

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal
Case No. 18/2825 SC/CRML

BETWEEN: Public Prosecutor

AND: Jacob Saki Malau
Defendant

Date: 19 December 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Ms B. Ngwele for the Public Prosecutor (absent)
Mr R. Willie for the Defendant

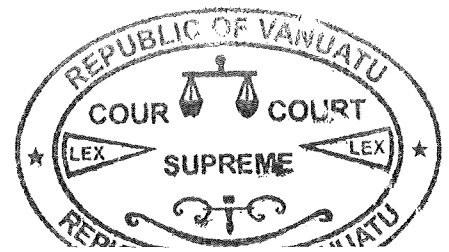
SENTENCE

A. Introduction

1. Mr Malau pleaded guilty to unintentional harm causing death, with a maximum sentence of 5 years imprisonment; and driving without a valid driving licence, with a maximum sentence of 3 months imprisonment and/or a fine of VT 30,000.

B. Facts

2. On 8 August 2018, at around 5pm Mr Malau drove a Toyota Hiace bus registration number B17821 in the Stad area, Port Vila. He had no valid driver's licence at that time. Mr Malau drove from INTV school and turned right towards the stadium when a young boy of 6 years suddenly ran out of a group of young children waiting to cross the road – he attempted to cross the road in front of the bus.
3. Mr Malau took no evasive action; nor did he attempt to stop. His bus ran over the young boy, as a result of which the young boy died.
4. Mr Malau continued to drive away without stopping – he later told the police he was afraid to stop as he was worried about the public's reaction to the incident.



C. Aggravating Factors of the Offending

5. There are a number of aggravating factors to the offending – Mr Malau did not stop after the accident to check on the boy and render what assistance he could, the age of the boy means that his family has been deprived of their enjoyment of the vast majority of his expected life span, and Mr Malau's failure to see the boy and/or to take evasive action combined with his driving without a valid driver's licence.

D. Mitigating Factors of the Offending

6. There are no mitigating factors relating to the offending.

E. Start Point

7. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 2 years 3 months imprisonment, on a totality basis taking both offences into account. I reject counsel's submission of a start point of 12 months imprisonment – this is a bad case of driving involving the loss of a life.

F. Personal Factors

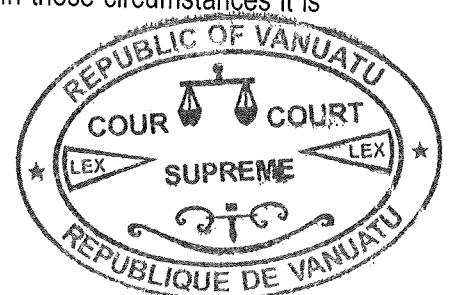
8. Mr Malau, at the age of 31, has a clear previous record. He is said to be remorseful, and a useful member of his family who rely on his earning capacity. Those factors enable a discount of 6 months imprisonment from the start point.
9. The final matter of mitigation is Mr Malau's prompt pleas. For his pleas, I allow 33.3% reduction to the end sentence.

G. End Sentence

10. Taking all of those matters into account, the end sentence that is imposed is one of 1 year 2 months imprisonment. I impose that on the unintentional harm causing death charge, with 1 month imprisonment concurrently for driving without a valid driver's licence.

H. Suspension

11. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.
12. Suspending Mr Malau's sentence is within my discretion. I take into account his lack of previous convictions, plus his prompt pleas. I acknowledge also, that eventually, Mr Malau self-reported the offending to the police later the same evening. I take note of Court of Appeal authority which has endorsed the deterrent value of a suspended sentence for offending of this type, especially considering that for the remainder of his life Mr Malau will live with the consequences of his actions having taken a life quite needlessly. In those circumstances it is appropriate to suspend the end sentence for 2 years.



13. Accordingly, the sentence of 1 year 2 months imprisonment is suspended for 2 years. Mr Malau needs to understand that he needs to remain offence free for 2 years from today, or he will be incarcerated for 14 months.
14. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I am satisfied that is required in this instance. Accordingly 12 months supervision is also imposed on Mr Malau.
- I. Compensation
15. Section 40 of the Penal Code requires the Court to consider whether compensation should be imposed, due to the death occasioned.
16. I am advised today, that Mr Malau has paid the family of the victim VT 100,000. In those circumstances I will not impose a further amount of compensation. However, I am firmly of the view that Mr Malau ought to do something concrete for the community to make up for his criminal conduct. Accordingly I require him to also complete 120 hours of Community Work.
- J. Disqualification
17. The driving standard displayed was exceedingly poor. To be able to drive is a privilege not available to everyone – and to be able to earn an income from driving requires far more responsible and considerate behaviour than Mr Malau displayed. His driving on this occasion dictates a meaningful period of disqualification, as a deterrence to him and the community at large.
18. In the particular circumstances of this case, Mr Malau is disqualified from holding or obtaining a drivers licence for all classes of vehicle for a period of 18 months.
19. Mr Malau has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 19th day of December 2018
BY THE COURT

Gardner Ull
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Justice G.A. Andrée Willens

