

BETWEEN: Public Prosecutor

AND: Lorry Kelpet
Defendant

Date: 16 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr T. Garae for Public Prosecutor (absent)
Mr L. Moli for the Defendant

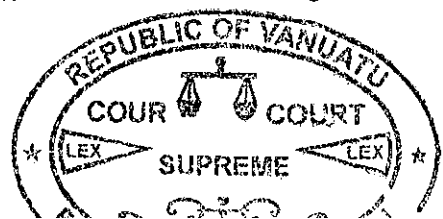
SENTENCE

A. Introduction

1. Mr Kelpet has pleaded guilty and accepted the summary of facts relating a charge of unintentional harm causing death. The maximum sentence for such offending is a term of 5 years imprisonment.

B. Facts

2. On 10 November 2019, Mr Kelpet had been working since 3am, baking bread. He ended up taking a delivery of bread to the Tebakor area at some time between 3 and 4 pm . To get there he drove a white Toyota mini-van down from Colladeau towards the USP roundabout. The summary of facts states that his vehicle then hit a pedestrian refuge island, which caused the vehicle to transgress onto the wrong side of the road. It remained on the wrong side of the road, as it proceeded down the hill towards Rania Store and eventually crashed through a light metal fence and into the Computer World building.
3. At the time of the accident, there were 2 other passengers in the mini-van, Mr Kelpet's 45 year old wife and his 1 year old grandson. Both were in the front seat beside Mr Kelpet, unrestrained. Both passengers must have been flung forwards upon the vehicle colliding with, and coming to a stop against, the Computer World store. The passengers both suffered skull fractures, and upon their being taken shortly afterwards to Port Vila Central Hospital, both were pronounced dead on arrival.
4. The minivan was said to be in good roadworthy condition two days prior to this event, by a witness who had driven the vehicle. The vehicle was examined after the accident by the Chief Mechanic of Wong's Garage Co and he stated that the hand and foot brakes were working well.



C. Aggravating Factors of the Offending

5. There are aggravating factors to the offending:

- Mr Kelpet knowingly drove when exhausted;
- He drove with both front seat passengers unrestrained – the obligation is on the driver to ensure that his/her passengers are safe. He should have insisted that both passengers do up their seat belts. Given the young age of the child, the safe place for him to be seated was not in the front seat – again the driver is obliged to seat his passengers where they can remain safe; and
- The accident caused the loss of more than one life, and in the case of the grandson, a life with a considerable future to look forward to.

D. Mitigating Factors of the Offending

6. There are none.

E. Start Point

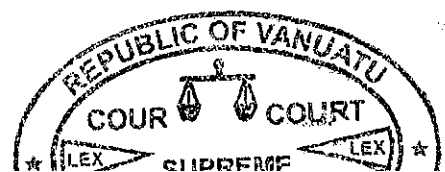
7. I set the start point for this offending, as required to be identified by *PP v Andy* [2011] 14, at 2 years 6 months imprisonment. I do so not due to the awful consequences of the offending, but taking into the criminal culpability of Mr Kelpet's conduct when considering the maximum sentence available and other similar cases.

F. Personal Factors

8. Mr Kelpet is now single, 43 years of age. He has 4 adult children, one of whom was mother of the deceased grandchild. He has lost his employment as a result of this offending. He has also of course lost his life partner and a no doubt cherished grandson. He has no previous criminal or traffic convictions, and not surprisingly Mr Kelpet is extremely remorseful over what has transpired.
9. I do not accept Mr Kelpet's explanation that his brakes failed. Not only does that contradict what other witnesses establish, but that explanation does not satisfactorily fit with the long distance travelled on the incorrect side of the road with seemingly no attempt to return to the correct side of the road. It is in my view, more likely than not, that Mr Kelpet simply fell asleep and the vehicle just continued on it's line until crashing into the Computer World store.
10. A custom reconciliation ceremony has been undertaken. Despite complaints by some members of the family, the photographs presented indicate this was a valid reconciliation ceremony, and appears to have been accepted as such by those in the photos. I note that a total value of almost VT 800,000 was offered and accepted.
11. For his personal factors Mr Kelpet is entitled to a reduction from the sentence start point of 9 months.
12. The final matter of mitigation is Mr Kelpet's guilty plea. I regard that as an indication of his remorse and his acceptance of wrong-doing. He has, by entering the plea when he did, spared the family of a long drawn-out Court process. In the circumstances, I am prepared to further reduce the start point by the maximum available in Vanuatu of one-third of the sentence to take into account Mr Kelpet's early plea.

G. End Sentence

13. Taking all of those matters into account, the end sentence that must be imposed is one of 14 months imprisonment.



H. Suspension

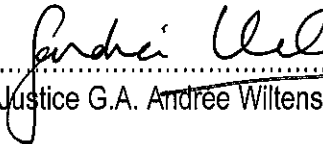
14. Mr Kelpet has no previous convictions. He has indicated his acceptance of his wrong-doing by pleading guilty at the earliest opportunity. He will live with the horrendous consequences of his actions for the remainder of his life. In the circumstances there is no need for an immediate imprisonment sentence – that will achieve nothing for him or the community. I note that a suspended sentence still carries with it an element of deterrence, which is necessary for this type of offending.
15. Accordingly I am prepared to exercise my discretion and suspend the entire sentence for a period of 2 years. Mr Kelpet needs to understand that this means the matter is not yet at end even though he will not be sent to prison at present. He needs to remain offence-free for 2 years. If he does, then this sentence will be at an end. If he does not, he may be sentenced for this offending as well as his other matter(s).

I. Other

16. Mr Kelpet has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 16th day of March 2020

BY THE COURT


Justice G.A. Andree Wiltens

