

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

Criminal
Case No. 21/2048 SC/CRML

BETWEEN: Public Prosecutor

AND: 1. Peter Thomas
2. Peter Remo
3. Ory Peter
4. Channel Willie
6. Dolcino Donald
9. Sandy Thomas
Defendants

Date: 26 November 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr K. Massing for the Public Prosecutor
Mr L. Moli the Defendants

Sentence

A. Introduction

1. D1 Peter Thomas, aged 51 years, pleaded guilty to intentional assault causing temporary injury (Charge 5).
2. D2 Peter Remo, aged 22 years, pleaded guilty to intentional assault causing temporary injury (Charge 9), and malicious damage to property (charge 3).



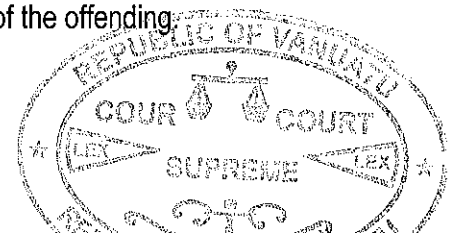
3. D3 Ory Peter, aged 20 years, pleaded guilty to intentional assault causing temporary injury (Charges 5 and 7) and was found guilty after trial of intentional assault causing temporary injury (Charge 10).
4. D4 Channel Willie, aged 34, pleaded guilty to intentional assault causing temporary injury (Charge 5).
5. D6 Dolcino Donald, aged 19 years, pleaded guilty to intentional assault causing temporary injury (Charge 12).
6. D7 Sandy Thomas, aged 46 years, pleaded guilty to abusive language (Charge 11).
7. D5 Alickson Pakoa has yet to appear, due to his being out of the jurisdiction. D8 Sandy Thomas was not convicted on any charge. The other charges were all the subject of oral *nolle prosequi* and dismissed, or the subject of acquittals after trial.

B. Facts

8. The summary of facts does not disclose what truly occurred. Accordingly, I will deal with sentencing on the basis of what became clear at trial.
9. The evidence was that the complainants and the defendants all resided at Matarisu Village in North Efate. On New Year's Eve in 2020, they all ended up in nearby Lanvan Village, by coincidence. The defendants were there to share in the consumption of alcohol, while the complainants went there to purchase take-away kava. For reasons not entirely clear, a fight broke out between the 2 groups near the nakamal at Lanvan Village.
10. Subsequently, they all returned to Matarisu Village, where a second fight broke out between them. Again the cause of the flare up of aggression is unclear.
11. The charges flow out of both incidents.
12. The prosecution allegations are that the complainants were assaulted, but that the defendants were not. Given that both incidents were in the nature of a general brawl, that seems unlikely to have been the true position. Certainly, when they gave evidence, the defendants at trial alleged the complainants to be the aggressors.
13. I noted that the defendants and the complainants are related. It is also significant that the complainants, save for Tom Obed, were much older than the defendants and most likely gave as good as they got in both brawls.
14. The malicious damage involved the hitting of a vehicle with a piece of wood; and the abusive language involved some profanity. The violence administered caused only temporary injuries, and consisted in the main of punches and kicks.

C. Sentence Start Point

15. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.



16. For the intentional assault charges, the maximum sentences are 5 years imprisonment. The maximum sentence for malicious damage is 12 months imprisonment; and the maximum sentence for abusive language is 3 years imprisonment.
17. I do not consider that any of the defendants should serve a sentence of imprisonment. Their actions were undoubtedly affected by their consumption of alcohol and their loss of temper when seeing what was happening all around them.

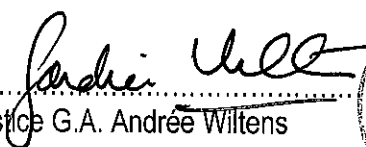
D. Mitigation

18. Each defended has pleaded guilty at the early in the Court process, and Ory Peter should have been better advised to run a trial, when in fact he admitted the offending in his evidence. In the circumstances, I am prepared to reduce the sentence start points for the pleas by 25%.
19. The defendants ages range from 51 to 20. They are all involved in cattle farming, and none has any previous convictions. They are all remorseful and apologetic, and indicate the matter could and should have been handles better. They have taken part in a custom reconciliation ceremony.
20. For their personal factors, I would reduce the sentence start points by 6 months for each defendant.

E. End Sentence

21. The most appropriate sentence in my view is to impose varying amounts of Community Work. I do not see any need or desirability to also impose supervision, despite the ages of some of the defendants.
22. D1 Peter Thomas is ordered to complete 120 hours Community Work on Charge 5.
23. D2 Peter Remo is ordered to complete 120 hours Community Work on charges 3 and 9 concurrently.
24. D3 Ory Peter is ordered to complete 140 hours Community Work on charges 5,7 and 10 concurrently.
25. D4 Channel Willie is ordered to complete 100 hours Community Work on charge 5.
26. D6 Dolcino Donald is ordered to complete 100 hours Community Work on charge 12.
27. D7 Sandy Charley is ordered to complete 40 hours Community Work on charge 11.
28. Each Defendant has 14 days to appeal the sentence.

**Dated at Port Vila this 26th day of November 2021
BY THE COURT**


Justice G.A. Andrée Wiltens

