

BETWEEN: Public Prosecutor

AND: Simo Atuary
Defendant

Date of Sentence: 24 September 2019
Before: Justice G.A. Andrée Wiltens
Counsel: Ms M. Taiki for the Public Prosecutor
Mr L. Moli for the Defendant

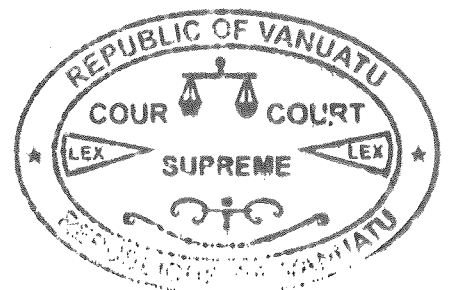
SENTENCE

A. Introduction

1. Mr Atuary has pleaded guilty to 2 charges of intentional assault. The maximum sentence for the first charge is 1 year imprisonment; for the second charge 10 years imprisonment. The reason for this differential is that permanent injuries were inflicted during the second attack, whereas only relatively minor and temporary injuries were inflicted in the initial assault.

B. Facts

2. On 2 April 2019, Mr Atuary became over-wrought regarding a set of headphones. As a result he assaulted his first cousin by using both his hands and feet. She is more diminutive than he and was 5 months pregnant at the time. The assault was aimed at her body. She eventually went to ground to protect her abdomen. Assistance was summonsed.
3. The complainant's partner then arrived home and was in the process of assisting the complainant when Mr Atuary attacked him. He used a knife and slashed at the partner's head, causing a deep laceration wound which resulted in the partner being hospitalised for 3 days due to the blood loss from the wound.



C. Aggravating Factors of the Offending

4. There are a number of aggravating factors to the offending. Firstly, there is the fact that there are two separate criminal acts involved – what might be termed repeat offending. There is a breach of trust in that both attacks were in the home they all shared, and because of their close relationships. The attacks were unprovoked and unexpected. The use of the weapon is aggravating, as is the nature of the weapon. The assault to the partner's head is further aggravating as that is the most vulnerable part of the human body. Both victims were vulnerable – the first cousin by dint of her size and being pregnant, and her partner as he was tending to her needs and unaware of any impending attack.

D. Mitigating Factors of the Offending

5. There are no mitigating factors relating to the offending.

E. Start Point

6. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 4 years imprisonment, on a totality basis taking both offences into account. This figure is arrived at on the basis that each offence is a stand-alone criminal act; with the second charge being the far more serious – it merits a sentence of 3 years 6 months imprisonment by itself. There has to be an uplift for the repeat offending, but a slight reduction to reflect totality.

F. Personal Factors

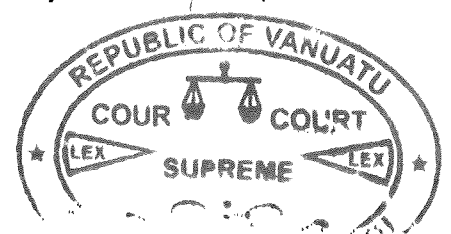
7. Mr Atuary has no previous convictions, he is remorseful and he is willing to engage in a custom reconciliation meeting post release. He is single, aged 32 years and unemployed. There is a suggestion he has mental issues, but there is no medical evidence to support that. He does suffer from epilepsy, but he is successfully taking medication to counter the effects of that. He is said to be remorseful. These factors enable a generous reduction of Mr Atuary's sentence by 6 months imprisonment.
8. The final matter of mitigation is Mr Atuary's pleas. These were promptly entered, not at the first available opportunity, but after medical evidence as to his fitness to plead had been obtained. In the circumstances a one-third discount remains available to Mr Atuary for his pleas.

G. End Sentence

9. Taking all of those matters into account, the end sentence that must be imposed is one of 2 years 4 months imprisonment. I impose that on charge 2. On charge 1, I impose a term of 9 months imprisonment, to be served concurrently.
10. The sentence is back-dated to 3 April 2019 – the date Mr Atuary was first incarcerated awaiting completion of the prosecution process.

H. Suspension

11. 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.

12. Suspending Mr Atuary's sentence is within my discretion. However, I decline to exercise my discretion in his favour.
13. To do so would return Mr Atuary to the very same environment where the offending occurred – and where a new young child is living. That is undesirable. Further, repeated gratuitous violence in a domestic setting is a serious matter which does not sit easily alongside the concept of a suspended sentence. That is especially so when all the indications are that Mr Atuary has a short temper.
14. The sentence must not only deter Mr Atuary and others from offending in this manner, but it must also attempt to prevent repeat similar offending.
15. Accordingly Mr Atuary must commence to serve his sentence.
16. The knife used in the second attack is to be destroyed.
17. Mr Atuary has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 24th day of September 2019

BY THE COURT

.....*Andrée Wiltens*.....
Justice G.A. Andrée Wiltens

