

PUBLIC PROSECUTOR

V

ROGER DAVID

*Date of Sentence:* 6<sup>th</sup> October 2020  
*Before:* Senior Magistrate Moses Peter  
*In Attendance:* Ms. Marie Taiki for State.  
Mr. Lorenzo Moli for the Defendant

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SENTENCE

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1. Defendant Roger David, you last appeared in court on 4<sup>th</sup> September 2017 and pleaded guilty on all counts on offence of Intentional Assault causing damages of temporary nature.
2. The charges are styled as follows:

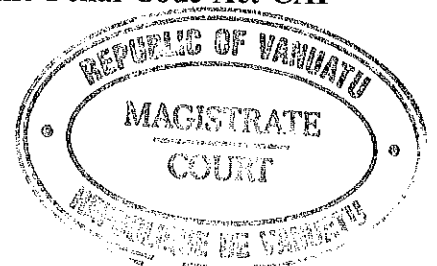
**Count 1**

**Intentional Assault contrary to section 107 (b) of the Penal Code Act CAP 135]**

*ROGER DAVID samtaem long night long namba 3 January 2017 long haus long Anamburu Anietyum (sic) yu bin assaulthem body blong man ia THEODOR DAVID olsem yu bin whipim head blong hem long wan guitar mekem se hemi bin kasem injury long body blong hem we bae I no save stap oltaem.*

**Count 2**

**Intentional Assault contrary to section 107 (b) of the Penal Code Act CAP 135]**



*ROGER DAVID samtaem long night long namba 3 January 2017 lo haus long Anamburu Anietyum (sic) yu bin assaultem man ia THEODOR DAVID olsem yu bin kakae hand blong hem mekem se hemi bin kasem injury long thumb blong hem we bae I no save stap oltaem.*

### **Count 3**

#### **Intentional Assault contrary to section 107 (b) of the Penal Code Act CAP 135]**

*ROGER DAVID samtaem long night long namba 14 August 2017 lo haus blong Chief Theodore Daivd (sic) long Anamburu Anietyum (sic) yu bin intentionally assaultem body blong man ia Nalveo Barry olsem yu bin whipim face blong hem long wan guitar mekem se hemi bin kasem injury long face blong hem we bae I no save stap oltaem.*

3. Today you appear for sentencing on the charges after the court took into consideration the submissions filed by Prosecutor and your counsel.
4. The facts related a sequence of assaults you perpetrated on the complainants the former who appeared to be your father and the latter being a relative. The first offending occurred on 3 January 2017 at Anamburu area where you assaulted your father with a guitar. The assault resulted from your father's intervention of an issue you had with your girlfriend that night when you chased her to assault her that she run for her safety and sought refuge in a group of people nearby who were singing bon annee. You hit your father with the guitar on his left face and bit his finger as he was struggling to remove the guitar from you. Your father bled as he knelt on the floor but you repeatedly hit him with the guitar. Luckily, a neighbor came in and took you outside.
5. The second offending occurred around evening on 14 August 2017 at your father's home when the complainant and another person were drinking kava together. The kava session went on until around 9 pm to 10 pm when both the complainant and your father were chanting as they were both playing their guitars. You went towards the complainant, yell at him and hit him on the face with a guitar you had on your possession as he was turning his face towards you.
6. A medical report dated 16<sup>th</sup> August 2017 carries findings of the examining doctor showing deep laceration and bleeding in the upper lips of the complainant with swollen gums. Apparently, the complainant is reported to have experience intense pain from the injuries.
7. The penalty for offence of Intentional Assault causing damages of temporary nature has recently been amended to five years from one-year imprisonment.
8. Your offending happened before 2017 when the amendment was passed so your offending is punishable by one-year imprisonment as the maximum prescribed penalty.



9. It must be clear that parliament has seen the prevalent reports of assaults in the society leaving many people victimized and traumatized by the criminal actions and thus passed an amendment in the provisions of section 107 (b) of the Penal Code Act by increasing the penalty to 5 years imprisonment in year 2017.
10. Obviously, this is to discourage such actions by people like you who have little or no respect to other people's right to live in a society that is free from violence, abuse and neglect.
11. To mark the seriousness of the offence and culpability of offending I have set a starting point of 5 months imprisonment after taking into account the following aggravating factors:
  - Oddly using a guitar to aggravate assault on the body of the complainants.
  - Repetitive use of same object as weapon to administer assault on the body of the complainants.
  - Lack of demonstration of remorse and deterrence as second offending happened in breach of bail conditions for the first offending.
  - Complainants all appear to be close relatives with the first complainant being your biological father.
12. In mitigation, it is acknowledged that you have been remanded in custody for 15 days until you were released on bail; however, you committed the second offence whilst on bail resulting in you forfeiting your bail right and was again remanded in custody. You have no previous conviction however it could have been the case if you are being dealt with separately for the previous offending.
13. It appears you have had several legal counsels before you appear for plea hearing. This has caused several changes in your plea. When the proceedings commenced for trial hearing you changed your plea from not guilty to guilty.
14. I give you one-quarter deduction for your guilty plea and that is five weeks deducted from your imprison sentence.
15. Your end sentence is three (3) months and three (3) weeks.
16. I am encouraged to have regard to possibility of keeping offenders like you in the community if is practicable and consistent with safety of the community and have considered that you have been remanded in custody and after your second release on bail, there was no report whatsoever about you re-offending.
17. This is a clear indication that you have come to realize your shortcoming and have endeavored to make specific amendments in your character and attitude. This is the primary intention of the court when imposing sentences on offenders.
18. In that regard, I have therefore accepted to suspend your sentence for two years. In event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.



19. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

**DATED at Port Vila this 6<sup>th</sup> day of October 2020**

**BY THE COURT**

.....MAGISTRATE  
**MOSES PETER**  
Senior Magistrate

