

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

JESSY NOEL

Mr Justice Oliver A. Saksak

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for the Defendant

Date of Hearing: 8th November 2012
Date of Sentence: 14th November 2012

SENTENCE

1. Jessy Noel, the Court has convicted you in respect to one count of intentional assault causing damage of a permanent nature laid under section 107(c) of the Penal Code Act Cap 135 (the Act).
2. The maximum penalty for this offence is 5 years imprisonment.
3. On 29th May 2012 you were employed by Niscol Company as a security officer. A copra ship had docked at the wharf and a number of casual workers from Malo were working that day. The complainant, Raphael Lolo was one of those workers. They were dissatisfied with their rate of payments and were complaining about it through the Company Secretary. You then approached the complainant with a metal shifting spanner and hit him on the left jaw. He fell to the ground and was kicked while he was on the ground defenceless. The Complainant received medical treatment the next day. The medical report shows injuries sustained by Mr Lolo which included a swollen and painful jaw and lips and loss of a left side pre-molar tooth. The assault was unprovoked. You have conceded these facts.



4. I have perused your Pre-Sentence Report and note that you are not a first-time offender. The Prosecutor has submitted that you have had numerous convictions from 1985 up until 2007. In 2007 you were sentenced to 7 months imprisonment for intentional assault but some 5 years have gone by and it appears you have not re-offended since then until in May 2012. Your previous convictions for other offences would not have much weight as an aggravating feature. I consider therefore that there are only two aggravating features namely (a) that the assault was unprovoked; and(b) that it involved the use of a heavy-duty metal shifting spanner.
5. Based on the principle in Tari v. Public Prosecutor [2011] VUCA 26; Criminal Appeal Case No. 2 of 2011, the appropriate sentence for you will be a custodial sentence. The starting point is 3 years imprisonment but with no uplift. Sentences of Community Work or supervision are not appropriate for reasons given by the Probation Officer.
6. Defence Counsel has submitted four mitigating factors but the first three factors are not relevant and are declined. The Court however accepts that it has been some 5-6 years since your last offending and conviction in 2007 for intentional assault. For this a reduction of 6 months will be allowed. The balance remaining is 2 years and 6 months imprisonment. This sentence is however suspended for a period of 3 years under section 57 of the Act. You must understand that if you commit this offence again or any other offences for which you are charged and convicted, you will go to prison to serve your 2 years and 6 months sentence automatically.
7. The purpose of this sentence is to –
 - (a) Deter you and others from this behavior;
 - (b) Denounce your actions;
 - (c) Mark the seriousness of your offending; and
 - (d) Punish you adequately.



8. There has been a request for compensation by the Complainant for loss of a tooth and pain and suffering. No specific sums were claimed. The Court must consider that request. Section 40 of the Act gives power to the Court to do that. In light of the circumstances of the case and your willingness to pay compensation and to reconcile, I consider that a nominal sum of VT25,000 be paid to the Complainant. Accordingly I order you to pay VT25,000 to the Complainant. This money must be paid to the Court Registry.
9. That is the Sentence of the Court. You have a right of appeal within 14 days if you so choose.

DATED at Luganville this 14th day of November 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

