

PUBLIC PROSECUTOR

- v -

MERAK KALENGOR

Coram: Vincent Lunabek - CJ

Counsel: Mr. Simcha Blessing for Public Prosecutor
Mr. Andrew Bal for the Defendant

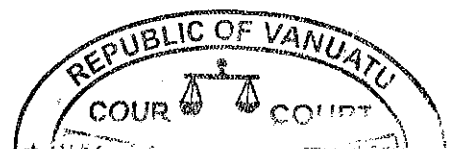
Date of Sentence: 16th October 2018

SENTENCE

1. Defendant Merak Kalengor, this is your sentence on one count of obtaining money by deception – contrary to section 130B of the Penal Code Act [CAP 135].

Background

2. You are initially charged with one count of theft, contrary to ss.122 and 125 of the Penal Code and one count of obtaining money by deception contrary to s.130B of the Penal Code [CAP 135].
3. You initially took pleas on the above two (2) counts on 3rd July 2018 and you entered not guilty on both charges. A trial was scheduled for two (2) and half days on 11, 12, 13 (½ day) of September 2018 at 9.00am.
4. At a pre-trial conference which was organised on 17th August 2018 but then adjourned and set again on 29th August 2018, your counsel confirmed the trial dates to be on 11,12 and 13 September 2018 as planned.
5. At the first day of trial on 11 September 2018 at 9.00am o'clock, you instructed your counsel that you maintain your plea of not guilty in the charge of theft but you wish to be arraigned on the charge of obtaining money by deception. You were then re-arraigned on that charge and you entered a guilty plea on the

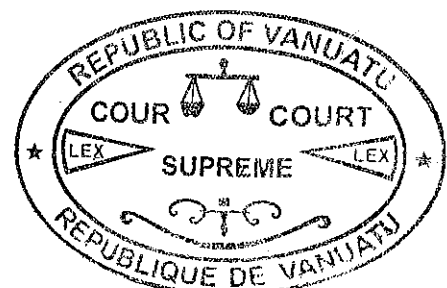


charge of obtaining money by deception – contrary to s.130B of the Penal Code Act [CAP 135].

6. The prosecution applied pursuant to s.129 of the Criminal Procedure Code Act [CAP 136] for a nulli prosequi. The nulli prosequi was granted to you. You were accordingly discharged of that offence accordingly.
7. You are now only sentenced for the charges of obtaining money by deception contrary to s.130B of the Penal Code.

The brief summary facts

8. The following are the facts constituting the charge of obtaining money by deception contrary to s.130B of the Penal Code [CAP 135].
9. Sometimes in October 2014, Mr. Sam Kalualua told you that he wishes to purchase a second hand firearm. You called Mr. Nanua who then joined you both little while later.
10. You both informed Mr. Kalualua that you will sell him a point 22 rifle for VUV 70,000. Mr. Kalualua handed them VUV 30,000 deposit.
11. Thereafter, Mr. Kalualua told you that he no longer wishes to pay for a second hand rifle. He wants a new rifle instead. You then misled Mr. Kalualua by advising him that you will contact a company in New Zealand to export the rifle to Vanuatu. Mr Kalualua provided an advance payment to the value of VUV 53,000.
12. When Mr. Kalualua met with you, you handed him a rifle that was wrapped in cloth. When Mr. Kalualua unwrapped the cloth outside the Police Station, he saw that it was a second hand rifle.
13. Time passed but you failed to provide to Mr. Kalualua his new rifle. When Mr. Kalualua confronted you, you told him to return the second hand rifle first before you hand him the new one. Mr. Kalualua returned the second hand rifle as you instructed. Mr. Kalualua asked you to return his money but you made excuses, avoided Mr. Kalualua and never returned the money.



14. Your job as a firearm officer under law was to:

- Facilitate process of new firearms application and recommend to the Commissioner Office for approval;
- Facilitate dealers application for importation of firearms and provide to the Commissioner's Office for approval;
- Issue Licenses;
- Firearm checks and registration of firearms;
- Confiscate unregistered firearms;
- Facilitate process of disposal of firearms through the office of Commissioner;
- Investigate offences under the Firearms Act;
- Safe keeping of firearms within the custody of the Central Firearms Registry.

15. You had no right under law to:

- Sell firearms kept at the Armoury without the Commissioner's approval
- Have firearms taken away from the armoury for fixing or any particular manner of dealing,
- Obtain money from sale of firearms for himself
- Import firearms for buyers

Arrest and Interview

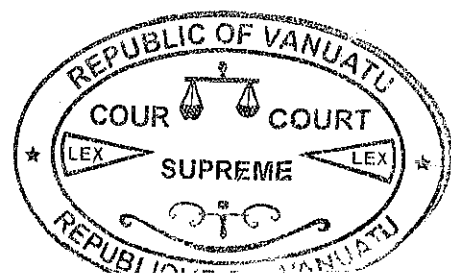
16. You were eventually arrested, you were interviewed under caution on the 15th of December 2015. You denied taking the firearms and stated that you did not possess a key to the armoury.

Relevant Law

17. Section 130B of the Penal Code is the relevant section. It says:

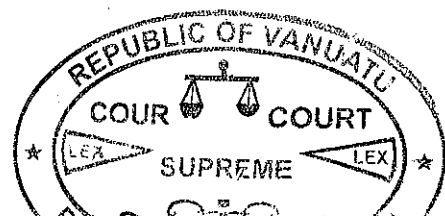
"A person must not by deception dishonestly obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever.

Penalty: Imprisonment for 12 years."

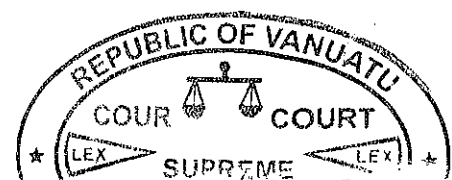


Sentencing approach and submissions

18. It is a serious offence. In this case, your offending is aggravated by the following factors.
- a) Mr. Merak Kalengor, at the time of your offending, you were a police officer whose duty is to preserve and maintain peace and order and to enforce and uphold the rule of law. You were a sergeant at that time and you abused that rank and position as you deceived the complainant and obtained money from him.
 - b) This was a serious breach of trust. The complainant was a simple and ordinary Ni-Vanuatu citizen who trusted you as a police officer and with your rank as a sergeant.
 - c) You used the money you obtained from the victim out of greed. You applied them to your own use.
 - d) The amount (VT53, 000) the complainant lost is significant according to his standard. Your actions must have significantly affected the complainant financially.
 - e) There is an impact of this offence committed by a police officer on the public. The public expects you as a police officer to preserve, enforce and uphold the law. You acted directly opposite to your duties as a police officer.
 - f) Corrupt officers such as you in the present case breached public confidence in the Vanuatu Police Force.
 - g) You obtained direct benefit for yourself an amount in the value of VT53, 000.
19. The prosecution submits to a starting point sentence of 8 months imprisonment. I disagree with the prosecution for 8 months imprisonment as a starting point.
20. I think the appropriate sentence is 16 months imprisonment considering the seriousness and the maximum penalty prescribed for the offence, the relevant authorities (although this case has to be specifically assessed as despite the amount of VT53, 0000, it is committed by a police officer in his everyday duties amounting to the acts of corruption in his offence and position as a sergeant.



21. Your highest sentence is 16 months imprisonment.
22. I take it that, your lawyer informed the Court that you do not need a pre-sentence report. After discussions with your lawyer, no pre-sentence report was ordered. Today I rely on the mitigating factors as provided by your lawyer.
23. In mitigation, your lawyer informed the Court that:
- You are 57 years of age.
 - You are a first time offender and you have no previous criminal record.
 - You cooperated well with the Police and make full admissions on the allegation that was put against you.
 - You are remorseful and promise before this honourable Court not to commit the same offence or any other offences.
 - You have retired from the Vanuatu Police Force and you are now driving your own service bus to earn money for a living and to support the welfare of your nuclear family particularly his children.
 - You are willing to retribute the amount of VT53,000 back to the complainant.
 - You pleaded guilty at first available opportunity that was given to you by the Court and this is a sign of remorse and contrition. Your lawyer said a plea of guilty enables the Court to deduct 1/3 of the sentence imposed.
24. I now consider the aggravating and mitigating factors as I need to balance them and cross reference each factor to the others.
25. An allowance of 6 months is given to you as you are a first time offender and you do not have previous conviction until you are convicted on 11 September 2018 in this case.
26. You have obtained money by deception in the month of October 2014 and you were sentenced in October 2018, some 4 years. I think it is a time delay to be taken in your favour. I allow a further 3 months.
27. I consider your guilty plea. In the circumstance of this case, you are not entering a guilty plea at the first available opportunity given to you by the Court. Your first plea was made on 3 July 2018 at 9.00am where you entered not guilty pleas on

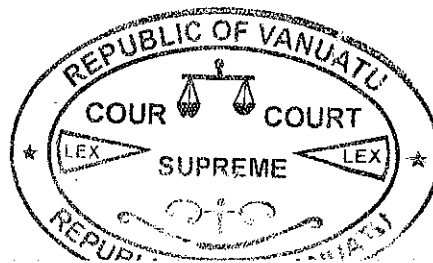


this charge also. The matter(s) were listed for 2 days and half (11, 12 and ½ day of 13 September 2018). At the pre-trial conference of 29 August 2018, your lawyer confirmed your trial dates as scheduled above. On 11 September 2018 at 9.00am at the first date of trial, you asked to be re-arraigned. You were re-arraigned and you pleaded guilty to this charge of obtaining money by deception contrary to s.130B of Penal Code. The prosecution applied for a nulli prosequi in respect to the charge of theft – contrary to ss.122 and 125 (a) of Penal Code as you pleaded not guilty on it. I note also that the nature of the offence of obtaining money by deception was not changed or amended. The only thing that is changed is the amount. So from the start in July 2018 to September 2018 you knew and accepted the nature of your offending. The only difference is the amount.

28. The circumstance of this case does not show that you pleaded guilty at the first available opportunity given to you by the Court. You are not entitled to a full 1/3. You are only entitled to 2 months.
29. Your total sentence of 16 months is reduced to 11 months.
30. Your end sentence is 5 months imprisonment.
31. The next question is whether I should suspend it. I answer positively (yes) in the circumstance of this case. It is suspended for a period of 12 months.
32. In addition, you are ordered to retribute the amount of VT53, 000 back to the complainant as a compensation order by 30 October 2018 failing which the complainant has a liberty to apply to this Court to enforce the compensation order.

Sentencing Orders

33. The Court orders are follow:
 1. 5 months imprisonment suspended for 12 months.
 2. Restitution order of VT53, 000 to the complainant as a compensation order by 30 October 2018.

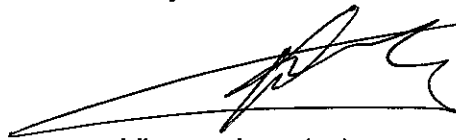


3. If Defendant Merak Kalengor, you failed to comply with Order 2 above,
the complainant must apply to this Court to enforce order 2 above.

34. You have 14 days to appeal this sentence if you are unsatisfied with it.

Dated at Port Vila, this 16th October 2018.

By the Court



Vincent Lunabek
Chief Justice

