

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

Criminal Case No. 21/2453
SC/CRML

BETWEEN: Public Prosecutor

AND: Wesley Willie
Defendant

Date of Hearing: 19 July 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr P. Toaliu for the Public Prosecutor
Mr B. Livo for the Defendant
Date of Sentence: 22 July 2021

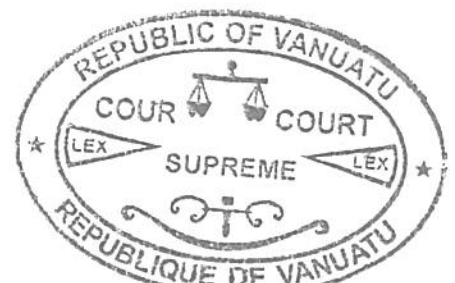
Sentence

A. Introduction

1. Mr Willie pleaded guilty to a charge of intentional assault causing death.

B. Facts

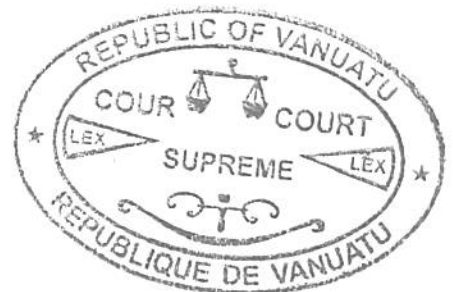
2. On 1 October 2020, in the early hours of the morning, some neighbours became aware that Mr Willie was assaulting his 37-year old partner Anita Benson. Accordingly, they went to intercede, shouting at Mr Willie to stop his assault.
3. Instead, Mr Willie threatened to assault the neighbours if they approached either him or his partner; and he continued to punch and kick his partner to her head and stomach repeatedly. He was wearing shoes at the time.



4. Others also attended the scene, and on arriving they saw Mr Willie standing over his partner who was lying on the ground and breathing heavily. On reaching Anita, they lifted her off the ground, but she died in the arms of one of them.
5. A post-mortem report conducted later the same day found that Anita had died as a result of severe traumatic brain injury. That was further clarified to have been caused by multiple blunt force injuries to the head causing a subdural haemorrhage/haematoma and subarachnoid haemorrhage.
6. Mr Willie admitted assaulting Anita, explaining that he was angry with her for having consumed alcohol that evening. He stated that he had gone to find her and found her sleeping at her father's house. He said he woke her up and asked from where she had obtained alcohol. She did not respond, so he punched her face and kicked her while she was on the ground there, before picking her up and leading her away to take her home. He said that he then assaulted her again in the same manner numerous times.

C. Sentence Start Point

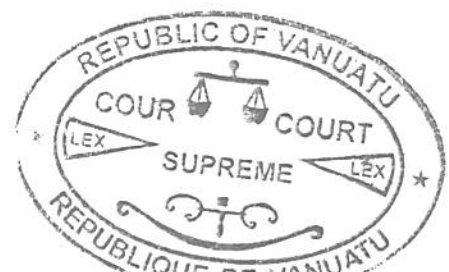
7. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in the aggravating and mitigating aspects of the offending.
8. The maximum sentence for intentional assault causing death is 14 years imprisonment.
9. There are no mitigating aspects to the offending. There are however numerous aggravating factors, including the following:
 - The offending took place at/near to Anita's parent's home where she could expect to feel safe;
 - Mr Willie was himself under the influence of alcohol;
 - The attacks were unprovoked and aimed at a defenceless victim affected by having been asleep and having consumed alcohol;
 - The assaults were repeated in the sense that there were clearly two periods of assaults; and as well, during each period the blows administered by hand and foot were numerous;
 - The most vulnerable part of the human body, the head, was targeted;
 - Mr Willie wore shoes which were used to inflict damage to the head;



- There is a breach of trust as Anita was Mr Willie's partner and the mother of their 4 children; and
 - Mr Willie threatened his neighbours to not interfere so that they were unable to interrupt and/or stop the beating being inflicted. Had they not been prevented by the threat Anita might not have lost her life. Mr Willie demonstrated a determination to see his plan of action through.
10. The sentence start point that I adopt for Mr Willie's offending is 10 years imprisonment. I am aware of numerous authorities which adopt a lesser sentence start point, but in my view, the aggravating features of Mr Willie's offending require a higher sentence start point than that adopted in *PP v Lava* [2020] VUCA 26 following on from the authority of *PP v Ierongen* [2002] VUCA 34. The authority of *PP v Therese* [2020] VUSC163 deals with a battered wife and cannot be compared to the present situation.

D. Mitigation

11. Mr Willie pleaded guilty to the lesser alternative charge at the earliest available opportunity. I consider he really had no alternative as the prosecution case against was strong – there were a number of eye-witnesses who observed this incident, and Mr Willie made a full confession to the police. His plea has however saved Court time and expense and can be taken as an indication of remorse. For this aspect of the case I accordingly reduce the sentence start point by 25%. I add, for completeness, that Mr Livo's assumption that a 1/3 reduction is appropriate is a misunderstanding of the case law. The reduction available for a prompt plea is up to 1/3, depending of the circumstances of each case.
12. Mr Willie is 43 years of age, with 4 children to care for, 3 of whom are still at school. He has limited education (up to year 10) and is a farmer. He was the breadwinner for the family.
13. He is held in high regard in the community and is not known as a violent person. His family remains supportive of him. He claims to be extremely remorseful, and has advised the PSR writer there will be no repetition of his offending. He will of course have to live with the consequences of his senseless actions, which have taken away his partner and the mother of his four children. He has no previous convictions.
14. Mr Willie has been in custody since this incident. Accordingly, he has not been able to arrange for or take part in a custom reconciliation ceremony with Anita's family, his own family and the community. However, he maintains he is willing to attend to this in the future.
15. For Mr Willie's personal circumstances, the sentence start point will be further reduced by 6 months.
16. As an act of clemency aimed at the secondary victims of this offending, namely the children of Anita and Mr Willie, I further reduce the sentence start point by 12 months so that the



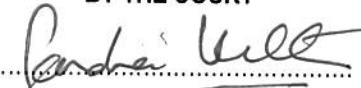
children are not deprived of their sole remaining parent any longer period than can be possibly imposed.

E. End Sentence

17. The end sentence that I impose is a term of 6 years imprisonment. The sentence is to be back-dated to commence on 2 October 2020 to preserve Mr Willie's parole rights.
18. This offending is too serious to consider suspending the sentence. As well, if the sentence were suspended that would send the wrong message to the community. The taking of a life is a very serious matter. Deterrence, and holding the offender accountable for his criminal act, are accordingly major sentencing principles that can be superseded by other principles such as rehabilitation in only rare circumstances. That is not the case here.
19. Mr Willie has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 22nd day of July 2021

BY THE COURT


Justice G.A. Andrée Wiltens

