

BETWEEN: **PUBLIC PROSECUTOR**
 Appellant

AND: **EDWIN NOF**
 Respondent

Coram: *Chief Justice Vincent Lunabek*
 Justice John von Doussa
 Justice Ronald Young

Counsel: *Mr Bernard Standish for the Public Prosecutor*
 Mr Hillary Toa for the Respondent

Date of hearing: 2 December 2008

Date of judgment: 4 December 2008

JUDGMENT

Introduction

When the respondent discovered his brother, Philip Nof, had damaged some of his property he found him and stabbed him to death. After his guilty plea to Intentional Homicide (s.106(1)(b) of the Penal Code Act) Justice Saksak sentenced him to 5 years imprisonment.

The Public Prosecutor says this sentence was manifestly inadequate for this crime.

Facts

Shortly before the killing, the deceased asked to borrow money from the respondent to purchase a rifle. The respondent refused to lend him any money. As a result the deceased became angry with the respondent. While drunk he went to the respondent's house and began damaging his property. Others in the village tried to stop the deceased without success. Shortly afterwards the respondent



discovered the damage. He armed himself with a knife and a rifle and went in search of the deceased. He found him asleep on the road. The respondent then repeatedly stabbed him to his head and body causing his death. Others present tried to intervene but were prevented from doing so because of the respondent's possession of the knife and the rifle. The deceased had 14 deep cuts to his head and torso.

After the killing the respondent went to the nearest police station and surrendered. He pleaded guilty at the first opportunity.

Discussion

There can be no criticism of the judge's starting point for the offending of 14 years imprisonment before factual mitigating features. As the Judge identified this was a brutal killing with a weapon. The respondent used the threat of his rifle to prevent others interfering with his attack. The assault occurred when the deceased was asleep and therefore especially vulnerable. And it involved the killing of a family member.

There was a modest basis to reduce this starting sentence on the facts relating to the deceased's actions that day and previously. On the day of the killing the deceased had damaged the respondent's home. There was a long history of difficult behaviour by the deceased toward the respondent stretching over 14 years. We consider these factors could properly have reduced the starting sentence by 1 year to 13 years imprisonment.

Both the appellant and the respondent agree, given the respondent's immediate acceptance of responsibility for the killing and his plea of guilty, that a full one third deduction from the starting point should be given. We agree with the Judge that a one third deduction for remorse and the guilty plea was appropriate.

The Judge then deducted a further 4 years and 6 months for what he described as other mitigating factors. The Judge described these as: "*no previous convictions and good character (although these are of minor relevance); your actions were provoked by the deceased's negative behaviour, actions and attitudes for over 14 years; you have made some financial contributions to the*



family of the deceased (although that is denied by the deceased wife); your family obligation as sole bread winner; your responsibility to the community.”

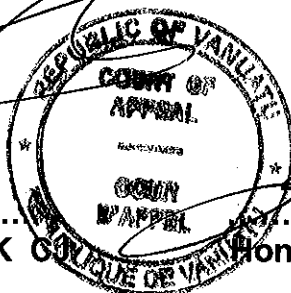
As to the deceased's previous difficult conduct some reduction in the starting sentence was justified. We have already reduced the starting sentence by one year. The other suggested factors could have little or no mitigating effect in such a serious crime. The respondent's previous good character and offer of amends can have only a minor effect on a sentencing for such a brutal killing. The respondent's family obligations and responsibility toward his community are not mitigating factors justifying a reduction of a proper sentence for this appellant.

In our view therefore the Judge was wrong to place so much emphasis on these mitigating factors.

We deduct one third from the starting sentence of 13 years leaving a sentence of 8 years and 8 months imprisonment. Given this is a Public Prosecutor appeal and the other minor mitigating factors we consider a sentence of 8 years imprisonment is the least sentence reasonably open for this crime. The sentence of 5 years imprisonment is quashed and a sentence of 8 years imposed instead.

DATED at Port-Vila this 4th day of December 2008

BY THE COURT



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Hon. Vincent LUNABEK Hon. John von DOUSSA J

.....
Hon. Ronald YOUNG J