

BETWEEN: Public Prosecutor

AND: 1. Collin Natonga
2. Kamil Samenan
3. Daniel Joel
4. Jack Kawiel
5. John Jimmy Namel
6. Harry Kalan
7. Nase Isaac Jodie
Defendant

Date: 28 August 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr K. Massing for the Public Prosecutor
Ms K. Karu for the First Defendant

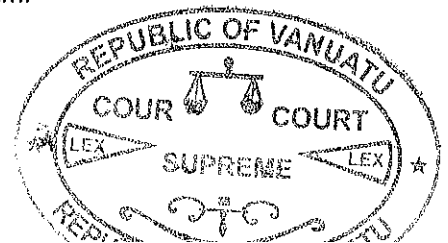
SENTENCE

A. Introduction

1. Mr Natonga pleaded to 2 criminal charges. The first relates to inciting and soliciting the commission of offending, namely to trespass, destroy another person's house property, and to steal a pig. Mr Natonga pleaded guilty to that offence at the first available opportunity.
2. He later pleaded to theft of the pig on the morning of his scheduled trial.

B. Facts

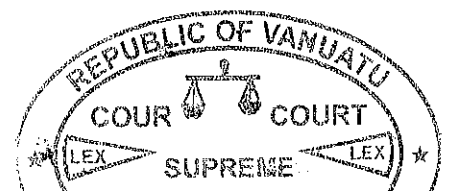
3. Mr Natonga is the Chief of the area where this offending occurred. On 15 July 2018, there was a meeting scheduled for the Chief's nakamal. Mr Natonga was upset at the owners of a nearby property (Mr Singiau) who allegedly declined to attend the Chief's nakamal when Mr Natonga called for meetings. As a result, at this particular meeting, Mr Natonga instructed the other 6 defendants to assist him.



4. Accordingly, the group went to the property at Erakor Half Road. The other six defendants then entered the premises with intent to intimidate the occupant (trespassed), taking with them a bush knife and an axe. Mr Natonga did not enter onto the property, but stood outside and observed.
5. Next, 5 of the other defendants set about destroying the property by removing the roofing iron and breaking down the walls. Mr Natonga also observed that. Finally, all the defendants were involved in the taking of a large black pig, which they removed from the property, killed and then ate.

C. Sentence Start Point

6. The appropriate sentence start point is to be set taking all Mr Natonga's offending into account on a concurrent basis. The various maximum sentences need to be considered, and his actual criminal culpability taken into account. Necessarily that involves having regard to the aggravating and mitigating features of the offending.
7. Section 35 of the Penal Code prescribes that a person convicted of inciting or soliciting must be sentenced as if a principal offender. Accordingly the maximum sentences for all the offending involved must be factored in. The maximum penalty for trespass and malicious damage to property is 12 months imprisonment. The maximum penalty for theft is 12 years imprisonment.
8. I adopted a start point for Mr Natonga's co-offenders of 4 years 6 months imprisonment. That was on the basis that they had trespassed and unlawfully entered onto the property concerned before destroying the house and stealing the pig – all on the instructions of Mr Natonga.
9. Mr Natonga is to be sentenced on the basis that he neither trespassed, entered onto the property, or took part in the destruction of the home. However, he incited and solicited the other defendants to pursue that course of conduct. If anything, it seems appropriate to hold Mr Natonga at least equally accountable for the wrong-doing as his followers. After all without Mr Natonga's urgings, there would likely have been no offending.
10. The aggravating factors relevant to this offending are as follows:
 - The defendants were part of a group, acting in unison against one lone occupant;
 - There was a degree of planning involved;
 - They had with them certain weapons, which were used to effect the malicious damage and must have caused genuine fear to the occupant, a person placed there for security purposes, who was rightfully present in a place where he should feel safe;
 - The taking of the law into their own hands;
 - The unprovoked invasion onto the property, with weapons and criminal intent; and
 - The loss occasioned – the home was destroyed and the pig killed and eaten. The value of the property is unknown, but the pig was said to be worth VT 70,000. Mr Singiau has explained the effects of the offending on him in the PSR, he being made homeless and having to re-acquire the usual home furniture and effects.
11. There is a measure of duplicity in the charges – Mr Natonga is charged with inciting theft and also taking part in the very same theft.
12. I adopt a sentence start point for Mr Natonga's offending, taking both charges into account concurrently, of 4 years 6 months imprisonment.



D. Mitigation

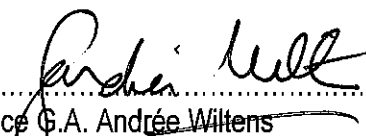
13. Mr Natonga pleaded guilty to the more serious offence at the first available opportunity. That is an indication of acknowledging his wrong-doing and his remorse. As well, it has saved Court time and expense. He pleaded guilty to the theft charge at a late stage in the Court process. The mitigation available to Mr Natonga for his guilty pleas is 33.3%.
14. At the time of the offending Mr Natonga was 46 years old – he is currently 48. He is married with 4 children, three of whom are still attending school. Mr Natonga is self-employed and the family's sole bread-winner. He has strong family and community support.
15. Mr Natonga has no previous convictions and maintains he is remorseful. I accept his remorse as genuine. I do so on the basis that he voluntarily stepped as the local chief once he realised his mistakes. I note further that he claims to have participated in a custom reconciliation ceremony – although Mr Ringiau disputes that.
16. For these personal factors, I reduce Mr Natonga's sentence start point by a further 12 months.

E. End Sentence

17. The end sentence that I impose is 2 years imprisonment. I impose that sentence on the inciting charge. In respect of the charge of theft I impose 9 months imprisonment. The sentences are to run concurrently.
18. Mr Natonga was remanded in custody for 8 days prior to being granted bail. His sentence start-date is therefore back-dated to 18 August 2020 to protect his parole rights.
19. The Court has the ability to suspend all or part of any sentence depending on the circumstances of the offending and the offender. In this case I take into account that Mr Natonga pleaded guilty at the first available opportunity. Further, that he has no previous or subsequent convictions. Additionally he is a good contributor to his community; and his immediate family. I also factor in Mr Natonga' genuine remorse and his claimed participation in a custom reconciliation ceremony. Now he has stepped down as the local Chief, I consider the likelihood of further similar offending to be greatly reduced.
20. In the circumstances, I am prepared to suspend Mr Natonga's sentence for 2 years. He needs to understand that he must remain offence-free for the next 2 years to avoid having to serve the sentence imposed today.
21. Additionally, Mr Natonga is to serve 120 hours community service. He is to also pay compensation to Mr Ringiau for the damage caused and the loss of the pig. I set that at VT 125,000; and it is to be paid within 28 days.
22. This end sentence imposed is higher than that of the other defendants. However there needs to be a clear differentiation between the master mind and main driver behind this conduct and the foot soldiers who merely executed the commands given to them. I am accordingly satisfied that there is appropriate parity between all those involved. Mr Natonga has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 28th day of August 2020

BY THE COURT


Justice G.A. Andrée Wiltens

