

BETWEEN: Public Prosecutor

AND: Bale Wamelie
Defendant

Date of Plea: 26th May 2021
Date of Sentence: 26th May 2021
Coram: Trevor NAIEU
Appearances: Terry Tous for Public Prosecutor
Defendant in Person

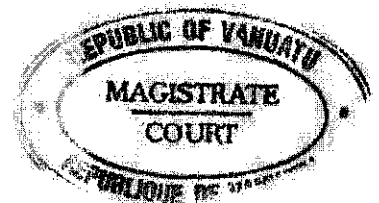
SENTENCE

A. Introduction

1. Mr Bale Wamelie pleaded guilty ("*Yes hemi tru*") to the offences of domestic violence and intentional assault.

B. Facts

2. The victim who lodges the complaint against Mr Wamelie to the Police is Mr Wamelie's niece.
3. On the 28 day of December 2020 at Pinalum village in the island of Malekufa, Mr Wamelie fiercely assaulted the victim.
4. The residents of Pinalum village including the surrounding villages were celebrating two weddings on the 28 December 2020 whereby as part of the celebration few of them consume alcohol liquor and amongst those that consume alcohol liquor is the victim and Mr Wamelie's wife.



5. The victim and Mr Wamelie's wife were drunk and dancing to the music played for public dancing as part of the celebration. The victim misbalanced herself while dancing and falls to the ground and while still lying on the ground, suddenly appearing from the crowd of people, Mr Wamelie took the opportunity and fiercely kicked the victim repeatedly with his legs and punched her face. Mr Wamelie was wearing a hard Yakka safety construction boots when he repeatedly kicked the victim.
6. The incident was then apprehended by other family members who then quickly make arrangements for transporting the victim to the Norsup hospital for medical attention.

C. Conviction

7. Conviction is hereby entered against Mr Wamelie for the offending of domestic violence and intentional assault upon satisfaction that all the elements of both the offences were met.

D. Sentence start point

8. The sentence start point is arrived at after having considered the maximum sentence available for these offending's and the careful assessment of the mitigating and aggravating factors of the offending's.
9. The maximum penalty for domestic violence is a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu or both.
10. The maximum penalty for intentional assault (s.107 (c)) is imprisonment for 10 years.
11. There are no mitigating factors to these offending's. The aggravating factor are as follow;
 - The defendant is a man of 34 years old while and the victim is a young woman of 29 years old.
 - The victim was drunk and unable to defend herself.
 - Breach of trust and care from a family member.
 - The defendant did not consume alcohol liquor therefore a degree of planning was involved.
 - The defendant was wearing a hard Yakka safety construction boots when he repeatedly kicked the victim.
 - The medical examination report shows the following:
 - ❖ Swelling on the right eye with a black spot below the lower eye lid
 - ❖ Pain and swelling below the right chest



- ❖ Bruising on the mouth (lower lips)
- ❖ Pain when breathing
- ❖ Dizziness
- ❖ Unable to lift up the right hand because it causes pain on the right chest
- The opinion of the medical examiner says that the victim was subjected to "*...strong punch on the face and also trauma on the left side of the body causing ribs fracture (x3)...*"

12. The sentence start point I set for the offending of domestic violence is 6 months imprisonment.

13. The start point I set for the offending of intentional assault is 2 years imprisonment.

14. The start point I set for both the offending will be a concurrent sentence of 2 years and 6 months imprisonment.

E. Personal Factors

15. The following are mitigating factors personal to Mr Wamelie:

- Mr Wamelie is a first time offender with no previous conviction and pleaded guilty for the offending of domestic violence at the earliest opportunity given saving the Courts time and expense in conducting a trial and avoiding the embarrassment to the victim to appear and give evidence. This also shows an acceptance of wrong doing and an indication of remorse. Mr Wamelie's early guilty plea awarded him a one third deduction to his sentence for the domestic violence offending.
- Mr Wamelie is 34 years old and currently unemployed.

16. The following are aggravating factors personal to Mr Wamelie:

- Mr Wamelie pleaded not guilty ("no ino tru") to the offending of intentional assault on the 28 April 2021 denying the injuries sustained by the victim that he did not cause those injuries. The matter was then listed for trial on the 28 May 2021. On the date for trial the prosecutor inform the Court that the defendant intended to change his plea of not guilty to guilty for the offending of intentional assault.

17. For Mr Wamelie's mitigating personal factors I reduce 12 Months.



F. End Sentence

18. The end sentence appropriate for Mr Wamelie's offending's' will be a concurrent sentence of 18 months imprisonment.
19. This sentence is intended to deter the defendant and other like-minded perpetrators of domestic violence from resorting to violence as a first or only option to get what they want, or, to get their spouses or other family member to respect them, or, resort to violence as an excuse for the fact that the victim was disobedient towards their directions and orders or the excuse fact that the victim was being disrespectful.
20. This sentence also echoes the same reasons clearly outlines by Judge Oliver Saksak in Public Prosecutor v Sao Christopher [2021] VUSC 49 who stated that;
- "... 15. This is to mark the seriousness of the defendant's offending, to mark public disapproval of his action, to set a deterrence for him and other like-minded persons, to protect the vulnerable members for the society and to punish the defendant appropriately. These principles are well established in cases such as R v Radich [1954] NZLR86 at 87, and Veen v The Queen (No.2) [1998] HCA 14, (1988) 164 CLR 465."*
21. It is inappropriate to suspend all or part of the sentence due to the serious nature and the type of offending involved. There is obviously a need to protect the vulnerable members of the community from this type of conduct and the need for protection and prohibition of domestic violence.

G. Right to Appeal

22. The Defendant is advised of his right to appeal this sentence within 14 days if he does not agree with it.

Dated at Lakatoro this 28th day of May 2021

BY THE COURT



Trevor NAIEU

Magistrate

