

PUBLIC PROSECUTOR

V

JOE YHAKOWAIE NATUMAN AND
ARU MARALAU

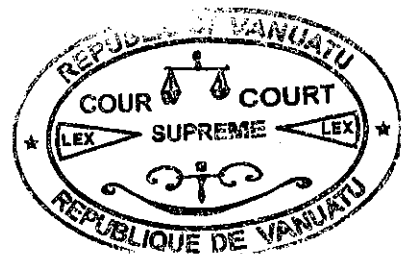
Date of Sentence: March 16th 2018 at 2 pm

Before: Justice JP Geoghegan

Appearances: Mr Naigulevu for the Public Prosecutor
Mr Morrison and Mr Nalyal for the Accused

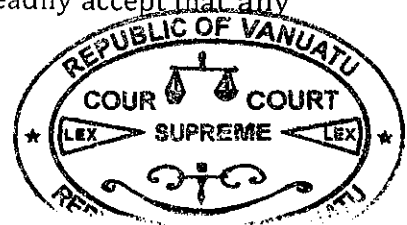
SENTENCE

1. Joe Natuman and Aru Maralau you appear today for sentencing, in your case Mr Natuman on two charges of obstructing or interfering with or knowingly preventing the execution of a legal process contrary to section 79 (c) of the Penal Code and in your case Mr Maralau one charge of complicity to obstruct or interfere with or knowingly prevent the execution of a legal process contrary to section 79 (c) of the Penal Code.
2. The penalty in respect of such a charge is a maximum of seven years imprisonment.
3. You had initially pleaded not guilty to these charges but entered guilty pleas after your submission that there was no case to answer was dismissed by me on



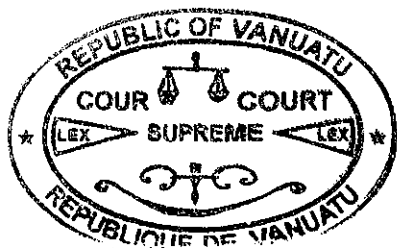
December 12th 2017. Your guilty pleas were subsequently entered on February 17th this year.

4. The charges against you in your case Mr Natuman are that on September 19th 2014, and on another occasion in that year you issued a letter and then a verbal instruction to the then Police Commissioner Arthur Caulton to stop all police criminal investigations into a case known as the "police mutiny case". You did that in your capacity as Prime Minister of Vanuatu and Minister of Police. You further issued that instruction subsequently to Mr Maralau. The charge against you Mr Maralau is that on September 19th 2014, you aided Mr Natuman in his instruction by your instructing of members of the police investigating team to stop their investigations into the police mutiny case. You did so in your capacity as Acting Police Commissioner at that time.
5. It is necessary to expand on the background to your offending to appreciate the context in which it had occurred. The matters I refer to are set out in my judgment of December 12th.
6. The police mutiny case involved the laying of charges of conspiracy to pervert the course of justice against a number of members of the Vanuatu Police Force. One of the officer charged was you, Mr Maralau. The charges were laid by the Public Prosecutor in November 2014 but were the subject of a nolle prosequi in July 2015. Pursuant to section 29 of the Criminal Procedure Code, a nolle prosequi is notice to the Court by the Public Prosecutor that he will not continue with a prosecution. It operates as a bar to any subsequent charges against an accused based on the same facts.
7. The charges in question had their origins in a period of conflict and instability within the Vanuatu Police Force and in particular conflict between the then Police Commissioner, Joshua Bong and the Deputy Police Commissioner Arthur Caulton. Mr Caulton was subsequently appointed as Police Commissioner and then directed a criminal investigation in respect of a number of officers including you Mr Maralau, in respect of allegations of mutiny. The conflict that had arisen did not reflect well on the Vanuatu Police Force and I can readily accept that any



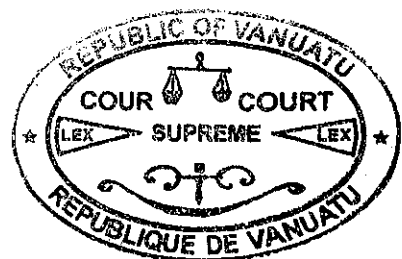
Prime Minister would be concerned regarding the matter both in respect of how such a conflict might appear to the public and how it might affect morale and discipline within the Force.

8. The relevant investigation took place between February 2014 and August 2014. On August 5th 2014 the investigating team referred its file to the Public Prosecutor's office for further consideration and the filing of charges if necessary. As I have said those charges were laid in November 2014 by a special prosecutor engaged from New Zealand, Mr Christopher Griggs.
9. During that period you both took steps to bring the investigation and criminal process to a halt. In May 2014, you Mr Natuman met with the Police Commissioner Mr Caulton. You advised Mr Caulton that you did not want to see the matter go to Court. At a subsequent meeting you enquired of Mr Caulton as to whether he had taken steps to prevent the case going to Court. Mr Caulton advised you that he had no power to interfere with an investigation and that the case had gone to the Public Prosecutor's office.
10. On August 14th, you Mr Natuman had your political advisor write to Mr Caulton instructing him to cease any investigation into the mutiny case. Your instructions were clear and unequivocal. Mr Caulton again advised you that the matter was with the Public Prosecutor's office.
11. On September 15th Mr Caulton was suspended as Police Commissioner. I accept that there is no direct evidence that you had undertaken that course because of Mr Caulton's perceived disobedience, but astoundingly, given the circumstances, Mr Maralau was then appointed as Acting Commissioner of Police despite the fact that he was the subject of an active investigation.
12. On September 19th only four days after Mr Maralau's appointment, you Mr Natuman wrote to Mr Maralau instructing him to stop the investigation. You Mr Maralau being blind, wilfully or otherwise, to the starkly obvious conflict of interest involved, proceeded to action that instruction even threatening the

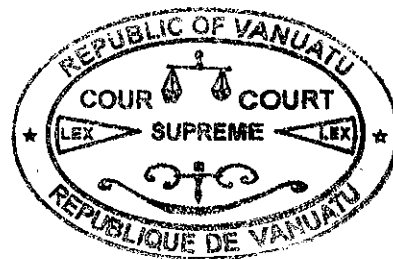


officer in charge of the investigation with disciplinary proceedings because of his perceived disregard of your instructions. What is clear is that your subordinate officer, in my assessment, showed far greater leadership and courage than you did on that occasion.

13. On November 21st 2014, you Mr Maralau suspended five members of the investigating team from duty and on December 2nd 2014, you Mr Natuman suspended the leader of the investigation team. You were not charged in respect of these matters and I wish to note that but that is part of the established factual background as per my earlier judgment.
14. The actions of both of you were the subject of a very strongly worded letter to the Attorney General at the time by the State Prosecutor Mr Griggs. He wrote of his concern over the matter and expressed his views that your actions were in breach of Article 55 of the Constitution and Section 22 (1) of the Leadership Code Act which broadly provides that a leader must not exercise undue influence over another leader so as to influence or attempt to influence that person to act in an improper or illegal way.
15. By this time, Mr Natuman, you had already received clear advice from your Attorney General in respect of the September 19th letter that you should immediately desist from involving yourself in the police investigation.
16. On December 3rd 2014, the Attorney General wrote to the Public Prosecutor advising him that you Mr Natuman appreciated that the prosecution was a matter for the Public Prosecutor and you would not be involved. You were not involved at any point from that time and it has to be recognised that it was then for the Public Prosecutor to proceed with that prosecution in and accordance with his professional duties and assessments.
17. That then is the factual background which provides the basis for this sentencing.

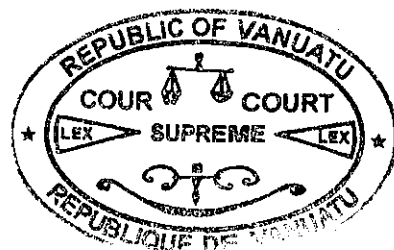


18. I have read the pre-sentence reports prepared together with the references, testimonials and medical information filed on your behalf. It is sufficient I think to say that those reports are positive ones and confirm your positions as leaders within the community. You have close links with your families and communities. You have led exemplary lives to date and have given a great deal to Vanuatu through your respective roles and that must be recognised.
19. I accept that the pre-sentence reports also establish your genuine remorse for your offending and confirms the view also expressed through your counsel in submissions that while you accept that you did the wrong thing, you did it for what you thought were the right reasons.
20. In his submissions, Mr Naigulevu acknowledges and recognises that section 79 of the Penal Code encompasses a very broad range of offences. I accept the broad submission that a breach of section 79 constitutes, in itself, a serious offence.
21. However there are a myriad of circumstances in which offending of this kind can take place and in my assessment the focus must be upon the facts of this particular case as it is those facts which establish whether the offending might properly be regarded as serious offending of its type or of a kind less serious.
22. Mr Naigulevu submits that you Mr Natuman as the Prime Minister and Minister of Police at that time must have understood the full and true implications of your decisions.
23. He submits in respect of your actions, Mr Maralau, that your decision to instruct the investigation team to cease an investigation of a case where you were a suspect could only be described as remarkable and I agree. How you came to be Acting Commissioner, given the background of this matter is frankly a mystery to me but the conflict of interest here was, as I have said, starkly obvious. In circumstances where you should have declined to be involved in the matter, where you should have reminded Mr Natuman of the need not to interfere, and



where you should have shown leadership, you have chosen to undertake a course which was potentially of direct benefit to you.

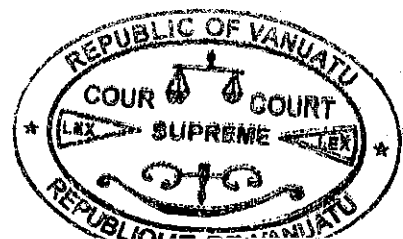
24. In making those remarks though, I am conscious of the matters referred to by Mr Bong in respect of your attitude to hierarchy of command and accepting of instructions and I do take into account that you were dealing with an instruction from the Prime Minister.
25. Both Mr Naigulevu and Mr Morrison have referred to aggravating and mitigating factors regarding your offending and I will come to those shortly.
26. Mr Naigulevu refers to the principles of denunciation and deterrence in cases such as this and clearly where sentencing involves offences concerning interference with the proper administration of justice those principles assumes greater significance than they otherwise would.
27. As with all sentencing however the focus must be on the particular facts of each case which is being dealt with.
28. Mr Morrison and Mr Nalyal have provided very detailed submissions on your behalf and I am grateful for them. They have referred to the fact that there is little judicial authority on sentencing on a matter such as this and I accept that that is the case.
29. I have been referred to a decision of the Supreme Court of Papua New Guinea in PP v. Nahau Rooney¹ and to the relatively recent sentencing judgment of Justice Sey in PP v. Willie Jimmy Tapangararua². That involved the bribery and corruption case involving 16 MPs in 2015 which I am sure you are both very familiar with.
30. That sentencing involved a guilty plea to two counts of bribery and corruption of officials, charges which carry a sentence of 10 years each. In that case, Justice Sey



adopted a starting point of 4 years imprisonment with an end sentence of 20 months imprisonment.

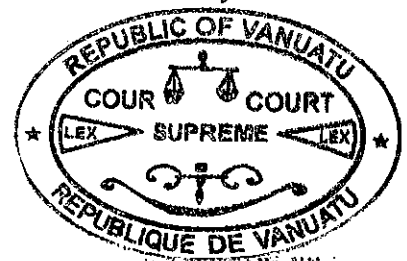
31. Mr Morrison submits on your behalf that a starting sentence of 3 years would appropriately reflect the offending in this case. Mr Naigulevu, as you will have heard, suggests that this offending, warrants a starting point of 4 years. Ultimately your counsel seek the imposition of a suspended sentence in the event of a term of imprisonment being imposed.
32. The first task is to assess an appropriate starting point. These offences are serious offences as I have said and are of a nature that strike at the heart of the administration of justice. Section 79 itself, as I have said, contemplates a vast array of circumstances varying in seriousness. Here however, we have a Prime Minister and Commissioner of Police, two individuals with enormous power, endeavouring to put a halt to an otherwise legitimate criminal process. That fact alone dictates that the starting point should reflect the importance of your respective positions and the power associated with them.
33. I do not consider your positions in themselves to be aggravating facts but simply relevant to the fixing of an appropriate starting point.
34. In your case Mr Maralau as I have said, there was a glaring conflict of interest. That conflict of interest may be perhaps contrasted with what is difficult to discern as any personal benefit to Mr Natuman in the actions which he took. Contrary to Mr Natuman, the potential personal benefit for you was there for all to see. You acted in pursuit of that personal benefit. As I have said a principled leader would not only have counselled the Prime Minister against the steps he proposed to take but would have stepped aside to ensure no conflict of interest arose. That is an aggravating factor in your case Mr Maralau.
35. Mr Naigulevu referred to the dismissal of investigators as an aggravating factor. That is something which I my assessment could have justified further charges. It

² [2015] VUSC 149



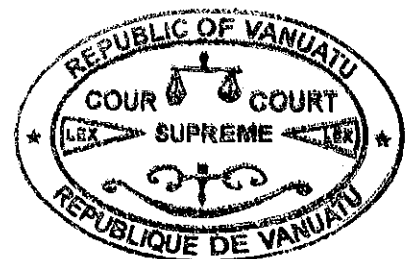
actually occurred after the offences with which you have been charged were completed but I consider that it is something that I am entitled to take account in assessing the starting point.

36. Mr Naigulevu also refers to your continuing in your actions despite legal counsel to the contrary. In that regard I agree with Mr Morrison's submissions regarding what the evidence establishes and do not consider that the evidence actually establishes that to be the case and accordingly I do not take it into account.
37. Mr Natuman, I have read your sworn statement detailing the background to this matter and to your expressed view that the issuing of the direction by you was actually an attempt to unify the Vanuatu Police Force and to ensure that it was united, disciplined and re-focused on its core functions. Mr Naigulevu has quite responsibly advised me that he does not wish to cross examine you in respect of the matters to which you have deposed and I accept that as Prime Minister, you would, in all likelihood have been extremely frustrated by the conflict within the Vanuatu Police Force at that time.
38. As I have said there is no discernible personal benefit to you in all of this and I accept that you were endeavouring to do the right thing albeit in a completely unacceptable manner which took no account of the need for the independence of either the Commissioner of Police or the Public Prosecutor.
39. Weighing all of those matters as best I can I consider that an appropriate starting point is 3 years imprisonment. I propose that as far as a starting point goes I should deal with both of you in the same way in this regard. In that regard Mr Maralau I have taken into account the matters raised by Mr Bong, the fact that you felt you had no choice but to take instructions and the fact that you were receiving instructions from the Prime Minister.
40. Mr Morrison has referred me to relevant mitigating factors which in your case, Mr Natuman, are the fact that there was no personal benefit to you, there was no direct effect upon the proceedings, that you are first time offender and that you

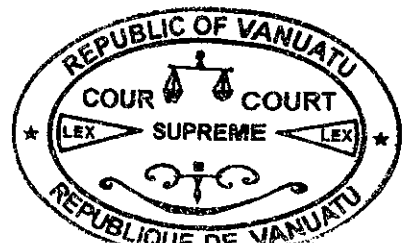


have demonstrated remorse and acceptance of guilt. All of those factors, with the exception of the issue of personal benefit, also apply to you Mr Maralau.

41. I have read the testimonials and references which have been submitted on your behalf, Mr Natuman, including one from the Prime Minister. They speak warmly and genuinely of your undoubted significant contributions to the Republic in your very lengthy political carrier. You were involved in the drafting of the Constitution and have served in public life for over 30 years. I have read the reference also supplied, as I have said, on your behalf, Mr Maralau and it is clear that you have also had a lengthy and significant carrier with the Vanuatu Police Force.
42. I take all of this into account in considering both an appropriate end sentence and whether you should receive a suspended sentence.
43. You are not entitled to any allowance for your guilty pleas which came after the close of the prosecution case.
44. I consider that your respective histories and your contributions as have referred to in the many testimonials should be recognised by a deduction of 12 months from the starting point of 3 years.
45. No further deductions are justified and accordingly and end sentence in respect of each count is one of 2 years imprisonment.
46. I do not accept the submissions of Mr Naigulevu that in your case Mr Natuman any term of imprisonment in respect of the two charges faced by you should be cumulative rather than concurrent. Although there are two distinct actions by you, they arose from the same sequence of events and concurrent sentences are accordingly appropriate.
47. All counsel have very helpfully addressed the matter of a suspended sentence in their submissions.



48. The suspension of any sentence is addressed by section 57 of the Penal Code. It requires me to consider whether a sentence of imprisonment is inappropriate in view of the circumstances, the particular nature of the crime and the character of the offender. I am satisfied that you both understand the nature of a suspended sentence and that consequences of breaching such sentence as Mr Morrison has confirmed with me that he has gone through that matter comprehensively with you.
49. It could easily be said that the nature of these crimes weighs against the imposition of a suspended sentence. However this is certainly not the most serious case of its type. Many acts of obstruction of justice, such as interference with witnesses, are carried out in the shadows and are hard to detect. This offending was if anything, completely transparent and consistent with your expression that you felt that you were doing the right thing. Your actions were not disguised and were not intended to be.
50. I am satisfied that because of the circumstances of this particular case and the general background of this matter and because of your character and contributions to the community that your sentences should be suspended. As recognised by the Papua New Guinea Supreme Court in the decision to which I have already referred, the fact that a Minister of the State has been convicted of an offence such as this after a public and much published hearing, may be a substantial penalty in itself. That comment could equally apply to someone in the position of Police Commissioner.
51. There are no issues here as to the need to protect the public and the character references provided for both of you speak of your integrity.
52. In the circumstances, I propose to deal with you both in the same way, save for one exception. In your case, Mr Maralau, there was a potential direct personal benefit. While some may see you as a subordinate to the Prime Minister the public is entitled to expect a Police Commissioner whether Acting or otherwise to stand up to improper political interference. Were there no private benefit for you in this matter I would have been prepared to treat you equally. The fact that



there was however leads me to the view that there should be an additional penalty of community work to take account of the personal benefit to which I have referred.

53. Accordingly Mr Natuman, in respect of the two charges of obstructing or interfering with the execution of a criminal process, you are sentenced to 2 years imprisonment and that term of imprisonment is suspended for a period of 2 years.
54. Mr Maralau, in respect of the charge of complicity to obstruct or interfere with the execution of a criminal process you are sentenced to 2 years imprisonment and that term of imprisonment is also suspended for a period of 2 years. You are also sentenced to undertake 150hours community work.
55. You have 14 days to appeal this sentence.

Dated at Port Vila this 16th day of March 2018

BY THE COURT

