

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal
Case No. 18/3197 SC/CRML

PUBLIC PROSECUTOR

V.

ROGER DAVID

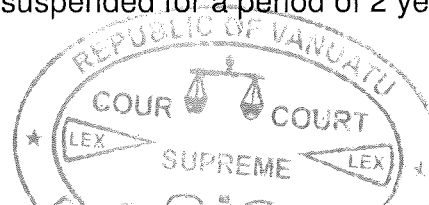
Coram: *Justice D. V. Fatiaki*

Counsel: *Ms. M. Tasso for the State
Mr. H. Vira for the Defendant*

Date of Sentence: *8 February 2019*

SENTENCE

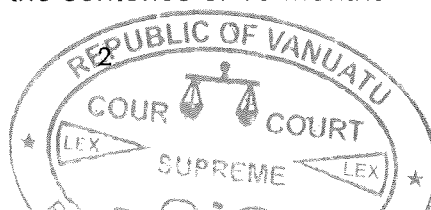
1. On 11th December 2018, the defendant appeared before the Court charged on an Information that contained 4 counts. Counts 1 and 2 charged offences of Threats to Kill and Mistreatment of an Animal that occurred almost 2 weeks before the offences in Counts 3 and 4. After discussions with prosecuting counsel about the applicability of Section 72(1) of the Criminal Procedure Code, Counts 1 and 2 were ordered to be severed and tried separately from Counts 3 and 4.
2. On 12 December 2018 the defendant pleaded guilty to a single count of Act of Indecency which arose as follows: On 18 October 2018 the defendant who was fully intoxicated was arrested and taken to the Police Station and locked up in Cell No. 6. Whilst in the cell the defendant undressed and exposed his naked penis to the complainant police officers who were on duty at the relevant time. The defendant was convicted.
3. Roger David your offence is certainly not the worst possible offence of its kind. It involved no physical contact and you were separated from the complainant by cell iron bars. Your offence is likely to have lasted for a short time and was directed at police officers who probably encounter more offensive and worse sights in the line of duty.
4. Having said that, this Court cannot ignore the fact that an offence of Act of Indecency carries a maximum penalty of 7 years imprisonment and is considered a serious offence. More relevantly and a serious aggravating feature, is the fact that barely 2 months earlier, this Court imposed on you on 10 August 2018, a 10 months imprisonment sentence suspended for a period of 2 years.



5. The offences for which that suspended sentence was imposed included an offence of Obstructing a Police Officer in the course of performing his duty in locking you up in a police cell. The suspended prison sentence had just started when you re-offended on 18 October 2018 barely 2 months after the sentence was imposed and after you were clearly warned by this Court at the time of imposing the suspended sentence, that any re-offending could result in you have to serve the sentence of 10 months imprisonment imposed in August 2018 (see: Public Prosecutor v Roger David [2018] VUSC 230 para. 9 esp.).
6. Defence counsel concedes the aggravating feature as well as the defendant's personal issues with controlling his temper as well as his violent tendencies and indiscipline. The defendant's attendance to the additional supervision sentence that was ordered in August 2018 is described as: "... very poor as he is hardly at home ...". For the present offence of Act of Indecency defence counsel suggests a starting point of 6 months and an end sentence of 4 months to serve. As for the defendant's suspended sentence counsel urges a further suspension for another 2 years. I disagree.
7. Prosecuting counsel for her part correctly writes:

"The offender committed serious offences against a police officer and was sentenced on 10 August 2018 for those offences. The seriousness was marked with a sentence of imprisonment, however, your Lordship gave the offender the opportunity to serve that sentence in the community and attend supervision so that he could rehabilitate. The offender has not taken that opportunity, and by reoffending he faces the imposition of the original sentence. The prosecution submission is that the original offending was serious and targeted towards police officers, the reoffending was less serious, but again targeted towards police officers. For this reasons, we submit that the sentence needs to generally deter others from committing offences against police."

8. The Court notes that both counsels appear to be of the view that the defendant's original suspended sentence was a sentence of 2 years imprisonment. That is incorrect, the 2 years refers to the length of the period of suspension imposed by the Court. The actual sentence was one of 10 months imprisonment.
9. Having said that, in the absence of any cogent reason(s) advanced by defence counsel which have arisen since the suspended sentence was imposed including the circumstances of the defendant's further offending which is not dissimilar to the earlier offending that gave rise to the defendant's suspended sentence, I can see no good reason not to activate the suspended sentence in full without the further possibility of a suspension.
10. Accordingly the defendant's suspended sentence is activated in full and the defendant is ordered to serve the sentence of 10 months imprisonment. For his




latest offending, I impose an additional consecutive term of 4 months imprisonment giving a total end sentence for the defendant to serve of:
(10 + 4) = 14 months imprisonment with immediate effect.

11. The defendant is also ordered to serve a sentence of Supervision for a period of 12 months and to undertake and complete any spiritual counselling and anger management programs as directed by a probation officer.
12. Defendant is advised of his right to appeal this sentence if he does not agree with it.

DATED at Port Vila, this 8th day of February, 2019.

BY THE COURT


D. V. FATIAKI
Judge.

