

PUBLIC PROSECUTOR
v
NIGEL MORRISON

Before: *Justice Jeremy Doogue*

Counsel: *Mr. Ken Massing and Ms. Betina Ngwele for the State*
Mr. Saul C. Holt QC for the Defendant

SENTENCE
dated 26th September 2019

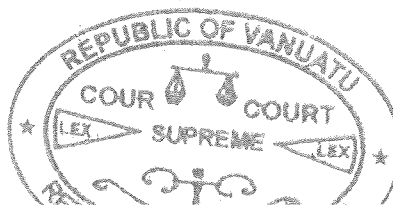
[1] Mr Nigel Morrison appears for sentence today following a finding by the Court that he was in breach of the Section 108(c) of the Penal Code. Essentially this offence involved causing the death of Christian Lacoste by the careless use of a motor vehicle. The facts which I have taken to be material will be identified in the reasons for the decision which will be issued in the near future. Essentially what happened though for the purpose of sentencing is that Mr Morrison turned into the opposing lane that the late Mr Lacoste was travelling down and as a result there was a crash.

[2] Mr Lacoste lost control of the motorcycle that he was riding. He flew/slid some 18 metres together with his motorcycle. He lay seriously injured off the side of the road until he could be taken to hospital. He later died in the evening of the same day with the cause of death being the shearing of his aorta which caused internal bleeding. Sadly, nothing could be done for him and his death was inevitable from the time of the crash.

[3] Mr Holt QC has correctly identified the type of balancing that a court is required to undertake when sentencing someone in a case of this kind. It is a type of case where technically a moment of inattention can cause catastrophic circumstances and a lifetime of suffering for the victim and family. Subsequent mention will be made of the effect that the death of Mr La Costa has had on his family.

[4] This case shows that it does not require a great deal of carelessness in order to result in very negative outcomes.

[5] The law has always recognised that when a penalty has to be imposed the degree of fault or carelessness culpability is an important matter that must be considered separately from the consequences. Consequences are also relevant and must be taken into account when sentencing.



[6] In this case it is my view that the culpability or fault while regrettable was not at the higher end. People who observe only one sentencing case are unlikely to appreciate the wide range of circumstances in which the courts are required to impose sentences on errant drivers. Some of these include cases where there has been an appalling degree of indifference by the driver or defendant to his responsibilities. In such a case a firm sentence is called for. In comparison with such cases where there may have been reckless driving accompanied by excessive speed, consumption of alcohol and other factors present, this case without in any way diminishing its significance is at the lower end of the scale and that is where the sentencing must start.

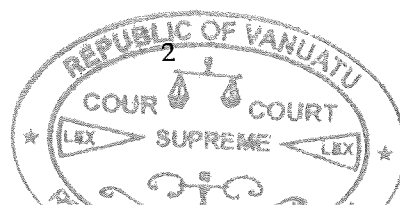
[7] Before I leave the brief discussion of the facts, I want to comment on the question of what if any contribution Mr Lacoste made. It was part of their defence that Mr Lacoste had been driving at a very high speed. In the end, as will become apparent for the reasons for judgment, I do not accept that that was a factor which played a great part in what happened. After all, even if you are travelling at a speed limit and a vehicle suddenly appears in your path in circumstances where you cannot stop, catastrophic consequences will follow in the form of a collision and a person being injured.

[8] In this case the Court as is customary is interested in the effect that the offending has had on the family of the victim Mr Lacoste.

[9] I will not read out in its entirety the letter that Sheberina Lacoste has written but it is a moving document it describes the effect on three generations of people, Mr Lacoste's elderly mother, Mrs Lacoste herself and the two girls aged 10 and 14 that he leaves behind. From all indications, it appears the children in particular were very close to their late father. The situation that Sabrina Lacoste in particular has been left in is quite unenviable.

[10] A balanced approach to sentencing must of course have regard to matters that can be placed before the Court that mitigates the case of the offender himself. First, I accept that his counsel has accurately relayed to the Court Mr Morrison's response to the question which was to the effect the day that this occurred was the worst day of his life. It is true that because of the path that he elected to take and which he was entitled to take of defending the charges, it may have seemed that the defendant was not respectful of the victim's family and remorseful but that is not necessarily so. I accept that he is remorseful of what has happened. At the same time because he decided to defend the charges he has, by taking that course, ruled out any possibility of a lessening or mitigation of his defence because of an early acceptance of guilt on his part.

[11] Mr Morrison's background is I have to say exemplary. He is 63 years old. He has lived in Vanuatu for 19 years. He has no previous convictions. He is a man who seems to be respected by his professional colleagues in the legal profession. He has made a high-level contribution to his profession through membership at Law Council and participation in



continuing legal education. He has also helped law students who I assume are young people who are studying law by taking part in moot trials in the University of the South Pacific. He has made substantial contributions of time and effort to the schools that, I understand, his children attended. He has done pro bono that is free legal work for people. He has also contributed significantly to the sport of cricket on Vanuatu.

[12] The sentence that the Court imposes is not something that the judge just feels like imposing regardless of sentences imposed in similar previous cases and cases in higher courts which provide guidance, including the Court of Appeal of Vanuatu on the approach to be taken.

[13] Potentially, there is a range of sentences in this case between 0 and 5 years of imprisonment available to the court under the Act. Obviously fixing the actual sentence that ought to be imposed in this case has to be done on a principled basis.

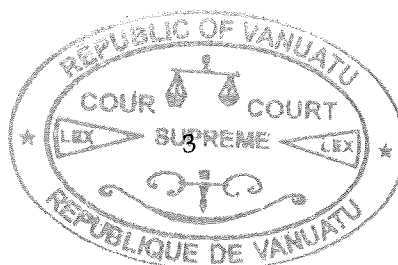
[14] Reference ought to be made to a case which included some observations on what the effect of sentence in a case like this. This was the decision of the Appeal Court in *Newell v PP*¹. The facts in *Newell* were rather different but what the court said in that case applies here:

“Dealing with cases of this sort creates some of the most difficult sentencing tasks in any court. This is a matter which in general conversation would be described as an accident. In the law’s terms it is a situation where death results from an unlawful act. That in law is not an accident but is unintentional harm causing death a criminal court in determining sentence on this sort of charge cannot put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court minimises the value of the life that has been taken. What the court is concerned to do is to assess the criminal culpability of the wrong doer”.

[15] One of the points that the court was making was that the constraints on the sentencing court when imposing penalty cannot properly be viewed as in any way minimising the value of the life of the person which was lost.

[16] I accept that in cases of this kind the Court of Appeal on Vanuatu has indicated a starting point in the region of 9 months imprisonment is a fairly typical approach to take. On the question of whether there should be an imprisonment sentence at all, the view of the court is that not for reasons of culpability on the part of Mr Morrison but in order to deter other people, there has to be a reasonably firm response by the courts when sentencing in cases of this kind.

¹ [1998] VUCA 2, a firearms case



[17] It is important to the community that offending which carries such potential high level of consequences must be marked for what it is, that is serious offending. In this case too, I consider it is appropriate to start with a term of imprisonment of 9 months.

[18] The court has power to suspend that sentence and it again following appellate court guidance would be normal for that to occur. In *Jenkinson v Public Prosecutor*, the court said:

"In the case of a first offender with a long history of good driving, good character, good employment record and involvement in community affairs, it is a very serious step to send that person to gaol. Suspension of the sentence, which allows the best opportunity for rehabilitation, will after be the appropriate course.


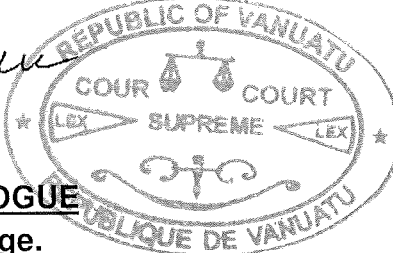
Serious driving offences causing personal injury or death will necessarily attract penalties that reflect a component of general deterrence. Such a purpose is not lost by the imposition of prison sentence that is suspended. The defendant who receives such a penalty still suffers the stigma of a prison sentence, and for the duration of the suspension is at risk of actual imprisonment should another offence occur".

[19] I consider that Mr Morrison's case falls within the ambit of those remarks.

[20] Having regard to matters of background I would subtract from the 9 months of imprisonment a figure of 3 months resulting in a 6 months term which will be suspended for a period of 12 months. I note that there is no cancellation of licence penalty available for reasons I have discussed with counsel I do not consider that an order for compensation should be made.

Dated at Port Vila, this 26th day of September, 2019.

BY THE COURT



J. DOOGUE
Judge.