

PUBLIC PROSECUTOR

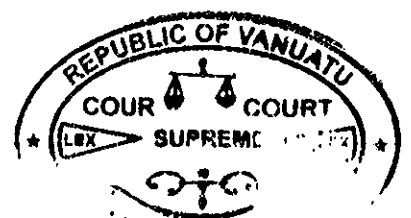
V

TONY DON

Hearing: 17 June 2011
Before: Justice Robert Spear
Appearances: Simcha Blessing for the State
Tom J Botleng for the Accused

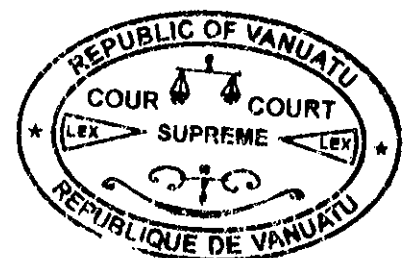
SENTENCE

1. Tony Don you are for sentence today on a charge of kidnapping. The offending is rather unusual. You are 19 years of age. One afternoon you saw the complainant, an 8 year old boy, walking along passed your home with his two sisters. You say that he swore at you, he verbally abused you, and so you decided that you would deal with him.
2. Your response to being abused by this 8 year old boy was to grab hold of him and drag him into a bush. You then took a rope, tied both his hands and legs together, and then tied him to (it says here a wood but I assume it is either) a fence post or a tree. You told that 8 year old boy that you would leave him there in the bush for the night. You then walked off and you then left him alone. Fortunately, the complainant was able to free himself by biting through the ropes. He then made his way off and lodged the complain.
3. I want to say something about provocation which you claim to be the driving factor here behind your actions. You are 19 years of age. It is

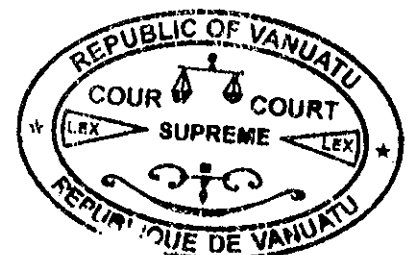


ridiculous to consider that you were provoked beyond reason by an 8 year old boy who was just levelling insults at you. The fact that you raised provocation as a mitigating circumstance surprises me but explains more about you than it does about that 8 year old boy.

4. No one deserves to be tied up like this. Your action displayed your immaturity. Of course, that 8 year old boy was no physical match for you and so your actions were akin to bullying. However if he had not free himself and had been left there for the night then difficulties could have arisen for him because of the nature of the restraint and the fact that the bindings could have caused a restriction in blood flow.
5. This is serious offending but it is not serious offending of the kidnapping type. It amounts more to immature purile actions which a 19 year old boy should have grown passed. I accept that your actions were impulsive but it still means that you left a young boy frightened at what might be ahead of him when you dragged him into the bush and left him tied up. It is offending that cries out for a deterrence sentence so that people do not consider that they can behave in such a bullying way with impunity.
6. The probation officer was not able to contact the victim's family or the victim so I have no idea how I have this sorry event has affected him. I note that you are prepared to undertake a custom reconciliation ceremony - and that is to your credit as is the fact that you have entered a plea of guilty at an early time.
7. The sentence that I impose upon you must hold you accountable for what you have done and denounce your actions in a clear and resounding way. It must promote in you a sense of responsibility. The sentence must also assist with your rehabilitation so that the Court can have some confidence you will not act in this way again. The sentence must be the least restrictive of outcome.



8. For the prosecution, Mr Blessing submits that a starting point of 2 to 2 ½ years is appropriate. I certainly agree with him that, for this offending, 2 years is an appropriate starting point. A sentence of imprisonment must be the starting point for an offence as serious as kidnapping.
9. You have however no previous convictions. You appear to be a young man who has had some personal difficulties and disadvantages. I note that you are remorseful and that you are willing to participate in a reconciliation ceremony. For those reasons I reduce that 2 year starting point by 9 months.
10. I give you full credit for your guilty plea of a third against that sentence which brings us from 15 months to 10 months imprisonment.
11. Because of your youth, because you have not had a great start in life through family circumstances, and because your Chief believes that you are a young man with whom he can work, I am prepared to suspend that sentence. It will be coupled with community work and supervision.
12. You have been on remand in custody for 2 months and 30 days (call it 3 months) and that need to be deducted as well from the sentence (effectively 10 months) that is to be suspended.
13. You are sentenced to 7 months imprisonment which I suspend for a term of 2 years. This means that if you are convicted of any other offence in the next 2 years you will go back to prison for that 7 months term.
14. . You will also carry out 150 hours community work and you are placed under supervision for 12 months with these special conditions:-
 1. You will undertake the niufala rod programme as directed by the probation officer.
 2. You will undertake spiritual counselling with your Minister as arranged by your probation officer.



3. You will undertake a reconciliation ceremony as organised by your chief and the probation officer provided that the complainant is willing to participate.
 4. You will undertake general counselling with your chief as arranged by your probation officer.
15. You have 14 days to appeal this sentence if you are upset with any aspect of it. As soon as you are released from prison, with your belongings, you are to go immediately to the Supreme Court Office for service of the Supervision and Community Work Orders. If you do not attend the Supreme Court Office straight after your release then a Warrant for your Arrest will issue.

BY THE COURT

