

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Criminal
Criminal Case No. 24/3335**

BETWEEN: PUBLIC PROSECUTOR

AND: GINO LAWAC
Defendant

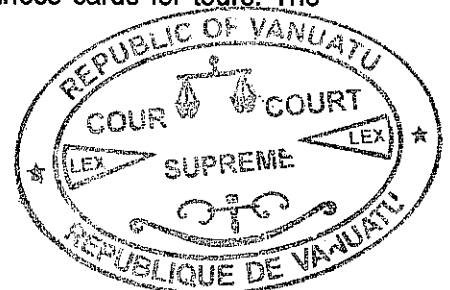
Date of Plea: 22 November 2024 and 11 December 2024
Date of Sentence: 3 April 2025
Before: Justice M A MacKenzie
Counsel: Ms L Lunabek
Mr L Malantugun

SENTENCE

1. Mr Gino Lawac, you appear for sentence in relation to two charges of obtains by deception contrary to s 130B of the Penal Code [CAP 135]. The maximum penalty for this offence is 12 years imprisonment.

The facts

2. In November and December 2019, you were living at Seachange Lodge. On 27 November 2019 you got on a bus driven by the first victim, Pattison Arnhambat. You told the victim that you needed someone to work with you to drive for the Seachange Lodge, and that if he agreed, the resort would buy a bus, and register it under the victim's name. Then the victim would work and repay the resort. You told the victim to give you VT 6000 to register as a driver for the safety of the tourists. The victim did so. (charge 1)
3. The next day, you told the victim that he and his son should give you VT 30,000 to buy a business licence, road tax and other items for the vehicle to be able to be roadworthy. You also said that the money would be used to obtain business cards for tours. The second victim Amilton Arnhambat then gave you VT 30,000.



4. Under caution, you admitted receiving VT 36,000 from the victims.

Sentencing purposes/principles

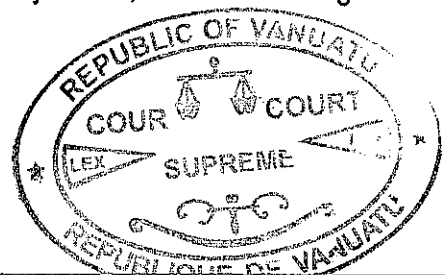
5. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

6. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

7. The first step is to set a starting point to reflect the features of the offending itself and with reference to the maximum penalty.
8. The aggravating factors are:
 - a. There are two victims.
 - b. Actual loss of money, being VT 36,000.
 - c. Some degree of planning and premeditation. This was a plan by you to con money out of the victims.
9. As to mitigating features of the offending itself, I cannot say whether or not the victims have been compensated for the VT 36,000 as there are conflicting reports as to this; you say police took VT 30,000 from you while you were in custody and gave it to Pattison Arnhambat. He says you have not repaid him. However, I do not think it is material in terms of sentence.
10. The prosecutor submits that a starting point of 2 years imprisonment is appropriate. Mr Malantugun submits that a starting point of 10 months imprisonment is appropriate. The guideline case for obtains by deception is *Public Prosecutor v Mala* [1996] VUSC 22. The Court said that the sum involved is not the only factor, but it may in many cases provide a useful guide, and that where the amount involved cannot be described as small but are less than 1 million vatu or thereabouts, terms of imprisonment ranging from the very short up to about 18 months imprisonment are appropriate.
11. Having regard to *Mala*, I cannot agree with the prosecutor's proposed starting point of 2 years imprisonment. Further, such a starting point is too high when I have regard to the starting point of 2 years imprisonment recently adopted by Trief J, when sentencing



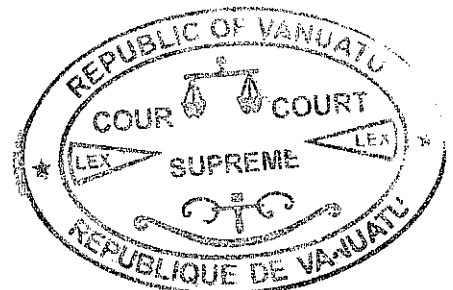
you for two charges of obtains by deception involving VT 270,000. I consider that the starting point should be no higher than 10 months imprisonment, taking into account the aggravating factors, *Mala* and the starting point adopted in *Public Prosecutor v Lawac* [2025] VUSC 59.

Guilty plea and personal factors

12. You did plead guilty to charge 2 at an early stage. You initially pleaded not guilty to charge 1, because of a dispute about the particulars. The sentence is reduced by 25 percent for the guilty plea. The sentence is reduced by 2.5 months.
13. You are aged 38 years and express some remorse in the presentence report. Mr Malantugun makes a fair point that there was a delay in the prosecution of this matter between late 2019 until 2024. The reason for the delay is not obvious. I reduce the sentence by 1 month for that factor.
14. You have a long history of dishonesty offending. Your previous convictions are set out in *Public Prosecutor v Lawac* [2021] VUSC 10. You have amassed a total of 29 dishonesty convictions. I have excluded your most recent conviction as they post date this offending. You have been dealt with by the Courts on 15 separate occasions, with the majority of the sentences imposed involving relatively short terms of imprisonment. An uplift to reflect this factor is needed but proportionate to the starting point. The sentence is increased by 2 months for this factor.

End Sentence

15. The end sentence is 8 ½ months imprisonment.
16. Your counsel submits that the sentence should be suspended. The prosecutor opposes suspension of the sentence. There is a discretion to suspend the sentence, in whole or in part, pursuant to s 57 of the Penal Code, taking into account the circumstances, the nature of the crime, and your character. Mr Malantugun's submission that you have made considerable improvements to your life these days needs to be seen in light of the fact that you were recently sentenced for similar but more serious offending which occurred in 2022. That suggests that your offending escalated in seriousness, given the amount involved. The present offending is yet another example of you acting in a dishonest way in the community. The repetitive nature of your dishonesty offending shows that a suspension of any part of the sentence is not appropriate. If terms of imprisonment do not act as a deterrent, then a suspended sentence will not do so. The need for accountability, deterrence, denunciation and community protection precludes suspension of the sentence, when your history is taken into account. I decline to suspend the sentence for these reasons.



17. There are two further considerations to be taken into account. The first is time spent in custody. The presentence report notes that you have been in custody for this offending since 23 June 2024. That is questionable given that the complaint for this matter was not laid in the Magistrate's Court until 6 September 2024. But more importantly, presentence detention was taken into account by Trief J when you were sentenced on 26 March 2025, so it would be double counting to deduct it again for this offending. Secondly, a totality adjustment is required to reflect that you were very recently sentenced for similar offending. Ideally, you would have been sentenced for both sets of offending together. While a cumulative sentence is appropriate for the present offending, because this offending happened at a different time, I must ensure that it is not out of all proportion to the overall gravity of both sets of offending. Therefore, I reduce the sentence for totality to 6 ½ months imprisonment.
18. The end sentence is 6 ½ months imprisonment, cumulative on the sentence of 3 years imprisonment imposed on 26 March 2025.
19. You have 14 days to appeal against the sentence.

**DATED at Port Vila this 3rd day of April 2025
BY THE COURT**

