

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

Criminal
Case No. 23/1030 SC/CRML

BETWEEN: Public Prosecutor

AND: Iven Kapalu

Coram: Justice Aru
Counsel: Mr. C. Shem for the Public Prosecutor
Mr. H. Rantes for the Defendant

SENTENCE

Introduction

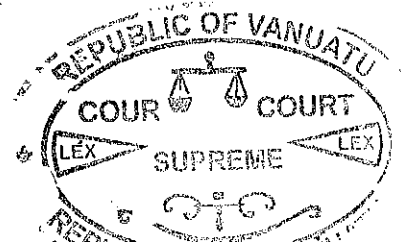
1. The defendant pleaded guilty to one count of reckless driving (count 1) and one count of unintentional harm causing permanent injury (count 2). He is now appearing for sentencing.

Facts

2. On 22nd December 2021 around midday, the defendant was driving a white lorry when the incident occurred. The victim at the relevant time was standing by the roadside talking to a Joel Kamisak. The defendant drove his lorry at great speed and as a result he ended up hitting them both on the side of the road. The victim's body was dragged by the vehicle for some distance as far as JB store before stopping.
3. The victim sustained injuries which resulted in him being flown to Port Vila for treatment at the Vila Central Hospital. His medical report revealed injuries to his left thigh/posterior knee, lacerations of the knee at 10 to 12 com and lower back pain.
4. The defendant admitted driving the lorry carrying 2 cubic metres of sand and was trying to avoid hitting a bus when he drove into the road side hitting the victim.

Start point

5. The maximum sentence available for reckless driving is a fine not exceeding VT100,000 or imprisonment not exceeding 1 year or to both. For intentional harm causing damage of a permanent nature the maximum sentence is imprisonment for 2 years.



6. Aggravating factors of the offending are that the defendant was driving at great speed with a heavy load, he did not keep a proper look out for other road users and the victim suffered permanent injuries to his body. Taking unintentional harm causing damage of a permanent nature as the lead offence, I set the sentence start point on a global basis at 18 months imprisonment.

Mitigation

7. A same day report was filed on behalf of the defendant. The report gives the following details about the defendant. He is 31 years old and is married with one child and is now a father of a 5 days old baby as well. He is a first-time offender. He completed his education at the primary school level. He is an active member of his community and assists with community activities. He earns his living as a public transport driver to support his family. Taking the above factors into account the sentence start point is reduced by 6 months.
8. The defendant pleaded guilty to the charges as a sign of remorse therefore the sentence start point will be discounted by one third.

End Sentence

9. The defendant is therefore sentenced to an end sentence rounded of to 8 months imprisonment. For reckless driving the defendant is sentenced to 3 months imprisonment to be served concurrently. The sentence is suspended for a period of 2 years and in addition the defendant will perform 200 hours of community work.
10. The defendant has 14 days to appeal if he is not satisfied with the sentence.

DATED at Isangel Tanna this 14th day of July, 2023

BY THE COURT

**D. Aru
Judge**

