

**IN THE COURT OF APPEAL OF**  
**THE REPUBLIC OF VANUATU**  
***(Criminal Appellate Jurisdiction)***

**Criminal Appeal**  
**Case No. 18/2470 CoA/CRML**

**BETWEEN: PUBLIC PROSECUTOR**  
**Appellant**

**AND: MATHEW TASEREI**  
**Respondent**

*Date of hearing:* 5 November 2018  
*Date of Judgment:* 16 November 2018

***Before:*** ***Chief Justice V. Lunabek***  
***Justice J. von Doussa***  
***Justice R. Young***  
***Justice O. Saksak***  
***Justice D. Aru***  
***Justice G.A. Andrée Wiltens***

*In Attendance:* Mr S. Blessing for the Appellant  
Ms L. Bakokoto with Mr L. Moli for the Respondent

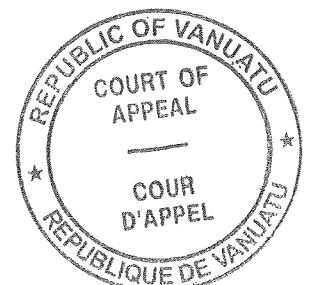
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## **JUDGMENT**

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### **A. Introduction**

1. Mr Taserei admitted “family violence” offending. He was sentenced to 2 years imprisonment suspended for 3 years, 12 months supervision and 100 hours of community work. This was a prosecution appeal, the submission being that the end sentence was manifestly inadequate given the overall seriousness of the offending.



## **B. The Issues**

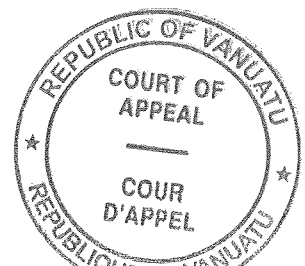
2. There was an acceptance that the start point identified was correct, as well as the allowances made for Mr Taserei's personal mitigating factors and his pleas. The appeal was based solely on the submission that the suspension of the term of imprisonment was wrong.
3. There was a secondary issue – the appeal was filed 12 days late, and therefore leave to appeal out of time was required. That was opposed, largely on the basis of prejudice to Mr Taserei.

## **C. The Facts**

4. Mr Taserei pleaded guilty to all the charges he faced: namely extortion, threats to kill (x2), criminal trespass, malicious damage and unlawfully entering a dwelling house.
5. Mr Taserei and his then partner became estranged sometime in 2016. Subsequently, a report was made to the police regarding his violent conduct. Mr Taserei subsequently attempted to compel his partner, and her mother, to withdraw the complaints to the police. In the course of that he threatened to slit their throats and kill them. He also threw stones at the mother's house, breaking several glass window louvres. Two days later he threw stones at, and into, the house where his partner and their young child were staying – fortunately without causing either any injury. Finally, 5 days later, he entered the same house and physically assaulted his partner in her bedroom.

## **D. The Judge's Decision**

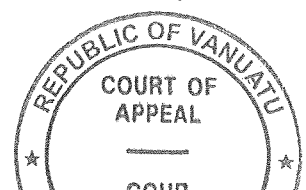
6. The primary Judge set a start point for the overall offending at 4 years imprisonment, looking at all the offending concurrently. He then allowed a 12 months discount for Mr Taserei's personal circumstances – in particular, his previous clear record, his having performed a custom reconciliation ceremony, and also to recognise that there was a delay of some 2 years before the case was finalised. Lastly, the Judge applied a discount for Mr Tarerei's prompt guilty pleas, which resulted in an end sentence of 2 years imprisonment.
7. The Judge then went on to consider, as required, whether the sentence ought to be served immediately or be suspended in whole or in part, pursuant to section 57(1) of the Penal Code [Cap 135]. He concluded that the sentence ought to be suspended. He coupled that with the additional measures of supervision and community work.



8. The sentencing Judge considered the need for punishment and general deterrence were important considerations in the sentencing of violent offenders in domestic situations. He also considered the entry of convictions was a real punishment in itself. In this case however, the fact that both Mr Taserei and his former partner were happily engaged to different (new) partners, led the Judge to think there was little prospect of his re-offending. The sentencing Judge did not wish to disturb the existing status quo as both had moved on with their separate lives. On that basis he suspended the term of imprisonment.

**E. Appellant's Submissions**

9. Mr Blessing was critical of the sentencing end point, in particular the fact that the term of imprisonment was suspended.
10. Section 57(1) of the Penal Code enabled the Judge to exercise his discretion and suspend the sentence if in his view it was not appropriate for Mr Taserei to suffer immediate imprisonment. The Judge was required, in considering that, to take into account the circumstances of the case, in particular the nature of the offending, and the character of Mr Taserei.
11. Mr Blessing submitted that the primary Judge had paid insufficient regard to the seriousness of the case. He submitted as aggravating features of the offending that there was a history of family violence, that Mr Taserei had entered into a dwelling house to compel the retraction of the complaint to the police, and that he had threatened to kill both his partner and her mother.
12. Mr Blessing further submitted that these acts demonstrated the pro-offending character of Mr Taserei. As well, Mr Blessing submitted that Mr Taserei had indicated his true attitude to his offending in the Pre-Sentence Report, where he had attempted to justify his actions – and demonstrated little remorse.
13. Mr Blessing submitted that the fact that both Mr Taserei and his partner had moved on with their lives cannot really be said to have eliminated the risk of further offending, which was one of the reasons expressed as justifying suspension. We respectfully agree with that submission.
14. We consider that the aggravating features of the offending identified had all contributed to the sentence start point - which was not challenged.
15. We consider further, although not expressly articulated, that the Judge must have had regard to other factors mentioned elsewhere in his sentencing decision. In particular, the lack of previous convictions was highly relevant – as was the fact that there had been no further offending in the subsequent 2



years. Further, the fact that Mr Taserei had undertaken a custom reconciliation ceremony, which resulted in acceptance by his former partner and her family of his regret for his actions. Finally, the early pleas entered by Mr Taserei are an indication of his remorse, and alleviated the need for the victims of his offending to have to testify in Court and re-live the incidents.

16. We do not express a view that those additional matters should have made the Judge suspend the imprisonment. Rather, the onus was on Mr Blessing to satisfy us that the end result was manifestly inadequate.

17. Looking at the factors identified, we are not able to endorse Mr Blessing's submissions that the suspension should not have been ordered. In our view, to suspend the sentence was clearly within the Judge's discretion in this particular case and looking at this particular offender.

18. We also address the issue of leave to appeal out of time. Ordinarily, 12 days out of time would be considered relatively insignificant - if good reasons for the delay were advanced and the prospects of success demonstrated.

19. However, we accept the submissions made by Ms Bakokoto to the effect that Mr Taserei would be actually prejudiced if leave were granted. From Mr Taserei's perspective, he has been under the impression that his sentence passed on 16 August 2018 meant that he not need go to prison for this offending. His liberty would again be in jeopardy if leave were granted.

20. As well, in the period since sentencing, Mr Taserei has completed 67 out of the 100 hours of community work imposed; and he has commenced to serve his period of supervision, being a quarter of the way through that aspect of his sentence. If suspension of the term of imprisonment were now to be lifted, all Mr Taserei's efforts as to compliance would have been wasted.

#### F. Summary

21. Looking at the end sentence imposed, we do not consider it to be manifestly inadequate. Accordingly, as there is no merit in the appeal, we decline leave to appeal out of time.

**Dated at Port Vila this 16th day of November 2018  
BY THE COURT**

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Chief Justice V. Lunabek

