

PUBLIC PROSECUTOR

V

**NICOLA NATUMAN
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ROY ROYSON**

Conference: Thursday 28 August 2014 at 9 am, Isangel, Tanna
Before: Justice Stephen Harrop
Appearances: Damien Boe for the Prosecution
Willie Kapalu for the Defendants

SENTENCE

1. You seven defendants pleaded guilty on Monday this week to counts of arson and malicious damage. The maximum penalty for arson under section 134 of the Penal Code is ten years imprisonment and for malicious damage under section 133, it is one year or a Vt 5,000 fine or both.
2. I have received helpful information by way of brief facts from the prosecutor, probation reports for each of you and submissions from Mr Kapalu your counsel. I have read these carefully and take them into account in reaching this sentence that I will impose on each of you.

Facts

3. The brief facts provided by the prosecutor are indeed brief, they say that the incident occurred on 22 November 2013, when the seven of you as a group went to a property owned by the victim and you set fire to several buildings, one permanent house, two sleeping grass houses and two kitchen houses but it is accepted by the prosecution that those were buildings which were no longer

being used for residential purposes. Accordingly it is not a situation where there were personal effects in the buildings which were lost as well as the buildings themselves. In addition, the burning occurred in the late afternoon or early evening so it is not a case where people were sleeping in the houses and lives were put at risk. This makes it a very different case from some of the others which have come before the Court and obviously less serious in that sense.

4. I understand that underlying this incident is a form of land dispute. If that is correct it would not be the first time in Vanuatu where a dispute has spilled over into violence against property or people and I am sure it will not be the last. That is no excuse though and the Court must treat as an aggravating factor the point that you decided to take the law into your own hands to teach the victim a lesson as you thought he should be taught because of the dispute.
5. If you have a dispute with somebody then the way to resolve it is peacefully, by talking or negotiating and not by violence. You also must follow custom and am sure that custom would not endorse the burning of valuable property. It is a matter for your to look to your chiefs and others in authority in your community if you have a dispute or a problem; you do not go and take the law into your own hands as you did here.
6. I have not been provided with any information which delineates the respective roles that you had in this incident so I am going treat all of you in exactly the same way. The starting point for the offending must therefore be the same for each of you. All of you are well and truly old enough to know better than to behave in this way. This is not some youthful escapade, your ages I think range from 27 to 43 so you should be mature and old enough to set an example to others as how to behave when you have a problem within your community. Also I note from the personal details in the pre-sentence reports that at least two of you have building skills. I wonder how you would have felt if something you have carefully built was burned down by somebody who had a disagreement with you. I do not think you would be happy.

7. Any arson case does not just involve physical harm to property, it also involves mental consequences for the owner there is the shock at finding out what has happened and understandably some fear as to what might come next: if somebody is prepared to burn down my property well maybe they are going to come and hurt me and my family next.
8. There is an implied threat in this kind of conduct which causes anger and fear on the part of the victim. He needs to see that the Court takes this matter seriously and imposes a deterrent sentence which will deter you from behaving in this way in the future but also other people who might be minded to do the same. Also you need to be held accountable for what you have done.
9. I want to record that I have been greatly assisted by the pre-sentence reports even though understandably there is a good deal of repetition between them. They have given me considerable insight into the feelings of the victim and also your personal circumstances. Generally speaking you are all, apart from this incident, good hard-working family men. Most of you have children to support and you should understand that you have put their lives at some risk because the starting point here and what could well be the end point is a sentence of imprisonment which would take you away to Port Vila and leave them in a position where they are unable to be supported by you.
10. These things you need to think about next time somebody suggests you go and do something violent. One of you has a previous conviction, Mr Royson you have a conviction for sexual intercourse without consent, that is obviously a serious charge but it is of a very different kind and I do not propose to increase your sentence because of it. However, you cannot claim of course to be otherwise of good character as the others can.
11. But in the circumstances I consider it appropriate to impose the same sentences on all of you and so effectively I put that conviction to one side and treat you all as effectively first offenders in relation to this kind of offending.

12. Mr Kapalu has filed helpful written submissions and he suggests an end sentence of a suspended prison term plus community work. I agree with that outcome.
13. I have read a number of the Supreme Court authorities to which he referred but I do not intend to refer to them because I have also researched a number of Court of Appeal decisions myself and naturally I focus on those since they are binding on me and provide authoritative guidance. In particular I have read the *Jackson* case [2011] VUCA 13, *Worahese* [2010] VUCA 11 and *Jimmy and Tom* [2010] VUCA 1.
14. These cases serve to demonstrate the wide variety of circumstances which may be associated with an arson offence. *Jackson* was clearly a much more serious case than the present, the most serious offender there the leader of the group, Jackson was subject to a starting point of 4 years imprisonment but the Court of Appeal said actually it could easily have been 6 or 7 years. The lesser involved in the group has a starting point of around 3 years. The facts there were obviously more serious because there was valuable property involved and there was a risk to life because of the time at which fires were set.
15. The *Worahese* case involved 3 buildings destroyed by arson, a sleeping house and kitchen and an incomplete house. There was a four-year starting point there ending up with a two-year end sentence of imprisonment. The Court of Appeal did not review that starting point on appeal because there was no challenge to it by the appellant. As to similar Supreme Court cases *Albert* [2010] VUSC 136 has some echoes of this. There the Chief Justice dealing with Mr Albert who was the only one of a group who faced an arson charge adopted a starting point of four years. But again there the facts were clearly more serious.
16. I have come to the view, having regard to these authorities and the maximum penalty, that a starting point of around 3 years imprisonment is the least restrictive that I can adopt to mark the features of this offending, to hold you accountable and to deter you and others. As I have said that fact that the property is not especially valuable here and the fact that there was nobody's

life at risk makes this a less serious case but the arson was of a significant number of buildings (and I do not overlook the accompanying charge of malicious damage which relates to a water tap and some other property). Overall this is a serious case of arson and I think three years imprisonment is appropriate.

17. Against that starting point there are a number of mitigating factors which will reduce it. First, you have all pleaded guilty at the first opportunity and that means you are entitled to a one-third discount, so that is 12 months and brings the sentence down to two years imprisonment. As I have already noted you are all apart from Mr Royson first offenders and otherwise of good character with families you support and you all make contributions to your community as the probation reports record.
18. You have offered a custom reconciliation ceremony but that has been declined by the victim. That is his right but you are entitled to some credit for your willingness to try to do what is right, to try to put things right in the customary way. I have asked your counsel whether you can pay some compensation aside from that but he says you are not in a financial position to do it. Of course even though I have an obligation to consider compensation and would normally award it in a case like this I cannot make an order which you cannot afford to pay.
19. As Mr Kapalu rightly says there is no information as to the value of the property but if the victim wants to take civil proceedings he will have the right to do that and he will need to identify the value of the property that he says has lost as result of your actions. In addition, here the prosecution has not put the Court or the defence in a position to assess the value of the property and to consider compensation.
20. In the end taking into account the factors other than the guilty plea I would reduce the end prison sentence to around 15 months imprisonment and that is the sentence I will impose on each of you. However I am required then to consider suspending that in whole or in part and I accept Mr Kapalu's submission that I should suspend all of it and I do so for 18 months from

today. That means if you commit another offence, any offence, you will then serve that 15 month prison sentence and the sentence imposed for the further offending.

21. So you have a considerable incentive to keep out of trouble for the next 18 months. I do consider however that because that is only a possible penalty and not an actual one it is appropriate to order you to undertake community work. In a sense, although you have of course primarily offended against the victim, you have also offended against the community generally. I take into account that you also have contributed to the community generally and you are entitled to have that weighed in the scales when assessment is made for an appropriate penalty by way of community work.
22. On these charges you are each sentenced on the arson counts to 200 hours community work and on the malicious damage charges you are sentenced concurrently to 40 hours community work so the total is 200 hours community work. I ask you to note that if you breach your community work that is committing an offence which would then trigger the suspended sentence. So you have a considerable incentive to do your community work.
23. In summary then the sentence I impose on each of you is a suspended sentence of 15 months imprisonment on the arson charges, wholly suspended for 18 months plus 200 hours community work and on the malicious damages charges, concurrently 40 hours community work.
24. You each have 14 days to appeal against the sentence if you do not agree with it.

BY THE COURT