

PUBLIC PROSECUTOR v ERICK ANTONIO MASSINGIOW

Before: Chief Justice V. Lunabek

Appearances: Mr D Boe for the State
Ms L Bakokoto for the Defendant

Date of Plea: 24 April 2023

Date of Sentence: 5 May 2023

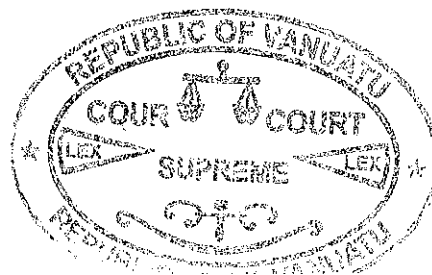
SENTENCE

A. Introduction

1. Erick Antonio Massingiw, you appear today for sentence. On 24 April 2023, you pleaded guilty on two counts of unintentional harm causing death and one count of unintentional harm causing permanent injuries, contrary to Sections 108(d) (Counts 1 and 2) and 108(c) (Count 5) of Penal Code, respectively.
2. You were discharged for two counts of causing death by reckless driving under Section 12 (Counts 3 and 4) and driving under the influence of alcohol drink (Count 6) of the Road Traffic (Control) Act [CAP. 29] as a result of the prosecution application pursuant to Section 29 of the Criminal Procedure Code [CAP. 135].

B. Facts

3. On 11 November 2022, you were driving a red kia morning registration number 10695 and you collided with a grey Chevrolet car registration number 9780 which was stopped on the side of the road. There were 3 passengers inside your vehicle at that time.
4. You drove from Matevulu village back to Luganville. You unintentionally collided your car with another car on the side of the road. You also unintentionally caused a road accident. Three passengers sustained some very serious injury on their bodies.



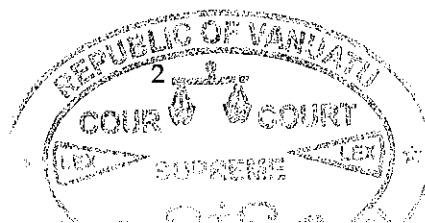
5. The three passengers were taken to the hospital on the same day and two (2) of the passengers namely Madlen Jackson and Samuel Riri were later pronounced dead on the 12th of November 2022 at the Northern Hospital as a result of the accident.
6. One of the passengers had a permanent injury on his body and particularly on his right leg. The injury was an unintentional as a result of the traffic accident caused by you.
7. You participated in a recorded interview and you admitted that you were the driver of the truck at the time of the accident. You also admitted that you were driving at a very high speed.
8. You were arrested and were remanded in custody until sentenced today.

C. Sentence Start Point

9. The offence of unintentional harm resulting in death of a person carries a maximum sentence of 5 years imprisonment. The offence of unintentional harm causing damage of a permanent nature carries a maximum penalty for 2 years.
10. The following aggravated features exist in this case:
 - (i) You were reckless in your driving on 11 November 2022;
 - (ii) You were travelling at the very high speed;
 - (iii) There was more than one victim as a result of your reckless driving.
11. You have a previous conviction in 2015 for driving without driving licence and you were sentenced to pay fine. I treat it as the personal factor to the offending.
12. The start sentence point for unintentional harm resulting in death is 4 years imprisonment on each of the two counts concurrently. I set 24 months for unintentional harm causing permanent injury to run concurrently with the 4 years imprisonment for unintentional harm resulting in death. Your start point sentence for the offending is 4 years imprisonment.

D. Mitigating Factors

13. Mr Erick Antonio Massingiw, you are 33 years old. You committed these offences when you were 32 years of age. You are from South West of Santo. You reside as Side River with your uncle Eli John.
14. You were a senior public servant from 2013 to November 2022. You worked with Ports and Marine in Luganville as a senior administration officer in the Shipping Support Unit.
15. You are a Year 10 school leaver. You completed your education with short courses in trade-commerce, finance, management, accounting, software in Microsoft and excel and information and technology.



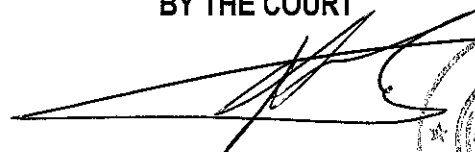
16. With your work and experience you support your children and your families. You have good relationship with your wife and children. You support also your community and your local church activities. I allow 3 months deduction from your sentence start point to reflect this.
17. You pleaded guilty at the earliest opportunity given to you by the authorities. You are entitled on 33% reduction from the start point.

E. End Sentence

18. Your end sentence is 2 years and 2 months imprisonment.
19. You were remanded in custody on 14 November 2022 until sentenced today. You have already spent 173 days which is an effective sentence of 10 months imprisonment. Your pre-custodial period will be taken into account in your favour by backdating the effective date your imprisonment sentence starts.
20. You are therefore sentenced to 2 years and 2 months imprisonment which shall be deemed to commence on 14 November 2022 to take into account of the days you have already spent in custody.
21. I consider the nature and seriousness of the offending and your person circumstances, they do not justify a suspension of your term of imprisonment for 2 years and 2 months.
22. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

Dated at Luganville, Santo, this 5th day of May 2023

BY THE COURT



Chief Justice V. Lunabek

