

BETWEEN: Public Prosecutor

AND: Jimmy (Sawan) Napau
Defendant

Date: 26 November 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr G. Simeon Public Prosecutor
Ms K. Karu for the Defendant

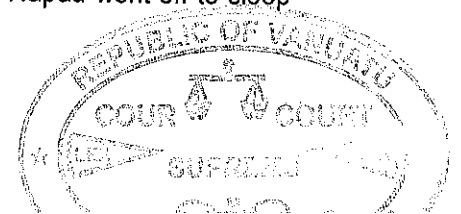
Sentence

A. Introduction

1. Mr Napau pleaded guilty to domestic violence (x 5). Charges 4, 6, 7 and 9 were dismissed following an oral nolle prosequi application being granted.

B. Facts

2. Mr Napa has been residing with his de facto partner, Sharon, at Blacksands area for the past 2 years. They co-habited also in 2009 to 2011, before parting ways.
3. In January 2021, they went together into Port Vila to do some shopping. Sharon was pregnant at the time and she bought a dish for washing, and he bought a bottle of beer. In the bus on their way back home, there was an argument, as Mr Napau had wanted to have sufficient money to buy 2 bottles of beer, which was not possible due to the purchase of the dish. When they reached home, the argument escalated to the point where Mr Napau used his beer bottle to strike Sharon in the face, breaking the bottle and causing bleeding. [Charge 1]
4. Not content with his first blow, Mr Napau took up a bush knife which he used to cut Sharon's right eyebrow and her right shoulder. This caused heavy bleeding, but Mr Napau went off to sleep

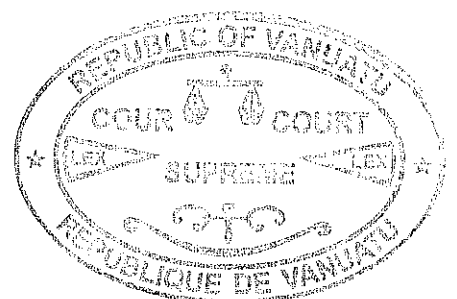


regardless. Fortunately, a relative of Sharon's noticed her predicament and took her to hospital. [Charge 2]

5. In June 2021, when 6 months or so pregnant, Sharon told Mr Napa that the next day she intended to go to Freshwota and ask a relative for money so she could pay for her next check-up. Mr Napau told Sharon that if she did go out as intended, she would not be permitted back home. Sharon responded that in fact he should be the one to leave. Mr Napau responded by striking Sharon's back numerous times, while scolding her. Sharon got up to go outside, but fainted. A neighbour saw her safely to hospital with the aide of Pro-Medical. [Charge 3]
6. On 19 August 2021, at 3am, Mr Napau returned home drunk. When he woke up in the morning he asked Sharon for sex, which she declined as she was heavily pregnant. Mr Napau then squeezed her neck to the point that she could no longer breathe. [Charge 5]
7. Sharon was medically examined on 23 August 2021. She was found to have a bruise at her right eye and a healing abrasion to the left side of her neck. I note that defence counsel belittles these injuries, but the PSR writer could clearly see the scars of the injuries occasioned to Sharon's eye and hand.
8. In the period that Sharon and Mr Napau were estranged, Mr Napau took up residence with Colette. In February 2020, Colette went with other women to wash clothes in a river. She later changed and covered herself with some Calico. This upset Mr Napau, who accused her of having poor dress sense. In the heat of the ensuing argument, he said to her "Yu luk hand blong mi ia sipos mi kilim neck blong yu ia wetem bae mi brekem". This terrified Colette, due to her previous experiences of violence at the hands of Mr Napau. [Charge 8]
9. On 10 February 2020, the Magistrate's Court issued a Protection Order against Mr Napau in favour of Collete. On 19 August 2021, the Magistrate's Court also issued a Protection order against Mr Napau in favour of Sharon.

C. Sentence Start Point

10. The sentence start point is to assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
11. The maximum sentence for domestic violence is 5 years imprisonment.
12. There are no mitigating aspects to the offending. However, there are aggravating factors, including the following:
 - There is a breach of trust involved in all 5 instances, with violence directed at his de facto partner, some of it at her home where she should feel safe;
 - The offending is of a repeat nature and involving two complainants;
 - The use of a weapon, aimed at the most vulnerable part of the body, namely the head, and administered while Sharon was pregnant; and
 - Mr Napau's controlling behaviour.



13. I adopt a sentence start point of 3 years 6 months imprisonment, on a global concurrent basis taking into account the number of offences and their seriousness.

D. Mitigation

14. Mr Napau pleaded guilty at the earliest opportunity. However, the evidence against him was strong. The injuries caused to Sharon are supported by other witnesses observing Mr Napau assaulting her. In the circumstances, I am prepared to reduce the sentence start point for the prompt pleas by 25%.

15. Mr Napau is now 34 years old. He is the sole breadwinner for the family, with experience in security work.

16. Mr Napau states he has performed a customary reconciliation ceremony with Sharon's family and his own family. The reconciliation that most concerns the Court is when such a ceremony involves the complainant and where the gifts and apology are accepted. Sharon has confirmed this to the PSR writer.

17. While in custody due to his conduct, Sharon gave birth to twins, one of whom unfortunately died the next day. Mr Napau claims to be affected by this tragedy. However, that is not mitigation. He was in custody due to his own acts, and for the safety of others in the community, especially his current partner. He does now have responsibilities towards his new son, and to a child from a previous relationship.

18. He attributes his conduct to his excessive consumption of alcohol, but that is not mitigation. Mr Napau states that he is remorseful, but given the number of violent offences he has been involved in, that is not accepted. He has had previous opportunities to address his issues, but he continues to offend.

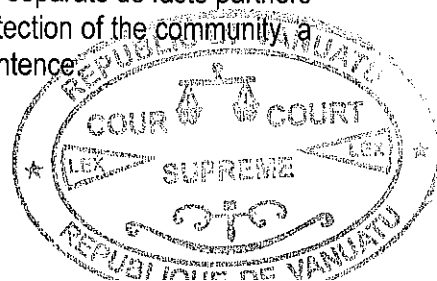
19. For his personal factors, I reduce the sentence start point by 5 months.

20. Mr Napau has previous convictions. In 2017, he pleaded guilty to intentional assaults (x2) and threat to kill. The complainant of that case was his then de facto partner, whom he attempted to cut with a knife, kicked her to her left ear, threw objects at her and struck her in the face causing bleeding. He also whipped her with a sugarcane trunk, while telling her that he would end her life. He attributed his acts to his inebriation. He received an end sentence of 2 years imprisonment. In 2020, under a different name, he pleaded guilty to a further intentional assault and was fined. To reflect these previous convictions, an uplift is required to the sentence start point of 8 months.

E. End Sentence

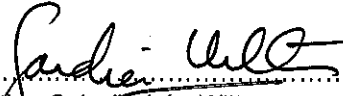
21. The end sentence I impose is 2 years 10 months imprisonment. I impose that on all charges concurrently. Mr Napau has already spent time in custody. Accordingly, the sentence is to commence as from 22 October 2021.

22. The Court has the ability to suspend all/part of the sentence in certain circumstances. I consider that to be inappropriate in this case. The Court is aware now of three separate de facto partners who have had to endure violence at Mr Napau's hands. For the protection of the community, a deterrent sentence is warranted. There is to be no suspension of sentence.



23. Mr Napau has 14 days to appeal the sentence.

Dated at Port Vila this 26th day of November 2021
BY THE COURT


Justice G.A. Andrée Wiltens

