

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

Criminal  
Case No. 19/1804 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Daniel Kierry  
Defendant

*Date:* 20 December 2019  
*Before:* Justice V.M. Trief  
*Counsel:* Public Prosecutor – Ms L. Lunabek  
Defendant – Mr H. Rantes

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**SENTENCE**

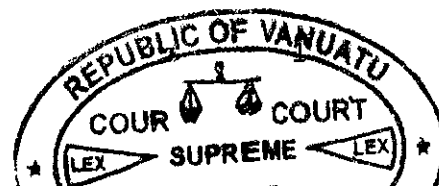
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A. Introduction

1. Mr Kierry pleaded Guilty ('I tru') to both counts in the Information and Brief of facts filed on 19 September 2019. The maximum sentence available for these offences is:
  - 1.1 5 years imprisonment for unintentional harm causing damage to the body of another person, through failure to observe any law, if the damage so caused results in death contrary to s. 108(c) of the *Penal Code* [CAP. 132]; and
  - 1.2 A fine not exceeding VT20,000 for driving a vehicle without a learner driver's licence contrary to subs. 47(1) of the *Road Traffic (Control) Act* [CAP. 29].

B. Facts

2. On 22 December 2018 Mr Kierry drove his white double cabin Toyota Hilux although he did not have either a learner driver's licence or a driving licence. He had three passengers sitting with him inside the truck, one of whom was the designated truck driver who had a driving licence. Mr Kierry's wife, their only child 6 year old Steven Daniel and two other children were sitting at the back of the truck.
3. They left Manvapan village, Tanna. At about 2pm the vehicle was going down a hill towards Sameria when Mr Kierry lost control of the vehicle. The vehicle slid across the road then fell off



the road about 3 metres down the hill. The vehicle rolled over and landed with its wheels facing upwards.

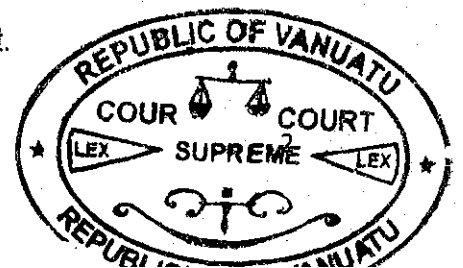
4. Mr Kierry's son was lying face down on the ground with blood running out from his ear, nose and mouth. When they checked him, they realised he was already dead.

C. Offending Starting Point

5. It is necessary to consider the culpability of the offending.
6. Mr Kierry chose to drive his vehicle when he did not have a learner driver's licence. The law requires that a person drive a motor vehicle only if they have a learner driver's licence or a driving licence. This was Mr Kierry's failure to observe the law. This requirement is in the law to ensure the safety of all passengers in a motor vehicle as well as other users of our roads. A driver's licence is a safeguard that the driver knows how to drive a vehicle and can do so safely and with care towards other road users.
7. Mr Kierry also chose to drive the vehicle full of passengers. He had passengers both inside the vehicle and outside on the back of the truck. The children, the most vulnerable of the group, sat outside. Finally, he chose to drive the truck even though the designated driver of the truck who had a driving licence was present.
8. The tragic outcome of Mr Kierry's choices was the accident that occurred and the loss of his and his wife's only child.
9. I consider that the aggravating factors set out above require a starting point of two and a half years' imprisonment.

D. Factors Relevant to the Offender

10. There are no aggravating factors personal to Mr Kierry.
11. In terms of mitigating factors, the pre-sentence report provided states that Mr Kierry shows remorse for his offending and is still having nightmares from his actions on 22 December 2018. Mr Kierry blames himself for his actions and regrets losing his only child. I cannot even begin to comprehend the effect that the loss of his only child at his own hands has had on Mr Kierry. The Court does not need to impose a deterrent sentence because Mr Kierry already understands the significance of what happened and will have the lifelong punishment of living with the fact that his actions caused the loss of his child's life.
12. Community leader Mr Joseph Noha confirmed that there has been a remorseful custom reconciliation between Mr Kierry and his wife for the loss of their child. Mr Kierry and his wife now have a month old baby boy, who they have in place of their lost one.
13. Mr Kierry is entitled to call upon the fact that he has no prior convictions and in Mr Noha's words, is a resourceful person in his community. He is described as a hard working member of his nakamal as well as playing a key role as a Presbyterian Church youth leader in his session. He has not breached any of his bail conditions. He is his family's main income earner.
14. Those factors warrant a deduction of 12 months from the starting point.



E. Deduction for Guilty Plea

15. The guilty plea was entered at the first opportunity. Mr Kierry is therefore entitled to the maximum discount available for a prompt plea of one third.

G. Sentence

16. Mr Kierry is sentenced to 12 months imprisonment as well as a VT20,000 fine for driving without holding a learner driver's licence.


H. Suspended Sentence

17. In view of the circumstances, and in particular the nature of the crime and Mr Kierry's character, I consider that it is not appropriate to make him suffer an immediate imprisonment. I order the suspension of the execution of the imprisonment sentence on the condition that Mr Kierry commits no further offence within the next 12 months.

18. Although Mr Kierry will not have to go into Correctional Services' custody today, I must warn him that if he commits an offence in the next 12 months and is convicted, that he will be required to serve this sentence of 12 months imprisonment in addition to any other penalty that may be imposed on him for the further offending.

19. Mr Kierry has 14 days to appeal his sentence if he so chooses.

DATED at Isangel, Tanna this 20<sup>th</sup> day of December 2019  
BY THE COURT

  
.....  
V.M. Trief  
Judge

