

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

Criminal
Case No. 20/1222 SC/CRML

PUBLIC PROSECUTOR

v

JOHN MANU

Date: 4 June 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr P. Sarai
Defendant – Mr L.J. Napuati

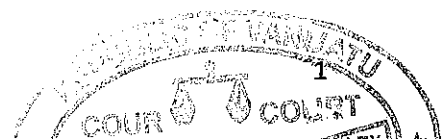
SENTENCE

A. Introduction

1. I found Mr Manu guilty after trial of the charge of unintentional harm causing death. He is convicted of that charge.

B. Facts

2. Mr Manu was the driver of the white Mitsubishi truck, registration number 970, in the early morning hours of 19 May 2019 at Nambatu area, Port Vila. The deceased Kenny Warek was a passenger on Mr Manu's truck.
3. Mr Manu turned left through the space between 2 traffic islands and commenced to cross Elluk Road with Ialun Kelep speeding towards him in a grey Toyota Hilux, registration number CT 19953, and already so close that Mr Kelep could not avoid hitting Mr Manu's truck.
4. Mr Kelep was driving at speed along his right of way and suddenly had Mr Manu's truck swing out into the road in front of him.
5. Mr Manu under-estimated the speed of the on-coming vehicle and over-estimated the distance it was away from the intersection. Alternatively, Mr Manu incorrectly assessed how long it would take him to cross the road in time for him to get out of the way of the on-coming vehicle.



6. Mr Manu failed to exercise the care that a reasonable person in his situation should have observed of how close Mr Kelep was to him as well as the speed at which Mr Kelep's approaching vehicle was travelling, and to stop and allow Mr Kelep the right of way before commencing on his left turn across Elluk Road.
7. Mr Manu was negligent and failed to comply with the law requiring him to give way to Mr Kelep. Mr Manu's decision and driving were a direct cause of the collision between the vehicles which led to the unfortunate death of Mr Manu's passenger who was flung from the back of the truck.
8. Mr Manu conceded that he had been consuming alcohol earlier the preceding evening. It was his evidence, which I accepted, that he had subsequently vomited and sobered up – although as the Court of Appeal observed, he did not go to sleep at all that night: *Manu v Public Prosecutor* [2021] VUCA 20 at [10].

C. Sentence Start Point and Personal Factors

9. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
10. The maximum sentence provided in section 108(c) of the *Penal Code* [CAP. 135] is 5 years imprisonment.
11. There are no mitigating aspects of the offending.
12. The offending is aggravated by:
 - Mr Manu's consumption of alcohol; and
 - The deceased was Mr Manu's passenger therefore under his care.
13. The factors set out above require a sentence start point of 18 months imprisonment. The *Morrison v Public Prosecutor* [2020] VUCA 29 and *Jenkinson v Public Prosecutor* [2000] VUCA 5 cases are distinguishable and do not apply as in *Morrison*, there was no consumption of alcohol and in *Jenkinson*, the Prosecution had not identified alcohol consumption as an aggravating feature.
14. Mr Manu is 29 years old. He is married. He has no previous convictions. After the vehicles collided, he rushed the deceased to the hospital when he could not raise an ambulance, stayed with him at the hospital and then went to the Police station to report what had happened. Mr Manu is a university graduate. He is employed as a Public Works Department procurement officer. He plans to undertake further university studies.
15. Mr Manu has the strong support of his chief. He is described as maintaining a good relationship within his community and involved in a lot of community activities. He has contributed to many events in his community on Tanna.
16. The pre-sentence report writer stated that Mr Manu is remorseful and regretted his over-consumption of alcohol for causing the deceased's death. Mr Manu has attempted to



perform a custom reconciliation ceremony but the deceased's family saw no need to. He remains willing to.

17. I reduce the sentence by 6 months for Mr Manu's personal factors.

D. End Sentence

18. Mr Manu is sentenced to 12 months imprisonment.

19. In view of Mr Manu's good character, remorse, full-time employment and his involvement in community affairs, I consider suspension of the sentence allows the best opportunity for his rehabilitation. I suspend the sentence for 2 years.

20. Mr Manu is warned that if he offends again within the next 2 years, he will need to serve his sentence of imprisonment in addition to any other penalty that may be imposed on him for the further offending.

21. Through counsel's sentencing submissions, Mr Manu has offered to pay compensation to the deceased's family. I am satisfied that Mr Manu has the means and ability to pay the monetary compensation offered.

22. Mr Manu is to pay compensation to the deceased's family for the amount of VT200,000 **by 4pm on 15 July 2021**. This does not limit the rights of the deceased's family to commence any civil action that they may wish to.

23. In addition, Mr Manu is ordered to complete 100 hours of community work.

24. The sentence is imposed to denounce the criminal conduct, to deter drivers to drink and drive, to hold Mr Manu accountable for his criminal conduct and to keep road users safe.

25. Contrary to Mr Sarai's submissions, I have no power to disqualify Mr Manu from driving under s. 108 of the *Penal Code*. This requires legislative amendment.

26. Mr Manu has 14 days to appeal the sentence.

DATED at Port Vila this 4th day of June 2021

BY THE COURT


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Viran Molisa Trief
Judge

