

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

Criminal
Case No. 20/3508 SC/CRML

BETWEEN: Public Prosecutor

AND: Philip Rawi

Date: 15th April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr. C. Shem for the Public Prosecutor
Mr. L. Napuati for the Defendant

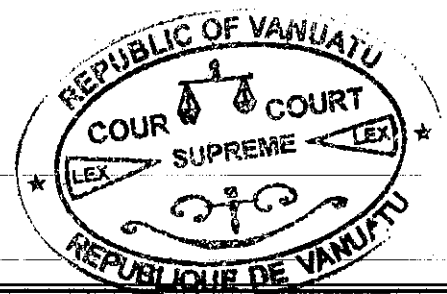
SENTENCE

A. Introduction

1. Mr Rawi pleaded guilty to causing death by reckless driving and intentional harm causing death. He accepted the summary of facts and was accordingly convicted on his own pleas and the admitted summary of facts.

B. Facts

2. Mr Rawi is 23 years old, from South Tanna. On 26 April 2019, he commenced a drinking spree which continued throughout the day, the night, and then into the following day until around 8pm on 27 April 2019. He was driving a Nissan Patrol, with passengers, for much of the time.
3. While at the hill at Iwaru on the way to Lenakel he was speeding to such an extent his passengers called out to him to slow down. He didn't. While attempting to turn up the hill at the speed at which he was driving, Mr Rawi lost control. The vehicle over-turned, throwing the passengers onto the road. One of the passengers, 19 year old Joshua Kahau was trapped beneath the vehicle.
4. Joshua Kahau was freed and rushed to Lenakel Hospital. However he had suffered traumatic brain injuries which led to his death the following day.
5. Mr Rawi admitted his offending when interviewed by the police.



C. Sentence Start Point

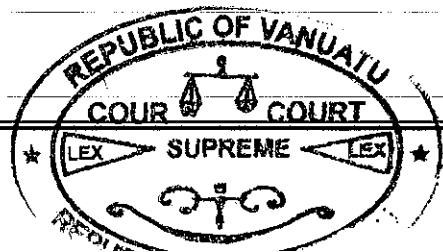
6. The sentence start point is to be assessed by looking at the maximum sentences for the offences and then factorising in the aggravating and mitigating aspects of the offending.
7. The maximum sentence for intentional harm causing death is 5 years imprisonment. The maximum sentence for reckless driving causing death is also 5 years imprisonment and/or a fine not exceeding VT 500,000. Pursuant to section 55 of the Road Traffic (Control) Act [CAP 29] Mr Rawi is also liable to be disqualified from holding or obtaining a driving licence for up to 5 years.
8. The aggravating features of the offending are that Mr Rawi had been consuming alcohol prior to and while driving; he drove at excessive speed while so incapacitated; and he ignored the counsel of his passengers. Further, the offending occurred at night with reduced visibility; and Mr Rawi had passengers on board at the time. It is further aggravating that Mr Rawi left the scene prior to the arrival of the police.
9. The mitigating aspects of the offending are two-fold. Firstly, there is a doubling up of the charges. Each offence alleges the causing of the loss of a life as a result of certain misconduct. Care must be taken to have regard to the overall criminal culpability of what occurred rather than adding up two separate allegations into something greater than actual.
10. Further, it is recorded in the summary of facts that Mr Rawi attempted to retrieve Joshua Kahau from under the vehicle but was unable to do. His attempt to assist is to his credit.
11. I consider the offending warrants a sentence start point of 3 years imprisonment.

D. Mitigation

12. Mr Rawi pleaded guilty at the earliest available opportunity. That followed a full confession to the police. In the circumstances I reduce the sentence start point by 25%.
13. Mr Rawi is 23 years old with no previous convictions. His employment as a driver will no longer be available to him. He has taken part in a custom reconciliation ceremony with the family of the deceased, which also is to his credit.
14. For his personal circumstances, I further reduce the sentence start point by 9 months – largely for his lack of previous convictions, his comparative youth and immaturity and offer to pay compensation.

E. End Sentence

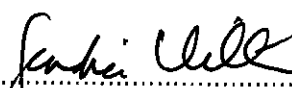
15. The end sentence that I impose is 18 months imprisonment. I impose that on both charges concurrently.
16. I am prepared to exercise my discretion and to suspend the sentence for 2 years. I do so on the basis that imprisonment would not return Joshua Kahau to his family. The Court's obligation is to keep offenders out of jail if possible. To ensure that Mr Rawi does not re-offend in a similar



fashion in the near future, he is additionally disqualified from holding or obtaining a driving licence for a period of 3 years from now.

17. Mr Rawi needs to remain offence free for the next 2 years to ensure he is not incarcerated for this offending.
18. I accept Mr. Rawi's offer of compensation for the family of Mr Kahau. Mr Rawi is to pay VT 200,000 within 21 days – he has indicated he has the means to do so.
19. Mr Rawi has 14 days to appeal this sentence.

Dated at Isangel this 15th day of April 2021
BY THE COURT


Justice G.A. Andree Wiltens

