

IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Cr. Case No. 208 of 2017

PUBLIC PROSECUTOR

V

COLTON EDMANLEY

Coram: Moses Peter

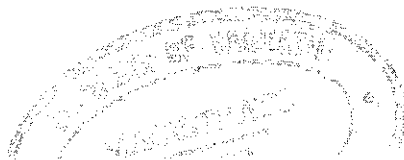
Appearances: Lenny Young for the State
Defendants appear in Person

SENTENCING

UPON HEARING Defendant Caulton Edmanley plead guilty on the charges of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP 135];

AND UPON CONSIDERING Mr. Young's submission and brief facts of the case as follows:

- The Complainant namely Dick alleged was detained at Cell 6 after his arrest on 18th January 2015. Sometimes later during night time he called the Police Officers to open the grill gate so that he can access the toilet.
- The defendant at that time approached the complainant and told him not to make noise.
- As he went outside to go to the toilet, the defendant struck him with his truncheon he had on his shoulder.
- The defendant repeatedly hit him on the truncheon on his shoulder and on his chest causing him to fall on the floor and at the same time defecates on his pants.
- The defendant apologized to him sometime later.
- A witness statement by Morris Tonney who was detained with the complainant in cell 6 confirmed a Police Officer swore at them when opening the grill door so the complainant could access the toilet. He said the complainant told him he had been assaulted by the police and he defecates on his pants. He saw the complainant with difficulties in walking.
- The cases of *Jack -v- Public Prosecutor* [2001] VUSC 11, saw the Supreme Court allowed the appeal on sentence and ordered VT 22,000 instead of VT 40,000 imposed on him by the Senior Magistrate. *Prosecutor -v- Kalsau* [2009] VUSC 79 the defendant is sentenced to 4 months'



imprisonment but suspended for 12 months taking into account the defendant 's early guilty plea and other mitigating factors.

AND UPON FURTHER CONSIDERING the defendant's sentencing submission which deposed that:

- The brief of facts is accepted by the defendant.
- The defendant is 33 years of age and hail from the Banks Island. He resides at Ohlen Area.
- He acknowledges his guilty plea on the charge.
- The case authorities submitted by the Prosecution does not compare with the circumstances of the offence and circumstances personal to this case.
- The case of *Public Prosecutor –v- Batick* [2015] VUSC 174 is the appropriate case to consider for sentencing. The defendant was charged with multiple charges but for charge of Intentional Assault causing Temporary Injury, he was sentence to 2 months' imprisonment served consecutively with other charges but then was suspended.
- The defendant is married with 3 children whose family depended entirely on his employment as a Police Officer for their sustenance.
- In the Pre-sentence report the defendant expressed remorse for his action and said he is willing to apologize to the complainant.
- Chief Sokovman spoke highly of the defendant as being an active member of his community and contributed in many community meetings.
- There was a delay in Prosecuting this case as it appears the charge was laid in 2 February 2017 but the offence was committed in 18th January 2015. The court must take into account the delay when deciding a sentence to impose on the defendant.

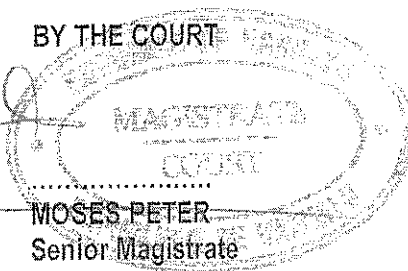
THE COURT IS SATISFIED THAT:

- The offence is serious as reflected in the relevant legislation. A maximum penalty of 1-year imprisonment.
- The complainant is arrested and is confined in cell 6 at the custody of the Police.
- He was totally shocked to receive the struck from you. All he wants is access to toilet. If he was making some noise which disturbs you, that did not give you a reason to strike him with the truncheon.
- The legislation governing the Police allows an officer to use reasonable force in order to prevent crime or to assist in a lawful effecting of an arrest. None of these circumstances prevail when you administered the strikes on the body of the complainant.
- If you intent to be offering some sort of punishment by using excessive force on the complainant, then that defeats the whole purpose of the court having the power to impose punishments on criminal offenders.
- The aggravated features the court took into account are administering strikes on complainant when in lawful custody of the police. You used your truncheon illegitimately. There is an unjustified use of force on the complainant.
- In mitigation, the court gave you credit for your early guilty plea and your expression of remorse.
- The court also took into account your family who needed your support financially and morally.
- I am also sure, the sentence I impose you will be not only serve as a punishment but also an act of deterrence to you and other people of similar position as you.

IT IS THEREFORE ORDERED THAT:

1. Conviction is hereby entered for your offending in respect to the charge.
2. You are ordered to a fine of VT 20,000.
3. You must pay your fine and produce receipt of payment in court no later than 30 days from today failing which you will serve 2 months' imprisonment.
4. You have 14 days to appeal if not satisfied with this sentence.

DATED at Port Vila this 14th day of November 2017

BY THE COURT

MOSES PETER
Senior Magistrate