

PUBLIC PROSECUTOR

V

TONY NOAL

*Hearing: 4 June 2013*

*Before: Justice Robert Spear*

*Appearances: Tabisa Harrison for the Public Prosecutor*

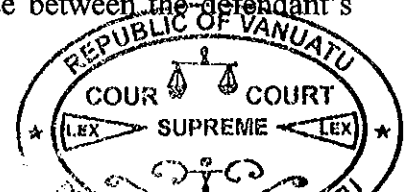
*Less John Napuati for the Defendant*

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SENTENCE

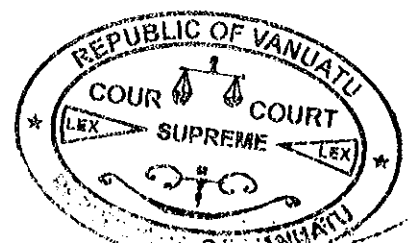
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1. Tony Noal, you are for sentence today having pleaded guilty to one charge of causing death by reckless driving. That is an offence carrying a maximum penalty of 5 years' imprisonment.
2. There are some slight differences in the account of events presented by the prosecution and the defence in their written submissions. Some time today was taken to resolve those differences so that a settled factual basis was available for sentencing purposes.
3. On 15 December 2012, the defendant and his older brother had been out in their father's bus. Clearly, the defendant had been drinking. Just after mid-night or thereabouts, the bus was parked beside the Pakaroa Church near Tebakor. The two brothers were talking to other young men. At some stage, two drunk men wandered passed and, for reasons not entirely clear on the material before me, a dispute arose between the defendant's

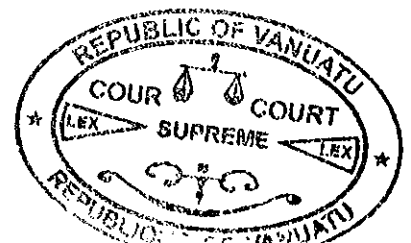


older brother and those two drunk men. That quickly escalated into a fight between the older brother and the two men during which the rear windscreen of the bus was broken by one of the two men.

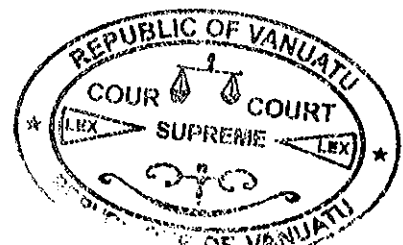
4. The defendant's brother shouted at the defendant to drive the bus away. The defendant at that time was 17 years of age. While he had certainly been drinking alcohol and was obviously affected by the alcohol he had consumed, it is not clear whether he was intoxicated. He did not have a driver's license. All that notwithstanding, he got into the driver's seat the drove the bus away. Sadly, he drove it straight over the deceased Joseph Marae who had been standing close by and watching the fight. The defendant drove over Mr Marae and he kept driving. The tragedy that has arisen from the events of this evening are that Mr Marae died as result of the injuries caused by being ran over by the bus.
5. The facts outlined above have been settled with counsel and this summary has been dictated in their presence with the invitation given to both counsel to correct any matter that I misstated. Both counsel accept that that is an accurate summary of the events of this evening.
6. What is clear is that the decision by the defendant to drive was made impulsively, while under pressure and generally in difficult circumstances when clearly his judgment was impaired by the alcohol that he had been drinking. This is not a case where a young man had taken a motor vehicle for a joy ride. This was a young man without a driver's license where his older brother had directed that he remove the bus from the scene to ensure that it was not damaged further.
7. The prudent course, measured in hindsight, would have been for the defendant not to have driven the bus and for any physical damage to the bus simply to become one of the consequences of that evening. However, the Court well understands that young men often do not make good decisions particularly when put under pressure and in particular when they have been drinking. As I have mentioned, this was not a case where the defendant set out to drive that night.



8. I assess this case as being a tragedy caused by a series of events that saw this young man make the very unwise and imprudent decision to comply with his brother's direction and drive off. It is clear that he was inexperienced as a driver and of course he was affected by alcohol. That is the recklessness that relate to his driving. It is unlikely that he had the skill to be able to drive the bus away without putting bystanders at risk. .
9. The defendant pleaded guilty at the first reasonable opportunity. He has demonstrated that he is contrite in respect of the harm that he has done to the family of Mr Marae and he is deeply remorseful for the consequences. I am aware that a custom reconciliation ceremony has taken place with involvement by the defendant and his family whereby a bullock, 2 kava, food and mats were offered. However, they were refused by the deceased's relatives. There has been custom reconciliation organised by the chiefs in respect of the respective communities that the defendant's family and the deceased's family come from. While that appears to have *buried the hatchet* (as it were) in relation to the relevant communities, the victim's family do not accept that there has been reconciliation. Indeed, there is a letter from a family member seeking compensation in the sum of Vt 100,000,000.
10. There is a compensation report from Probation that deals in particular with the harm that has been done to the family of the late Mr Marae. It also deals with the defendant's ability or capacity to provide compensation.
11. The defendant is 17 years of age, he is unemployed, he has a little in the way of education and no job prospects. His parents have indicated that they have already contributed to the reconciliation ceremony and they cannot afford any further compensation to be made on behalf of their son. e.
12. The family of the victim Mr Marae are perfectly entitled to refuse to accept the offer of compensation that was made at the time of the custom reconciliation ceremony. However, the Court is constrained in respect of compensation by the ability of the defendant, not his family, to pay compensation. The defendant has nothing and so the Court cannot make an order that is effectively worthless and which cannot be enforced.



13. I have already characterised the nature of this offending as being the impulsive act of a young man who found himself in a situation where he made the very poor decision to get behind the wheel of the van and drive it off. It had tragic consequences. However it needs to be contrasted with a case where a young man had set out to drive notwithstanding that he did not have a licence and notwithstanding that he had been drinking.
14. In so far as the appropriate sentence here is concerned, it is important to recognise that the defendant is only 17 years of age, that he is remorseful, and that he pleaded guilty at the first available opportunity. He co-operated with the Police fully with the Police.
15. The nature of this particular offence is that he drove a vehicle recklessly and that recklessness contributed to the death of Mr Marae. Intention to cause death is not required for a charge such as this.
16. This is not a case where a sentence of imprisonment should be imposed. The focus must be on the culpability of the defendant for the recklessness that he displayed that night.
17. This is a case where some measure of punishment is required but also some assistance is required for the defendant to ensure that he thinks more clearly and carefully next time he finds himself in a difficult situation such as this. We are dealing with a 17 year old who has no previous convictions and is otherwise considered a good young fellow and a good member of his community. Nothing would be gained by sending him to prison.
18. The appropriate sentence in my view is one of 200 hours community work and 2 years supervision. You are sentenced accordingly. The special conditions that attach to supervision are as follows:
- a) You will undertake the Niufala Rod program as directed by your Probation Officer;
  - b) You will undertake spiritual counselling with a church pastor a directed by your Probation Officer;



- c) You are not to consume alcohol or kava;
- d) You are not to drive a motor vehicle
- e) You will live where directed by your Probation Officer.

19. You have 14 days to appeal this sentence if you do not accept it.

**BY THE COURT**

