

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU
(Appellate Jurisdiction)

Criminal Appeal
Case No. 20/2124 SC/CRMA

BETWEEN: Alex Denny

Appellant

AND: Public Prosecutor

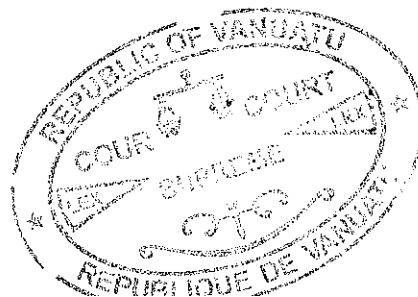
Respondent

Date of HEARING: 2nd day of October, 2020 at 8:15 AM
Date of Decision 9th October 2020
Before: Justice Oliver Saksak
In Attendance: Mr Lorenzo Moli for appellant
Ms Georgina Kanegai for respondent

DECISION

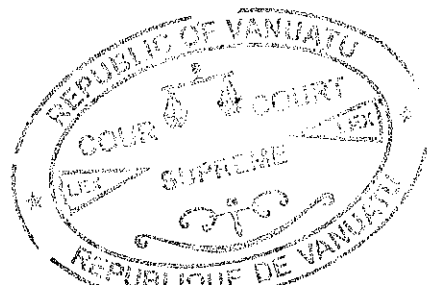
Introduction

1. On 5th August 2020 a Magistrate in the Magistrate's Court made a ruling admitting into evidence the witness statement of Michael Stone. This followed the application by Prosecution on the basis the witness was in Australia and could not be available before the Court due to COVID-19, the undue delay and expenses to be incurred in prolonging the trial, on the basis of the charge laid, and on the basis of the statement of Inspector Andrew Kalman.
2. The appellant alleges the Magistrate failed to consider his rights and obligations for cross-examination of the complainant, that the statement is unsworn and could not be admitted and that the Magistrate had prejudged the matter when it had not gone to trial.
3. The Public Prosecutor opposed the appeal first and foremost on ground that there was no jurisdiction to hear the appeal and submitted it should be dismissed. The State relied on the case of James v PP [2014] VUSC 196.



Discussion

4. This is an important issue which I will consider first because if the State succeeds then there is no necessity to consider the grounds of the appellant's appeal, as this will then dispose of the appeal.
5. Prosecutions submitted that section 200 (1) of the Criminal Procedure Code Act provides for right of appeal only to a convicted person. They argued the appellant has not been convicted as the trial is still on foot. Further they argued that under section 200 (3) only the state may appeal to the Supreme Court on a point of law and that there is no provision allowing a defendant to appeal on a point of law against the decision of a Magistrate exercising a discretion.
6. Section 200 of the Criminal Procedure Code Act [CAP 136] states:
"APPEALS TO SUPREME COURT AND COURT OF APPEAL
200. (1) Any person convicted on a trial held by the Magistrates' Court may appeal to the Supreme Court: Provided that –
(a) where such person has pleaded guilty he may appeal only on the point of the legality of the sentence
(b) there shall be no appeal against a sentence of fine not exceeding VT2, 000 (notwithstanding a term of imprisonment in default of the payment of fine) where no substantive sentence of imprisonment has also been passed.
(2) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal: Provided that where such person has pleaded guilty there shall be no appeal except–
(a) where the sentence exceeds imprisonment for six months; or
(b) on the point of the legality of the sentence only.
(3) The Public Prosecutor may appeal to the Supreme Court on a point of law against any judgment of the Magistrates' Court.
(4) The Public Prosecutor may appeal to the Court of Appeal on a point of law against any judgment of the Supreme Court exercising original jurisdiction."
7. Mr Moli did not respond sufficiently or at all to this issue of jurisdiction.
8. In paragraphs 5 (iii) of the appellant's memorandum of appeal the appellant states the matter has not even gone for trial. This indicates the appellant has not yet been convicted to invoke section 200 (1) of the CPC Act. The case as it were is in its interlocutory stage. There is no final decision or judgment of the Magistrate finding guilt, and therefore there could be no appeal under section 200 (1).

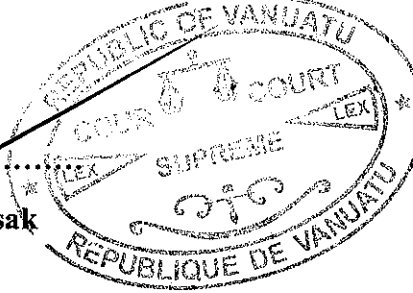


9. And I accept Prosecutions submission that this appeal lacks merits and jurisdiction. It is a premature appeal.
10. On this ground and reason alone the appeal must be dismissed. It is not necessary to consider the three grounds of appeal raised by the appellant. These would be properly considered only after trial and where a verdict of guilt was returned, and the defendant was unhappy with the verdict and appealed.
11. Accordingly the appeal is dismissed. The case must continue in the Magistrate's Court.

DATED at Port Vila this 9th day of October, 2020.

BY THE COURT

.....
Oliver Saksak
Judge

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COURT" and "SUPREME" are prominently displayed in the center, with "LEX" appearing on either side of the central emblem.