

BETWEEN: Public Prosecutor

AND: John William Haiegospin
Defendant

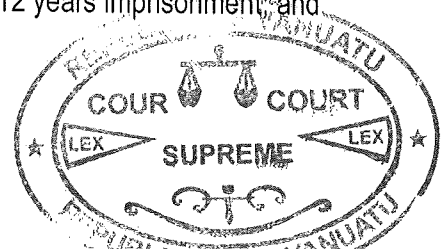
Date: 12 March 2019
By: Justice G.A. Andrée Wiltens
Counsel: Public Prosecutor (absent)
Mr E. Molbaleh for the Defendant

SENTENCE

A. Introduction

1. Mr Haiegospin faced a number of charges to which he pleaded guilty, namely:

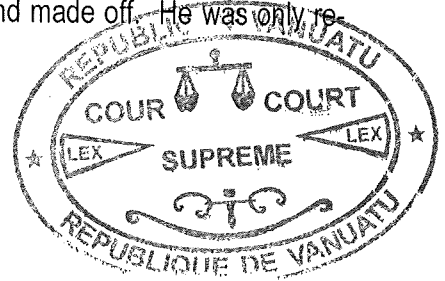
- (i) Attempted intentional assault – the maximum penalty for that offence is 5 years imprisonment;
- (ii) Driving under the influence of alcohol - the maximum penalty for that offence is 1 year imprisonment and/or a fine of up to VT 10,000;
- (iii) Threats to kill - the maximum penalty for that offence is 5 years imprisonment;
- (iv) Malicious damage to property - the maximum penalty for that offence is 1 year imprisonment;
- (v) Theft - the maximum penalty for that offence is 12 years imprisonment; and



- (vi) Escape from Lawful custody (now amended to correct a typographical error to be under section 84, not 83 of the Penal Code) - the maximum penalty for that offence is 5 years imprisonment.

B. Facts

2. Relevantly, Mr Haiegospin was convicted of a number of charges in November 2017 – namely, domestic violence, threats to kill, malicious damage to property, endangering transport and reckless driving. He was sentenced to an end sentence of 2 years 3 months imprisonment; which was suspended for 2 years. He was additionally sentenced to 12 months probation, and disqualified from holding or obtaining a driving licence for 12 months.
3. The complainant in that matter was Mr Haiegospin's mother. He was released on the suspended sentence in December 2017 and, perhaps surprisingly, almost immediately re-integrated into the family.
4. In the afternoon of 5 March 2018, a number of the family went swimming at Eton Beach with friends. The offending I need to deal with occurred that afternoon/evening.
5. Firstly, some time after lunch. Mr Haiegospin wanted to purchase more alcohol for himself and his friends, so he took VT 3,000 from his mother's purse without her permission – he is fortunate to not have been charged for this theft. When his mother went to remonstrate and ask him to not purchase more alcohol, Mr Haiegospin attempted to bash her head with the car door. He drove off and returned at about 4pm with more alcohol, which he and his friends then consumed.
6. When it was time to go home, Mr Haiegospin demanded to be given the car keys. His mother declined initially, but when she observed how angry Mr Haiegospin became, she relented. He drove the family back home, under the influence of too much alcohol, and at an excessive speed. While on that journey, his mother contacted his father at home and arranged for him to immediately seize the car keys so that Mr Haiegospin could cause no further trouble. That is what occurred.
7. After thinking about this for some time, Mr Haiegospin realised his mother must have caused the keys to be taken by his father. He therefore went to the kitchen, picked up a machete and used it to threaten his mother, saying: "Today, I will chop your neck off" and explaining that he didn't care if he went to jail again, as he was not afraid to go back. An uncle intervened, and Mr Haiegospin's mother fortunately managed to evade any further confrontation.
8. Mr Haiegospin was further annoyed by this development, so he set about damaging family property – two louvres and 6 cups. The damaged items are valued at VT 800. Then he went into his parent's shop, stole VT 2,000 and finally he left and caught a bus elsewhere.
9. The police were notified and they managed to locate and arrest Mr Haiegospin at sometime between 7 - 8pm. He was taken to Central Police Station. There was a discussion about whether bail was possible, or whether an overnight remand was best. While documentation was being prepared to enable Mr Haiegospin to be released into his parent's custody, he decided to flee. He jumped over a fence at the Police Station and made off. He was only re-arrested on 10 April 2018 – more than a month later.

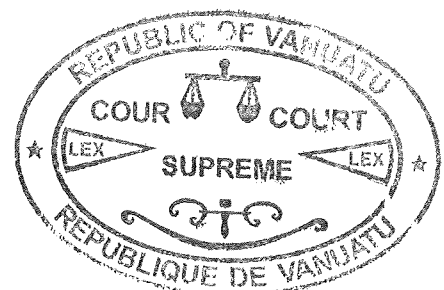


C. Aggravating Factors

10. The majority of the offending was against Mr Haiegospin's biological mother, and must have been extremely distressing for both his parents.
11. This offending occurred while Mr Haiegospin was subject to the suspended sentence for very similar offending. He has a number of previous, relevant criminal convictions.
12. This behaviour demonstrates a continuing irresponsible and immature attitude. It involved uncontrolled violence and the excessive consumption of alcohol.

D. Sentence

13. This sentencing was delayed due to Ms Pakoasongi's other commitments during the last Court of Appeal session meaning she was unable to file sentencing submissions as per the agreed timetabling orders made. However, no prosecution sentencing submissions have been filed since, and no counsel appeared today. Both matters are unacceptable.
14. Mr Molbaleh has filed sentencing submissions – at 8am this morning. While helpful, they would have been of far greater assistance to the Court had they been filed somewhat earlier!
15. The following further matters impact on the end sentence:
 - Mr Haiegospin pleaded guilty to the escaping charge on 7 May 2018. He pleaded guilty to the remaining charges on 14 December 2018, the date of his trial. His pleas were followed by the prosecution offering a *nolle prosequi* on an even more serious charge, which was then dismissed. The pleas were therefore not at the earliest opportunity;
 - Mr Haiegospin has been remanded in custody prior to trial between 10 April 2018 and 23 October 2018 – a total of some 6 months 2 weeks;
 - He is currently 21 years of age – he was 20 when committing the offending;
 - He has undertaken a custom reconciliation ceremony with his parents, in conjunction with an uncle and his Chief; and
 - Remarkably, his long-suffering parents have again forgiven him.
16. Ordinarily, the appropriate start point for sentence, taking the totality criminal culpability into account, would be 4 years imprisonment. For Mr Haiegospin's previous similar convictions and the fact that he committed the current offending while subject to a suspended sentence, there has to be an uplift of further 12 months imprisonment. Five years imprisonment seems to be to be very lenient, in all the circumstances.



17. I would allow a 4 months reduction for Mr Haiegospin's undertaking the custom ceremony and the fact that his parents have forgiven him. I would allow a further 11 months reduction for the fact of his youth and his good prospects of rehabilitation. Lastly, I would allow a reduction of 20% for his late guilty pleas.
18. The end sentence that I consider appropriate for Mr Haiegospin's total criminal culpability is therefore a term of 3 years imprisonment.
19. However, the circumstances of this case require that the primary consideration for sentencing Mr Haiegospin should be rehabilitative rather than punitive. For that reason I am not activating the suspended sentence immediately. Further, I am going to sentence Mr Haiegospin on a different basis, so as to accentuate the rehabilitative needs, as I set out below.
20. In respect of charges 3 and 7, the more serious of these matters, I order Mr Haiegospin to come up for sentence before me at 8am on 13 March 2020 pursuant to section 56 of the Penal Code. I will sentence him in respect of those charges at that time. A further PSR is required.
21. In respect of charges 1, 2, 5, and 6 concurrently, I sentence Mr Haiegospin to (i) 250 hours of Community Work; (ii) 12 months of probation with the conditions that he be assessed for and if found suitable to successfully attend and complete courses to deal with the consumption of alcohol and drugs, anti-violence, respect for elders and the community, and budgeting; and (iii) to be disqualified from holding or obtaining a driving licence for 3 years from today.
22. My intention, subject to how Mr Haiegospin behaves over the next 12 months, is to simply impose the same sentence on charges 3 and 7, concurrently. However, if his behaviour is not impeccable over the next 12 months, I intend to sentence Mr Haiegospin to a term of imprisonment for this continuing quite anti-social conduct for a period of up to 3 years. There is a huge incentive for him to become and remain a better member of the community than his recent conduct demonstrates and to avoid a further period of incarceration. I sincerely hope Mr Haiegospin takes advantage of the opportunity afforded to him.
23. Mr Haiegospin has 14 days in which to appeal this sentence should he disagree with it.

Dated at Port Vila this 12th day of March 2019

BY THE COURT


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Justice G.A. Andrée Wiltens

