

PUBLIC PROSECUTOR

V

MORSEN WILLIE BEN

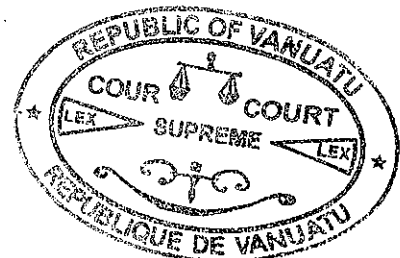
Hearing: Friday 1st July 2016 at 9 am

Before: Justice JP Geoghegan

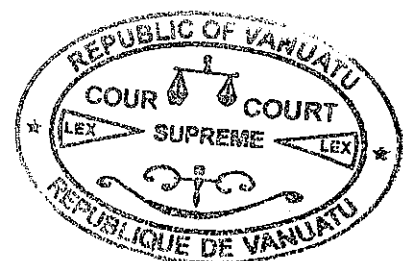
*Appearances: Lenry Young for the Public Prosecutor
Henzler Vira (PSO) for the Defendant*

SENTENCE

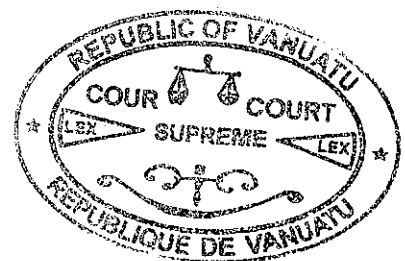
1. Mr Ben you appear for sentencing in respect of two charges, one of threatening to kill and one of malicious damage to property. The charge of threatening to kill carries a maximum term of imprisonment of 15 years and a charge of malicious damage to property carries a maximum term of imprisonment of 1 year or a Vt 5,000 fine or both.
2. There is no dispute about the facts surrounding this offending and accordingly I refer to those facts set out in paragraphs 4-7 of the prosecution submissions which had been filed. They tell me that the incident providing the basis for these charges occurred on April 14th 2016. At that time, the complainant was inside his yard when he was approached by you. You were armed with a big knife and it was clear that you were angry. You walked up to the complainant and were approximately 4 meters away from him when you said the words "stop there ! Its you, fuck you! Stop there, I am going to cut you, I am going to cut off your head, today".



3. The complainant has stepped away from you at which point you have cut a wooden chair and a washing basin with the knife, breaking them with the force of the blow. The complainant who was clearly very scared by this tried to escape from you and you have chased after him. The complainant's wife has been present at this particular time and she has confirmed that you came into the complainant's home armed with a big knife and you have said words to the effect that the complainant had said that you were practising black magic and that you would cut his neck off. The complainant's daughter was also present at that time.
4. It needs to be said from the outset that you have no previous convictions.
5. I have read your pre-sentence report which tells me that you are 36 years old and married with 2 young children. You have previously been employed but you are currently looking after your family and your main source of income is subsistence farming. Your family is clearly dependent upon you. You hoped to be recruited in the seasonal working scheme however that will be subject of course to your conviction for these offences. Your mother describes you as a hard worker but someone who has a quick temper and who has always acted before thinking. You will need to reflect on that. You have expressed remorse and offered reconciliation but that has been turned down.
6. The pre-sentence report refers to the Chief of your village advising of a previous incident between you and the complainant in which you have acted quite admirably but there is clearly some history between you. Your chief speaks positively of you and is willing to supervise you should you be given a community based sentence.
7. You have been described as a model prisoner by those supervising you while you have been in custody on remand.

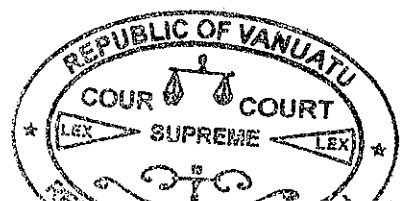


8. I have had helpful submissions from the prosecution and am grateful for the helpful submissions provided by Mr Vira at very short notice today.
9. The prosecution correctly points to a number of factors which increase the seriousness of this particular offending. They are as follows:-
 - a) You had a weapon at the time of the threats.
 - b) You have actually used that weapon in damaging the complainant's property.
 - c) The offending has occurred in the complainant's property - a place where the complainant and his family were entitled to feel safe.
10. A number of cases have been referred to me to assist in fixing a starting point for the most serious offence of threatening to kill.
11. The prosecution submits that the appropriate starting point is one of 3 years imprisonment and I agree with that assessment. Mr Vira accepts also that that is an appropriate starting point. There are no aggravating personal features which warrant any increase in that 3 year starting point.
12. You have expressed genuine remorse and have offered reconciliation. The fact that reconciliation was turned down cannot be held against you. I grant a modest deduction of 3 months to take account of those factors and from that I then deduct a further one third for the early entry of a guilty plea leaving an end sentence of 1 year and 10 months. From that 1 year and 10 months, I then deduct a further 3 months being the period you have already spent in custody although I acknowledge that that allowance is somewhat generous.
13. That reduces the end sentence to one of 1 year and 7 months imprisonment on the most serious charge. An appropriate sentence in



respect of the charge of malicious damage to property is one of 4 months.

14. The issue then becomes whether or not I should suspend your sentence. In that regard I am able to consider the suspension of your sentence in whole or in part. In reaching that decision the matters that I have referred already are of some significance. Clearly there is some background and history here which goes some way to explaining your offending. It does not excuse your offending but it does go some way to explaining it. You have no previous convictions and given that you are 36 years old that is significant. Your family is dependent on you and needs you. You have already spent almost 3 months in custody which will, I hope in itself, have been a salutary lesson to you.
15. In all of the circumstances I am satisfied that despite the brandishing of a weapon, it is appropriate that this sentence be suspended. It will also enable you to receive the benefit of supervision and will perhaps also act as some incentive to keep the peace between you and the complainant given that your family and you are bound to run into each other. What you need to know is that if you commit any further offence within the period of suspension then you will activate the sentence and it will be imposed on you. In that regard I note that before formal sentencing I advised you of the intended sentence and the effect of the suspended sentence. Mr Vira explained that to you in bislama and I am satisfied that you understand the effect of the sentence.
16. The need to underline the seriousness of your offending can be taken care of by the imposition of community work. Accordingly I sentence you as follows:
- a) On the count of threatening to kill you are sentenced to 1 year and 7 months imprisonment.
 - b) On the count of malicious damage to property you are sentenced to 4 months imprisonment with that to run concurrently with the sentence of 1 year and 7 months.



- c) The sentence of imprisonment is suspended in full on the condition that you commit no further offence against any Act, regulation, rule or order within 2 years of today.
 - d) You are sentenced to supervision for 12 months on the conditions set out in the pre-sentence report. For the sake of clarity I record those conditions as follows:-
 - i) To undertake such rehabilitation program as organised by your probation officer.
 - ii) To undertake counselling with a church pastor.
 - iii) To undertake the Niufala Rod Program with a probation officer.
 - iv) To perform a reconciliation ceremony to the victim where convenient and appropriate.
 - e) You are sentenced to 100 hours community work.
17. You have 14 days to appeal this sentence.
18. I record that after delivering the sentence set out above I noted that I had not activated my dictaphone and accordingly this sentencing had not been recorded. I advised counsel accordingly and advised that I would return to my chambers and dictate the sentencing notes which I would be able to reconstruct from my own notes. I advised counsel that accordingly the sentencing notes they receive may vary slightly in terms of the wording used from the sentencing delivered to Mr Ben but that the end result would be the same.

Dated at Port Vila this Friday 1st day of July 2016

BY THE COURT

**JP GEORGHEGAN
JUDGE**

