

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

Criminal
Case No. 21/2309 SC/CRML

BETWEEN: Public Prosecutor

AND: Rosen Lauto
Defendant

Date: 24 August 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms M. Tasso for Public Prosecutor
Ms K. Karu for the Defendant

Sentence

A. Introduction

1. Mr Lauto pleaded guilty to a charge of intentional assault causing permanent injury, a very serious charge.

B. Facts

2. On 23 October 2020, between 11pm and midnight, Mr Mark Tom was travelling home with a friend. The bus they had caught broke down, and so they resorted to walking the remainder of the journey to Erakor Half Road, Port Vila. Near the Blue Bucket nakamal, Mr Tom was unexpectedly struck in the face by a rock thrown at him.
3. The rock damaged his right eye, such that he is now permanently blind in that eye. When first struck, Mr Tom fell to the ground and became unconscious. Once he came to, his friend assisted him to get to his home. He was taken to hospital for medical treatment, but the eye could not be saved.
4. Mr Tom and his friend had no idea who had thrown the rock. The police were also unable to ascertain the culprit.



5. Subsequently, on 4 November 2020, Mr Lauto and his parents visited Mr Tom at his house. Mr Lauto admitted being responsible for what had occurred. The family brought with them VT 15,000 cash, a length of calico, a bag of rice and some mats by way of apology, which was accepted by Mr Tom.

C. Sentence Start Point

6. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
7. The maximum sentence for this offending is 10 years imprisonment.
8. The offending is aggravated by the use of a weapon, namely the rock, which was thrown at the most vulnerable part of the human body, Mr Tom's head. The very unfortunate consequence of the loss of sight in one eye is not aggravating, although the effects of the offending on the complainant are.
9. There are also mitigating aspects to this offending. Mr Lauto alleges that Mr Tom had consumed alcohol that evening. Mr Lauto has had previous bad experiences with the VMF, and Mr Tom was wearing such uniform at the time. When Mr Lauto and his friend were walking past Mr Tom and his friend, Mr Tom suddenly grabbed Mr Lauto's right hand. Mr Lauto was frightened and struggled free, but in doing so ended up on the ground. He says his hand fell on a rock and he picked it up and threw it towards Mr Tom before running away. In essence he is claiming to have been provoked. I accept Mr Lauto's explanation for the purposes of this sentencing.
10. Accordingly, I adopt a sentence start point of 2 years 6 months imprisonment.

D. Personal Factors

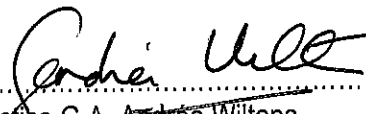
11. Mr Lauto came forward and admitted his offending when he and his parents offered their apologies to Mr Tom. Had that not occurred, the prospect of ascertaining the person responsible for the throwing of the rock appears to have been slim. When first asked about the matter by the police, Mr Lauto again admitted responsibility. Further, he has pleaded guilty to the charge at the first available opportunity. His entire conduct indicates that he has accepted his wrong-doing, and that he is extremely remorseful.
12. The maximum discount for early guilty pleas is up to 33%. However, what has occurred here merits greater discount. Mr Lauto would not be in his current position but for his own subsequent actions taking full responsibility for the matter. In the circumstances, I am discounting the sentence start point by 50%.
13. Mr Lauto is now 18 years old. He was 17 years old at the time of the offending. His youth and immaturity merit discounts from the sentence start point. He is single and resides with his parents while he continues with his education – he has another year to complete his studies. He has no previous convictions, and he has performed a custom reconciliation ceremony with his apology being accepted by Mr Tom.
14. In the circumstances, I do not consider that a term of imprisonment is appropriate. However, neither do I consider that an absolute discharge is appropriate as submitted by his counsel. The offending is serious and must be marked by a conviction.



E. End Sentence

15. Mr Lauto must be held accountable for his criminal conduct and the sentence imposed must be a deterrent to him and other members of the community who might be tempted to act in this fashion.
16. Accordingly, he is sentenced to 12 months of supervision with the special condition to he attends and successfully completes the Niu Rod programme. He is additionally ordered to complete 100 hours of Community Work.
17. Mr Lauto has 14 days to appeal the sentence.

Dated at Port Vila this 24th day of August 2021
BY THE COURT


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Justice G.A. Andree Wiltens

