

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

**Criminal**  
**Case No. 24/1345 SC/CRML**

**PUBLIC PROSECUTOR**

**V**

**ARTHUR GARAE**

*Date of Plea:* 17 June 2024  
*Date of Sentence:* 12 September 2024  
*Before:* Justice M A MacKenzie  
*Counsel:* Public Prosecutor – Mr L Young  
Defendant – Ms A Yeeon (holding papers for Ms B Taleo)

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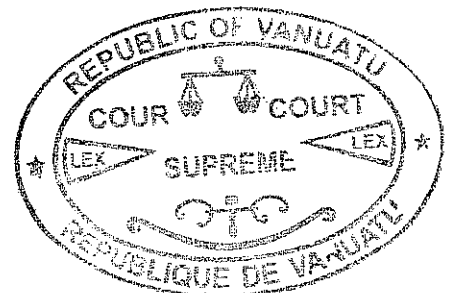
**SENTENCE**

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1. Mr Garae, you appear for sentence in relation to a charge of intentional assault causing permanent injury.
2. The maximum penalty for the offence under section 107( c ) of the Penal Code [CAP135] is 10 years imprisonment.

**The Facts**

3. At about midnight on 28 May 2021, the victim was walking along a road at Stonehill on Santo. He saw some people getting into a fight with his friends. These people were intoxicated. The victim told the people to stop the fight, and everyone dispersed.
4. While the victim was still walking along the road, the intoxicated people returned. The victim's friends became involved in a further altercation, but the victim remained a by stander.



5. Your father approached the victim and pushed him to the ground and squeezed his neck. You then joined in. You kicked the victim's jaw. At the time you were wearing steel capped boots. The kick rendered him unconscious. The victim was medically examined in hospital. He had a fractured jaw.
6. When spoken to by police, you made admissions to the offending.

### **Sentencing purposes/principles**

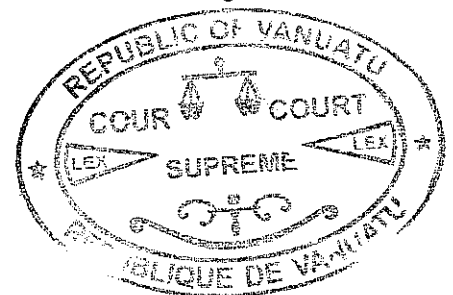
7. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

### **Approach to sentence**

8. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### **Starting point**

9. The first step is to set a starting point, taking into account the aggravating factors and with reference to the maximum penalty for the offence.
10. The aggravating factors are:
  - a. The victim was vulnerable because he was on the ground after having been assaulted by your father.
  - b. There was an attack to the head. You kicked the victim in the jaw.
  - c. The fact of a permanent injury is inherent in the charge but the extent of the injuries reflect what must have been considerable force used. First, he was rendered unconscious and second, he sustained a fractured jaw.
  - d. You were wearing steel capped boots at the time. That is similar to using a weapon to inflict injury.
  - e. It was gratuitous violence because of a perceived wrong by the victim.
11. There are no mitigating features of the offending itself. I do not accept that you were provoked. S27 of the Penal Code addresses provocation. Provocation is something that

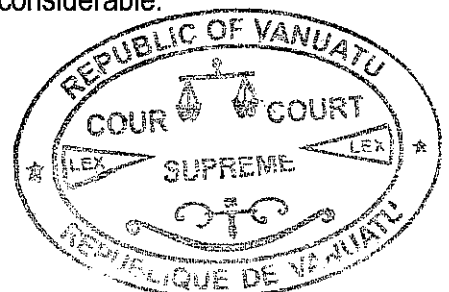


can affect a starting point. However, there can be no reduction to the starting point for the following reasons;

- a. There is no reference in the summary of facts to the victim being drunk, causing a disturbance and making offensive comments, as detailed in the written submissions. As Mr Young noted in a brief oral submission, you agreed to the summary of facts.
  - b. Even if the victim did behave as asserted, your response was disproportionate. Assaulting the victim as you did, by kicking him in the head on the road after he had fallen down, is disproportionate to any degree of provocation, arising from being sworn at.
  - c. Any provocation asserted is not of such a degree as to deprive a normal person of their self control.
12. Counsel have referred to cases to assist the court in setting the starting point. The prosecutor submits that the appropriate starting point is 4 years imprisonment. Ms Taleo submits that the appropriate starting point is 2 years imprisonment.
13. A case not cited by counsel is *Public Prosecutor v Michel* [2012] VUSC 245. It involved the victim being struck by the defendant in the mouth while he was on the ground in the street. The defendant was wearing caterpillar safety boots. The starting point adopted was 4 years imprisonment. It is broadly comparable to the circumstances in the present case, and involved the same charge but at a time when the maximum penalty was 5 years imprisonment.
14. Taking the aggravating factors I have referred to into account, together with *Public Prosecutor v Michel*, I adopt a starting point of 4 years imprisonment.

### **Step Two -guilty plea and personal factors**

15. You pleaded guilty at an early opportunity. The sentence is reduced by one third for the guilty plea, which is 16 months.
16. You are aged 21 years, and a first offender. You were aged 18 years at the time. You are employed and you are well supported by your family. You have a partner and a child, you were co operative with police and relevantly, there was a long delay in the prosecution. There has been a custom reconciliation, although it did not involve reconciliation towards the victim. You told the presentence report writer that you were not wearing safety boots. However, that is in the summary of facts, which you agreed to. And on any analysis the degree of force must have been considerable.



17. Taking into account your relative youth at the time, family support, that there was a custom reconciliation, delay and that you are a first offender the sentence is reduced by 8 months, which is approximately 17 percent.

**End sentence**

18. The end sentence is 2 years imprisonment.
19. Having regard to s 57 of the Penal Code, it is appropriate to suspend the sentence. I have had regard to the circumstances, the nature of the offending and your character. This was a street attack which was completely unacceptable and a disproportionate response on your part. Those factors point away from suspension. I also take into account your age, relative youth at the time, co operation with police, delay lack of prior history and early guilty plea, which all favour suspension. With relatively young offenders, the purposes of accountability, deterrence and denunciation can often give way to the need for rehabilitation. In this regard, I refer to the observations about the impact of youth on sentencing in *Heromanley v Public Prosecutor* VUCA 25.
20. The sentence is to be suspended for 2 years. You are warned that if you are convicted of any offence in the next 2 years, that you will be taken into custody and serve your sentence of imprisonment as well as the penalty for the further offending.
21. There is 14 days to appeal.

**DATED at Port Vila this 12th day of September 2024.  
BY THE COURT**

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Justice M A MacKenzie

