

BETWEEN: Public Prosecutor

AND: Richard Alick
Defendant

Before: Justice G.A. Andrée Wiltens
Hearing: 11 June 2018
Counsel: Ms L. Lunabek for the Public Prosecutor
Mr L. Moli for the Defendant

Sentence

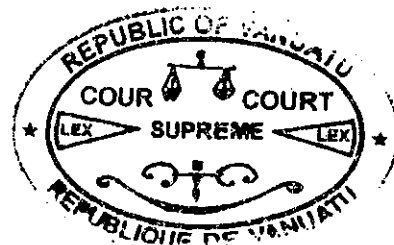
A. Introduction

1. Mr Alick pleaded guilty to:

1 - Causing Death by Reckless Driving, laid contrary to section 12 of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 5 years imprisonment and/or a fine of VT 500,000.

2 – Driving under the Influence of Drink, laid contrary to section 16 of the Road Traffic (Control) Act [Cap 129]. The maximum sentence for this offence is a term of 1 month imprisonment and/or a fine of VT 10,000.

2. I note that section 55 of the Road Traffic (Control) Act also permits this Court to disqualify Mr Naio from holding or obtaining a driving licence, in respect of charges 1 and 2, for a period of up to 5 years.



B. The Facts

3. At about midnight on 2 March 2018 Mr Alick was driving a white Hyundai bus Registration no. 18183, while consuming alcohol with friends (beer, wine and whisky). Mr Alick was showing off to his friends and some female passengers by travelling at high speed, even though several passengers protested at times and wanted to get off.
4. Just outside the Waterfront Bar, opposite Computer City Mr Alick's bus ran into a lamp post – all those on board were unable to describe how that occurred; but as a direct result of the crash, one of the passengers died at the scene.

C. Submissions

5. The prosecution pointed to 5 precedent authorities as to the appropriate level of sentencing for Mr Naio:

- *PP v Kanas* [2010] VUSC 5
- *PP v Nawia* [2010] VUSC 52
- *PP v Kaltang* [2002] 9
- *PP v David* [2012] 166.
- *PP v Sablan* [2012] VUSC 262

6. Mr Moli further referred the Court to *PP v Makali* Criminal Case no. 10/45 and *PP v Aissav* [2016] 197.

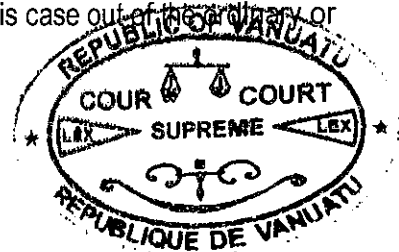
7. The cases indicate a common start point for sentence of between 2 to 3 years imprisonment, depending on the particular facts of the case; and suspension of sentence on occasions.

D. Starting Point

8. The prosecution pointed to the following aggravating factors:

- Mr Alick was plying his normal trade while considerably under the influence of drink
- 2 passengers asked Mr Alick to stop, but he did not
- The crash was so violent no passenger was able to recall the exact cause of the accident
- The crash caused a death.

9. To my mind these are not aggravating factors – they do not take this case out of the ordinary or escalate Mr Alick's criminal culpability.



10. The prosecution submitted that the appropriate starting point in terms of step one as prescribed by *PP v Andy* [2011] VUCA 14 was in the order of 2 to 3 years imprisonment. Mr Moli suggested 2 years imprisonment.

E. Personal Factors

11. In terms of step 2 of *PP v Andy* Mr Moli made the following points:

- Mr Alick is only 23 years of age and residing with his uncle, as both parents are deceased
- Mr Alick has no previous convictions
- Mr Alick co-operated fully with police enquiries
- Mr Alick is remorseful
- Mr Alick was remanded in custody prior to being granted bail
- Mr Alick has a good work ethic, driving the bus in order to support his uncle
- Mr Alick has performed a reconciliation ceremony with the family of the deceased
- Mr Alick did consume alcohol, but only out of respect for his uncle.
- Mr Alick's wife is currently in hospital, 8 months pregnant with their first child.

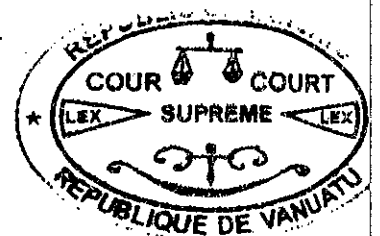
F. Pleas

12. Mr Naio pleaded guilty at the first available opportunity. The discount available to him for that is a maximum of one-third of the sentence: see *PP v Andy*.

G. Sentence

13. The main purposes and sentencing principles in this type of offending are to:

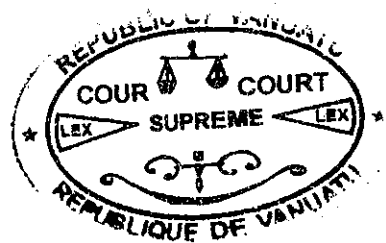
- hold the offender accountable for his exceedingly negligent conduct and the harm done
- promote a sense of responsibility for the harm done
- provide for reparation
- denounce the conduct
- deter the offender and the public at large from this type of behaviour



- protect the community
 - assist in the offender's rehabilitation and re-integration
 - take into account the gravity of the offending
 - take into account the seriousness of the offending in comparison with other offending, and
 - consider consistency of sentencing and parity of sentences.
14. The driving in this instance was very poor. Mr Alick should have known better than to drive while under the influence of alcohol; and to drink while driving is an aggravating factor to his criminal culpability. That is further compounded by Mr Alick's driving at speed. A valuable life was needlessly lost as a direct result of this conduct.
15. I set the start point for sentence at 24 months imprisonment, on a totality basis.
16. Mr Alick's personal circumstances dictate some reductions from that starting point. Firstly, I accept that he has been remanded in custody prior to being bailed. He has co-operated with the authorities throughout the investigation. He has shown true remorse for his actions. He has no previous convictions, and has good community support. The most significant factor in terms of mitigation is the reconciliation ceremony he undertook with the deceased's family. These factors combine to reduce the start point for sentence to 18 months imprisonment.
17. Lastly, Mr Alick is entitled to one-third further discount for his prompt plea.
18. The end sentence is therefore set at 12 months imprisonment. That will be imposed on charge 1; on charge 2, Mr Alick is sentenced to 1 month imprisonment to be served concurrently.

H. Suspension

19. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate:
- In view of the circumstances,
 - In particular, the nature of the crime, and
 - The character of the offender.
20. In my analysis, Mr Alick's sentence must be suspended – for the reasons articulated previously relating to his personal factors. To not suspend the sentence would be a harsh punishment for what was really a series of poor decisions, for which he has already paid a price. He still has to live with his conscience, knowing he was responsible for a needless death.



21. The sentence of 12 months imprisonment is accordingly suspended for 2 years. Mr Alick needs to understand that he needs to remain offence free for 2 years from today, or he will be incarcerated for 12 months.

22. Suspending a sentence is often accompanied by a direction that the offender be subject to a period of supervision by the Probation service, to ensure that re-offending risks are minimised. I am satisfied that is not required in this instance.

I. Compensation

23. Section 40 of the Penal Code requires the Court to consider whether compensation should be imposed, due to the death occasioned. Indeed that is why sentencing was adjourned, so that this aspect could be further investigated.

24. I am advised today, in a Report specially prepared with this issue in mind, that Mr Alick is unable to pay any compensation.

25. Due to Mr Alick's personal financial situation it would be wrong and too onerous for me to impose a compensation order on him. However, I am firmly of the view that he ought to do something concrete for the community to make up for his criminal misconduct – accordingly I am therefore imposing an additional penalty of 120 hours of community work.

J. Disqualification

26. The driving standard displayed was exceedingly poor. To be able to drive is a privilege not available to everyone – and to be able to earn an income from driving requires far more responsible and considerate behaviour than Mr Alick displayed. His driving on this occasion dictates a meaningful period of disqualification, as a deterrence to him and the community at large.

27. In the particular circumstances of this case, Mr Alick is disqualified from holding or obtaining a drivers licence for a period of 18 months. I impose that in respect of both charges.

28. Mr Alick has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 11th day of June 2018
BY THE COURT

Gendrei Ull
Justice G.A. Andrée Wilfens

