

PUBLIC PROSECUTOR

V

WILLIE KAUNG

*Date of Sentence: 29<sup>th</sup> September, 2020 @ 11AM*

*Before: FSam*

*In Attendance: Mr Karae\_T for the Public Prosecution*

*Mrs Karu\_K for the Defence and Defendant appearing*

*Copy: The Public Prosecutor, The Public Solicitor, Defendant.*

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SENTENCE

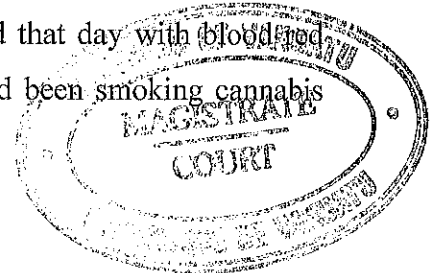
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**Introduction**

1. On the 31<sup>st</sup> of August, 2020, Mr Kaung pleaded “yes hemi tru” and recorded by the Court as his guilty plea to one count of Intentional Assault causing temporary injury contrary to section 107 (b) of the Penal Code Act [Cap 135].

**Factual Background:**

2. The complainant, who is Mr Kaung’s wife, had lodged an official complaint with the police on the 18<sup>th</sup> of June 2020, stating she had been experiencing domestic violence from her Husband, Mr Kaung for some years, throughout the course of their relationship. That Mr Kaung is suspected by the complainant to be smoking cannabis, and that on the 17<sup>th</sup> of June 2020, she had smelled what she suspected was burnt cannabis, and seeing her husband that day with bloodshot eyes, giving rise to her suspicion that her husband had been smoking cannabis



earlier. Later on that day around 7:00 hrs., her husband assaulted her for no reason, by kicking and punching her on the head. It was this incident that gave rise to the complaint being lodged with the Police by the complainant wife on the 18<sup>th</sup> June 2020, having been fed up with her husband's violent behavior. The complainant was medically examined where the injuries she sustained had affected her performance and caused her to experience pain.

### The Law

3. Section 107(b) of the Penal Code states:

*107. Intentional assault*

*No person shall commit intentional assault on the body of another person.*

*Penalty: ....*

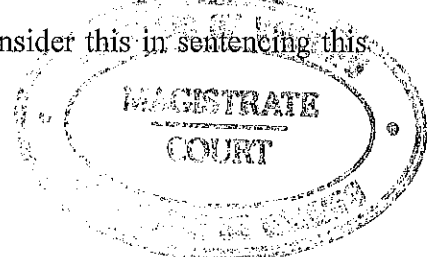
*(b) if damage of a temporary nature is caused, imprisonment for 5 years;*

*..."*

### Aggravating and Mitigating Factors

4. The Court heard submissions from both State Counsel Mr Karae and Defence, Mrs Karu, before deciding on the appropriate verdict for Mr Kaung.

5. The Court accepted the facts as submitted by Prosecution and which are acknowledged by the Defence. Mr Karae cited some case authorities which were considered including *PP v Wari [2017] VUSC 144*, *PP v Pita [2017] VUSC 177* and *PP v Maliwan [2018] VUSC 29*, and I will consider this in sentencing this defendant.



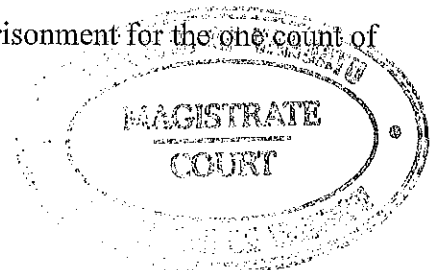
6. The Court accepts the following aggravating factors; that the Defendant Mr Kaung has a history of committing domestic violence upon his complainant wife, leaving her in a vulnerable position, where she is experiencing constant fear for her safety and welfare, up to the point where she gathered up the courage to report Mr Kaung's behavior to the Police, that Mr Kaung uses cannabis when assaulting the complainant as he did in this case, where he did strike the complainant on her head with his fist and legs, which led to the injuries sustained.

7. The Court also considered and accepted the following as mitigating factors and factors personal to the Defendant; that Mr Kaung has no prior convictions, that he cooperated with the police during investigation, that he had pleaded guilty at the earliest available opportunity given him, that he had spent four (4) days in custody, where he realized his wrongdoing and is remorseful of his actions, that he had performed a custom reconciliation ceremony to his wife and her families by exchanging food crops, including manioc, kumala, banana, and three mats, some Kava as well as a verbal apology to his complainant wife and her family, that he is a young man of 27 years of age, and is currently residing with his complainant wife and 3 children, and he is the sole bread winner in the family.

8. Having considered all the relevant factors and circumstances in respect of the Defendant's offending, this Court is satisfied that the elements of intentional assault have been proven beyond a reasonable doubt, and I find Mr Kaung guilty of this count and convict him accordingly.

### **Starting Point**

9. Mr Kaung has a history of committing violence upon his complainant wife, by physically assaulting her, and causing her injuries as a result. And this is reflected in the cases cited by Mr Karae, of *PP v Wari [2017] VUSC 144*, *PP v Pita [2017] VUSC 177* and *PP v Maliwan [2018] VUSC 29*. However, while the nature of offending in these cases are more serious than the current case, I will accept and adopt a starting point of 24 months imprisonment for the one count of intentional assault in this case.



**Deductions and End Sentence**

10. Mr Kaung pleaded guilty to intentional assault at the earliest available opportunity, and he is entitled to a one third (1/3) deduction.

11. , A further one month deduction is given for Mr Kaung's personal factors, including the custom reconciliation he performed.

12. I also consider Mr Kaung had spent 4 days in custody and this is also taken into account, leaving a final end sentence of 16 months imprisonment.


**Suspension**


13. In considering suspension, I accept Mr Kaung is currently continuing on his relationship with his complainant wife, having had performed a custom reconciliation to her and her family which was accepted, and which shows Mr Kaung is accepted back into the community. For this, I grant suspension of his 16 months imprisonment sentence for 2 years in pursuant to section 57 of the Penal Code Act. This means Mr Kaung, you will not go to prison, but you must be of good behavior and you must not commit any further offences in the period of 2 years from today's date. If you do, your suspended sentence will be uplifted and you must go to prison for 16 months.

14. Mr Kaung has a right to appeal this sentence if he is not happy with it, within 14 days from today.

**DATED at Port Vila, this 29<sup>th</sup> day of September, 2020.**

**BY THE COURT**

  
**FSam**  
**Magistrate**

  
MAGISTRATE  
COURT  
PORT VILA  
VANUATU