

**PUBLIC PROSECUTOR VS- VICTOR JAMES**

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Ken Massing for the State  
Junior Garae for the Defendant*

**Date of Plea:** *22<sup>nd</sup> August 2016*

**Date of Submissions & Sentence:** *2<sup>nd</sup> September 2016*

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**SENTENCE**

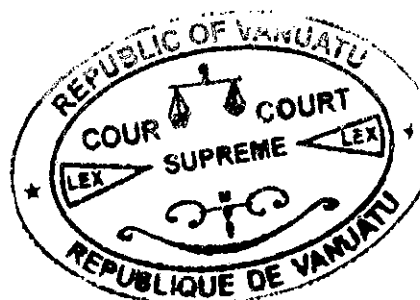
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1. Victor James, you are here for sentence for having pleaded guilty to one count of Arson contrary to section 134 (1) of the Penal Code Act [ CAP.135] ( the Act). This section provides-

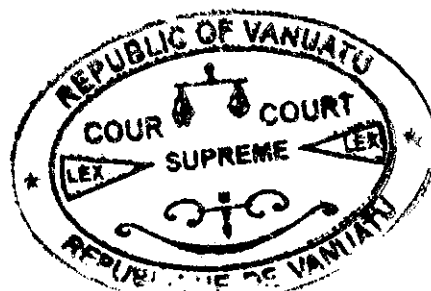
*" Arson*

*134 (1) No person shall wilfully and unlawfully set fire to or damage by means of any explosive, any building or other property whatsoever which to his knowledge belongs to another. ( My underlining for emphasis). Penalty: Imprisonment for 10 years."*

2. The facts of and surrounding your offending are as stated in the Prosecution's Brief of Facts filed on 22<sup>nd</sup> August 2016 showing that-
- a) On the night of 16<sup>th</sup> May 2016 you went to the Night Club Planet 107 where you had a few beers. You returned to town. On the way you had some kava from Blue Light Kava Bar at BP Burn Area.
  - b) At around 11 O'clock that night you were seen by a Police Officer in the vicinity of Daming Store.
  - c) Between 11 O'clock pm and 1 O'clock am on 17<sup>th</sup> May 2016 you entered Daming Store for the first time and stole tobacco. You gained entry through the back fence. You filled your black hand bag with tobacco and left the store.



- d) You followed the route to Natapoa Motel and arrived at the Blue Light Nakamal opposite the Police Station. You met some boys and attempted to sell them tobacco. They refused and went to report the matter to the Police.
  - e) At around 1:30am to 2:00am on 17<sup>th</sup> May 2016 the Police saw you sleeping on the public stage at Unity Park. The Police woke you up and took the hand bag off you. They searched the bag and found a lot of tobacco in it. They took the bag to the station and told you to collect it in the morning.
  - f) After the Police had left you, you then returned to Daming Store. You entered the store a second time and stole some more tobacco and put them in a carton. You took matches and set fire alight on a piece of carton and left the premises.
  - g) You then went up the hospital and drank water from the water tank there. You left the carton of tobacco under a mango tree there. A security guard saw you there in the early hours of the morning of 17<sup>th</sup> May 2016. You then left for home. Just a few minutes later the security guard heard the fire alarms go off at the Fire Station.
  - h) You wore short trousers, a jersey t-shirt and carried a black hand bag at the time. On the evening of 17<sup>th</sup> May 2016 you were seen still in the same clothing.
  - i) You were invited to the Police Station on 18<sup>th</sup> May 2016 and questioned. First you denied the offending but later admitted committing the offence.
  - j) The police recovered the black hand bag, tobacco and the t-shirt.
  - k) The permanent building although not habited, was completely burned down with every saleable goods and items.
  - l) The value of the goods damaged, destroyed and lost was in excess of VT 100 million. Nothing was recoverable.
3. You do not dispute those facts but have conceded them.
4. You are therefore on your guilty plea, convicted as charged. Your offending is too serious that the only appropriate sentence the Court will impose on you today is to be a custodial sentence.

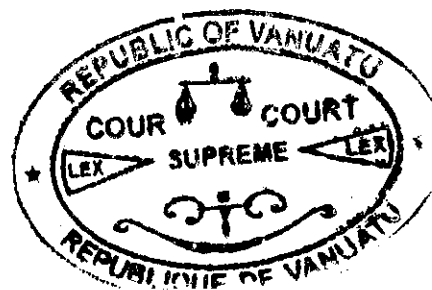


5. Your action was clearly intentional, wilful and unlawful.

In your pre-sentence report you said:-

*“ Mi minim nomo blo mekem fasin ia from mi les lo ol chines kam mekem business lo ples blo mi.”*

6. You unlawfully entered the Store twice around. And you stole tobacco twice around. You did it fearlessly and with some degree of planning and malice afore- thought. Your actions are inexcusable . You caused very substantial losses to the owners of the Daming Store which are unrecoverable. The emotional harm caused to the owners of the business is undoubtedly immensed.
7. The Prosecutions have submitted the cases of Worahese .v. Public Prosecutor [ 2010] VUCA 11, Jackson .v. Public Prosecutor [ 2011] VUCA 13 and Public Prosecutor .v. Nambong [ 2013] VUSC 47 and urged the Court to adopt a starting sentence of 6-8 years imprisonment.
8. Defence Counsel submitted that the Court should adopt the sentencing principles in Public Prosecutor.v. Jimmy [ 2012] VUCA 1, Public Prosecutor.v. Japeth [ 2014] VUSC 157, Public Prosecutor .v. Hugo [ 2011] VUSC 310 and Public Prosecutor.v.Albert [ 2010] VUSC 136. Defence Counsel urged the Court to adopt a starting point of 4 year imprisonment and for a suspended sentence.
9. Those submissions are rejected. None of the cases referred to by defence counsel and the Prosecutions have the same facts and circumstances. They are all different from each other and even on the value of houses and properties burned and destroyed. None of these cases come anywhere close to this case in terms of value of the building, materials and goods, making this case the most serious of all arson cases thus far.
10. I there consider that the starting point shall be one of 9 years imprisonment taking account of all the aggravating circumstances of the case. I therefore sentence you to imprisonment for a starting point of 9 years.
11. However I reduce your sentence by 3 years for your early guilty plea, representing a 1/3 reduction. That leaves the balance of 6 years imprisonment.
12. I reduce the balance of sentence of 6 years by 3 months and 8 days being the period you have taken in custody from 24<sup>th</sup> May 2016. Your end sentence is therefore 5 years, 8 months and 22 days imprisonment to be served at the Correctional Centre in Luganville.



13. There will be no further reduction. This is to serve the following purposes-
- a) Mark the seriousness of your offending.
  - b) Mark Public disapproval and condemnation of your wilful and unlawful actions.
  - c) Deter you and other like -minded persons.
  - d) Protect the finance and business sector of the community
  - e) Punish you adequately and appropriately.

14. That is the sentence of the Court.

15. You have a right to appeal against this sentence within 14 days if you so choose.

DATED at Luganville this 2<sup>nd</sup> day of September 2016

BY THE COURT

  
OLIVER.A.SAKSAK

Judge

