

BETWEEN: Public Prosecutor

AND: Moses Robert
Defendant

Date: Tuesday, 26 June 2018
By: Justice G.A. Andrée Wiltens
Counsel: Mrs B. Pakoasongi for the Public Prosecutor
Mr Vira for Ms K. Karu for the Defendant

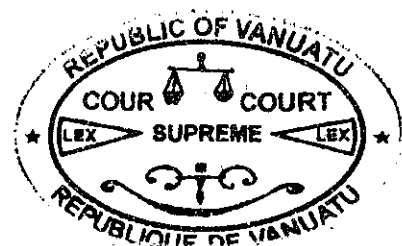
SENTENCE

A. Introduction

1. Mr Robert pleaded guilty to one charge of domestic violence, laid contrary to section 10(1) of the Matrimonial Protection Act No. 28 of 2008. The maximum sentence for this offence is a term of 5 years imprisonment and/or a fine of up to VT 100,000.

B. The Facts

2. On 24 August 2017, a drunken Mr Robert went home to find that his wife and children had left. He went looking for them and found them hiding in a deserted home. He assaulted his wife, verbally abused her and threatened her with a knife in the presence of their 9 year-old son. Mr Robert threatened his son with the knife as well when he attempted to intervene. A medical report indicates muscular pain to the complainant's back and front of her neck – she had difficulty walking from the pain occasioned by the assault. I requested further details of what the assault entailed, but despite adjourning for that purpose, learnt nothing further.

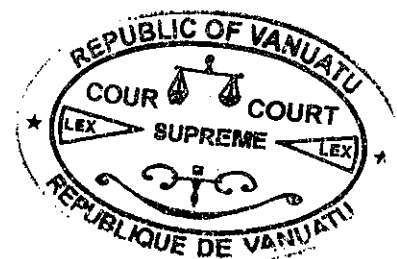


C. Submissions

3. Ms Pakoasongi has referred to the authority of *PP v Malliwan* [2018] VUSC 29. The similarity there was that an assault was occasioned in the presence of a 9 year-old daughter. The violence meted out was substantially more severe than in this case. Mr Malliwan was sentenced on the basis of a start point of 2 years imprisonment uplifted by 6 months for aggravating factors including the presence of the young child.
4. Ms Pakoasongi points out that Mr Robert has a previous similar conviction in 2016 for which he was sentenced to 11 months jail.
5. Ms Pakoasongi submits that Mr Robert did not plead guilty at the first opportunity and is therefore not eligible for a 1/3 discount.
6. Ms Karu, in her written submissions, also relied on the *Malliwan* case. She submitted that the appropriate starting point for Mr Robert is 2 years imprisonment. She further submitted that Mr Robert pleaded at the first available opportunity after the amended charging document was filed.

D. The Purposes and Principles of Sentencing

7. The main purposes of sentencing, as conveniently set out in Section 7 of the New Zealand Sentencing Act 2002, are to:
 - hold the offender accountable for the harm done to the complainant and the community,
 - promote a sense of responsibility for, and an acknowledgement of, the harm done,
 - provide for the interests of the victim of the offending – including providing reparation for the harm done,
 - denounce the offender's conduct,
 - deter the offender and the public at large from this type of behaviour,
 - protect the community, or
 - assist in the offender's rehabilitation and re-integration.
8. All of those considerations have valid application to sentencing in Vanuatu.
9. The principles of sentencing, set out in section 8 of that same New Zealand Act involve a number of mandatory considerations, including the following pertinent matters:
 - take into account the gravity of the offending, and the degree of individual culpability,



- take into account the seriousness of the offending in comparison with other types of offending, as indicated by the maximum penalties prescribed,
- impose the maximum penalty prescribed if the offending is within the most serious of cases for which that penalty is prescribed – unless the circumstances relating to the offender make that inappropriate. Similarly, impose near to the maximum sentence if the offending is near to the most serious of cases for which the penalty is prescribed, again subject to the same qualification,
- consider the desirability of consistency of sentencing and parity of sentences,
- take into account any information concerning the effect of the offending on the victim,
- take into account any particular circumstances of the offender to ensure disproportionately severe sentences are avoided,
- take into account the offender's background to see if wholly or partly rehabilitative sanctions are appropriate,
- take into account the outcomes of any restorative justice processes undertaken, and
- impose the least restrictive sentence that is appropriate in the circumstances.

10. Again, all of those considerations have valid application to sentencing in Vanuatu.

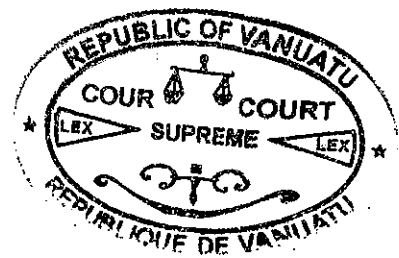
E. Starting Point

11. The appropriate starting point in terms of Step 1 as prescribed by *PP v Andy* [2011] VUCA 14 needs to be determined. The violence meted out in this instance is nowhere as dire as in *Malliwan*.
12. Taking everything into account, I set the start point for the offending for Mr Robert at 15 months imprisonment. There has to be an uplift of 3 months imprisonment to that for his previous similar recent conviction for which he was actually imprisoned without suspension.

F. Personal Factors

13. In terms of step 2 of *PP v Andy*, Ms Karu points to the following:

- Mr Robert is a 34-year old farmer from Tanna. He has a wife and 3 children
- He has been remanded in custody from 7 September 2017
- He is said to be remorseful.



G. Plea

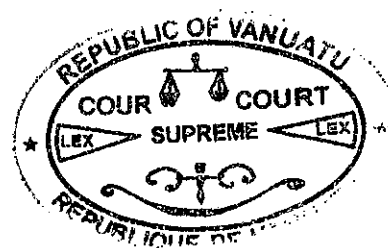
14. A guilty plea at the first available opportunity renders defendants eligible to receive the maximum 1/3 discount available for prompt pleas: see *PP v Andy*. The issue in this case is was Mr Robert's plea entered at the first available opportunity. The position as I see it is that Mr Robert has faced the charge of domestic violence throughout the criminal process. The amendment made, just prior to plea, was to reduce the number of charges faced to only this charge. It seems to me Mr Robert could and should have pleaded guilty to this charge when first arraigned following the preliminary inquiry – namely on 31 January 2018. Instead he pleaded guilty on the day of trial, namely 17 May 2018. It follows that the prosecution had to expend time, energy and costs to be ready for trial – and more significantly, right up until the plea was entered, the complainant would have been under stress in anticipation of having to testify against her husband.
15. In the circumstances, the maximum discount available for Mr Robert is 20%.

H. Sentence

16. I take into account the bare facts that I have as to the actual nature of the assault. Mr Robert was drunk and out of control, he used a knife to threaten his wife and their son, and he administered actual violence to his wife – in the presence of his young son. I adopt a start point for those factors of 15 months imprisonment.
17. There has to be an uplift for Mr Robert's previous convictions, one of which involved a threat to kill his wife in 2016, for which he was sentenced to 11 months actual imprisonment.
18. Mr Robert's personal circumstances are not such that they convince me he is entitled to any mitigation on that basis.
19. The end sentence is reduced by 20% for the plea.
20. The end sentence that I arrive at is 17 months imprisonment.

I. Suspension

21. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence, in whole or in part, if immediate incarceration is inappropriate:
 - In view of the circumstances,
 - In particular, the nature of the crime, and
 - The character of the offender.
22. In my analysis, there are two compelling reasons which militate against suspension:



- Mr Robert's previous similar offence was recent. He was sentenced to immediate imprisonment. It would be wrong to afford him a suspended sentence for further similar criminal conduct.
- To suspend the sentences would be to send entirely the wrong message to the community. Not only must the conduct be denounced, there must be a serious deterrent message sent, so that the gravity of this continuing trend of violent offending is well recognised by all.

23. Mr Robert will serve an end sentence of 17 months imprisonment.

24. Mr Robert has 14 days to appeal the sentence if he disagrees with it.

**Dated at Port Vila this 26th day of June 2018
BY THE COURT**

Justice G.A. Andree Wiltens
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