

PUBLIC PROSECUTOR

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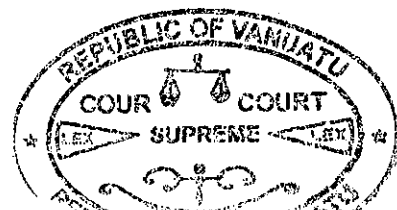
BERRY TARAN TARAVAKI

Coram: Lunabek Vincent CJ

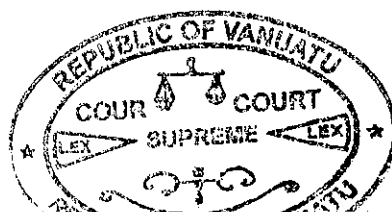
*Counsel: Mr Lenry Young for Public Prosecutor
Mr Stephen Carlo for Defendant*

SENTENCE

1. Mr Berry Taran Taravaki, this is your sentence. You are charged with 2 counts of Threats to kill a person, contrary to section 115 of Penal Code Act [Cap 135] and one count of carrying firearms in public place, contrary to section 29 of Firearms Act [Cap 198].
2. On 3rd of May 2016, you entered guilty pleas on these three above counts charged against you in the information dated 28th April 2016.
3. The brief facts of your offending are provided by the Prosecution. You and your lawyer on your behalf accept these facts. They are this:-
4. On 9 April 2015 at around 9:30 hours in the morning Jenny Neil Jones was at her property "Secret Garden" at Mele; she heard people shouting outside her property. She went out to see what was happening. She saw you walked into her premises (Secret Garden) holding a firearms. You saw the cartridge inside the firearms and pointed the firearm at her. You were 2 meters away from her. She was scared of her life as she never experiences such kind of threat. Steve Joel, Chris Sakita and Madlene Taravaki were present too.
5. Steve Joel, a tour guide of Secret Garden, was inside the premises at the time he saw you went inside the yard of Secret Garden armed with a firearm. You showed him the cartridge that was loaded in the firearm. You then pointed at him and said "yu wantem hemial!" (You want this!").



6. Chris Sakita, a staff worker of Secret Garden, was present at the time. He was with Steve Joel inside the Secret Garden premises when he heard you saying abusive words and went inside the premises closer to him and Steve Joel armed with a loaded firearm. You pointed the firearm at Steve Joel and said ("yu wantem hemia"! ("You want this"!)).
7. Maddlene Taravaki, office clerk of Secret Garden, was present at that time and she saw you with possession of firearm. She saw you pointing the gun at Steve Joel and she heard you saying ("yu wantem mi sutum yu"! ("You want me to shoot you"!)).
8. Johnny Charley was in his house situated opposite to Secret Garden. He saw you armed with a loaded firearm inside the premises of Secret Garden.
9. Police Officer Didier Lukai cautioned you on the same day (9 April 2015) and you admitted the allegations. You said in your statement that you had firearm with you when you went into the premises of Secret Garden. You confirmed pointing the gun at Steve Joel and Chris Sakita. You said that the firearm was not loaded. You told the writer of the report that you only inserted the gun with an empty cartridge shell. You only pointed out that you tricked the victim, unnoticed when you inserted the cartridge to the firearm. You are not the owner of the firearm. The firearm is a 4.10 rifle. It belonged to Emil Vatoko's father who transferred ownership to Emil Vatoko. Mr Emil Vatoko is your son in law.
10. On 9 April 2015, Emil Vatoko and his brother in law (Mr Sael Taravaki) went hunting and both confirmed there were no bullets, just empty cartridge shells in the cabbage plastic. They suggested that these were the bullet cartridge shells that you were using. Mr Emil said he placed the firearm on shelves and had to rush to the town along with his brother in law. That was where you had access to the firearm. You now acknowledge that even by pointing a gun without a bullet is a serious offence.
11. I accept your versions of fact on this point that you pointed a firearm 4.10 rifle on the victims. The rifle was loaded with an empty bullets cartridge shell or an empty cartridge.



12. LAW AND APPLICATION

Section 115 of the Penal Code A [Cap 135] is the prohibition section for the offence of threats to kill a person... It provides: "No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person – Penalty – Imprisonment for 15 years."

Section 29 (1) of Firearms Act [Cap 135] is the prohibition section for the offence of carrying any firearms in a public place. It provides: "No person shall, without lawful authority or reasonable excuse (the proof whereof lies on any firearm (whether loaded or not) together with ammunition suitable for use in that firearm.

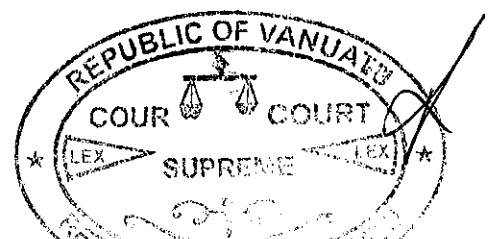
Penalty – Fine not exceeding VT250,000 or imprisonment for a period not exceeding 5 years or to both."

The term "public place" is defined by the Public Order Act [Cap 84] in this way: "Public Place" means any place whatever, whether publicly or privately owned, which is habitually frequented by the public or to which the public has access, whether on payment or otherwise and shall be deemed to include any place not falling within the foregoing definition at which the public has been invited, whether by individual or general notices, radio announcements or any other medium of information whatever, to attend a meeting.

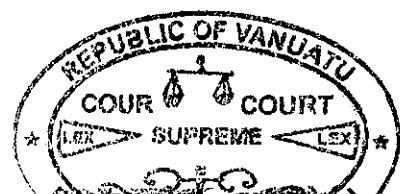
Schedule (section 2) Interpretation Act (Cap 132) provides:

"Public place" and "Public premises" includes any public road and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment and any building or place which is for the being used for any public or religious meetings or assembly or as an open Court.

13. When I consider your sentencing, I note the nature of offences you are charged with and convicted of upon your guilty pleas. Threats to Kill a person is sanctioned with a maximum penalty of 15 years imprisonment and carrying Firearms in a public place is sanctioned with a maximum penalty of a fine not exceeding VT250,000 or imprisonment for a period not exceeding 5 years or to both.

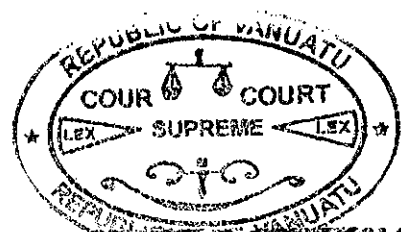


14. These offences are serious offences as reflected through the heavy penalties imposed by Parliament as maximum penalties.
15. In your sentencing, I take into account of the pre-sentence report, the submissions of the prosecution and the submissions made by your lawyer on your behalf.
16. The sentence you shall receive for your offending shall reflect the circumstances of the commission of the offences.
17. In order to arrive at a sentence, I shall begin with an appropriate sentence starting point.
18. The prosecution and your lawyer refer the Court to the decision of the Court of Appeal in Walker –v- Public Prosecutor [2007] VUCA12 and other cases applying the ratio of Walker case as contained in their respective submissions.
19. I repeat what I said in the case of Public Prosecutor –v- Robert [2016] VUSC17 that *“cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence. For offence of threats to kill a person by a defendant with the presence of a weapon and the use of the weapon is on the higher scale of aggravation and seriousness. A suspended sentence of imprisonment must only be granted if the circumstance of the case is justified.”*
20. The report shows that you explained your offending by pointing out that the victims were painting abusive language on what used to be your former grocery shop. You stressed that given your present status and current age, you felt that you need to address this issue by way of threatening those youth and other family members (victims)
21. The victims are the owners of the Secret Garden, a Tourist Attraction Agency.
22. Mr Berry Taravaki, you must understand that your actions and conduct in the commission of offences on 9 April 2015 are intolerable and unacceptable. You cannot take the law into your own hands.
23. In the present case, the seriousness of your offending is aggravated by the following factors:
 - Entry into the victims’ premises with a 4.10 rifle;



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- Direct use of threat of an offensive weapon i.e. 4.10 rifle;
 - Firearm was loaded with an empty cartridge ;
 - Threat occurred on the complaints premises and at a closer distance;
 - Threat occurred by directly pointing a firearm at the complainants;
 - Threat occurred in a public place;
 - Threat occurred with menacing words or languages;
 - You are not the owner of the 4.10 rifle;
 - You are not authorised to use the rifle.
24. The appropriate starting point is one of 4 years imprisonment inclusive of the aggravating factors for the offences of threats to kill a person and 2 years imprisonment for carrying firearms in a public place.
25. I must now assess the mitigating factors to balance them with the aggravating ones:
- You are a first time offender (you have no previous convictions).
 - You are remorseful and sorry for your actions
 - You have skills and knowledge in agriculture. (You did poultry farming to support your family).
 - You have five children and eleven grandchildren to father and take care of them physically, spiritually and economically, as he is currently an Elder of the Mormon Church in Vanuatu and a self-businessman.
 - You are 61 years of age
 - You are on medication for Hepatitis B and experiencing high blood pressure.
 - You cooperate well with the police when you were approached regarding the offences you committed.
 - You would like to apologise to the Court and to the victims as a sign of contrition.
 - You promised not to commit the same offences and any other offences in the future.
26. You pleaded guilty to these offences at the first opportunity given to you by the Court. You will be entitled to one third reduction of your head sentence which is 18 months.
27. You will be entitled to another reduction allowance of 6 months to reflect other mitigating factors.



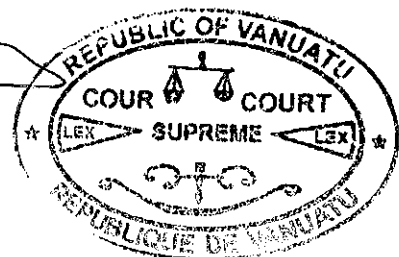
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28. You receive an end sentence of 24 months in respect to the two counts of threats to kill a person (in counts 1 and 2) and an end sentence of 1 year imprisonment in respect to the offence of carrying firearm in a public place (in count 3).
29. The sentences shall run concurrently to each other. This means that Mr Berry Taravaki you shall serve an end sentence of imprisonment of 2 years imprisonment.
30. 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.
31. I assess the circumstance to justify a suspension. I accept it. I suspend your imprisonment term of 2 years for period of 2 years.
32. In addition, I order you Berry Taravaki to undertake 80 hours of community work.
33. I decline to make an order pursuant to section 39 of the Firearms Act [Cap 198] to forfeit the 4.10 rifle. The circumstance of this case is peculiar. The owner of the rifle is an innocent party however; I will not hesitate to make an order to this effect if the owner of the rifle constantly neglects to put his rifle out of access by others.
34. Defendant Berry Taravaki, you have 14 days to appeal your sentence if you are unsatisfied with it.

DATED at Port-Vila this 30th day of May 2016

BY THE COURT

Vincent LUNABEK
Chief Justice



**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

ORDER FOR SENTENCE OF COMMUNITY WORK

(Sections 58F & 58G Penal Code (Amendment) Act No.14 of 2007)

Name: **BERRY TARAVAKI**

DOB: **61 YEARS**

Residential location: **MELE VILLAGE, EFATE**

At a sitting of the Supreme Court at Port-Vila, Efate this 30th day of May 2016, you were sentenced to 2 MONTHS IMPRISONMENT suspended for a period 2 years and in addition, you are ordered to perform 80 hours Community Work.

<u>Case number:</u> CR Case 1383 of 2016	<u>Offences:</u> <ul style="list-style-type: none">• 2 counts of Threats to Kill a person, contrary to section 115 of Penal Code Act [Cap 135] and• 1 count of Carrying Firearms in public place, contrary to section 29 of Firearms Act [Cap 198].
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The Penal Code Amendment Act 2006 requires you to:

1. You must report to a Probation Officer as soon as practicable and not later than 72 hours, after sentence is passed.
2. You must report to a Probation Officer as directed at any other time during the sentence for the purpose of monitoring the sentence.
3. You must notify a Probation Officer, within 72 hours, if you move to a new residential location.
4. You must work as directed by the Probation Officer until the total number of community work hours is finished.

Other rules of the Community Work sentence will be explained to you when you meet your Probation Officer

DATED at Port-Vila this 30th day of May 2016

BY THE COURT



**Vincent LUNABEK
Chief Justice**

