

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 24/3258 SC/CRML

PUBLIC PROSECUTOR

Respondent

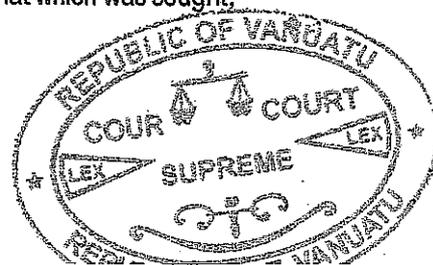
v

SEULE SIMEON
Applicant

Date of Hearing: 18th September 2025
Date of Decision: 18th September 2025
Before: Justice E P Goldsbrough
In Attendance: Daniel W for the Applicant
Young L for the Respondent

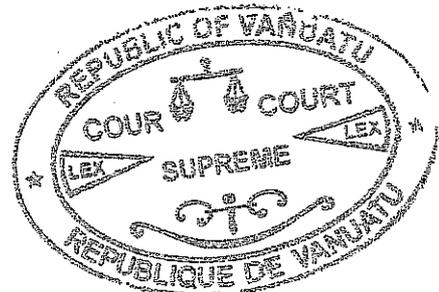
DECISION ON STAY APPLICATION

1. The provisions of s50 of the Penal Code present several practical challenges, not the least of which is how to deal with people who have not yet opted to begin any sentence of imprisonment imposed on them following conviction and sentence.
2. This is an application, or more correctly, should be an application for a stay of a decision of the Supreme Court pending appeal. That decision is a decision in criminal case 3258 of 2024 imposed by the Supreme Court on 27 August 2025, wherein the present Applicant, Simeon Seule (the Applicant), was sentenced to a period of imprisonment of two years and six months. That sentence was ordered to commence, subject to any election made by the Applicant, on 10 September 2025 in accordance with s 50 provisions.
3. Before going into custody, the Applicant sought release from custody pending his appeal against conviction, which had been filed on 19 August 2025. Simply by setting out that which was sought,

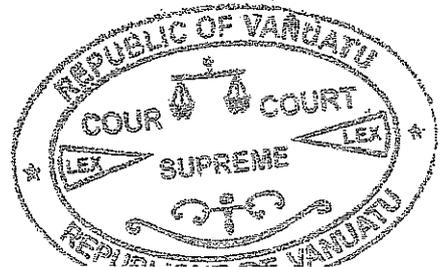


the issue becomes manifest. How can an order be made releasing a person from custody when that person is not in custody?

4. The application for release was heard and determined by the trial judge. After that decision, a purported appeal was filed to the Court of Appeal against that decision. Such an appeal would offend s 70 of the Criminal Procedure Code. Counsel for the Applicant was invited to consider alternative approaches to such an appeal, given the apparent obstacle. The application presently before me was filed and drawn to the attention of the trial judge, as is proper. The trial judge determined not to deal with the application, applying the criteria as laid down by the Court of Appeal in *Stage Four Ltd (as Trustee for the Montreal Trust) v 100% Pur Fun Ltd* [2024] VUCA 3. The Chief Registrar determined to assign the matter to me for hearing.
5. Bail pending appeal is regularly sought and often successfully where a convict is serving a custodial sentence, that is to say, is in actual custody. When that convict remains at large, either because the sentence does not involve a custodial sentence or because any custodial sentence has not begun, an application for a stay should be made.
6. Different counsel have adopted different approaches. Whilst it is well known that an appeal does not operate as a stay automatically, counsel in this jurisdiction has been known to advise clients that they do not need to report to the Correctional Centre as ordered because they have appealed. That advice was criticised by the Supreme Court when it ordered the arrest of the defendant who followed that advice. In this instance, a premature application for bail was made and not surprisingly refused.
7. This application for a stay is not well pleaded, as it conflates the criteria on a bail application and what counsel describes as a suspension of the sentence. Sadly, counsel from the Office of the Public Prosecutor has responded to each of the grounds set out in the application, when most of them do not apply. I say sadly, as its effect is to reveal at an early stage the arguments which would more properly be made during the appeal hearing.
8. It is not my function to educate counsel nor tell them what they should do in the best interests of their client. I will confine my remarks to the application and what needs to be addressed according to law. Two jurisdictions outside of Vanuatu have helpfully set out what is generally regarded as appropriate for a court to consider when dealing with an application to stay a decision of a tribunal which is being taken on appeal.



9. In *Elphick v MMI General Insurance Ltd & Anor* [2002] QCA 347 the Court said as follows:-
"To succeed on an application for a stay the applicants must show good reason for the stay to be granted and that it is an appropriate case in which to grant a stay. Those authoritative decisions in this court establish that an applicant should demonstrate:
- A good arguable case on appeal.
 - That the Applicant will be disadvantaged if a stay is not ordered.
 - That competing disadvantage to the respondent should the stay be granted, does not outweigh the disadvantage suffered by the Applicant if the stay not be granted.
10. In *Yan v. Mainzeal Property and Construction Ltd (In Receivership and Liquidation) & Rochina Global Real Estate Ltd (In Liquidation)*. [2014] NZCA 86, the Court of Appeal of New Zealand suggest that the following should be taken into account:-
- (a) Whether the appeal may be rendered nugatory by the lack of a stay;
 - (b) The bona fides of the appellant as to the prosecution of the appeal;
 - (c) Whether the successful party will be injuriously affected by the stay;
 - (d) The effect on third parties;
 - (e) The novelty and importance of questions involved;
 - (f) The public interest in the proceeding;
 - (g) The overall balance of convenience; and
 - (h) The apparent strength of the appeal.
11. Both of those cases are civil cases, wherein most applications for a stay are made. Still, the principles are equally applicable, modified to the extent that it may be necessary to accommodate the particularities of the criminal jurisdiction.
12. It will be those criteria that are applied in determining this application.
13. There is both an appeal against conviction and sentence. There is also an appeal brought by the prosecution concerning an order sought, but not made, under the provisions of the Leadership Code. Both appeals brought by the Applicant are appeals as of right. The appeals are listed to be heard in November 2025 when the Court of Appeal next sits.
14. I am satisfied that the Applicant and his bona fides in filing his appeal. Indeed, given that the prosecution suggests, in filing an appeal, that the trial judge was in error, there seems to be little,



if any, need to look into whether the Applicant has a good arguable case, nor the apparent strength of the appeal.

15. Orders will be made, should a stay be granted, designed to ensure that if the appeal is not to be prosecuted, or not prosecuted with due diligence and speed, the stay will automatically come to an end.
16. As to the balance of convenience, it would, in my view, be wrong for the Applicant to be required to serve all or part of his custodial sentence where no other risk is presented. The situation may be different if the Applicant was said to be a flight risk or if another substantial risk to the integrity of the criminal process was put forward. That is not the case here.
17. The application is granted, and a stay of the decision of the Supreme Court of 27 August 2025 is ordered pending the hearing of the appeal. That order of stay is conditional on the appeal being prosecuted with due diligence and speed and will automatically expire on 3 November 2025, absent further order. On 3 November 2025, the Applicant will surrender himself to the custody of the Court of Appeal for the hearing of his appeal unless this order is amended before that date.

DATED at Port Vila this 18th day of September 2025

BY THE COURT



Hon. Justice EP Goldsbrough

