

IN THE MAGISTRATE COURT OF

Criminal Case No. 22/ 1410 MC/CRML

THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

v

ROYSON SHEM

Date: 22nd September 2022

Before: Magistrate P. Toaliu

Counsel: Mr. Lenry Young for the Public Prosecutor

Mr. Willie Kapalu for the defendant

SENTENCE

A. Introduction

1. Mr. Shem is charged with one count of Intentional assault contrary to section 107(b) of the Penal Code [CAP 135] and one count of domestic violence contrary to sections 10(1) and 4(1)(a) of the Family Protection act No. 28 of 2008.
2. This morning, Mr. Young entered a *Nolle Prosequi* to count number two; domestic violence.
3. Mr. Shem pleaded guilty to the remaining charge of Intentional assault.
4. Mr. Shem is convicted on his own plea and admission to the summary of facts filed by the state this morning.

B. Facts

5. On 12th March 2021, the complainant who is Mr. Shem's de-facto partner filed a complaint to the police that on 11th March 2021, Mr. Shem assaulted her. The reason for the assault was that because she had refused to had intercourse with him the night prior.



C. Sentence Start Point

6. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
7. The offence of intentional assault contrary to section 107(b) of the Penal code is 5 years imprisonment.
8. The following are the aggravating factors:
 - a. A breach of trust;
 - b. The pain and injury sustained by the complainant. She suffered bruising and swelling on her arm as a result of the assault;
 - c. The assault happened in a family home where the complainant should be feeling safe;
 - d. The attack was unprovoked.
9. There are no mitigating aspects of the offending.
10. I set a starting point of 10 months imprisonment.

Guilty plea

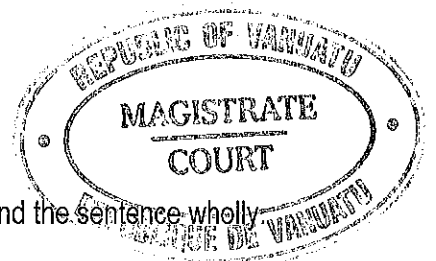
11. Mr. Sam pleaded guilty at the first available opportunity. As such, he is given a 1/3 deduction for his guilty plea.

Personal Mitigation

12. Mr. Shem is a first time offender;
13. Mr. Shem has apologized to the complainant and they are currently back living together.
14. They have four children and Mr. Shem is the sole bread winner of his small family.
15. I allow a reduction of 2 months to reflect this.

D. End sentence

16. The sentence I will impose today will:
 - a) Adequately punish you for your actions;
 - b) Send a message of deterrence to the community;
17. Your end sentence is 4 months imprisonment.
18. I consider it appropriate given your personal circumstances to suspend the sentence wholly
19. Therefore, your sentence is 4 months imprisonment suspended for 1 year.



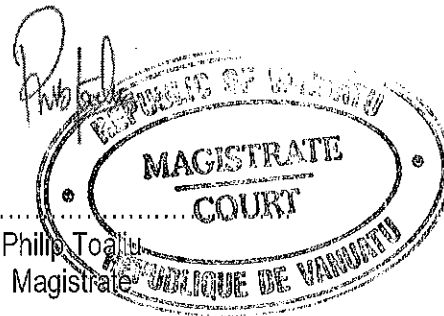
20. You are warned that if you re-offend within this one-month period, you will be arrested and incarcerated to serve your 4 months imprisonment along with any other sentence the court imposes for that other offending.

21. If you are not happy with the sentence, you have 14 days to appeal.

22. You have 14 days to appeal this sentence if unsatisfied.

Dated at Port Vila this 22nd day of September 2022

BY THE COURT



Philip Toaitu
Magistrate