

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 19/1949 SC/CRML

BETWEEN: Public Prosecutor

AND: Brian Roy
Defendant

Date: 6 August 2019
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Ms J. Garae for the Defendant

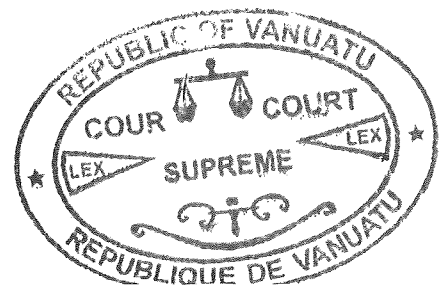
SENTENCE

A. Introduction

1. Mr Roy pleaded guilty to one charge of arson. The maximum sentence for that offence, as it did not more seriously involve a dwelling house, is a term of 10 years imprisonment. It is a serious offence.

B. Facts

2. Mr Roy was in dispute with Mr Kotie Lauren over who owns a piece of land at Lape Village, Big Bay area, Santo. Mr Lauren declined to try and resolve the issue but instead, perhaps somewhat provocatively commenced building a nakamal over land that Mr Roy claims as partly his and other adjacent land that Mr Roy claims is communal land. There have apparently been several attempts by the village elders and church council to hold meetings with Mr Lauren but all were thwarted by Mr Lauren not attending. Finally,



out of frustration and to end the immediate dispute, Mr Roy set fire to the partly completed nakamal – it was razed to the ground.

C. Aggravating/Mitigating Factors to the Offending

3. The aggravating factors to the offending are that this was quite deliberate and done with some forward planning. Mr Roy took the law into his own hands. The effects on Kotie Lauren, the complainant, are not known.
4. There are no mitigating factors to the offending.
5. The start point that I adopt as appropriate for this criminal offending and Mr Roy's culpability is 2 years 6 months imprisonment.

D. Personal Factors

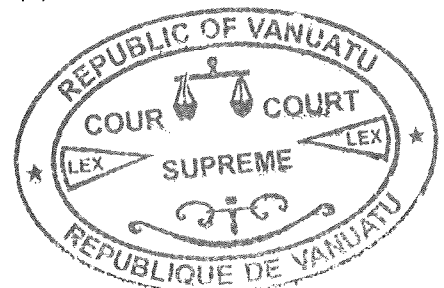
6. Mr Roy is 24 years of age, a farmer, and he has no previous convictions. He resides in a de facto relationship and has one young child. He is said to get on well with his family and his immediate community. He related to his counsel and the PSR writer that he knows what he did was wrong and that he is remorseful. He is willing to attend a custom reconciliation ceremony.
7. When first interviewed, Mr Roy made a complete admission of his offending to the police.
8. Mr Roy's personal factors enable me to reduce the start point for his sentence by 6 months imprisonment.
9. The final factor I can take into account is Mr Roy's plea, which was given at the earliest stage possible. The available discount for his plea is a further reduction of one-third.

E. Sentence

10. The end sentence that I impose on Mr Roy is one of 16 months imprisonment.

F. Suspension

11. There seems to be an assumption by Vanuatu counsel that all relatively short sentences of imprisonment ought to be suspended. That is not the position according to the law.
12. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".



13. Even taking into account the desirability of keeping offenders in the community, so far as practicable and consistent with the safety of the community, suspending sentences should only be done in exceptional cases – not in every case where the sentence is of a short term.
14. Mr Roy's case involves offending that was committed deliberately, in the knowledge that it was wrong. It is a charge of arson, with a maximum term of 10 years imprisonment – in other words it is a serious matter. He took the law into his own hands, and in the absence of any custom reconciliation ceremony, there is a real risk of further dispute between Mr Roy and Mr Lauren. In these circumstances, I do not think suspending all or part of Mr Roy's sentence is appropriate.

G. Compensation


15. Mr Roy advises that he is not in a position to pay compensation. The amount of the loss is also not known. In the circumstances, I decline to make a compensation order. The effect of that is the mitigation that is available if reparation is made is not applicable to Mr Roy's case. Mr Lauren will need to take civil action if he wants to pursue his loss.

H. Conclusion

16. Mr Roy is to serve 16 months imprisonment from today.
17. Mr Roy has 14 days in which to appeal this sentence if he does agree with it.

DATED at Luganville this 6th day of August 2019

BY THE COURT


Justice G.A. Andrée Wiltens

