

BETWEEN: Samson Konpikon
Appellant

AND: Public Prosecutor
Respondent

Date of Hearing: 8th November 2022

Before: Hon. Justice Oliver A Saksak
Hon. Justice Dudley Aru
Hon. Justice Ronald Young
Hon. Justice Richard White
Hon. Justice Edwin P Goldsbrough
Hon. Justice Stephen Harrop

Date of Decision: 18 November 2022

Appearances: F Tasso for the Appellant
B N Tamau for the Respondent

JUDGMENT OF THE COURT

1. Samson Konpikon, the Appellant, appeals against the decision not to suspend the sentence of imprisonment imposed in the Supreme Court when he was sentenced on 8 July 2022. He had earlier pleaded guilty to offences of making threats to kill and domestic violence and was sentenced to a total of two years and eight months imprisonment.

Background

2. The offences were committed in the family home and against his partner with whom he shares a daughter. There was an argument over a minor issue, and he was angry, and his anger led to an assault on his partner, with punches and kicks causing her a lot of pain. He tore her clothes leaving her exposed when others were present. His response to those relatives present who protested was to say that because he was tired of seeing her face, he would kill her so that she would not see the next day.



3. Taking the maximum available penalty for the two offences and the serious nature of the offending, the sentencing judge arrived at a starting point of three years imprisonment. This starting point was increased owing to personal aggravating factors to four years then reduced to an end sentence of two years and eight months after personal mitigating factors were considered. The factors which went to reduce the sentence were cooperation and a guilty plea, remorse and a customary reconciliation.
4. There is no appeal against the length of the term of imprisonment imposed. This appeal is confined to the decision not to suspend the sentence of imprisonment. On that point the sentencing judge said that he considered suspension but decided not to suspend because of the seriousness of the offending and as a deterrent to others.
5. From those remarks it is clear that the sentencing judge turned his mind to the question of suspension. It is therefore necessary to consider whether there was any error in the judge's decision concerning suspension.

Suspension of sentences of imprisonment

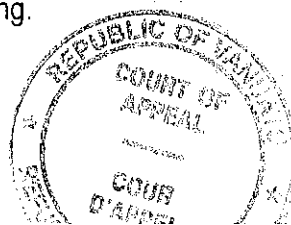
6. Section 57 of the Penal Code provides for suspension of sentences of imprisonment. It provides in s 57 (1) (a) that: -

"If the court which has convicted a person of an offence considers that:

- (i) in view of the circumstances; and*
- (ii) in particular the nature of the crime; and*
- (iii) the character of the offender,*

it is not appropriate to make him or her suffer an immediate imprisonment, it may in its discretion order the suspension of the execution of imprisonment sentence it has imposed upon him or her, on the condition that the person sentenced commits no further offence against any Act, Regulation, Rule or Order within a period fixed by the court, which must not exceed 3 years"

7. The Appellant's counsel submits that sufficient emphasis was not put on those facts which had been submitted about the character and personal circumstances of the offender. The offences had been committed in 2018 and, aside from a further incident also in 2018, the appellant had kept out of trouble; he and his partner remained together; he lacked any previous conviction; and was a hardworking man who supported his family. These factors, it is submitted, should result in a suspension of the sentence of imprisonment.
8. On appeal it was further submitted that by the time of the appeal he would already have served three months imprisonment, suggesting that he had endured the shock of prison sufficient to deter him from further offending.



Discussion

9. It is without doubt that factors such as those identified by the appellant are appropriate to put forward and be considered on the question of suspension. That is clear from the terms of section 57 (1) (a) (i) and (iii). However, on occasions the seriousness of the offence or offending considered under section 57 (1) (a) (ii) can outweigh those other factors.
10. It has been said repeatedly, for example, that offenders convicted of sexual offences can expect an immediate custodial sentence. This is but one example where the particular nature of the crime overtakes any personal circumstances of the offender. Here, the sentencing judge applied his mind to the question of suspension and determined that the offences were so serious that suspension was not indicated. In his remarks identifying mitigating factors the Judge illustrated he was well aware of many of the factors also relevant to suspension. There was no need for the Judge to repeat these factors when he came to consider suspension, they would have been part of the evaluation exercise he undertook. The refusal to suspend the sentence of imprisonment was open to him in the circumstances and no error has been shown in his approach.
11. On appeal, it is not for this Court to substitute its own view as to whether suspension should have been ordered or not unless it is established that the sentencing judge has made an error, in either not applying his mind to the question or taking into consideration irrelevant factors or in not considering relevant factors. Here the sentencing judge has both applied his mind to the question and has considered only those factors which he was obliged to consider. The judge did not overlook any relevant factors. There is no error in that approach.

Decision

12. This appeal is dismissed. The sentence imposed in the court below is confirmed.

DATED at Port Vila this 18th day of November, 2022

BY THE COURT

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Hon. Justice Oliver Saksak

