

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

Criminal
Case No. 25/353 SC/CRML

PUBLIC PROSECUTOR

v

JOHNY BONY

Date of Plea: 11th March 2025
Before: Justice Josaia Naigulevu
Counsels: Acting Public Prosecutor – Mr. Christopher Shem
Public Solicitor – Mr. Regi Melsul Temankill

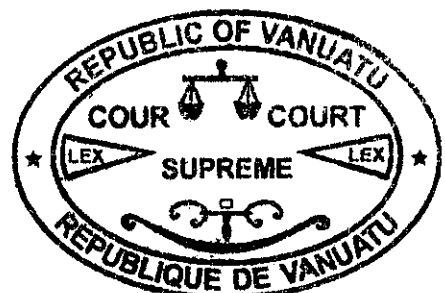
SENTENCE

Introduction

1. Mr. Johnny Bony, you appear for sentence today having entered a guilty plea and accepted the summary of facts presented by the prosecution relating to a count of Unintentional Harm contrary to section 108 (c) of the Penal Code.
2. An earlier count of driving under the influence of alcohol was withdrawn by the prosecution.
3. You were duly convicted on your plea.

Facts

4. Nalau Tom, a boy aged six years old was walking along the road at Green Corner Area on Island Tanna at about 7.30am in the morning on the 16th November 2024, when a land cruiser registration number 2373 you were driving hit him, and then dragged him for a distance of 20 meters. The summary of facts which you accepted described the manner in which you drove as "... in a very speedy manner."



5. After your vehicle had hit him, the prosecution's facts stated that you "...did not stop to assist..." the young victim, but "...actually continued on (his) way and left the deceased (death) on the roadside."
6. The victim's death occurred when you ran into him with your vehicle.

Sentencing purpose and Guideline

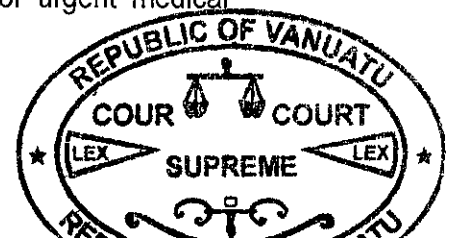
7. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others must be deterred.
8. The approach taken in the present case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

Statutory Sentence

9. The maximum sentence of the offence of Unintentional harm that results in death is 5 years imprisonment.

Aggravating Factors

10. The following circumstances constitute the aggravating factors of your offending:
 - a) You drove the truck at high speed at all material time;
 - b) You displayed a certain degree of recklessness when you drove a laden truck at high speed along a road known to have residential areas along it;
 - c) You failed to exercise due care and attention, having regard to the safety of potential road users.
 - d) You failed to keep a proper lookout when you drove the truck along that road;
 - e) The child victim endured additional trauma and injuries when he was dragged for a further distance of 20 meters along the road by your truck and left on the roadside, whilst you drove off.
 - f) You failed to stop the vehicle after your vehicle had hit the deceased child;
 - g) You failed to attend to the victim, and/or convey him for urgent medical attention after your vehicle had hit him.



Starting Point

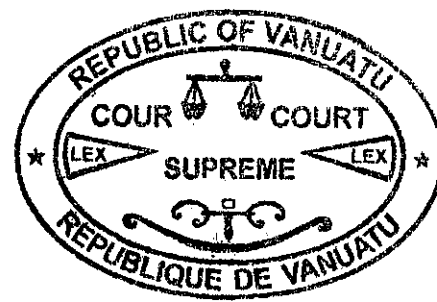
11. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
12. I have considered the submissions of counsel as well as the authorities they have referred to for the Court's consideration. This Court notes the helpful guidance provided by the Court of Appeal in relation to the sentencing of this type of offences.
13. In the case *Jenkinson v Public Prosecutor* [2000] VUCA 5, the Court stated:

"In the case of a first offender with a long history of good driving, good character, good employment record and involvements in community affairs, it is a very serious step to send a person to jail. Suspension of the sentence, which allows the best opportunity for rehabilitation, will often be the appropriate course. Serious driving offences causing personal injury or death will necessarily attract penalties that reflect a component of general deterrence. Such a purpose is not lost by the imposition of a prison sentence that is suspended. The defendant who receives such a penalty still suffers the stigma of a prison sentence, and for the duration of the suspension is a risk of actual imprisonment should another offence be committed."

14. In *Newel Public Prosecutor v Kalsong* [1998] VUCA 2, the Court of Appeal observed:

"Dealing with cases of this sort creates some of the most difficult sentencing tasks in any Court. This is a matter which in general conversation would be described as an accident. In the laws term it is a situation where death result from an unlawful act. That in law is not an accident but is unintentional harm causing death. A criminal Court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court's minimise the value of the life which was taken. What the Court is concerned to do is to assess the criminal culpability of the wrong doer. In a case such as this a Court cannot ignore the reality that (the defendant) faces a life time in which he lives with the knowledge that as a consequence of his careless act, a life was taken."

15. Counsel have referred this Court to several comparable case: *Public Prosecutor v Kalsong* [2011] VUSC 3 and *Public Prosecutor v Melsul* [2016] VUSC 98. In each of these cases, the victims were run over by vehicles driven by the offenders, and the Court adopted a starting point of eighteen months.



16. Taking into account particularly the severity of the aggravating factors in the present case, this Court adopts a starting point of 24 months.

Guilty Plea

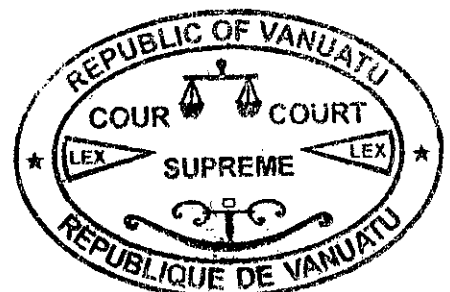
17. You entered a plea of guilty in this Court at the earliest opportunity. As a result, you are entitled to a discount of 8 months. This period is deducted from the starting point.

Mitigating and Personal Factors

18. You care for your parents and support a nephew's education.
19. You earn a living from commercial fishing, a trucking business and livestock and crop farming.
20. You performed a custom ceremony in which you sought forgiveness from the victim's family.
21. You have never been convicted of a criminal offence in the past.
22. These factors reduce your sentence by a further 4 months.

End Sentence

23. I have taken all these matters in consideration and impose an end sentence of 12 months.
24. Your counsel has urged me to suspend your imprisonment sentence. I will do so. It will be suspended for a period of 2 years, but you are warned against re-offending over the same period.
25. Your driver's license is suspended for 12 months, during which period you are not permitted to drive any vehicle on the road. At the end of that period, you will be required to take and pass a driving test to be supervised by the police. You shall not drive a vehicle again until you pass that test.
26. You are required to perform 100 hours of supervised community work.
27. You have 14 days to appeal this sentence.



DATED at Port Vila this 16th day of June 2025
BY THE COURT

