

PUBLIC PROSECUTOR

-v-

MARCEL MANITOK

*Mr Leon Malantugun, Acting Public Prosecutor for the Prosecution
Mr Jacob Kausiama, Public Solicitor, for the Defendant*

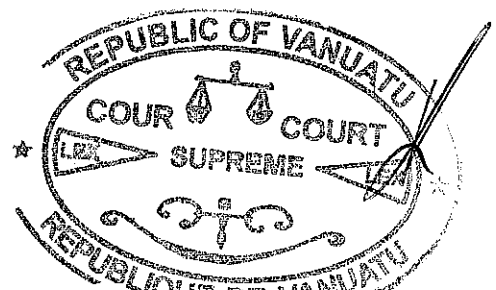
SENTENCE

This is the sentence of the Defendant, Marcel ManitoK. Defendant ManitoK, you are charged for one count of intentional assault, causing damage on the body of another person, resulting in the death of that person, contrary to section 107(d) of the Penal Code Act [Cap135]. You were convicted on this count on 28th May 2008. It is now 6 years before you are sentenced today. There is no rational explanation of this lengthy delay apart from retrieving the file from the old pending case files. At the time of the sentencing, there is still no pre-sentence report provided to assist the Court.

The brief facts of this case are that an incident occurred on 4 August 2007 at about 4.00am o'clock in the early part of the morning of that day. The assault took place outside the area belonging to Club Vanuatu and a person (a USP student from Solomon Islands) died from injuries he sustained in the incident.

It was after the night club had closed its doors. People came out of the night club and were outside. It was still dark at that time of the morning with some lights from the Uncle Bills side of the road. Many persons were intoxicated. The deceased person was intoxicated.

Defendant Marcel ManitoK, you had been consuming alcohol and you were drunk. You were involved in three separate assaults, that occurred that night outside the night club. You were first involved in an argument as a result, you were punched heavily to your face by a Samoan student,



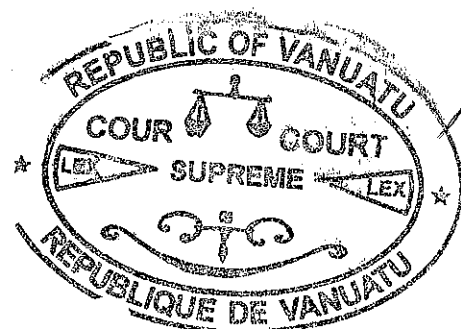
causing a cut above your head and you were bleeding from the cut. You were then surrounded by a number of Solomon Islander men who proceeded to kick you to both your legs causing pain and causing you to call for help.

Then that help was in the form of accused Jeffrey Iautu who arrived and Jeffrey escorted you by holding you and walking away from the group of Solomon Island students. As you and Jeffrey were walking away and near the shop, Uncle Bills, someone (the deceased person) jumped on your back and got a hold around your head. You struggled a short time with the deceased and eventually you both fell to the ground on the concrete tar road. The deceased fell on the back of his head and you fell on top of him. You regained your feet first. The deceased was still laying on the tar road. You bent yourself over the head of the deceased victim, closed your fist firmly and repeatedly punched the head of the deceased with your hands while he was laying on the concrete tar road. The deceased victim was unconscious. He was breathing like blood. Blood covered his face. The police arrived and took him to the hospital. The deceased victim had suffered a trauma to the mid-facia area. He had a fractured nose, a cut near the right eye, the face was puffed up. The deceased victim had taken in some blood and mucus as he was in a state of unconsciousness. He could not speak or respond. There was pressure in the deceased victim's pupil as he had a sluggish reactive pupil, and inability to breathe without assistance. The doctor had to drill three holes into the skull to release the pressure. At that time the deceased victim had a survival rate of less than 5%. The deceased died on 6th August 2007 as a result of the multiple injuries he sustained on his body.

The offence under section 107(d) is a serious offence. It carries a maximum penalty of imprisonment for 10 years.

In your sentencing, the court considers the following guideline judgment of Vanuatu Court of Appeal relevant to section 107(d) offence as contained in the submissions of the Prosecution and Defence Counsel: *Public Prosecutor –v- Ierongen [2002] VUCA 34; 07-02 (1 November 2002)*. The circumstance of this case warrant a custodial sentence.

On the facts and circumstances of this case, it is accepted that there are some degree of provocation.



I accept the Defence submissions that the Court should approach the sentencing on the lower scale of this offending based on the Ierongen guideline judgment. In Ierongen, the Court of Appeal ranges a starting point between 4-7 years imprisonment for uncontested case, and in the present case the low scale would be 4 years imprisonment. The Court adopts 5 years as a starting point bearing in mind of the particular circumstances of the offending in this case.

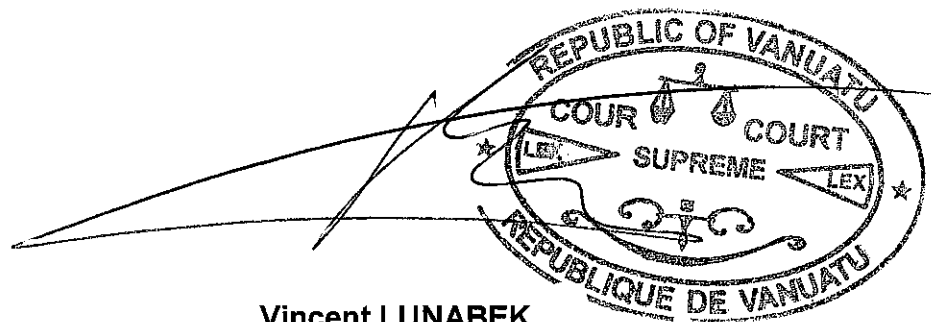
In mitigation, the sentence is reduced to 2 years considering, the provocation and another 2 years and 4 months reduction to allow for the considerable time delay of 6 years before the sentencing of the Defendant.

The balance of the imprisonment sentence is 8 months imprisonment. The overall circumstance of this case justifies that the Sentence of 8 months imprisonment be suspended for a period of 12 months. It is so suspended for such a period.

Defendant Marcel Manitok, you have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port-Vila this 20th day of June 2014

BY THE COURT



**Vincent LUNABEK
Chief Justice**