

BETWEEN: Public Prosecutor
Prosecutor

AND: Morris Charley
Accused

Dates: *Hearing: 5th day of February, 2019 at 9:00 AM;*
Decision: 1st of March 2019 at 11:00 am

Before: *Justice Stephen D. Felix*

In Attendance: *Ms. Bertha Pakoasongi for the*
Prosecution
Mr. Kylie B. Karu for the Defendant

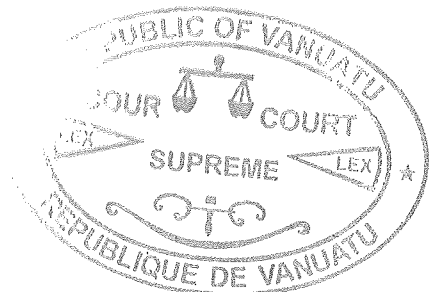
JUDGMENT

A. INTRODUCTION:

1. Mr. Morris Charley, you were originally charged with 1 count of 'Threats to Kill' and 2 counts of 'Intentional Assault' but the Prosecution has entered Nolle Prosequi for the 2 counts of Intentional Assault;
2. You pleaded 'Guilty' to one count of 'Threats to Kill' on the 5th of February 2019 and were convicted as charged under section 115 of the Penal Code Act;
3. 115. *Threats to kill person*

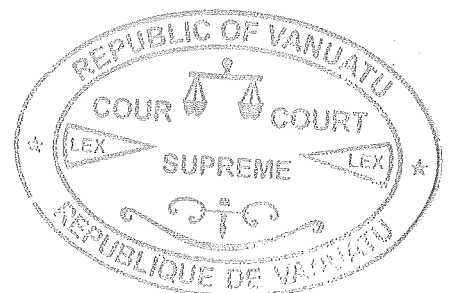
No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

Penalty: Imprisonment for 15 years.

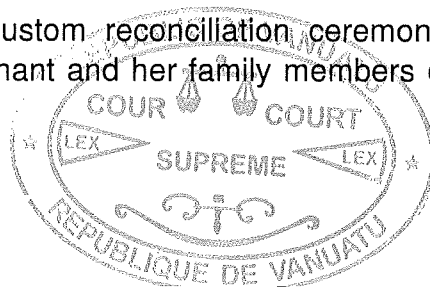


B. BRIEF OF FACTS:

4. Mr. Morris Charley, you are married and you have 5 children but, for about 7 years, you abandoned your family and went and settled with the complainant in a de-factor relationship;
5. During your time living together with the complainant, you often go back to visit your wife and your children and that has caused a lot of quarrels between the complainant and yourself.
6. In September 2018, the complainant decided and told you that your relationship with her should end and that you should return to your wife and children;
7. On the 27th of September 2018 at around 6 o'clock in the morning, you reacted, out of anger, to your partner's remarks, by going to her work place and conducted yourself violently towards her and you orally threatened her that you would kill her and that you would then commit suicide by hanging yourself.
8. The complainant's boss intervened and so you and the complainant ended up at the Police Station in around table meeting with police officer Rolline Pakoa.
9. During the meeting at the police station, you kept repeating that you would kill the complainant and then hang yourself; and that caused the complainant a lot of fear for her life.
10. You were then arrested and detained by the Police.

**C. DISCUSION : Submissions and Findings**

11. The offence of 'Threats to Kill' is considered to be a serious offence as reflected in the maximum penalty prescribed by Parliament but also as reflected in previous decisions of this court and also of the Court of Appeal as in Walker v Public Prosecutor [2007] VUCA 12:
12. I agree that cases of this nature warrant imprisonment sentence to reflect the seriousness of the offence.
13. And the offending by a Defendant while in possession of a weapon and the use of the weapon renders the offending more grave and serious.
14. In this present case and particularly this offending, there is no presence of any weapons except the oral threats expressed directly towards the complainant;
15. The threats were repeated more than 3 times and even in the presence of police officers at the Police Station;
16. That had caused the complainant real fear for her life because of the strong believe that you, as a mature male person, were not afraid of anyone including the police and that you were really serious about acting out what you had threatened the complainant, a defenseless woman, of doing to her.
17. In mitigation, the pre-sentence report compiled after interviewing yourself, your wife and the complainant or the victim, and after considering the submission by your lawyer, I take into consideration the followings as factors personal to you:
 - 1) You are 54 years old and married to Ms. Nettie Morris and father of a 5 children;
 - 2) You are a carpenter with good employment records and are currently working at Hide away Resort and providing for your wife and children;
 - 3) You have performed a custom reconciliation ceremony and apologized to the complainant and her family members on the



16th of November 2018 who accepted the apologies together with some mats, bananas and manioc and 50,000 Vatu Cash.

- 4) That reconciliation was confirmed by the complainant through the probation officer.
- 5) You have now returned to your family and are no longer living with the complainant.
- 6) You are a first time offender and generally a well-respected person in your community;

18. In line with reasoning of the Court of Appeal in Moli v Public Prosecutor [2011] VUCA 35, I will apply my mind to the sentencing options including a punishment alternative to imprisonment but also discounts from the starting point for the reconciliation ceremony, the expression of remorse and the time already spent in custody.

19. The prosecution and the defense counsel both submitted that, in addition to the discounts that may be awarded by the Court, a 1/3 deduction from the start sentence should also be made for the early guilty plea taken by you and that has saved a lot of the Court's time.

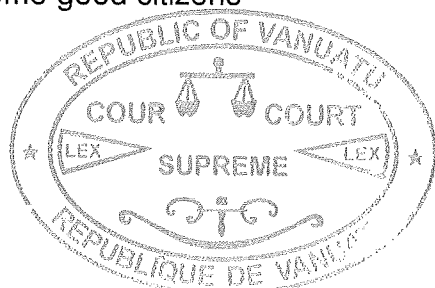
D. PURPOSE AND PRINCIPLES OF SENTENCING:

20. In the case of *PP v Kalosil and Others* [2015] VUSC 149, the Court in that case has set out the purpose of sentencing as to punish and to hold the offender accountable for the harm done to the complainant and also to the community;

21. It is also to deter other members of the community; to send a clear message condoning a particular conduct as unacceptable in the society and also protecting other innocent members of the society;

22. It is also to serve as retribution and to ensure that the punishment must fit the crime;

23. It is also to correct and rehabilitate the offenders to try and change their ways and behaviours and to become good citizens



E. STARTING POINT:

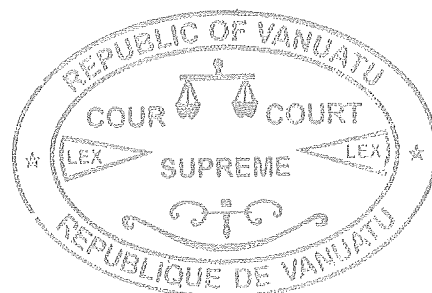
24. In line with the principles of PP v Andy, and in consideration of the seriousness of the offence and the aggravating factors of the offending, I am fixing the starting point for this case at 24 months imprisonment.
25. From the 24 months, I give 12 months discount for the custom reconciliation, 2 weeks discount for time already spent in custody and 8 months discount for the early guilty plea leaving an end sentence of 3 months and 2 weeks imprisonment.

F. CONCLUSION

26. I am therefore sentencing you to a term of 3 months and 2 weeks imprisonment.

Suspension:

27. Section 57(1) of the Penal Code Act requires the Court to consider whether the end sentence imposed should be served immediately or suspended ;
28. In my analysis of the circumstances in this case, there are compelling reasons which allows me to suspend the immediate execution of the sentence of 3 months and 2 weeks imprisonment for a period of 1 year from the date of this decision.
29. Mr Morris Charley, you must not re-offend within the next 1 year or you may be called upon to be dealt with for the new offence and to serve the 3 months and 2 weeks in prison.

**Community Work**

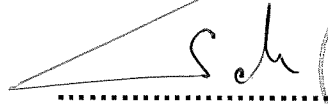
30. I have also applied my mind on alternative sentences to imprisonment such as community work and supervision and consider community work to be relevant to your situation.

31. You will, therefore, during your period of suspension, perform community work for 20 hours.

You have 14 days to Appeal.

DATED at Port Vila this 1st day of March 2019.

BY THE COURT



Stephen D. Felix
Judge

