

PUBLIC PROSECUTOR

V

GERALD MOULON

Coram: Moses Peter

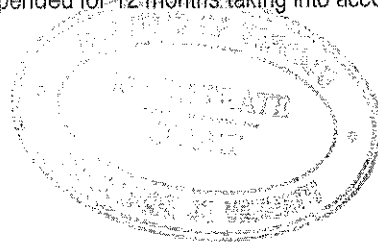
Appearances: Belina Ngwele for the State
Defendants appear in Person

SENTENCING

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

AND UPON HEARING Ms. Ngwele on behalf of the State on brief facts of the case as follows:

- There were two complainants in this case being Mr. John Lui and his daughter who were on the 1st of January 2011 at their home when the defendant approached them with an intention to assault them.
- The complainant Mr. John Lui alleged that he saw you going straight towards him at his house and assaults him on the face. His lips bled as a result of the assault.
- Mr. John Lui's daughter came to stop you and you assaulted her also on her face.
- The case of *Public Prosecutor -v- Morris* [1995] VUMC saw the court imposing 3 weeks' imprisonment on defendant but suspended for 1 year after taking into account defendant's previous conviction on similar offence and that he is a member of the Vanuatu Mobile Force. The victim is his legal wife.
- In *Public Prosecutor -v- Willie Ben & Ors* (Magistrates Court) 11 August 2015 the defendants were each ordered to pay fine of VT 3,000 and VT 1,000 Prosecution Cost after the court found them guilty of assaulting the complainant at Au Bon Marche Manples to which he sustained temporary injuries
- In *Public Prosecutor -v- McCarthy Hava* (Magistrates Court) Cr 303 of 2015, the defendant was given an end sentence of 9 weeks' imprisonment suspended for 12 months taking into account personal particulars of the defendant.



There was no sentencing submission filed by counsel for the defendant as ordered on 3rd of April 2017. The Prosecution has filed their submission and the court had to consider their submission in the sentence of the defendant.

THE COURT IS SATISFIED THAT:

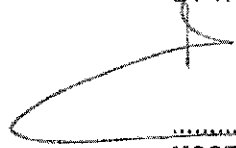
- The offence is serious as reflected in the relevant legislation. A maximum penalty of 1-year imprisonment.
- You as a police officer failed to reason that your action constitutes a crime.
- People feel safe at their residence but you entered their residence with an intention to assault the complainants and put their safety to jeopardy and their lives at great risk.
- The complainant is 75 years of age, and his daughter being less powerful left them defenseless at that point because you exert excessive attacks on them.
- You are lucky that they only sustained injuries from the assault.
- If you have an issue with the complainant, then it can be resolved nicely if you had taken the right approach to solve it.
- 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 complainants.
- There are no considerations for mitigating factors as none exists except that you are a first time offender as submitted by the Prosecution.
- I am also sure, the sentence I impose you will 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 10,000.
3. You must pay your fine and produce receipt of payment in court no later than 30 days from today failing which you will be summoned to court for alternative sentence.
4. You have 14 days to appeal if not satisfied with this sentence.

DATED at Port Vila this 24th day of May 2018

BY THE COURT


.....
MOSES PETER
Senior Magistrate

