

PUBLIC PROSECUTOR

v

BEN AITIP VIOMBONG

Defendant

Coram: *Justice Oliver A. Saksak*

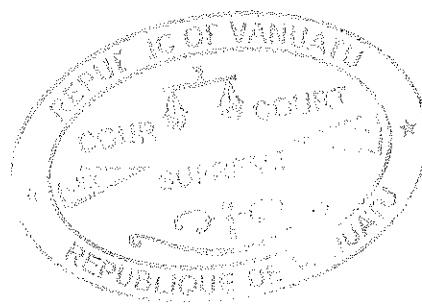
Counsel: *Ms Laura Lunabek for Public Prosecutor*
Mr Steven Garae for Defendant

Dates of Plea: *17TH July 2024*

Date of Sentence: *23rd July 2024*

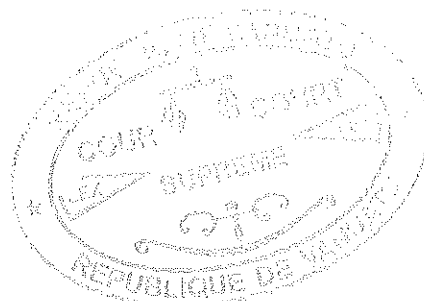
SENTENCE

1. Ben Aitip Viombong pleaded guilty to one charge of threats to kill, section 115 PCA (Count 1), to two charges of domestic violence, sections 4 (1) (a) and 10 (1) Family Protection Act 2008 (Counts 2 and 4), and to one charge of Obstructing Police Officers, section 73A PCA [Cap.135], (Count 3). And he is for sentence today.
2. The Court convicts and sentences him on his own guilty pleas.
3. The facts are that on 3rd March 2023 at around 10:30 hours the defendant whilst drunk went to his nephew's house with a bush knife and a piece of wood. He then called to George to come outside and uttered these words in Bislama "Yu kam aotside bai mi katem yu long doa ia". This is the subject of the threats to kill charge in Count 1.
4. For domestic violence, Count 2 the victim was the defendant's sister Angella Vimbond, a widow with 5 children. On 10 January 2024 at around 10:00am she and her mother were preparing laplap when the defendant returned home with some shrimps from the river and wanted to cook them. The

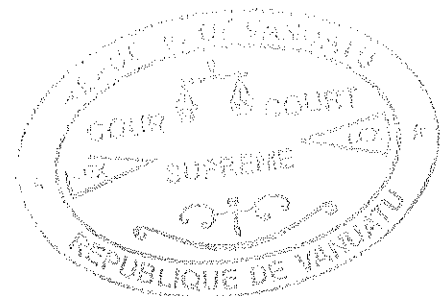


victim's son (nephew) went along to see the defendant (uncle) who smacked his buttocks with a piece of wood. The boy's mother (victim) ran to enquire as to what happened when the defendant ran towards them and chased after them. The complainant and her little boy fell down and the defendant kicked her on her head many times causing her left eye and left ear to bleed. She cried but the defendant continued to assault her by kicking her. She then pushed him and ran away.

5. In respect of the charges in Counts 3 and 4 the offences happened on 1st October 2023 around midday. The victim, Magrena Vimbond was sleeping in the house with her mother in another room, she heard the defendant asking about his cannabis plants which someone had interfered with. The defendant was angry about this and he took a cocoa branch and hit Magrena Viombong with it on the shoulders, her right hand and left back and the back of her head. This caused dizziness on the victim who felt numbness to her right hand. She cried as she laid on her bed. The assault caused her to urinate on her bed. The defendant then entered his mother's room with a knife.
6. The Police were called up to the scene. The Police arrived and were told the defendant had a knife with him. Two police officers approached the defendant who had a knife on him. They over powered him and removed the knife from him. He tried to use the knife to cut the Police officers but they managed to hold him down, removed the knife, arrested him and took him to the Police Station and detained him.
7. The Police interviewed the defendant under caution on 18 January 2023, and on 4th and 9th October 2023 about all these offences. The defendant admitted committing all these offences.
8. The reason he was so angry was that Magrena had removed his cannabis plants which he had planted. This made him so mad, he assaulted his sister and wanted to cut off the head of his mother and Hellen's with the knife
9. The reasons he gave for his actions are not mitigating circumstances. The facts indicate the following aggravating features:



- a) A serious breach of trust. His mother, sister and nephew were the direct victims of his actions. He owes them a duty of care and love, but it appears he loves his cannabis plants more than his relatives.
 - b) The threats made to the mother and sister were serious threats to cut their heads off.
 - c) A weapon (a knife) was used to threaten the relatives and the Police.
 - d) The offences were committed within the confines of the family home where the relatives were supposed to feel safe.
 - e) The actions were repetitive and on different dates.
 - f) There appears to be no remorse for his unlawful actions.
10. In assessing appropriate punishment I have seen the submissions by defence Counsel who referred to the cases of PP v Malsrake [2024] VUSC 343, PP v Sine [2020] VUSC 229 and PP v Wuis Willie Crc 22/2119 VUSC. The facts and circumstances in those cases were different from the facts and circumstances in this case.
11. I have also noted the cases referred to by the Prosecutions which are PP v Nakou [2021] VUSC 319, PP v Tula [2023] VUSC 161, PP v Iatu [2023] VUSC 71 and PP v David [2018] VUSC 230. All these cases too are quite different in their facts and circumstances.
12. From a number of cases the Court has had to deal with this week, the Court is seeing a new trend and level of offendings involving assaults and domestic violence which are aggravated and closely associated with the possession and cultivation of cannabis plants and substances. This new trend in my view now warrants the imposition of custodial sentences without suspension with community work sentence and supervision, if sentences are continued to be seen as a deterrence, preventative and protective measure and a mark of public disapproval.
13. For those reasons I now sentence the defendant to a custodial sentence as follows:-
- a) For Threats to kill- Count 1- A sentence of 2 years imprisonment consecutive.
 - b) For domestic violence – Count 2- A sentence of 1-year imprisonment concurrent with the sentence for Count 4.



- c) For domestic violence – Count 4 a sentence of 2 years imprisonment concurrent with the sentence for Count 2.
 - d) For obstructing Police Officers- Count 3, a sentence of 2 years imprisonment concurrent with the sentences for Counts 2 and 4.
14. The total sentence of the defendant shall be 4 years imprisonment without suspension.
15. In mitigation I consider first his guilty pleas on 17 July 2024 for which the full 1/3 is allowed. The balance of the sentence is 2 years and 8 months.
16. Next, I consider his clean past record and other personal factors, I reduce the balance of his sentence by 5 months. That leaves his end sentence to be 2 years and 3 months.
17. Next, I note that the defendant has already spent some 175 days since 31 January 2024 when he was first remanded in custody. I order that the sentence of 2 years and 3 months be backdated to 31 January 2024.
18. That is the sentence of the Court for the defendant. He has a right of appeal against this sentence within 14 days if he so chooses.

DATED at Luganville this 23rd day of July 2024

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

