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**IN THE MAGISTRATES COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 20/2563 MC/CRML

PUBLIC PROSECUTOR

V

SILAS NALAU

ROGER TOM POSEN

ROGER TOM

In Attendance: ***Michael George of the State Prosecution's Office***

Defendants appear in person

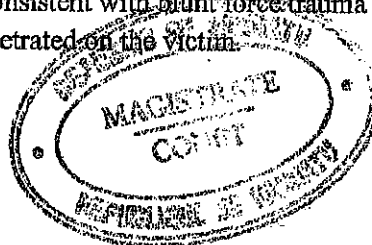
SENTENCE

A. Introduction

1. Mr. Silau Nalau, Roger Tom Posen and Mr. Roger Tom all pleaded guilty on the charges alleging criminal trespass, intentional assault and complicity to intentional assault.
2. Conviction is entered on the summary of offence.

B. Facts

3. The complainant Carlo Georgio is the father of the victim namely Roberto Carlo.
4. On 19th August 2020 he was at his workplace in the Ministry of Internal Affairs in the morning when his wife rang him and related to him what you have done to their son Roberto Carlo.
5. His wife and son were at their home at around 8.30 am when you went into their residential property and assaulted Roberto Carlo by punching him on the face and kicking him on the body.
6. You remain in the property until the police officers arrived and took you away to the police station.
7. A medical report showed the victim had scalp laceration of 1 cm length with surrounding hematoma of 1 cm in diameter. The findings of the medical doctor shows that the injuries sustained is consistent with blunt force trauma to the face as a result of the assault you perpetrated on the victim.



8. At cautioning with the police officers, you made full admission of the offending.

C. Starting Point

9. The maximum penalty for criminal trespass is 1-year imprisonment, intentional assault and complicity to intentional assault is 5 years imprisonment.
10. There are no mitigating aspect of the defendants' offending however the aggravating factors of their offending are that:
- o There was a degree of planning involved where the defendants all discussed what you would do.
 - o They entered the victim's residential property without lawful authority.
 - o They assaulted the victim in the confine of his own home where he is entitled to feel secure and safe.
 - o There was joint enterprise in the offending where defendants Silas Nalau and Roger Tom Posen assaulted the victim while Roger Tom stood by and watch.
 - o The victim and his mother were without support and were defenseless in the instance of the attack.
11. I considered totality of the offence and adopt a starting point of 1-year imprisonment.

D. Deduction for Guilty Plea

12. The defendants all pleaded guilty at the first opportunity. They also made full admissions of their offending to the police immediately after their arrest. They are each entitled to one-third reduction of 4 months.

E. Personal Factors

13. Mr. Silas Nalau is 47 years old. He is married and has three children two of whom are still attending school. He works as a bus driver and financially sustains his family on the income of his employment. He looks after the youths in his community.
14. Mr. Roger Tom Posen is 45 years old. He is married and has four children one of whom is also a defendant namely Roger Tom.
15. His other children left school due to the pandemic situation and remained at home.
16. He cultivates land and sell his produces in the market. He is a big chief in his community.
17. Mr. Roger Tom is 24 years old. He is single and is unemployed. He lives with his parents.



- 18. The defendants all reported a reconciliation ceremony was organized with the victim. A pig, 2-kava stem and some root crops was presented to the victim and his family.
- 19. The complainant who is present in court also confirm the reconciliation ceremony and ask for withdrawal of the case.
- 20. I am aware that any custom compensations or restoration by defendant are matters to take into account when assessing the penalty to impose on the defendant but are not justifiable for withdrawal of the matter.
- 21. For the personal factors, I deduct 2 months.

F. End Sentence

- 22. The sentence is to hold each of the defendants accountable for their conduct, to denounce their conduct and to show public disapproval of such offending, to protect the community and to deter them from acting in this matter in the future.
- 23. Taking into account all the matter discussed above the end sentence imposed to be concurrent are :


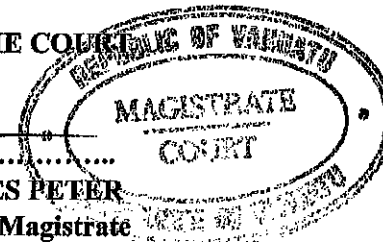
- a) Intentional Assault (Count 2) 6 months imprisonment
- b) Criminal trespass (count 1) 2 months imprisonment
- c) Complicity to Intentional (Count 3) 6 months Imprisonment

24. In view of the circumstances, I have accepted to suspend your sentence for 12 months. Additionally, the defendants are each ordered to pay a fine of VT 10,000 in 30 days.

The defendants all have 14 days to appeal this sentence if they disagree with it.

DATED at Port Vila this 10th day of May 2021

BY THE COURT

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MOSES PETER
Senior Magistrate