

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

Criminal Case No 18/1838 SC/CRM

PUBLIC PROSECUTOR

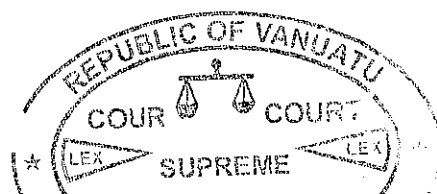
V

HOWARD PARAS

Before: Chetwynd J
Hearing: 21st August 2018 at Port Vila
Counsel: Ms MarieTaiki for the Public Prosecutor
No appearance for the Defendant

SENTENCE

1. The defendant Howard Paras appeared before the Supreme Court for the first time on 7th August this year. He entered a plea of guilty to a charge of intentional assault causing permanent harm. He appears today for sentence.
2. The bare facts behind this case are that on the morning of 19 November, 2014 the defendant went to the victim's house and attacked him with the bush knife. He admits that he struck the victim three or four times. In doing so he caused the victim to suffer permanent harm. A medical report says that the victim received serious injuries to his hand which have left him with greatly reduced grasp in the left hand. This was obviously a serious offence committed with a bladed weapon.
3. The bare facts of this case however present a very unclear picture of what actually went on and what preceded the attack. Unfortunately I am unable to obtain clarification on what did occur because Ms Takai only has a holding brief and the defendant's counsel has not appeared this morning. I can only expand on the bare facts by looking at the papers presented to the court before plea. I have to admit of being concerned about what is not said about this case. There appear to be allegations the victim possessed firearms and quite possibly a taser device. There are allegations of rape against the victim. The defendant says there was a



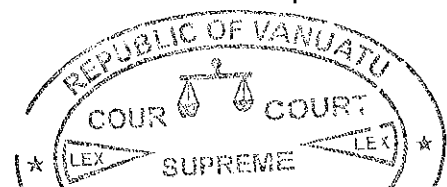
confrontation between him and the victim earlier in the morning with the victim threatening him with a rifle. I do not know if there is any truth in these allegations or whether they were ever investigated. If there is any truth in those allegations it is easier to understand what the defendant did but of course it can never excuse what he did. I should also mention that the victim says he was trying to help the defendant's wife escape from an abusive relationship and that there was no sexual misconduct of any kind. I should also remind myself it would be wrong to blame the victim for the offence.

4. My other concern is that the offence took place in November 2014 and it has taken nearly four years for the case to reach the Supreme Court. There is no discernible reason for this excessive delay.

5. Having said all that I am obviously dealing with a serious offence. However, the maximum sentence the defendant faces is not, as the prosecution suggest, 10 years imprisonment because the events took place well before February 2016 when the Penal Code amendments came into effect. The maximum sentence faced by the defendant is five years imprisonment. Nonetheless this is a serious offence as is any assault with a bladed weapon. Whilst the allegations the defendant makes against the victim may assist in understanding why the defendant might have been angry and upset and why he did what he did, they cannot excuse what he did. The appropriate starting point is 3½ years imprisonment. There are no particularly aggravating features which exacerbate the offending.

6. As to mitigation, as the defendant is unrepresented this morning I will depend on the presentence report. The alternative is to adjourn the matter but the defendant has waited long enough already to have his case dealt with. I do not want to make him suffer further delay.

7. The defendant has no previous convictions. He must be given credit for that. I will reduce his sentence by 6 months. He clearly has acknowledged his guilt and the Probation Officer was satisfied he was genuinely contrite. The defendant is prepared to consider compensation and reconciliation in custom. I will take that into account as well. The defendant is entitled to a full reduction for an early guilty plea. He admitted his guilt when interviewed by the police shortly after the offence and pled



guilty the first time he appeared in the Supreme Court. A full one third reduction will reduce his sentence to 2 years.

8. Turning now to the question of delay, as I have indicated earlier there is no discernable reason for a 4 year delay. The delay cannot be said to have arisen because of the defendant's conduct or actions. He admitted what he had done to the police the day after the assault took place. All other relevant statements were taken on the day of the assault or the day after. A medical report setting out the injuries inflicted on the victim would have been available very soon after the incident as well. The Court of Appeal ¹ has suggested in other cases that a suitable reduction in sentence in similar circumstances would be 12 months. Had the defendant been dealt with in a timely manner, and let it not be forgotten the Constitution guarantees any defendant a fair trial within a reasonable time ², he would have served any sentence by now and been able to have gotten on with his life. The sentence will be reduced by 12 months leaving a year to serve.

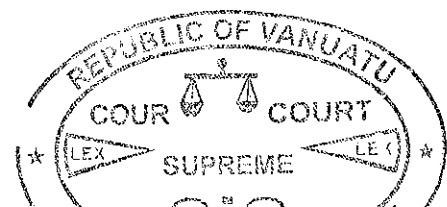
9. Next, I must take into account any time the defendant has spent in custody waiting for trial. The pre-sentence report says that the defendant has been in custody for very nearly two and a half months. That would represent time served of 5 months. The sentence is reduced by that time served equivalent to 7 months imprisonment.

10. Finally, I consider whether the sentence should be suspended. The Penal Code ³ requires me to consider in particular the nature of the crime and the character of the offender. Normally the nature of the crime would weigh more heavily in the court's considerations but here the character of the offender comes to the fore. As has been said, the offence took place nigh on four years ago. During the intervening period there has been no hint of unlawful behaviour, no sign of re-offending. I therefore believe that the sentence can be suspended. To make it clear, I am not suspending the sentence because of the delay in dealing with this case, I am suspending the sentence because during the period of delay the defendant has not gotten into trouble or re-offended. He has demonstrated that he is not a danger to the public and is capable of behaving within the law.

¹ See *Public Prosecutor v Morkro* [2017] VUCA 16; Criminal Appeal Case 3681 of 2016 (7 April 2017) and cases cited

² Article 5(2)(a) of the Constitution

³ Section 57(1) (a)

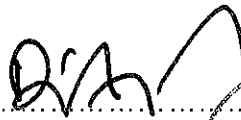


11. The sentence of 7 months imprisonment will be suspended for a period of 2 years. As the defendant was not represented I explained to him what that would mean and he indicated he understood that if he re-offended within the two years he would go back to prison.

12. I will also order that he is placed under the supervision of the Probation Service for 12 months. He will also be required to participate in any rehabilitation programs that the Probation Officer deems necessary.

13. I conclude by reminding the defendant that he is entitled to appeal this sentence. He has a limited amount of time to lodge any appeal. Normally it would be 14 days from today. However, because he has been let down by his counsel I will order that time for an appeal will not start to run until a copy of this decision is received by his errant counsel.

Dated at Port Vila this 21st August 2018



D. CHETWYND
Judge

