

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

**Criminal
Case No. 18/252 SC/CRML**

PUBLIC PROSECUTOR

V

THOMAS MALLIWAN

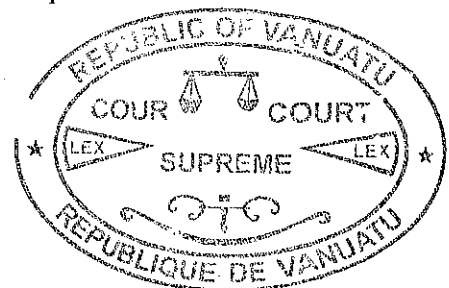
Date of Sentence: 22nd day of March, 2018 at 9:00 AM

Before: David Chetwynd

Counsel: Laura Lunabek for Public Prosecutor
Willie Kapalu for Defendant

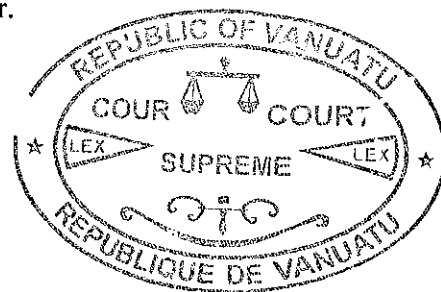
SENTENCE

1. The defendant Thomas Maliwan was charged with 3 offences; threatening to kill, domestic violence and intentional assault causing temporary injury. He entered a plea of not guilty to the charge of threats to kill and pleas of guilty to the domestic violence and assault charges. The prosecution nolle'd the threats to kill charges.
2. The facts were admitted by the defendant. He has accepted that he carried out a prolonged, viscous attack on his de-facto partner. He accepts that the attack took place in the presence of their 9 year old daughter. The Pre-Sentence report mistakenly refers to a charge of attempted homicide and looking at the injuries suffered by the victim the defendant is lucky not to be actually facing such a charge.
3. On 2nd November 2017 the defendant was waiting for the complainant. She had gone to live with her sister at Elluk. As she got off a bus the defendant started punching her. She fell to the ground. The defendant continued assaulting her as she was lying on the road. At one point she saw the defendant



pick up a stone and move towards her. She saw her daughter crying and trying to stop the defendant.

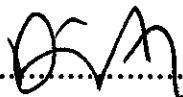
4. She passed out and when she regained consciousness the defendant was standing over her. He then pulled her to her feet and said they were all going back to Blacksands. She broke free and tried to run away. The defendant caught her, hit her on the back and pushed her to the ground. The assault continued and the complainant passed out again. The next thing she was aware of was people running towards her and then the arrival of the Promedical team. She was taken to the hospital where it was found she had multiple bruising to her head, neck and abdomen.
5. Those same facts constitute two offences, domestic violence and intentional assault. The Family Protection Act is quite clear in section 10(1)(3) that an offence of domestic violence "*is in addition to and not in substitution for any other offence constituted by an act of domestic violence*". The defendant was extremely lucky that a family protection order taken out by the complainant had not been served. If it had he would have been facing an extra 2 years sentence. The maximum penalties for assault and domestic violence are 5 years.
6. The domestic violence was about as serious as it gets without the use of a weapon. It was part of a pattern of behaviour on the defendant's part. The starting point would be 2 years with aggravating factors being the deliberate seeking out of the complainant with a view to assaulting her and the assault taking place in the presence of a young child. The defendant will be sentenced to 2 ½ years imprisonment.
7. As regards the assault, the starting point is 18 months with the same aggravating factors. The sentence will be 2 years imprisonment.
8. The defendant has no previous convictions and is entitled to some credit for that. However with such an admitted long history of domestic abuse it is hard to see the defendant as a man of good character.



9. The defendant has expressed remorse but I am not convinced he is truly remorseful. He has however arranged for some kind of reconciliation ceremony to take place.
10. I will reduce both sentences by 6 months to take account of those factors.
11. The defendant has entered pleas of guilty at an early stage in proceedings. He is entitled to a full 1/3 reduction in sentence in respect of both charges.
12. Taking the deductions set out above into account the end sentence for the domestic violence is 16 months. For assault it is 12 month. The sentences shall be served concurrently.
13. Given the prolonged and severe nature of the assault and given the history of domestic abuse I do not believe this is a case where sentences can be suspended. The defendant will serve his sentences immediately. They will be deemed to have started when he was first taken into custody on 3rd November 2017.
14. As I told the defendant in Court, he has 14 days to appeal this sentence. Time will begin to run when his counsel receives a copy of these written reasons.

DATED at Port Vila this 27th day of March, 2018.

BY THE COURT


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David Chetwynd
Judge

