

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

**Criminal Case No. 16/138 SC/CRML**

**PUBLIC PROSECUTOR – VS – MARCELLINO PIPITE**

**PAUL TELUKLUK**

**SILAS YATAN**

**TONY NARI**

**JOHN AMOS**

**ARNOLD PRASAD**

**TONY WRIGHT**

**SEBASTIEN HARRY**

**THOMAS LAKEN**

**JONAS JAMES**

**JEAN YVES CHABOD**

**WILSON IAUMA**

**Before: Justice Chetwynd**

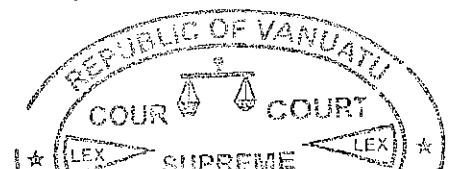
**Counsel: Mr Josaia Naigulevu and Mr Tristan Garae for the Public Prosecutor Ms  
Christina Thyna for Marcellino Pipite, Silas Yatan & Thomas Laken`  
Ms Kayleen Tavoia for Paul Telukluk & Sebastien Harry  
Mrs Mary Grace Nari for Tony Nari, Arnold Prasad, Jonas James, Jean Yves  
Chabod & Wilson Iauma  
George Boar for Tony Wright & John Amos**

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## **SENTENCE**

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1. On 16<sup>th</sup> August all the Defendants were found guilty on one count of conspiring to defeat the course of justice contrary to section 79(a) of the Penal Code. They appear for sentencing today. The maximum sentence for such an offence is 7 years imprisonment. It is quite clear an offence of this sort is regarded as serious. Under the common law in England and Wales the similar offence of conspiracy to pervert the course of justice was punishable by life imprisonment. The undermining of the judicial process as is evidenced



when offences such as these are involved is an attack on the judicial process. When the judicial process breaks down the consequences for society in general can be and usually are dire. I did mention in court that I have worked in two jurisdictions where there was a failure of an effective judiciary in whole or in part which contributed to the outbreak of civil wars. In Sierra Leone the total breakdown of the judiciary led to a very bloody 10 year civil war. In Solomon Islands the breakdown of the Local Courts system (equivalent to our Island Courts) and the Customary Land Appeal Courts contributed to what became known as the ethnic tension in the year 2000. The reason for these serious consequences is quite simple. When no one trusts the judiciary, when people think they cannot rely on the judiciary, they take the law into their own hands.

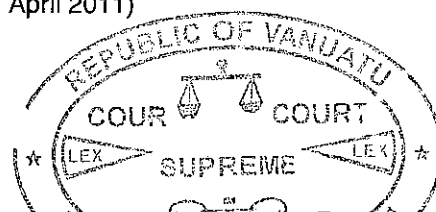
2. I will also repeat what I said in my decision when I found all the defendants guilty. They are not being sentenced because they are guilty of obtaining pardons. They are being sentenced because they were found guilty of being involved in a conspiracy to obtain pardons with the intention of defeating the course of justice. The full details of what went on are set out in my earlier judgment and need not be repeated here. The process of sentencing involves 3 steps. That was set out in the case of *Andy*<sup>1</sup>. The process as described in *Andy* has been confirmed as the correct approach time and time again. The first step is to look at the seriousness of the offence and the culpability of the actual offending and arrive at what is commonly called the starting point.

3. It is clear from the evidence I heard during the trial that different defendants were involved to differing degrees. Usually when a number of defendants are convicted of the same offence they are all dealt with equally. In this case not all the defendants participated in the conspiracy to the same degree; some are more culpable than others. The starting points and the sentences imposed on each defendant will reflect that. Having decided on the starting point the second step in *Andy* is to consider the personal circumstances or factors which affect each defendant. In this case I cannot treat any of the defendants, bar Mr Wilson lauma, as being of good character and without previous conviction. The other defendants are no longer first time offenders. They committed this separate offence after they had been convicted of charges of bribery and corruption and whilst they were on bail. I have therefore only reduced a sentence from its starting point when a defendant has shown remorse for his actions. I have also taken the view that the defendants who are the most culpable and show remorse should be entitled to a comparatively larger reduction in their sentence.

4. Marcellino Pipite can be seen as the lynch pin of this conspiracy. He managed to sully all three arms of government in one foul swoop. As Speaker of Parliament he is in effect the senior member of the legislature and at the time of the offence he was also acting Head of State. As such and in those roles he rode roughshod over the judiciary

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<sup>1</sup> *Public Prosecutor v Andy* [2011] VUCA 14; Criminal Appeal 09 of 2010 (8 April 2011)



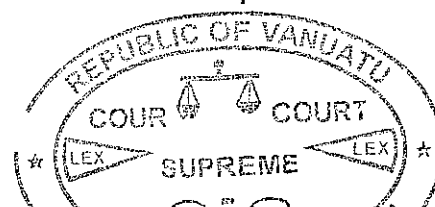
by granting pardons to himself and the other convicted politicians. He must be seen as the most culpable of all the defendants. The starting point of his sentence is 4 years imprisonment. Whatever was undoubtedly good about his character and all the good things he has done in the past were taken into account by Her Ladyship Justice Sey when he was sentenced by her. I cannot now treat him as a man of good character. It is difficult to see what else I can take into account. He shows no remorse for his offending and he does not accept the guilty verdict. He blames his lawyers for all his problems. He will serve 4 years imprisonment. He is not entitled to any discount for a guilty plea (the third step envisaged in *Andy*.) He will serve 4 years.

5. Paul Telukluk had less of a role in the conspiracy. He was on the periphery of what went on but he was still involved. His starting point is 2 years and 3 months imprisonment. Again he is not an offender who can be considered a man of good character. He does not accept his conviction and shows no remorse. Whilst he is not of the best of health that is a matter for the Correctional Services authorities or the parole board. It is not something which should affect the length of the sentence imposed on him. He will serve 2 years and 3 months. He is not entitled to any discount for a guilty plea. He will serve 2 years 3 months.

6. The same comments about health relate to other defendants too. Some have less serious health issues than Mr Telukluk but what they all seem to have in common is that they are related to life style choices. The health issues also all seem to be long standing and have not affected their ability to hold the office of MP or conduct other businesses. These defendants have already served part of their sentences following their bribery convictions. There is no evidence that being incarcerated has harmed or exacerbated their health and accordingly none of the health issues referred to in the pre-sentence reports or in mitigation should affect the sentences imposed on any of the defendants.

7. Silas Yatan was more involved in the conspiracy and is therefore more culpable than some defendants although he is not as culpable as others. He was an enthusiastic supporter of the idea but not a driving force. The starting point for Mr Yatan should be 3 years. He cannot be said to be a person of good character without previous convictions. However, he is one of the defendants who shows some grudging remorse. Although it could be said he is remorseful only because he was caught I will give him the benefit of the doubt. He should be given credit for his remorse and his sentence should be reduced by 6 months. He will serve a sentence of 2 years and 6 months. He is not entitled to any discount for a guilty plea.

8. Tony Nari was one of those very much involved in the conspiracy, one of the prime movers. His enthusiasm and his eagerness at the very early stages of the conspiracy drove the others on. However, unlike Mr Pipite, he did not abuse a position of power and authority. He is sentenced to 3 years and 6 months. He cannot be said to be a person of



good character without previous criminal convictions. However he shows some remorse although he does not take total responsibility for his actions. He will be given credit for his acknowledgment of his culpability even though he places most of the responsibility, the blame, on the lawyers. He should have 6 months deducted from his sentence. His final sentence is one of 3 years. He is not entitled to any discount for a guilty plea.

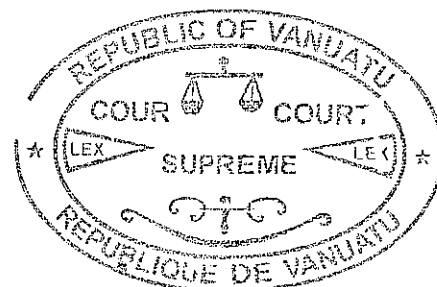
9. John Amos was not one of the principal figures in the conspiracy. The evidence suggests he was dragged along by the others but is, nonetheless, culpable. He should serve a sentence of 2 years and 3 months. He shows a little remorse but will not accept responsibility for his bad choices. He cannot claim to be of good character or free from criminal convictions and is not entitled to any discount for a guilty plea. He will serve 2 years and 3 months.

10. Arnold Prasad was not one of the prime movers in the conspiracy but was willing to go along with what was planned. His sentence is 2 years and 3 months. He has shown no remorse and cannot be said to be of good character and without previous convictions. Nor can he say he is entitled to a discount for an early guilty plea. He will serve 2 years and 3 months.

11. Tony Wright was one of the defendants who were involved in the conspiracy on the periphery. He is sentenced to 2 years and 3 months imprisonment. He cannot rely on any claim to a good character or to be free from previous convictions. He does not accept his involvement in the conspiracy or the verdict and shows no remorse. He is not entitled to any discount for a guilty plea. He will serve 2 years and 3 months.

12. Sebastian Harry would like the court to believe he was the buffoon of the group. He claims to have been under the influence of alcohol all of the relevant time. I did not accept that and I did not accept he was not a part of the conspiracy. I do accept he was not one of the principal characters and he is sentenced to 2 years and 3 months. Because of his previous conviction he, like all the others, is unable to rely on his previous good character or lack of a criminal record. He shows no real remorse for his involvement. He is not entitled to any discount for a guilty plea. He will serve 2 years and 3 months.

13. Thomas Laken was one of the defendants who were involved in the very early stages of the conspiracy. He is one of the prime movers and one of those who was at the "breakfast" at Mangoes. His degree of culpability will be measured accordingly. He should be treated the same as Mr Yatan and he will be sentenced to 3 years imprisonment. Like all the other politicians involved in this offence he has a previous conviction and cannot now lay claim to a previous good character. He, unlike Mr Yatan, shows no remorse and heaps all the responsibility and blame on the lawyers. He is not entitled to a reduction in sentence for any guilty plea. He will serve 3 years.



14. Jonas James was one of those on the margins of the conspiracy. He is culpable but to a limited degree. His starting point is 2 years and 3 months. He has a previous conviction and lost his claim to his previous good character upon that conviction. However he is the only defendant to show anything like true remorse and acceptance of responsibility for his actions. He is entitled to a reduction in his sentence. And it will be reduced by 3 months to 2 years. He is not entitled to any further reduction or discount in respect of any early guilty plea. He will serve 2 years.

15. Jean Yves Chabod was not one of the main characters in this offence. He was on the periphery of the planning and activity. His sentence is 2 years and 3 months. He blames the lawyers for his predicament. He also says that he made an appointment to see the President after the pardon had been granted with the intention of asking for it to be revoked. His Excellency revoked all the pardons before the meeting could take place. He does not accept responsibility for what happened and cannot be said to show any remorse. He cannot be said to be of good character and has his previous conviction. He is not entitled to any discount for an early guilty plea. He will serve 2 years and 3 months.

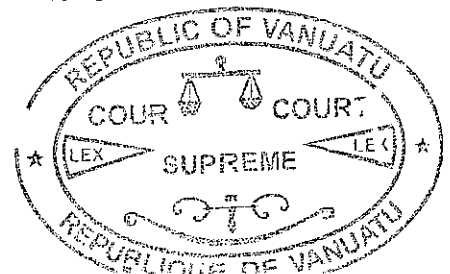
16. Wilson lauma is the only lawyer involved in the conspiracy to have faced charges. He says that he was under pressure from his employer but as a lawyer and officer of the court he should, quite frankly, have known better. I made comment in my earlier judgment in this case that I felt all the lawyers involved should face some sanction. That may still be a possibility for Mr lauma and so I will bear it in mind when sentencing him. However, Mr lauma cannot escape the conclusion that he must have known that that his advice or lack of it would put his clients, indeed all the defendants, on the wrong side of the legal line. Genuine and proper advice about a pardon was part of his duties as a lawyer and officer of the court but what he and his colleagues countenanced that day crossed the line and he became part of the conspiracy. His starting point is 2 years and 9 months. He has never been in trouble before and he is entitled to a reduction for his lack of previous criminal convictions and his good character. His sentence is accordingly reduced by 9 months to 2 years. He is not entitled to any reduction for a guilty plea.

17. I have considered whether any of the sentences imposed on any of the defendants can be suspended<sup>2</sup>. I am required to consider that possibility so far as it is practicable and consistent with the safety of the community. Section 57 of the Penal Code also offers guidance;

#### *PROVISION FOR SUSPENSION OF SENTENCES OF IMPRISONMENT*

*(1) The execution of any sentence imposed for an offence against any Act, Regulation, Rule or Order may, by decision of the court having jurisdiction in the matter, be suspended subject to the following conditions:*

<sup>2</sup> Section 37 of the Penal Code [cap 135]



(a) if the court which has convicted a person of an offence considers that:

- (i) in view of the circumstances; and
- (ii) in particular the nature of the crime; and
- (iii) the character of the offender

Alternatively I can consider suspending part of the sentence in accordance with section 58 of the Penal Code:

#### POWER OF COURT TO SUSPEND SENTENCE IN PART

(1) If a court has decided that the case is so serious as to warrant imprisonment, and that it is not appropriate to suspend the whole sentence, it should consider whether there are grounds for suspending the sentence in part.

(2) A court may suspend a sentence in part if the sentence is for three years or less

18. There are a number of cases where both the Supreme Court and the Court of Appeal have considered what circumstances make it appropriate to suspend a sentence. Some of those cases involve the offence of rape and are not appropriate to follow in this case.

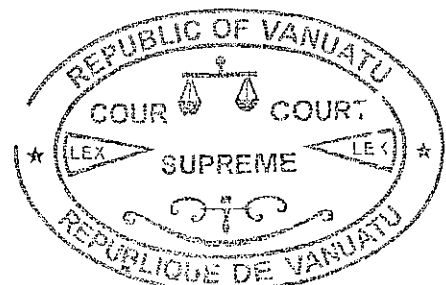
The Court of Appeal in the case of *Urinmal v Public Prosecutor* [2013] VUCA 23; Criminal Appeal 06 of 2013 (26 July 2013) said:

*"There were a number of singular aggravating factors about this offending. It was premeditated. It took place over a long period. It was politically motivated, and designed to achieve an unlawful end by intimidation and violence. There was the chase of the car and removal of the victim which had similarities to a home invasion. The assaults were savage and undoubtedly terrifying. They involved attacks to the head. The injuries although not permanent were significant.*

*While there were significant personal mitigating factors, the appellants singularly failed to show any remorse, a factor that is relevant in considering whether a sentence of imprisonment should be suspended."*

The case involved a group of 13 men chasing another man in a car, catching him and beating him. The victim was trying to obtain photographic evidence of election fraud.

Another Appeal case is *Jackson v Public Prosecutor* [2011] VUCA 13; Criminal Appeal 07 of 2010 (8 April 2011) where the court stated:



*"The end sentences of nine months' imprisonment were severe. However, they were within the range, albeit at the top of that range. The more lenient suspended sentence given to Mr Moli was justified by his youth, (he was 18 years old when the offences occurred), and his genuine remorse. Uniquely, he had a high level of motivation to address his offending. The judge's decision to impose custodial sentences on the others must be seen in the context of the need to deter individuals from taking the law into their own hands and to inflict gratuitous damage to property in such an extreme manner as occurred here."*

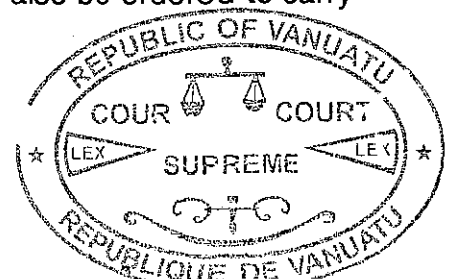
In the more recent Supreme Court case of *Public Prosecutor v Taravaki* [2016] VUSC 73; CR 1383 of 2016 (30 May 2016) His Lordship the Chief Justice held:

*"The next question is whether the circumstance of this particular case justifies a suspension of your imprisonment sentence. You are 61 years of age. You admitted your offending to the police. You admitted the offences to the police; you pleaded guilty to the offences at the first opportunity given to you by the court. You were remorseful and said sorry for your actions. You performed custom reconciliation to the victims of your actions. The victims accepted your reconciliation. You are a sick old man on medication for Hepatitis B and experiencing high blood pressure.*

*I assess the circumstance to justify a suspension. I accept it. I suspend your imprisonment term of 2 years for period of 2 years."*

That case involved a 61 year old man who went onto someone else's property and threatened people there with a gun. It later transpired that, unbeknown to those threatened; the gun was loaded with blank cartridges.

19. Bearing in mind the provisions of sections 57 and 58 of the Penal Code and the guidance to be found in the cases above I find that the only sentence which warrants suspension is that of the defendant lauma. I stress that I am not suspending his sentence because he is a lawyer. I am suspending his sentence because of the circumstances of the offence and the nature of his offending and his character. One might say his real crime was to fail miserably in his role as lawyer and officer of the court. He did not seek personal gain or benefit and indeed (apart perhaps from the supposed kudos of advising senior politicians) would not have benefitted from what part he played in the conspiracy. He is the only defendant who can say, before conviction, he was of good character. There is also a possibility he may face professional sanction and he will have a high level of motivation. In the circumstance the sentence of two years imprisonment imposed on Wilson lauma will be suspended for a period of 2 years. He will also be ordered to carry out 200 hours community work.



20. So far as the commencement of sentences is concerned, in relation to those defendants previously convicted of bribery and corruption, I do not accept that "The Rule" as set out in section 52 of the Penal Code applies. Whilst I accept that the earlier convictions were a precursor to conviction in this case they are in respect of distinct and separate offences. The sentences of immediate imprisonment imposed in this case must be served consecutively to those imposed in the earlier bribery and corruption case.

**Dated at Port Vila this 29<sup>th</sup> September 2016 (published 19<sup>th</sup> October 2016)**

**BY THE COURT**

