

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

Criminal
Case No. 20/2287 SC/CRML

BETWEEN: Public Prosecutor

AND: Amless Prasade
Defendant

Date: 6 November 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr K Massing for the Prosecutor
Mrs P Malites for the Defendant

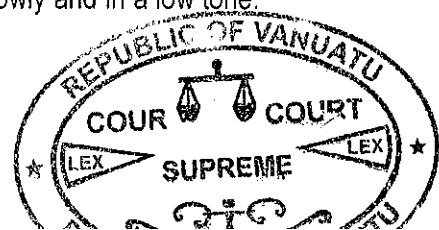
SENTENCE

A. Introduction

1. Mr Prasade pleaded guilty to:
 - Threat to kill; and
 - Malicious damage to property.

B. Facts

2. Mr Prasade and Florence Krelly were previously de facto partners.
3. At around 9 pm on 5 August 2019 Mr Prasade met with Florence at the First Packet nakamal at Anamburu area, Port Vila. He threatened to kill her, saying slowly and in a low tone:



"Mi save stikim yu long knife nao ia yu dead I stap ia bai mi jump ko long wan yard mo ranway".

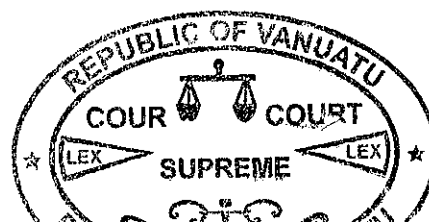
4. This frightened Florence as she had previously been threatened and assaulted by Mr Prasade. As a result of being frightened, Florence wanted to leave, but Mr Prasade prevented that by taking her bag and all her cash. Accordingly, Florence walked all the way home.
5. On 7 September 2019, Mr Prasade entered their residence and destroyed property belonging to Florence, including items of crockery.
6. When arrested and interviewed, Mr Prasade admitted both offences.

C. Sentence Start Point

7. The sentence start point is to be assessed by having regard to the maximum sentences available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
8. The maximum sentence for threat to kill is 15 years imprisonment. The maximum sentence for malicious damage to property is 12 months imprisonment.
9. There are no mitigating aspects to the offending. The aggravating factors include:
 - Breach of trust;
 - Offending in the matrimonial home; and
 - Repeat nature of the offending.
10. Mr Massing has cited authorities to the effect that the appropriate sentence start point, where a knife is used to re-inforce a threat to kill is in the order of 4 years imprisonment. However, there was no knife used by Mr Prasade.
11. I distinguish the case of *PP v Yawissi* [2020] VUSC 136 as this case involves a breach of trust and some of the offending occurred in the matrimonial home environment. This offending is therefore more serious than that in *Yawissi*.
12. Accordingly, I adopt a start point of 3 years imprisonment for the charge of threat to kill, uplifted by a further 3 months to take into account the malicious damage to property charge.

D. Personal Factors

13. Mr Prasade pleaded guilty at the first available opportunity. That indicates he has accepted his wrong-doing. It may also indicate remorse. In any event it has saved Court time and expense, and spared Florence the humiliation of having to give evidence against him. For that reason I reduce the sentence start point by one-third.
14. Mr Prasade is 29 years old, and in a de facto relationship with Florence. He depends on her for financial support.



15. He has good relations with the Community and his Church. He has no previous convictions.
16. There has been no custom reconciliation ceremony, but Mr Prasade has indicated he is willing to participate.
17. For his personal factors, I further reduce Mr Prasade's sentence start point by 4 months.
18. Finally, Ms Malites has submitted that there is further mitigation available to Mr Prasade due to the manner in which he was treated by the police when arrested and subsequently. Mr Prasade has tendered a sworn statement to the effect that he was awoken when the police arrived at 10:30 pm to arrest him. He went to the door and was immediately punched hard to his mouth, causing bleeding and Mr Prasade to fall backwards. When he stood up again, he was kicked in the ribs. Subsequently, at the Police Station, Mr Prasade was punched on the nose, causing a tear and further bleeding; and then again punched to the mouth causing further bleeding. Thereafter he was detained in the police cells.
19. There is no independent evidence to confirm or disprove these allegations. On the assumption that they are true, I allow a further reduction to the sentence start point of 3 months. If I am wrong in that, then Mr Prasade has had good fortune.

E. Sentence

20. For the offence of threat to kill Mr Prasade is sentenced to 18 months imprisonment. For malicious damage to property he is sentenced to 3 months imprisonment, to be served concurrently.
21. He has served two periods of incarceration – from 9 August 2019 to 6 September 2019, and 7 June 2020 to 2 October 2020. Accordingly the sentence start date is back-dated to 3 July 2020 to reflect the time already served and to preserve Mr Prasade's parole rights.
22. The sentence will not be suspended. Not only is there the aspect of repeat offending and therefore the prospect of re-offending, but the fact that Mr Prasade is in a relationship with the complainant makes it inappropriate to return him to the very environment where he offended. Florence and other members of the community deserve and need to be protected.
23. Mr Prasade has 14 days to appeal the sentence.

Dated at Port Vila this 6th day of November 2020
BY THE COURT

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Justice G.A. Andree Wilken

