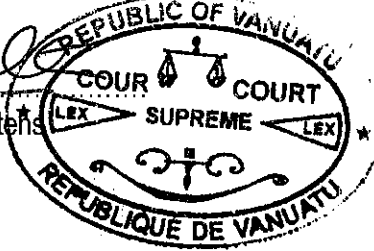


unfortunate financial situation and prospects provides a real temptation to relapse – that must be deterred, and the community protected. There will accordingly be no suspension of the sentence.

17. Mr Torsen has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 30th day of May 2018
BY THE COURT

Justice G.A. Andrée Wilten
Justice G.A. Andrée Wilten

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COUR SUPREME" are written, with "COUR" on either side of the central emblem. The word "LEX" is written on either side of the central emblem, flanking the word "SUPREME".