

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

Case No. 21/3109 PRIN

PUBLIC PROSECUTOR

V

CLEMENT TARI

Date of Sentence: 23rd September, 2022

Before: Magistrate FSam

In Attendance: Mr Karae_T for the Public Prosecution

None by Defendant.

Copy: The Public Prosecution, Defendant.

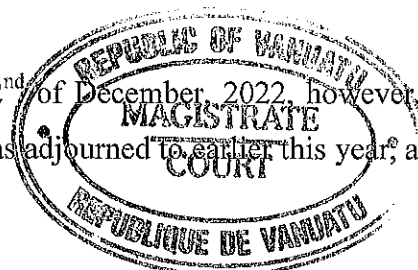
SENTENCE

Introduction

1. On the 17th of November, 2021, after informing the defendant of his right to legal representation, he stated his understanding of the charge against him, and decided to take his plea on his own accord, as “hemi no tru” to one count of domestic violence, and which was recorded by the court as his “not guilty” plea, and this matter proceeded to Trial on the 13th of December, 2021.

2. On the trial date, prosecution informed the court of the defendant’s intention to change his plea, wherefrom after amendments made to the particulars in the charge against him, the defendant answered “yes itru” to the count of domestic violence against him.

3. Sentence was scheduled for the 22nd of December, 2022, however, due to the court being on recess then, the matter was adjourned to earlier this year, and with



considerable delays, given difficulties experienced by the prosecution in this case, the court decided to proceed with sentence in the absence of the defendant.

4. The difficulty experienced by prosecution in this case, is not being able to reach the defendant or the complainant via the given known contacts and with regards to summons issued, the defendant could not be located at his last known address, nor any family member for this matter. To make matters worse, the complainant who is the defendant's wife, is even unreachable, or cannot be located. As a result, sentence of the accused has been on hold to date.

5. Given the difficulty on the part of the defendant in not making himself available for his sentence, and to avoid any incompleteness of the proceeding, the court sees the only option fit to take is to proceed in the defendant's absence.

6. The court made consideration on the defendant admitting the assault, as well as his guilty plea, and wherefrom he is convicted of the charge of domestic violence accordingly.

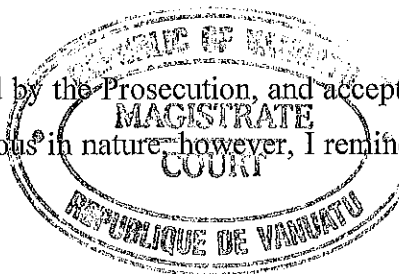
Facts

7. Brief facts of this case are that on the 20th of July, 2019, the complainant, upon being suspicious of her defendant husband's behavior, went to Stella Marie, to find him with his girlfriend, Ms Sharon in her house. Out of anger, and seeing the defendant's clothes hanging on the line, she grabbed a scissors and started cutting up the clothes, along with some solar light wires. The complainant further smashed plates and cups in the outdoor kitchen to the house, with an iron rod.

8. Hearing the commotion, the defendant came outside, where a heated argument arose between them and Ms Sharon. The defendant being angry with the complainant for cutting his clothes, then proceeded to slap her.

Sentencing Starting Point

9. I take note of the case authorities cited by the Prosecution, and accept that the offending in these cases are much more serious⁹ in nature, however, I remind myself



of the need for general deterrence and punishment of such an offending as this case, given its seriousness.

10. With regards to the two-step approach outlined in the cited court of appeal case of *Jimmy Philip v Public Prosecutor*, I consider the seriousness of the offending as reflected in the maximum penalty imposed for domestic violence offence, which is 5 years imprisonment, or VT 100,000 fine or both imprisonment and fine.

11. The aggravating factors to the offending include,

- There was a serious breach of trust in the relationship;
- The offending were unprovoked;
- The victim was a woman and a vulnerable victim to the assault caused upon her body.

12. I consider the relevant factors and I make my conclusion to set a starting point of 6 months imprisonment.

Mitigating Factors and Guilty Plea

13. In mitigation, I consider first his guilty plea, and he is awarded a 20 % deduction instead because of the change of plea at date of trial.

14. I also take note of his clean history, or no prior conviction, and make 1 month deduction thereof.

15. Further 1 month deduction is given to his admission of his wrong doing.

End Sentence

16. The end sentence therefore is 2 months imprisonment.



Suspension


17. I exercise this court's discretion, as per section 57 of the Penal code Act, to suspend the defendant's 2 months imprisonment sentence for a period of 1 year, taking due regard to the nature of the offending and the relevant factors.

18. This sentence is also appropriate as punishment and deterrence to the defendant and likeminded offenders from committing similar offences. The sentence also necessary to allow the defendant the chance to rehabilitate.

19. The defendant has 14 days to appeal this sentence if he is not happy with it.

DATED at Port Vila, this 23rd September, 2022.

BY THE COURT



FSAN REPUBLIQUE DE VANUATU

Magistrate