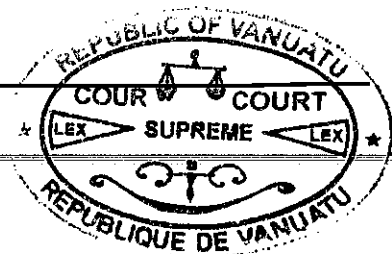


BETWEEN: Public Prosecutor

AND: Marcellino Pipite
Paul Teluluk
Silas Yatan
Tony Nari
John Amos
Arnold Prasad
Sebastien Harry
Thomas Laken
Jonas James
Jean Yves Chabod
Wilson lauma
Defendants

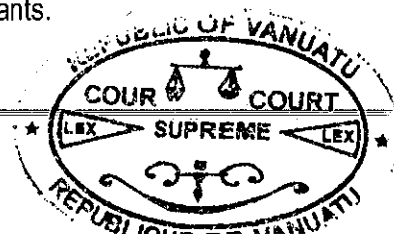
Date: Thursday, 14 June 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mr J. Naigulevu for the Public Prosecutor
Ms C. Thyna for Mr Pipite
Mr L. Napuati for Mr Yatan
Mr N. Morrison for Mr lauma
Mrs M. Nari for remaining Defendants

JUDGMENT



A. Introduction

1. On 13 June 2018 Mr Pipite, Mr Yatan, Mr Nari, Mr Amos, Mr Laken and Mr James were sentenced to end terms of 3 years 10 months imprisonment for the offence of conspiring to pervert the course of justice.
2. In the late afternoon of 13 June 2018, all filed appeals against sentence; and they simultaneously applied for bail pending appeal with identical sworn statements filed in support.
3. The bases for the appeals, as advanced by Ms Thyna, are:
 - The full 1/3 discount for early guilty pleas should have been allowed, as per *PP v Andy* [2011] VUCA 14 on the basis that the re-trial was a new proceeding and the calculation of time should have been re-commenced; and
 - There were other personal factors advanced as mitigation which should have been taken into account.
4. When I challenged Ms Thyna about the reason why discounts for early pleas are entertained, she was at a loss to respond.
5. In my view, the reasons are that an early guilty plea saves time, effort and costs; it spares complainants the stress of having to re-live ordeals and the prospect of being cross-examined in Court with unlimited spectators watching on; and, significantly, it demonstrates an acceptance of the criminal conduct alleged and can be an indicator of contrition or remorse on the part of the perpetrator. The sooner the plea is entered, the greater the mitigation available.
6. In this case, there has been a 2.5 year time lag between the offending and the pleas – in which time these defendants denied any wrong-doing leading up to and during the first trial, a refusal to accept their convictions at sentencing, and again during the Appeal process. All that time, there was no remorse shown, and no acceptance of wrong-doing. And the resultant costs accrued over time; and further effort was involved in trial preparation, in the actual trial, in the sentencing process and finally during the entire appeal process. The witnesses were no doubt on tenterhooks throughout that process, wondering if they would have to give evidence.
7. In my view, there is no way that the pleas here can be described as early.
8. In the end I allowed 15% discount for the pleas entered.
9. Even if this point gains any traction in the Court of Appeal, which I seriously doubt, it can only reduce the end sentence by a relatively short term of imprisonment.
10. I also challenged Ms Thyna as to the further mitigating factors that I had omitted to consider or take into account. She was unable to assist me. I cannot therefore assess whether or not this ground of appeal has any merit.
11. Ms Thyna explained that the sworn statements of all six defendants were identical was due to a shortage of time. What that meant, so far as I was concerned, was that there were no special considerations required to be taken into account for any of the applicants.



12. I also asked Ms Thyna to confirm that the appeals filed were in relation to sentence only. She confirmed that. I therefore did not take anything from her application stating that the previous appeal against verdicts had been successful.
13. I asked Ms Thyna what was meant by the statement in the application for bail "The approach of the Court in this trial did not comply with the hand-down Order with the Court of Appeal..." She was unable to help me. I determined to put this to one side.
14. Ms Thyna was supported by Ms Nari and Mr Napuati – they did not advance any further bases for the applications, but Mr Napuati reported that his client had been unwell yesterday afternoon. He agreed that he appeared well again in Court before me.
15. Mr Naigulevu denied any suggestion of plea bargaining; and rightly pointed out that the prosecution does not sentence nor can it agree sentences – that is the Court's function.

B. The Considerations

16. No counsel was able to present any precedent authority to assist me regarding what aspects of the application ought to be considered. There is no guidance either in the Penalty Code or the provisions of the Criminal Procedure Code.

17. Accordingly, I took into account the following factors:

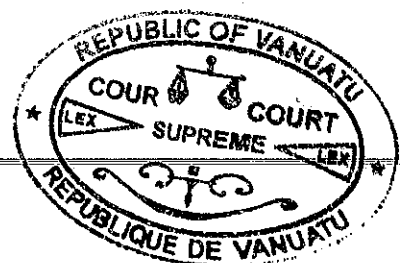
- Are there good grounds to appeal?
- Is the appeal likely to succeed?
- If the appeal succeeds, will the defendants have spent a good part of their sentence in custody needlessly?
- What period of time will expire prior to the appeal being heard?

C. Decision

18. The grounds of appeal, as explained to me (I did not have a copy of the appeals actually filed), do not fit within my description of "good". There is no obvious error; nothing that makes me immediately think that the appeals must be allowed. It appears to me that it is the exercise of the sentencing Judge's discretion is what is being challenged.

19. As earlier expressed, my views on the possible success or otherwise of the appeals, are extremely poor. I bear in mind that Justice Chetwynd sentenced these defendants to terms of 3 or more years imprisonment, with no suspension. My sentences are higher, but again there is no suspension. I cannot think of a scenario whereby the Court of Appeal could reduce the sentences down to a suspended sentence. I bear in mind that these defendants all have a serious, relevant and recent previous conviction – for which each was incarcerated.

20. I note that the next Court of Appeal session is in early July.



21. The defendants will have served approximately one month of their sentence before the Court of Appeal considers the matter. Out of a sentence of 3 years 10 months, that is not a factor that lends weight to the argument for bail pending appeal.
22. The applications for bail pending appeal are all declined. The defendants are to start serving their sentences. If their medical issues grow worse, they should alert the Correctional Facility staff – I have no doubts they can and will be properly cared for.
23. Section 70 of the Criminal Procedure Code precludes an appeal from this decision.

**Dated at Port Vila this 14th day of June 2018
BY THE COURT**


Justice G.A. Andrée Wiltens

