

BETWEEN: The Public Prosecutor

AND: Fatty Jimmy

Yoan James

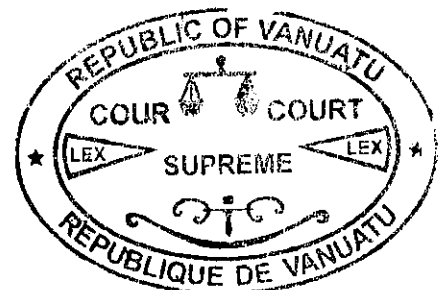
Willie Pakoa Boa

Defendants

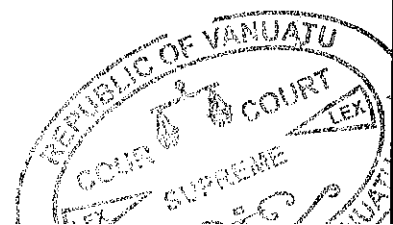
Date of Plea: 21st July 2020
Date of Sentence: 9th September 2020
Before: Justice Oliver Saksak
In Attendance: Mr Philip Toaliu for Public Prosecutor
Ms Pauline Malites for the Defendants

SENTENCE

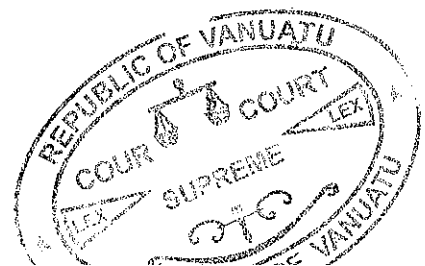
1. Fatty Jimmy and Mathias Pakoa were jointly charged with Robbery contrary to section 137 of the Penal Code Act [CAP 135] (the Act) on 21st July 2020. Fatty Jimmy pleaded guilty to this charge in Count 1. Mathias Pakoa did not appear on that date. This case had been adjourned with a Warrant of Arrest outstanding of his arrest.
2. Fatty Jimmy and Mathias Pakoa were jointly charged also with Intentional Assault causing permanent injuries contrary to section 107 © of the Act. Again only Fatty Jimmy was present on 21st July 2020 and he pleaded guilty to the charge in Count 2.
3. Fatty Jimmy is to be sentenced today for those 2 charges.
4. Yaon James Pikon and Willie Pakoa Boa were jointly charged with complicity to robbery contrary to sections 30 and 137 of the Act. They both pleaded guilty to the charge on 21st July 2020. They are here for sentence today.



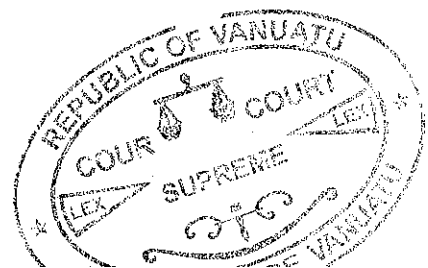
5. Robbery is a very serious offence because it carries the maximum penalty of 25 years imprisonment. And under section 30 of the Act any person who may be convicted and punished as a principal offender. And for an offence under section 107 (c) the maximum penalty is 10 years imprisonment.
6. The victim of this offending is Charles Pierce. The offendings occurred at about 4:00pm in the morning of 17 May 2012 at the residence of the victim at Malapoa Estate.
7. These 4 defendants entered the area. Yoan James Pikon and Willie Boa stood by the road keeping a lookout. Fatty Jimmy and Mathias Pakoa entered the victim's compound.
8. The victim awoke from his sleep. He was conscious that thieves had gone into his compound by a flashlight (torch) shone into his bedroom. The victim shouted out to alert the intruders. He saw through the curtains dark figures standing by his gate.
9. At that moment a rock was thrown at his window breaking it. Another one was thrown followed by two more.
10. The victim went out and continued shouting. More stones were thrown at him and he retreated into his lounge and locked the door. More stones were hurled at his windows breaking them.
11. Fatty Jimmy then approached the victim through a window and demanded VT 150.000 . He fired stones at the victim with a slingshot. The victim hold him there was no money in the house. He demanded alcohol and laptop. The victim told him he had none of these items in the house. At this Fatty Jimmy fired a stone into the victim's face and blood spurted everywhere as a result. He was thrown to the floor and kicked. He suffered a broken pelvis bone.
12. The defendants tried to steal the victim's car but it could not function on the reverse position. The defendants took and walked away with an electric fan, and electric saw, an aluminium frying pan, a big macocot sauce pan, a red electric planer and a mirror.
13. Fatty Jimmy boasted to his colleagues about how he had fried a stone at the victim's eye with a sling shot. He admitted to entering the house of the victim and to throwing stones at the victim's house and windows.



14. Yoan James and Willie Pakoa admitted to taking part in the offending as watchmen by the victim's gate. They also identified the items stolen.
15. In sentencing these offenders I take into account the following aggravating features:-
- (a) It was a group offending,
 - (b) There was a degree of planning involved.
 - (c) Stones were used as weapons repetitively.
 - (d) A slingshot was used.
 - (e) There was violence used and the damage caused.
 - (f) Past criminal history of Fatty Jimmy and Willie Pakoa.
16. There are no mitigating circumstances for the offendings.
17. Taking the totality of the offendings I set the starting sentences as follows-
- (a) For Fatty Jimmy, for the charge of robbery he is sentenced to 7 years imprisonment and for intentional assault causing injuries of a permanent nature, to 4 years imprisonment concurrent with the sentence of 7 years for robbery.
 - (b) For Willie Pakoa, he is sentenced to a start sentence of 5 years imprisonment for complicity to robbery.
 - (c) For Yoan James Pikon, he is sentenced to a start sentence of 4 years imprisonment for complicity to robbery.
18. I now consider their personal and mitigating factors. First Fatty Jimmy. He was 23 years old in 2012. He is now 31 years old. There has been a delay of some 9 years to his pleas. He lives in a defacto relationship with an 8 year old daughter. He is currently serving an imprisonment sentence of 25 months commencing on 12 January 2020 for 2 counts of unlawful entry and 2 counts of theft. He apologised to the victim during his visit to the correctional centre. He had very poor upbringing resulting in his poor education and unemployment. He made admissions to the police and pleaded guilty to the charges on 21st July 2020.



19. I therefore allow a 1/3 reduction for his guilty pleas and deduct 2 years and 4 months from his concurrent sentence of 7 years imprisonment. The balance is 4 years and 8 months imprisonment. The balance is 4 years and 8 months imprisonment.
20. For delay, remorse and other personal factors I deduct 8 months. His end sentence is therefore 4 years imprisonment. I order that these be served consecutively with his current sentence of 25 months.
21. For Willie Pakoa, he is now 28 years old. He lives in a defacto relationship with 3 children aged five, one and 6 months old. He left school at class 5. His father has passed away. He earns money through fire-dancing. He is skilful in pottery, arts, fishing, construction and farming. His ambition is to buy land and build a decent house for his family. He admitted his offending to the police and to the Court. I consider the 9 year delay in the prosecution of his case as well. He is a second time offender. He was sentenced to 60 hours of community work for possession of cannabis. However this is unrelated to the offence in this case.
22. I allow a 1/3 reduction from his 5 years sentence reducing it by 1 year and 4 months down to 3 years and 8 months imprisonment. And for the other mitigating factors and his personal factors, I deduct 8 months leaving his end sentence at 3 years imprisonment.
23. Since 2012 to date he has not committed any similar offence. Therefore I am prepared to suspend his sentence of 3 years imprisonment for a period of 2 years from today's date. This suspension is made under section 57 of the Act on good behaviour. If he commits any other offence for which he would be charged and convicted, he will go to prison for 3 years.
24. Finally for Yoan James Pikon. He is now 28 years old, living in a defacto relationship with 2 children aged six and 2 years old. He left school at Year 7 and due to his father's passing he could not continue his education. He now works as a night guard with Eagle Watch Company. He currently supports his daughter, widowed mother and other relatives. He is motivated in life to buy land and build a rental apartment. He is skilful in mechanic, carpentry, construction and farming. He has no previous record. He has not committed any offence since 2012. He had admitted his involvement to the police and pleaded guilty. There has been a long delay in prosecuting his case.



25. I allow 1/3 reduction for guilty plea from his 4 year sentence to bring it down to 3 years imprisonment. I allow a further reduction of 8 months for the delay and personal factors. His end sentence is therefore 2 years and 4 months imprisonment.

26. I order that this sentence of 2 years and 4 months be suspended for a period of 2 years on good behaviour and under section 57 of the Act. If he reoffends or commit other criminal offences for which he would be charged and convicted, he will go to prison for 2 years and 4 months imprisonment.

27. Those are the sentences the Court imposes on the 3 defendants today. If any of them disagrees with their sentence, they can appeal within 14 days from today's date.

**DATED at Port Vila this 9th day of September 2020
BY THE COURT**


OLIVER.A.SAKSAK
Judge

