

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

PETER NAPUATT

Mr Justice Oliver A. Saksak

**Mr P. Wirrick for Public Prosecutor
Mr B. K. Kalotrip for Defendant**

**Date of Hearing: 27th November 2012
Date of Sentence: 4th December 2012**

SENTENCE

1. Peter Napuatt, you were charged with one count of Intentional Harm Causing Death contrary to section 108(c) of the Penal Code Act Cap 135 (the Act), and with one count of Failing to Indicate Intention Before Manoeuvring contrary to section 5 of the Road Traffic (Control) Act Cap 29 (the RTC Act).
2. The particulars of the charge in count 1 read –

“Peter Napuatt, samtaem long namba 29 October 2012 long main rod long Luganville East School mo Michel Store long Luganville, yu bin drivem wan Nissan Patrol G6479 mo long taem ia yu unintentionally causem ded blong wan small girl ia Marian Temakon through Negligence mo Failure blong observem traffic law, olsem yu no bin indicate long signal before yu turn left, mekem se narafala vehicle I bangem track blong yu mo yu bangem Marian Temakon mo causem ded blong hem.”

On 6th November 2012 you pleaded guilty to the offence as charged.



3. The particulars of the charge in Count 2 read –

“Peter Napuatt, samtaem long namba 29 October 2012 long main rod long Luganville East School mo Michel Store Luganville yu bin drivem wan Nissan Patrol G 6479 mo long taem ia yu bin fail blong indicate long left signal blong yu before yu turn long left direction igo insaed long yard blong Michel.”

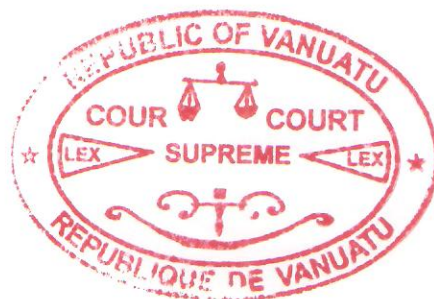
On 6th November 2012, you also pleaded guilty to the offence as charged.

4. The maximum penalty for an offence under section 108(c) of the Act is imprisonment for 5 years. And for an offence under section 5 of the RTC Act, the maximum penalties are a fine not exceeding VT10,000 or imprisonment not exceeding 1 month, or to both such fine and imprisonment.

5. The facts stated by the Public Prosecutor to which you have conceded are –

“1. The Defendant, Peter Napuatt, was the C.E.O. of the Vanuatu Agriculture College at the time of the offending. At around 7:00 A.M. On Monday the 29th of October 2012 the Defendant was driving the College’s Nissan Patrol vehicle, registration number “G6479” along the main road in front of the northern entrance to Santo East French School. The Defendant was driving towards Chapuis at the time. In the passenger seat of his vehicle was one Willie Sam- also employed by the college. There were no other passengers.

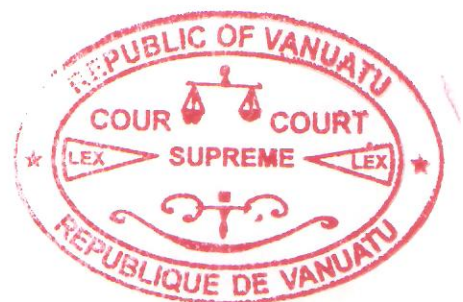
2. At the time one Henry Rite of Port Olry was driving a Toyota Hiace service bus, registration number “B8396”, also with only one passenger, one Pierre Renmal. Henry Rite was driving behind the Defendant in the same direction.



3. *As the Defendant came close to Michel Store which is across the road from the Santo East French School Entrance he decided to turn into the store's parking area. Before turning and while turning the Defendant did not indicate. The Defendant was, at this time driving slow enough to be able to turn into the store. Given the Defendant's slower speed and absence of indication Henry Rite decided to overtake the Defendant, thus he accelerated his vehicle and attempted to pass the Defendant in order to do so. As Henry Rite attempted to overtake the Defendant, the Defendant was beginning his turn into Michel Store.*

4. *Upon realizing the Defendant's intentions, Henry Rite applied his brakes but to no avail, his vehicle's right front area slammed into the Defendant's vehicle's front left door area. The collision caused the Defendant's vehicle to strike the late Marianne Temakon, a Saint Therese primary school student who was, at that time, with her sister waiting for their father to pick them up in his taxi and take them to school.*

5. *The Victim and her sister were walking away from the store and were in front of the store's concrete wall when the Victim was struck. The Defendant's vehicle struck the Victim and pinned her against the store's concrete wall which the Defendant's vehicle also slammed into and partially damaged. The Victim was found under the Defendant's vehicle and had both her legs broken when she was hit. She also suffered from other internal injuries. She was taken to hospital in a taxi immediately after the accident but died some 2 hours later at the hospital. The Victim's sister managed to jump out of the way of the Defendant's vehicle before it struck her sister."*



6. In considering and assessing your appropriate sentence, I have taken into consideration the following –
- (a) The guideline authorities referred to by the Public Prosecutor which are –
 - (i) John Jenkinson v. Public Prosecutor [2000] VUCA 5; CRC 1/2000.
 - (ii) Public Prosecutor v. Nelson Kalsong [2011] VUSC 3; CRC 119/2010.
 - (iii) Public Prosecutor v. Michel Tabi [2010] VUSC 202; CRC 13/2009.
 - (iv) Public Prosecutor v. Jack Kanas [2010] VUSC 5; CRC 108/2009.
 - (v) Public Prosecutor v. Abet Poilapa [2012] VUSC 20 CRC 146/2011;
and
 - (vi) Public Prosecutor v. Wesley Kal [2009] VUSC 80; CRC 43/2007.

 - (b) The guideline authorities referred to by defence counsel which are –
 - (i) Public Prosecutor v. Silas Robert [1997] VUSC 50; CRC 51/1997.
 - (ii) Public Prosecutor v. Kuvu Noel [1998] VUSC 79; CRC 87/1998.
 - (iii) John Jenkinson v. Public Prosecutor [2000] VUCA 5; CRC 1/2000.
 - (iv) Public Prosecutor v. Keny Alang [1997] VUSC 27; CRC 30/1997.
 - (v) Public Prosecutor v. Jack Joseph [2009] VUSC 22; CRC 86/2008;
and
 - (vi) Public Prosecutor v. Wesley Kal [2007] VUSC; CRC 43/2007.

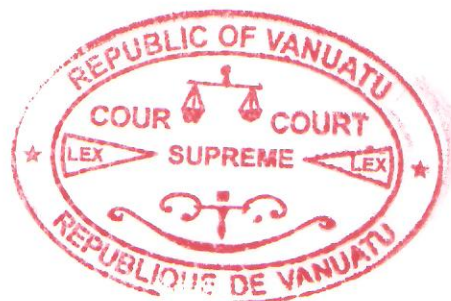
 - (c) The written and oral submissions made by both the Public Prosecutor and defence counsel.

 - (d) The Pre-Sentence Report submitted by the Probation Officer.

 - (e) The Victim Impact Statement and the relative's request for compensation.

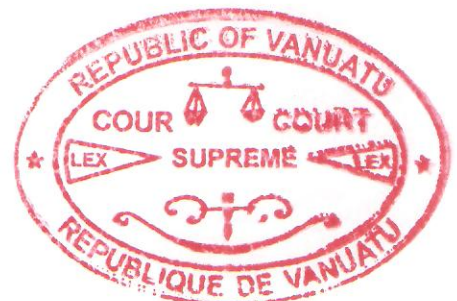
 - (f) The antecedents or previous conviction.

 - (g) The aggravating features; and



(h) The mitigating factors and character references submitted.

7. The majority of the cases cited by Counsel are Supreme Court cases which are not binding but are persuasive authorities only. The only binding authority is the case of Jenkinson v. Public Prosecutor. That is a case where the Court of Appeal said that the appellant was guilty of negligence which placed his offending at the high end of the scale and established that the starting point would be a custodial sentence in the region of 9 months imprisonment before any uplifting for aggravating features or reductions for mitigating factors. However, that case did not involve recklessness or failure to observe a law and the appellant had no prior convictions and had an unblemished driving record. That is not so in your case.
8. Clearly from the facts you drove negligently and recklessly and you failed to indicate your intention to turn left as required by section 5 of the RTC Act. Your failure to indicate before turning aggravated your offence under section 108(c) of the Act. Had you done so, no collision would have resulted.
9. From the sketch map, the victim and her sister were standing some 6 – 8 metres well away from the point of impact. From that distance, it was possible you could have done something to avoid going forward and causing the accident. You obviously saw the girls standing there as there is nothing to obstruct your views in that area at all. Despite that, you simply continued going forward until you hit the girl and the brick wall. Only then did you stop. You were reckless in your driving. The term “*reckless*” is appropriately defined and explained by this Court in the case of Public Prosecutor v. Silas Robert [1997] VUSC 50.
10. Under those circumstances, the appropriate sentence for committing both offences must be a custodial sentence. The starting point for your offending is 12 months imprisonment.
11. There will be an uplift of 2 years for the aggravating features such as –



- (a) Your failure to observe the law, as a highly educated and qualified person;
- (b) Your previous conviction for careless driving in 2010;
- (c) Your victim, an 8 year old school girl dying undeservedly in pain and agony, depriving her the right to life etc...

Your sentence is increased to 3 years imprisonment.

12. The purpose of imposing this high sentence is to –

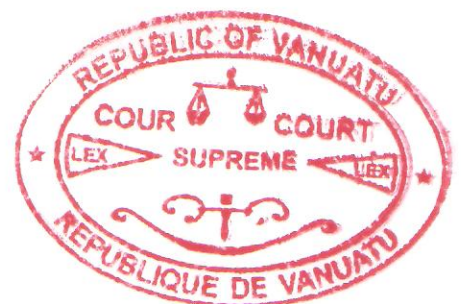
- (i) Mark the seriousness of your offending;
- (ii) Mark the public condemnation of your actions as irresponsible;
- (iii) Deter yourself and other members of the driving public as road-users; and
- (iv) Punish you appropriately.

13. I do not consider that your sentence should be suspended in view of your blemished driving record and previous convictions for careless driving.

14. I do however consider that you are entitled to a substantial reduction for your mitigating factors, in particular for –

- (a) Your early admission and guilty plea for which you are entitled to a 1/3 reduction;
- (b) Your remorse, desire and intention in performing a reconciliation ceremony, and your willingness and undertaking to pay compensation of VT1Million to the parents of the victim;
- (c) Your personal character and attitude towards work and community welfare; and
- (d) Your contributions to the Community.

For these, I order a reduction of 2 years and 2 months from the total sentence of 3 years imprisonment. The balance you will serve is 10 months imprisonment at the Correctional Centre in Luganville.



15. This sentence is imposed in relation only to the lead offence in Count 1. The offence in Count 2 is treated as an aggravating feature for which no separate penalty will be imposed.
16. You will be entitled to automatic release on parole after you have served 5 months of your 10 months sentence.
17. In addition to your sentence of imprisonment, the Court orders you to pay compensation of VT1.000.000 to the parents of the deceased. This is done pursuant to section 40 of the Act.
18. Your sentence will be effective from 11th December 2012. You have 7 days from today in which to put your house in order, to perform a "klinim fes" reconciliation ceremony with the deceased family. On this occasion, you are to pay the first installment of VT400.000 to the parents of the deceased. The balance of VT600.000 will remain outstanding but must be paid within 6 months after your release from custody, on or before 31st October 2013.
19. You have a right of appeal against this sentence within 14 days from the date hereof if you so choose.

DATED at Luganville this 4th day of December 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

