

PUBLIC PROSECUTOR
v
ANTHONY SHEM MANUAKE

Coram: *Hon. Chief Justice V. Lunabek*

Counsel: *Ms. Laura Lunabek for Public Prosecutor*
Mr Henzler Vira for the Defendant

Date of Plea: *22 August 2022*

Date of Sentence: *13th October 2023*

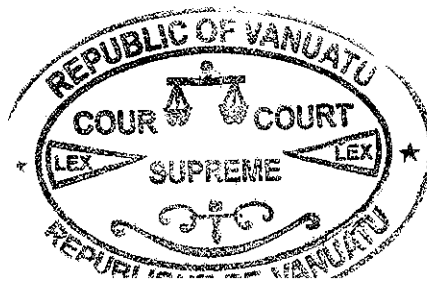
SENTENCE

A. Introduction

1. Mr Anthony Shem Manuake ("*Mr Manuake*"), you appear for sentence. On 22nd August 2023, you entered guilty pleas on two counts of intentional assault contrary to Sections 107(a) and (b) of Penal Code, (Counts 1 and 4), one count of threats to kill a person, contrary to Section 115 of Penal Code (Count 2) and one count of abusive or threatening language contrary to Section 121 of the Penal Code Act.
2. The offence of intentional assault in Count 3 was dismissed after you pleaded not guilty.

B. Facts

3. Mr Manuake, at the time of your offending, you were 17 years of age.
4. The complainant was 20 years of age at the time of offending.
5. The complainant and you were in a relationship when the offending occurred between the 7th of April and the 18th of April 2023.



6. The first incident occurred on Friday the 7th of April 2023, the complainant was staying at your house at Seven Star area when you arrived home and told her to come and see you outside the house.
7. There, you slapped the complainant on the cheeks. The complainant tried to run away but you pulled her to the side of the road, slapped her cheeks, kicked her ribs and punched her stomach while swearing at her.
8. While assaulting her you also threatened to kill her using words to the effect of: "*sapos yu ko reportem mi long police after mi kolo prison, taem bae mi kam out bae mi kilim dead yu mo ol family blong yu*".
9. The complainant after that went back to her parent's house at Prima Area and did not come back to your house.
10. The fourth incident occurred on 15 April 2023 after you both get off the bus near the Covenant Church. You then took her into an empty yard nearby and punched her onto her left eye which caused her to bleed and kicked her on her right leg which made her fall.
11. While on the ground, you continued your assault by kicking her on the back.
12. The final incident occurred whilst standing outside, close to the Covenant Church, the police then arrived, and you whispered to the complainant that if she did not come back to you, you would kill her with all her family members.
13. You were cautioned and interviewed on the 18th of April 2023.
14. You stated that you would only speak in court.

C. Sentence Start Point

15. The maximum penalty for the offences under Section 107(a) and (b) are imprisonment for 1 year and 5 years respectively. The maximum sentence for threats to kill a person is 15 years imprisonment. Abusive or threatening language carries a maximum penalty for a fine not exceeding VT20,000 or a term of imprisonment not exceeding 1 years or to both such fine and imprisonment.
16. The nature of the offences indicate that you committed serious offences on 7th and 18th April 2023.
17. In the circumstances of this case, they are no personal mitigating factors to the offending but the offences are aggravated as you used your hands and legs to assault the complainant



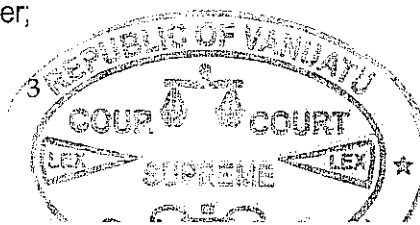
on her cheeks, hands, ribs and stomach while you threatened to kill her. The assaults are repeated on the body of the complainant.

18. In the present case, there are more than one charge. I assess the overall culpability of the offending on a concurrent basis. This approach is in line with the two steps approach considerations set out in Philip v Public Prosecutor [2020] VUCA 490 adopting Moses v R [2020] NZCA 296.
19. The offence of threats to kill a person is the leading offence. The maximum term available is a term of 15 years imprisonment.
20. The prosecution submits that an appropriate sentence start point is between 5 to 6 years imprisonment. The prosecution does not oppose any suspension of the term of imprisonment sentence considering Mr Manuake, you are 17 years of age at the time of the offending. The defence submits, in the present case, there was no weapon involved and the threats to kill the complainant was a verbal threats. The threats to kill a person is a leading offence, a sentence start point of 3 years and 6 months should be appropriate.
21. I peruse and consider the prosecution and defence submissions. In Walker v Public Prosecutor [2007] VUCA 12; Criminal Appeal Case No. 06 of 2007 (24 August 2007) and Public Prosecutor v Walker [2007] VUSC 63; Criminal Case 20 of 2007 (14 June 2007), it was held that:

"cases of this nature must always warrant imprisonment sentence to reflect the seriousness of the offence as intended by Parliament. For offence of threats to kill a person, by a defendant with the presence of a weapon and the use of the weapon is on the higher scale of aggravation and seriousness ..."
22. In the present case, there is no weapon and so there was no use of a weapon to commit the crimes. But, Mr Manuake, you used your hands and legs to assault your girlfriend causing injuries of a temporary nature to her body coupled with orally abusing or threatening language at her and threats to kill her.
23. I take all these matters referred to above into account, as a global basis, taking into account all the offences, I fix the appropriate sentence start point at 3 years and 6 months (42 months) imprisonment as submitted by the defence.

D. Personal Mitigating Factors

24. On your personal factors, I consider the following factors:
 - You are a first-time offender;



- You were remorseful for what you did to the complainant;
- You regretted your wrong doing and you promised that you will not repeat these offences again in future. This means that you will be in control of your anger the next time you see your girlfriend drunk and under the influence of alcohol.

25. Your sentence is reduced by 6 months to reflect the above personal mitigating factors.

26. I reduce your sentence further by 33% for your guilty pleas provided at the first opportunity given to you by the relevant authorities. Your sentence is reduced to 20 months imprisonment.

27. I consider your young age when you committed these offences at the age of 17. I give you a reduction of 10 months to reflect your young age.

E. End Sentence

28. Your end sentence is 10 months imprisonment.

F. Suspension consideration and alternative sentences

29. The next question is whether I should suspend your imprisonment sentence. Section 57 of Penal Code provides:

"PROVISION FOR SUSPENSION OF SENTENCES OF IMPRISONMENT

57. (1) *The execution of any sentence imposed for an offence against any Act, Regulation, Rule or Order may, by decision of the court having jurisdiction in the matter, be suspended subject to the following conditions:*

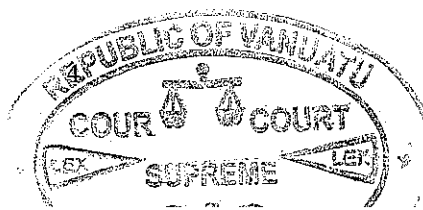
(a) if the court which has convicted a person of an offence considers that:

(i) in view of the circumstances; and

(ii) in particular the nature of the crime; and

(iii) the character of the offender,

it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years; and



(b) *if, at the end of such period, the person the execution of whose sentence has been suspended in accordance with this section is further convicted of any offence against any Act, Regulation, Rule or Order, the court shall order that the suspended sentence shall take effect for the period specified in the order made under paragraph (1) (a) of this section unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending, in no case concurrently with any subsequent sentence.*

(d) *Where a court decides under paragraph (1) (c) that a suspended sentence is not to take effect for the period specified in the order, then, subject to this Act, the court must either:*

(i) *order that the suspended sentence:*

(ia) *take effect with the substitution of a lesser term of imprisonment; or*

(ib) *be cancelled and replaced any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or*

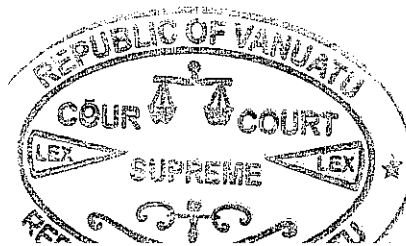
(ic) *be cancelled; or*

(ii) *decline to make any order referred to in subparagraph (i) concerning the suspended sentence.*

(2) *The court must, when ordering the suspension of the execution of the sentence of imprisonment, explain clearly to the person sentenced the nature of the Order and must ascertain that he or she has understood its meaning."*

30. I consider the nature and circumstances of your offending; I consider also your character as an offender of 17 years of age at the time of your offending with a degree of immaturity and poor reasoning. See also the Court of Appeal judgment in *Korthy v Public Prosecutor* [2019] VUCA 19 where the Court said: "... he being only 18 years old at the time of his offending. There is much authority for the proposition that young men, especially, suffer from immaturity and poor reasoning. Further, the possibility of rehabilitation is greater in the case of youths. For that reason, we allow a discount of 20 months for (defendant's) young age at the time of his offending".

31. In the case of *Public Prosecutor v Walker* [2007] VUSC 63 the Court stated that: "A suspended sentence of imprisonment must be only granted if the circumstance of the case justified."



32. I have applied my mind on alternative sentences to imprisonment, such as community and probation on the facts of this present case. They are relevant to your situation. I decide to suspend your imprisonment sentence of 10 months for a period of 2 years.
33. During the 2 years period of suspension of your imprisonment sentence, you must not re-offend. You must stay out of crime and be a good citizen. If you re-offend before the end of 2 years period of suspension of your imprisonment, your sentence of 10 months imprisonment will be re-activated, in addition to the charge laid against you. I hope you understand.
34. In addition, you are sentenced to 6 months supervision under special condition to attend anger management classes and 50 hours of community work.

G. Appeal right

35. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

Dated at Port Vila, this 13th day of October 2023

BY THE COURT

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Hon. Vincent LUNABEK
Chief Justice

