



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

Criminal
Case No. 24/3158
SC/CRML

PUBLIC PROSECUTOR

V

JOHN USUA

Date of Plea: 6th March 2025
Date of Sentence: 30th May 2025

Before: Justice Oliver Saksak
Counsel: Mrs Marie Taiki Silememea for Public Prosecutor
Mrs Cecile Dehinavanua Tovor for Defendant
Date of Plea: 6th March 2025
Date of Sentence: 30th May 2025

SENTENCE

Introduction

1. On 6th March 2025 John Usua entered guilty pleas to one charge of threats to kill (Count 1- Section 115), one charge of intentional assault (Count 2 – section 107 (b) and not guilty plea to one charge of malicious damage to property (Count 3 – section 133 of the Penal Code Act [Cap.135].

Nolle Prosequi

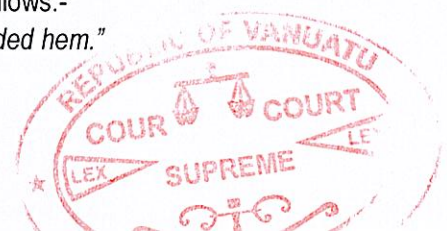
2. Prosecutions entered nolle prosequi in relation to the third charge for which he was acquitted. He is for Sentence today in relation only to the threats to kill and intentional assault charges.

Maximum Penalties

3. Threats to kill a person carries the maximum penalty of 15 years imprisonment. Intentional assault resulting in temporary injuries carries the maximum penalty of 5 years imprisonment.

Facts as Agreed

4. The defendant is a 28 years old man, unemployed and residing at Eratap. The victim was Elvis Jackson, a 29 years old man who works as a mechanic residing also at Eratap.
5. On 12 July 2024 around 9.00pm the defendant and some others were making noises in front of the victim's compound. This caused the victim to come out of his house and swore at the defendant. The made the defendant angry. He took a branch of coffee tree and hit the victim on the head. The victim became angrier but his brother came around and took him away back to his house. He then noticed blood on his left ear and that his head had swollen.
6. A little while later the complainant saw the defendant enter his compound holding an iron axe and fled to a nearby bush to hide and watch. He overheard the defendant speaking to his relative by the name of Samuel Nowawun. The words uttered were in Bislama as follows:-
"Wehem sting kok ia bae mi mas cuttem ded hem tedei, tedei mi mas kilim ded hem."



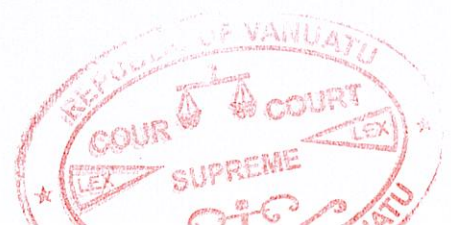
7. The victim hid in the bushes and watched until Samuel had managed to calm him down and brought him out of the compound.
8. Samuel Nowawun, his wife Dorothy Nowawun including Joseph Jackson had also witnessed the threats and assault inflicted on the victim by the defendant that night.
9. On 13 July 2024 the victim was examined at the Vila Central Hospital by Dr Bradley Wais who found a laceration or cut on the head and on the left ear with a swelling.
10. The defendant has accepted these facts as filed jointly by counsel on 1st April 2025.
11. The defendant is to be sentenced on his own guilty pleas on the agreed facts.

Assessment of Sentence

12. In assessing the sentences of the defendant, Prosecution submitted the cases authorities of PP v David Yawa [2023] VUSC 12 (CAC 6 of 2007), PP v Steven Mul [2022] VUSC 199 and Walker v PP [2007] VUCA 12.
13. Defence counsel referred the Court to PP v Buleko [2021] VUSC 341 where the Court adopted a start sentence of 4 years imprisonment for threats to kill and 2 years imprisonment for intentional assault causing temporary injuries.
14. The facts and circumstances in all the cases referred were all different however it appears the sentences imposed appear consistent for these offendings and in compliance with the principles set out in the Court of Appeal Case of Walker v PP.
15. Defence counsel submitted that the assault was provoked by the fact it was the complainant who had first used offensive language against the defendant together with his parents. However, that submission misses the fact that it was the defendant and his friends who were making noises when people were already in bed at 9.00pm in the night. Noises made nocturnally after 9.00pm is a statutory offence in itself.
16. In any event the facts as accepted show that even if there was provocation to some extent that gave rise to the disturbances that night, the defendant went beyond and used a piece of coffee branch to hit the complainant on the head and on his left ear causing bleeding and swelling. The head being a vital part of the human body, and I think the complainant was fortunate, as the injuries could have been much worse.
17. It did not stop with the first assault. The defendant returned to the complaint's compound with an iron axe, a lethal weapon and threatened to take his life with the axe. Luckily the complaint ran and hid earlier. That aggravated the intentional assault charge.

Start Sentences

18. With that said and in accordance with Walker, the appropriate sentence for the defendant is to be custodial sentences.
19. I therefore sentence the defendant to imprisonment and adopt the start sentences as follows:-
 - (a) For threats to kill, Count 1 – 4 years imprisonment.
 - (b) For intentional assault, Count 2 – 2 years imprisonment.



These sentences will run concurrently and the total Sentence shall be 4 years imprisonment.

Mitigation

20. I have considered the mitigating factors as submitted by defence counsel based on the Pre-Sentence Report submitted by the Probation Service. I therefore deduct the sentence as follows:
- (a) For guilty plea, the defendant is not entitled to the full 1/3 remission. The sentence is reduced by only 1 year, down to 3 years.
 - (b) I note he is a first-time offender with unblemished criminal record. He has a family with 3 children. His community chief speaks well of him. He has a handicapped mother who is under his care. He was remanded in custody for one month and five days from 17 July 2024 until released on bail on 19 August 2024.

21. For all those factors together, I allow a further reduction of his sentence by 10 months.

End Sentence

22. I therefore sentence the defendant to an end sentence of 2 years and 2 months imprisonment.
23. In my considered view, the sentence is to be suspended for a period of two years on good behavior, under section 57 of the Penal Code Act [Cap. 135]. This means the defendant must not commit any other criminal offences within 2 years. If he does and is charged and convicted, he will go to prison for 26 months.

Additional Sentence of Community Work

24. I however sentence the defendant to perform community work for 100 hours. This is to mark the seriousness of his offendings and to deter like-minded offenders. This additional sentence shall be performed by the defendant within 12 months from the date of sentence.

Right of Appeal

25. That is the sentence of the defendant. He may appeal within 14 days if he does not accept the sentence.

DATED at Port Vila this 30th day of May 2025.

BY THE COURT



Hon. Oliver A. Saksak

Judge

