

PUBLIC PROSECUTOR

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JOE BOE

Coram: Justice D. Fatiaki

Counsels: Mr. Takau for the State
Mr. Bal for the Accused

Hearing Dates: 11th November 2009
12th November 2009
13th November 2009

Decision Date: 1st February 2010

SENTENCE

1. Joe Boe On the 6th of October 2009 you pleaded guilty to a charge of Intentional Assault Contrary to Section 107(b) of the Penal Code. The particulars of the charge were that on the 16th of May 2009 at the New Covenant Church "*yu bin assaultem gel ia Jenny Jimmy*".
2. The prosecution's case is that on that evening you assaulted the complainant by kicking her on the left eye, chest and ribcage. At the time you were wearing shoes and the prosecution says that the reason you assaulted the complainant was that she had refused to "*go out*" with a cousin of yours despite your insisting that she do so.
3. Your sworn evidence on the other hand substantially confirms the nature and extent of the assault on the complainant but not the reason for it. You say that you assaulted the complainant because she remained seated after you had told her twice to get up so you could together go and find her a taxi to go home.
4. Plainly there is an unresolved conflict in the evidence as to the reason for you assaulting the complainant, but, whatever the reason for the assault, neither reason provides an excuse or justification for the assault which comprised kicks delivered to the complainant's left eye and torso.
5. A medical examination of the complainant revealed that she had a swollen left eye and she experienced pain on her neck, chest and ribcage.

Fortunately the injuries were not serious or life-threatening nor did they require hospitalization, suturing, or any major form of treatment.

6. Having noted the relatively minor nature of the complainant's injuries this Court cannot ignore however the admitted fact that the injuries were caused by kicks delivered by the defendant to the head and body of the complainant.
7. Joe Boe I do not need to remind you that kicking a person's head and body is a serious assault and could have easily resulted in much graver injuries. You should consider yourself fortunate that the injuries were not more serious in this case but the fact that the victim of your assault was a defenceless woman is a further aggravating feature, as is the fact that the assault was repeated.
8. What's more you should be made aware that despite the absence of any permanent injury, the offence with which you have been convicted carries a maximum penalty of imprisonment for 1 year.
9. The prosecution in its sentencing submissions accept that an appropriate sentence in this case would be 200 hours of community service. Defence counsel for his part, submits that a Supervision Order under Section 58F of the Penal Code combined with Community Service is a more appropriate sentence. Both submissions are not dissimilar and both would not entail you having to go to prison.
10. The pre-sentence report prepared by the probation officer also strongly recommends a community-based sentence of Supervision and Community Work.
11. Joe Boe you are still a relatively young man of 22 years and you are an only child. Your parents separated when you were 7 years of age and you were raised by your grand parents in Ambae. You have never attended school. You have a 3 year old daughter of your own and you got involved in this case after you came to Port-Vila to attend a wedding ceremony in September 2008 and, unfortunately, you did not return to your home Island of Ambae.
12. Joe Boe you are a first offender and I understand that you behaved yourself while you were in remand for 3 months before you were released on bail. I note from the probation officer's report that you wish to personally apologise to the complainant and also perform a Kastom ceremony to her. I understand from the report that The complainant has forgiven you and is willing to accept such a ceremony.
13. I am advised by defence counsel, and confirmed in a report prepared by the probation officer who attended, that a kastom ceremony was performed by you and accepted by the complainant on 7th January 2010.

This is an important mitigating factor that I am obliged to take into consideration in assessing the penalty to be imposed on you.

14. Joe Boe you admitted the assault when questioned by the police and you pleaded guilty at the earliest opportunity. That is a strong mitigating factor in your favour and reflects an acceptance on your part that what you did to the complainant was wrong. It also demonstrates some remorse on your part.
15. The sentencing of a young offender is never an easy task for a Court but the law obliges me to have regard to the possibility of keeping you in the community so far as practicable and consistent with the safety of the public.
16. Joe Boe you do not strike me as a person who would be a risk to the community if you remained at large and accordingly I will consider imposing a non-custodial sentence which will allow you to remain in, and contribute to your community.
17. The order of the Court is that you Joe Boe are sentenced to undergo a sentence of Supervision for a period of 9 months. You are required as a standard condition of this sentence, to report in person as soon as practicable to a probation officer who will advise you about what programmes you will be required to undertake as part of your sentence.
18. I should warn you that it is an imprisonable offence for you to fail to comply with any condition of your sentence of Supervision.

DATED at Port Vila, this 1st day of February 2010

BY THE COURT



D. FATIAKI
Judge

