

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 18/2506 SC/CRML

PUBLIC PROSECUTOR

V

NIGEL JOHN GILTRAP

Coram: Chief Justice Vincent Lunabek
Counsel: Mr. Ken Massing for Public Prosecutor
Mr. Mark Hurley for Defendant

Date of Sentence: 12th July 2019

SENTENCE

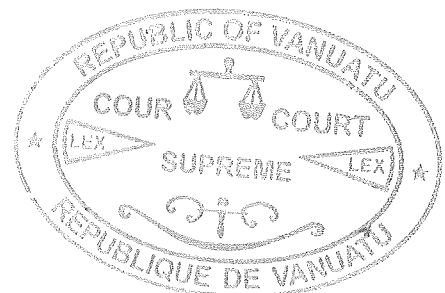
A. Introduction

1. Mr. Nigel John Giltrap, you appear today for sentence on two counts of assault, contrary to section 107 (a) and (b) of the Penal Code Act [CAP 135] respectively.
2. You were initially charged and tried on three counts of intentional assault, contrary to section 107 (a) (b) and (c) of the Penal Code.
3. On 28 June 2019, you were found not guilty on the first count of assault causing damage of Permanent nature, contrary to section 107 (c). But you were instead convicted on the two other counts of assault, contrary to section 107 (a) and (b) of the Penal Code.

B. Offending section and the maximum penalty

4. Section 107 of the Penal Code is the relevant provision. It states:

"107. Intentional assault



No person shall commit intentional assault on the body of another person.

Penalty: (a) if no physical damage is caused, imprisonment for 1 year;

(b) if damage of a temporary nature is caused, imprisonment for 5 years;

5. After your convictions, you were liable to 1 year and 5 years imprisonment as the maximum penalties for these two offences of intentional assault.

6. They are serious offences as reflected by the maximum penalties imposed by law.

C. Facts as found by the Court

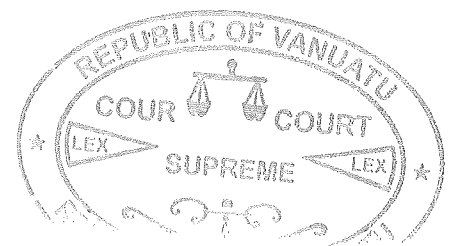
7. The two incidents of assault were committed on the bodies of an elderly couple of 83 and 77 years of age (Mr. and Mrs. Quinto respectively) at Si Chuan Restaurant in Luganville, Santo on 20th March 2018 at about 7.00pm O'clock in the evening (a Chinese Restaurant).

8. The Restaurant had a CCTV Camera video footage which captured what happened in the counter room and also at the door of the dining room in the restaurant.

9. You were the first customer in the Restaurant that evening. You were at the counter when Mr. and Mrs. Quinto entered the Restaurant. You have already ordered your takeaway food and you were ready to leave when the Quintos entered the restaurant.

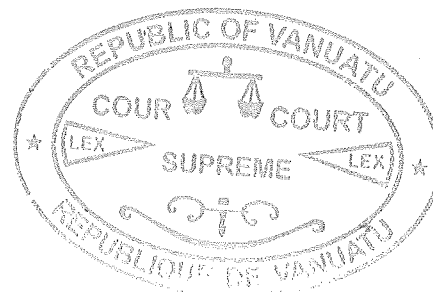
10. Mr. and Mrs. Quinto went to the Restaurant to have dinner. In the counter room you talked to Mr. Quinto from a distance and then you moved closer to him. You were remonstrating and haranguing Mr. Quinto about outstanding of invoices of charges Mr. Quinto owed you of the use of your slipway by Mr. Quinto. Mr. Quinto said he settled the bills by sending a cheque of VT221, 000 Vatu. You said Mr. Quinto was lying. There was also mentioned of half Million dollars of lawyers' fees of a Supreme Court case on defamation Mr. Quinto lodged against you and the case was discontinued a day or two before the trial date. It was discontinued on the advice of Mr Quinto's Counsel.

11. You were haranguing Mr. Quinto so he decided to avoid you and he went to the dining room. You persisted and you followed Mr. Quinto in the dining room. You were not supposed to be in the dining room of the restaurant that night. You were angry when you

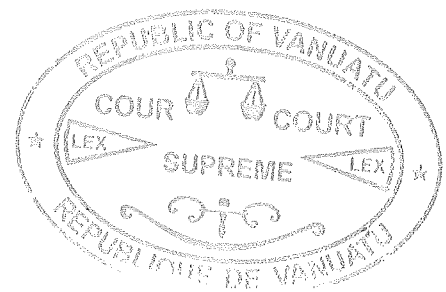


followed Mr. Quinto in the dining room. When Mr. Quinto and you were inside the dining room, Mrs. Quinto and the two Chinese were at the counter. Something happened in the dining room between Mr. Quinto and you as there were loud voices and movements there in the dining room.

12. This caused Mr. Quinto to come back to the counter room and asked the owner of the restaurant to call the police. The Chinese owner and his colleague were not responsive as they seemed not to understand what Mr. Quinto said. You were the one who did the most talking in the dining room.
13. You told Mr. Quinto what the fuck he knew about running a business. You gave Mr. Quinto his pedigree of what you thought of him. You believed that Mr. Quinto walked off when he walked into the dining room. You followed Mr. Quinto in the dining room as you were angry and became aggressive toward Mr. Quinto. A notice of unpaid charges to Mr. Quinto and the recourse to the Court should be the way forward. But you could not let it go. You persevered with a strong desire to win your point.
14. After Mr. Quinto came back to the counter and told the owner to call the police; Mr. Quinto went back to the dining room. At this point in time Mr. Wang followed him there in the dining room. You pushed Mr. Quinto with your right arm across the door and this time, the Chinese man and Mrs. Quinto saw what you did to Mr. Quinto. Mr. Quinto said you used your body like a football player using his body. You came through and pushed Mr. Quinto with your arm and walked toward the door.
15. Mrs. Quinto was at the entrance of the dining room and saw that you were pushing her husband with your arm across the door and walked toward the door to go out.
16. That push with the arm on the body of Mr. Quinto at the door of the dining room before you walk away (although you were not charged for it) was the triggering factor of the two assault incidents as Mrs. Quinto saw the assault on her husband. She disapproved it. Because you walked pass her, on her walking motion, behind you, she touched your back and told you to behave.



17. When Mrs. Quinto touched your back, you turned and looked on your left side at the direction of Mr. Quinto. Mr. Quinto was there but not Mrs. Quinto. When you turned yourself you looked at Mrs. Quinto who was telling you to behave but because you were too abusive, angry and aggressive you threw her on the floor with your right arm. It is pure aggression on your part on this old lady of 77 years old.
18. It was a hard push by you with you right arm throwing Mrs. Quinto down on the floor and she banged heavily against the counter. It was with some considerable force taking your weight and size as a fit and strong man. The CCTV video showed that the impact of the fall of Mrs. Quinto against the counter caused the left side of the counter table which was made of hard furniture to move. The flowers that were on the right side of the counter table were shaken.
19. Mrs. Quinto sustained injuries as a result of her throwing down on the floor against the counter by you. Mrs. Quinto had a fracture to her right femur and she went through an operation in Noumea, New Caledonia, on March 2017. Prosthesis was put to help her right femur to heal. That injury was over. However, as a result of the injury she sustained on 20 March 2018, the next day she could not use her right leg at all. Her right hip could not sustain her weight. She was unable to use her right leg for 2 weeks. She was unable to walk for a month. She has again an injured femur. It could not be sustained. She was on crutches for 2-3 months. It was overlapping the earlier damage and it had interfered with the complete healing of the previous damage of her right femur.
20. Mr. Quinto, who was abused, provoked and assaulted across the door of the dining room, did not respond to these provocations. He then saw that you assaulted his wife by throwing her on the floor against the counter, reacted by rising up his both hands toward you. Mr. Quinto did not throw a punch at you considering his old age of 83 years, his weight and size. You confronted him instead of going out of the restaurant as the door was just behind you. You assaulted him by throwing a right punch at him causing him to fall on the floor and while he was on the floor, you assaulted him again twice by pushing on his body against the floor before you went outside the restaurant. This is not self-



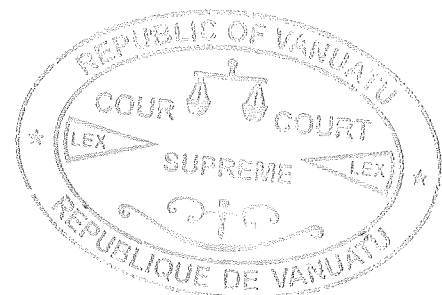
defence as found by the court and also the force used was disproportionate to the action of Mr. Quinto.

D. Submissions

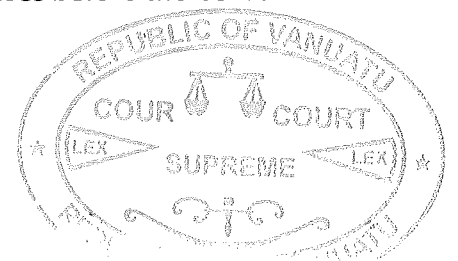
21. In their submissions, the prosecutions refer to the following two cases: **Public Prosecutor –v- Roger David, criminal case No.1248 of 2018**, where the defendant was charged and pleaded guilty to one count of intentional assault – causing temporary damage and one count of obstruction. In that case, the complainant was struck by the Defendant a number of times on his body. The Defendant used his hands and struck the complainant on his body. As a result of the assaults, the complainant sustain injuries there of temporary nature. The Court took a starting point sentence of 18 months imprisonment. The Court also reduced the sentence by giving allowances for the mitigating factors and one third for the defendant’s early guilty plea. The end sentence was 10 months imprisonment which was suspended for two (2) years and 12 months supervision was added to that sentence.

22. The Second case is **Public Prosecutor –v- Kalwatman [2017] VUSC 188**. In that case, the Defendant was charged with two counts of intentional assault of temporary injury and one count of indecency without consent. The Court imposed a starting point sentence of 15 months imprisonment, reduced on mitigating factors and an end sentence of 12 months imprisonment suspended for 3 years with supervision.

23. The prosecution submitted that the following aggravating factors exist in this case –
 - Offending against an elderly couple of 83 and 77 years.
 - Assault on Steve Quinto was repetitive.
 - Forced used in both assaults.
 - Pain and suffering by the two elderly victims.
 - Psychological impact on both victims.
 - There are two victims of assault.



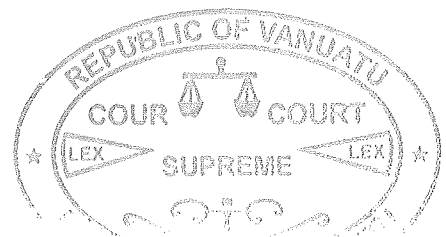
24. The prosecution submitted that the Court should sentence the Defendant of a range sentence between 2 to 3 years imprisonment as the starting point. Some allowance is to be given for reduction on the mitigating factors leaving an end sentence between 18 to 22 months imprisonment. That sentence should not be suspended in view of the circumstances and the particular nature of the crime and the character of the offender (s.57 Penal Code).
25. Mr. Hurley on your behalf referred and relied on the case of **Public Prosecutor –v- Andy [2011] VUCA 14** in which the Court of Appeal set out the sentencing guideline approach to be followed by the Courts in this jurisdiction.
26. Mr. Hurley submitted that your offending is at the bottom of the scale of the offending under s.107 (a) and 107 (b) particularly when regard is had to the fact that the assaults would not have occurred at all if it were not for the actions of Mr. and Mrs. Quinto towards yourself.
27. Mr. Hurley also submitted that even though self defence has been rejected the Court had found that your actions were disproportionate to the actions of both Mr. Quinto and Mrs Quinto’s actions towards yourself. He said that if Mrs. Quinto had not touched you in the back you would never have turned. Likewise, if Mr. Quinto did not come towards you with both hands raised as you were leaving the restaurant, the assault on Mr. Quinto would not have occurred.
28. Mr. Hurley submitted that the assault on Mr. and Mrs. Quinto took place within a very short time frame and then you left the restaurant. This was not a case of a random, premeditated assault nor (unlike numerous other cases that came before the Courts) were there any aggravating features such as a weapon involved, any blows to the Complainant’s heads or nor is there any evidence that you were intoxicated.
29. He submitted that viewed objectively your actions whilst held to be disproportionate, were reactive to the actions against yourself by Mr. and Mrs. Quinto.
30. Mr. Hurley helpfully referred and provided the following cases before the Court:



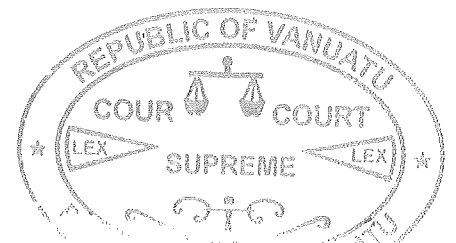
Precedents – Sections 107(b) and 107(c) of the Penal Code

To identify the starting point of the offending in the present case, the court is to consider other sentencing decisions as set out in the following table are of assistance:

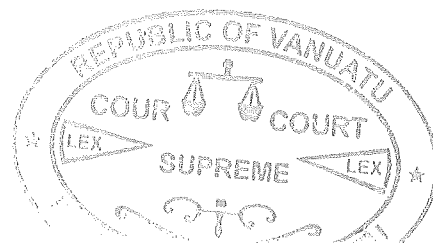
Item Number	Date of Decision/Citation	Case Name	Nature of Events	Nature of Plea	Sentence
1	17 August 1998 [1998] VUSC 37	Public Prosecutor v Ronoleo	Intentional assault contrary to section 107(b) of the Penal Code	Guilty	Fine of VT5,000
2	30 October 1998 [1998] VUSC 80	Public Prosecutor v Charley	Section 107(c)	Guilty	Fine of VT20,000
3	26 February 2001 [2001] VUSC 11	Jack v Public Prosecutor	Section 107(b)	Not guilty	Fine of VT22,000 and Prosecution costs of VT3,000
4	23 September 2002 [2002] VUSC 82	Public Prosecutor v Kaloris	Section 107(b)	Not guilty	4 months imprisonment suspended for 2 years with compensation to the victim of VT50,000
5	21 August 2009 [2009] VUSC 79	Public Prosecutor v Kalsau	S.107(b)	Guilty	4 months imprisonment suspended for 12 months
6	1 February 2010 [2010] VUSC 1	Public Prosecutor v Boe	S.107(b)	Guilty	Supervision by probation office for 9 months
7	29 October 2010	Public	S.107(b)	Guilty	3 months



	[2010] VUSC 167	Prosecutor v Dick			imprisonment suspended for 12 months
8	25 August 2011 [2011] VUSC 235	Public Prosecutor v Marcel	S.107(b)	Guilty	9 months and 7 months imprisonment suspended for both defendants for 2 years plus 50 hours community work
9	26 August 2011 [2011] VUSC 237	Public Prosecutor v Tess	S.107(b)	Guilty	8 months imprisonment suspended for 2 years plus 100 hours of community work
10	14 September 2011 [2011] VUSC 246	Public Prosecutor v Moses	S.107(b)	Guilty	5 months imprisonment suspended for 2 years plus 80 hours community work
11	19 June 2013 [2013] VUSC 82	Public Prosecutor v Alvea	S.107(b)	Guilty	10 months imprisonment suspended for 3 years plus supervision by probation for 12 months with conditions plus performance of custom reconciliation ceremony
12	28 August 2013	Public	S.107(b)	Guilty	3 months



	[2013] VUSC 123	Prosecutor v Waiane			imprisonment suspended for 12 months plus 50 hours community work
13	5 May 2014 [2014] VUSC 34	Public Prosecutor v Boe	S.107(b)	Guilty	9 months imprisonment suspended for 2 years
14	10 September 2014 [2014] VUSC 125	Edmond v Public Prosecutor	S.107(b)	Guilty	5 months imprisonment suspended for 12 months
15	18 August 2016 [2016] VUSC 204	Public Prosecutor v William	S.107(b)	Guilty	6 months imprisonment suspended for 2 years
16	7 July 2017 [2017] VUSC 90	Public Prosecutor v Nasemel	S.107(c)	Guilty	2 years imprisonment suspended for 2 years plus rehabilitation programs as directed by probation officer
17	6 June 2018 [2018] VUSC 84	Public Prosecutor v Philip	S.107(b)	Guilty	4 months imprisonment suspended for 2 years plus 120 hours community service work plus VT60,000 compensation order to the victim
18	10 August 2018 [2018] VUSC 230	Public Prosecutor v	S.107(b)	Guilty	10 months imprisonment

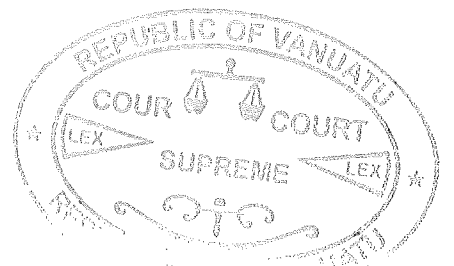


		David			suspended for 2 years plus 12 months supervision with conditions as directed by probation service
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31. Mr. Hurley further raised concerns with the prosecution’s submissions of the lack of detailed analysis of the two cases the prosecution refer and rely in their submissions (**PP – v- David and PP-v- Kalwatman**).
32. Your lawyer pointed to the fact that having regards to the facts in the above table of precedents, the facts in the present case are not more serious than the facts in PP –v- Kaloris (referred in item 4 in the above table) where the facts were that the Defendant punched the Complainant to the side of his face, pushed him to the ground, held his neck and pushed a poster into the complainant’s mouth and made him eat it. In that case, Coventry J. held the correct starting point was 4 months imprisonment before suspending that sentence for two years and ordering compensation of VT50, 000 to the complainant.
33. Your lawyer also invites the Court to take the following matters into consideration when the Court considers your sentencing. These matters relate to your subjective features.

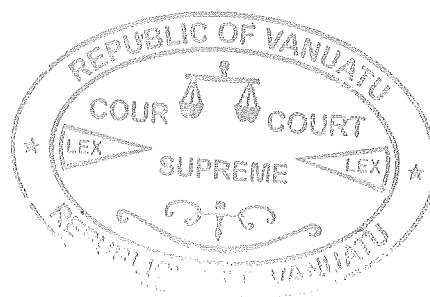
Subjective features of the Defendant

34. You are 52 years of age. You have been married for over two years. Your wife has two teenage sons aged 17 years and 15 years from her first marriage (her first husband died). Your wife is dependent on you as too are the two teenage boys who you have been raising as if they were your own biological sons.
35. Your company, Nikon Limited, is the biggest new investment in Santo for several years. It has been operating for approximately 5 years and the overall investment is approximately US\$4.2 million. A Ni-Vanuatu ship owner, Brian Fong, has pledged his support for Nikon

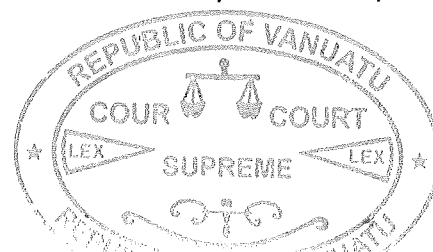


Ltd's ongoing business in his reference attached to these submissions. I have seen and read it.

36. At its peak, Nicon Limited was employing approximately 26 Ni-Vanuatu. In addition, it was providing training opportunities for school leavers. As a prudent investor, approximately 20 Ni-Vanuatu employees have had their employment terminated pending the possibility of you being sentenced to a term of imprisonment.
37. A new shipping service operating MV Waihola from Santo to the northern islands will not proceed if you are imprisoned.
38. There have been negotiations between Nicon Limited and the Ministry of Infrastructure (MIPU) and the Office of the Marine Regulator (OMR) for redevelopment of the slipway and management of the national fleet.
39. The MIPU and the OMR have been working with your Nicon Ltd to provide services for the Vanuatu shipping fleet as there is no other facility in Vanuatu capable of doing so. You feel that the Government should be investing in education and health not borrowing money for expensive shipyards from other nations. You are working with the Government to endeavour to achieve these aims. However, a prison sentence will severely hinder those negotiations. I have seen and read the reference from OMR dated 8 July 2019 to this effect.
40. In addition to your Santo business, you run a larger property business in New Zealand with construction projects and land sales partially completed that require management input daily.
41. Nicon Limited operates with a flat management structure. That is, there is no management team between you and the foremen or workers you employ. You need to be in communication several times a day to field enquires and give directions, the businesses are managed "hands on" by you.

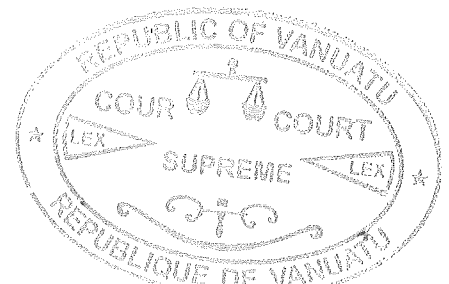


42. Your wife and sons live in New Zealand. You were incarcerated for 6 days from 20 March 2018 following the Si Chuan Restaurant incidents before being granted conditional bail. However, the bail conditions and need to attend numerous court dates have curtailed your freedom of movement significantly; meaning that you have spent long periods of time away from your NZ based family and business.
43. You had instructed Dane Thornburgh since 2016 to sue Stephen Quinto and his company for the outstanding bill resulting from their vessel having been repaired at Nicon Ltd's slipway. Mr. Thornburgh's failure to take that recovery action against Mr. Quinto and your company has been compounded by your lack of action to take legal proceedings to recover more than VT50 million of outstanding invoices for Nicon Ltd's shipyard.
44. Hurley Lawyers have taken over the legal affairs of Nicon Ltd. This criminal case has been a priority thereby delaying the filing of the civil claim against Mr. Quinto and your company. The claim against Mr. Quinto and your company is not VT221,000 but several million vatu due to the interest that has accrued. Hurley Lawyers will file the claim in the near future.
45. Previously Mr. Quinto has hired private detectives to investigate your private business looking for ways to make it difficult for you.
46. Mr. Quinto has made repeated attempts to seek to have you removed from Vanuatu by approaching the Dept. of Immigration and the Vanuatu Investment Promotion Authority (VIPA).
47. Mr. Quinto has even approached ship owners and influential business owners to seek to gain their support to sign a petition to have you removed from the country.
48. You have a strong work ethic and lives in a house at the shipyard in Santo. You seldom socialize unless with your wife. Often the only opportunity you have to leave the property in a day is to go out for dinner.
49. Nicon Ltd's shipyard/slipway project in Santo has been slower, more difficult and more expensive than you had anticipated. You have expended so much money on it that you



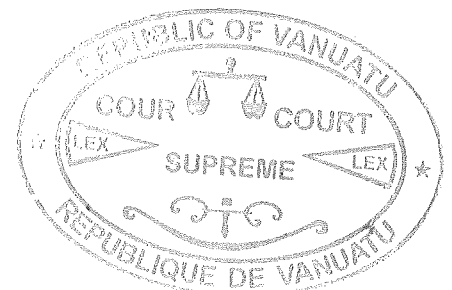
have committed to getting it to a point where you can step aside. Alternatively, you can afford to close it up and do nothing with the property should you see fit. Mr Quinto's interference with your affairs only delays and compromises an important project for Vanuatu.

50. Mr. Hurley submitted on your behalf that having regard to the second step of the assessment of aggravating and mitigating factors relating to your personally, your strong connections to the community and the detriment to the shipping industry if you were imprisoned and your shipway business was forced to close, an appropriate sentence would be a fine.
51. It is noted that you have a previous conviction arising from an assault of a former domestic partner (following provocation) that occurred in New Zealand in 2008. You have a special visa to pass through Australia to travel to Vanuatu from your New Zealand home in Christchurch. You travel via Brisbane to Santo.
52. It is said any custodial or suspended sentence will impact on this visa process, making access to Santo very difficult. The more difficult it is for you to work the slower and less likely the Nikon Ltd project referred to above will go ahead.
53. It is said that pursuant to section 58C of the Penal Code you have the means to pay a fine either in whole or part of the fine to be paid as compensation to Mr. and Mrs. Quinto.
54. Mr. Hurley submitted therefore that a fine (whether wholly or partly inclusive of a compensation order) to Mr. and Mrs. Quinto in the range of VT250,000 would be appropriate to mark the Court's disapproval of your offending and to achieve the other objectives of the sentencing process.
55. Mr. Hurley said, this is consistent with the approach taken in the first three cases referred to in the above table.
56. Mr. Hurley finally submitted if, despite submissions made on your behalf, this Court is minded not to impose a fine/compensation order then it is submitted that a suspended sentence of imprisonment should be the alternative sentence.

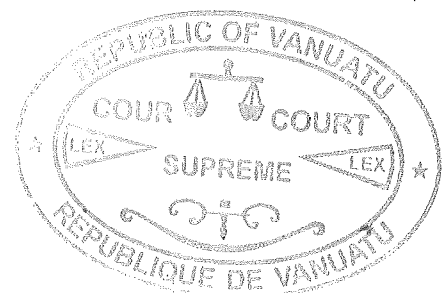


E. Court approach and consideration of Sentencing

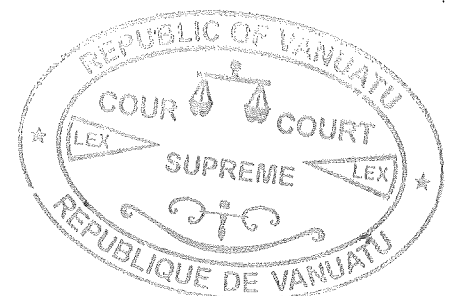
57. When I consider your sentence today, I need to consider the nature and seriousness of the offending, your culpability and the circumstances of your offending.
58. The offence against s.107 (a) carries a maximum penalty of 1 year imprisonment. The offence against s.107 (b) carries a maximum penalty of 5 years imprisonment.
59. Offences under s.107 (a) (b) are serious offences as reflected by the maximum penalties imposed by law as I mention earlier.
60. I apply the sentencing guidelines in the light of the sentencing approach provided in **Public Prosecutor –v- Andy [2011] VUCA 14** in order to arrive at an appropriate starting point sentence including the aggravating factors. In this case, the following aggravating factors exists:
- Offence of assault on the bodies of an elderly couple of an old man of 83 years and an old lady of 77 years.
 - Force, abuses and violence were used in both assaults.
 - Pain and suffering by the two elderly persons.
 - There was psychological and emotional impact on both victims. Both were shocked of what happened to them.
 - Mr. Quinto is disabled and cannot walk straight as the assault on her was overlapping her previous femur fracture.
 - It took her a month to walk after the date of the offending. She is still having difficulty to get moving. She was shocked and cannot tolerate the abusive languages from you (Mr. Giltrap) during the offending.
 - Mrs. Quinto is an old female who is weak – she was attacked by you, you are stronger than her.
 - Mrs. Quinto recorded that the offending towards her is a worse thing that has happened in her entire life.



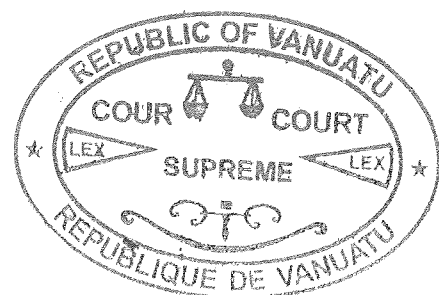
- You were abusive angry and aggressive during the offending.
 - You attempted to take the law into you own hands while notice of debt to Mr. Quinto and recourse to the Courts is the way forward instead of resorting to violence on monetary debt issues.
61. Considering the seriousness of the offending, your culpabilities coupled with the above aggravating factors, the offending are not a lower scale of offending. They are in the middle level scale of the offending between 1 year and 6 months and 2 years starting point sentence.
62. A sentence of fine is not appropriate type sentence. The sentence of the Court must deter you from such an offending. It must also deter others from such behaviour. It is noted, you have means to pay the fine and as such a fine sentence is not appropriate in this case considering, the seriousness, the culpability and the aggravating factors set out above.
63. The appropriate starting point sentence in this case is 1 year and 6 months imprisonment.
64. In this case, although I do not have a pre-sentence report before I sentence you as your counsel informed the Court that you did not need one. I called the prosecuting counsel and your lawyer to direct for a victim impact assessment to be filed (one was filed on 10 July 2019). I also called the prosecutor and your lawyer on 10 July 2019 to enquire as to whether you are a first time offender or whether you have previous convictions as the prosecution did not mention anything to that effect.
65. I was then informed by your lawyer that you are not a first time offender. You have previous convictions of assault and breached of temporary protection orders under the Domestic Violence Act 1995 (NZ). Undeterred you breached that order four times over the following month. You were convicted for assaulting your partner by tipping a can of red paint over her and you were also convicted on the other five breaches of protection order obtained by your former partner. The incident happened in 2008. You were tried and convicted as stated above in October 2009. You were sentenced to 2 years imprisonment. That sentence was upheld by the New Zealand Court of Appeal in 2010 in **Giltrap –v- R [2010] NZ CA 157 (30 April 2010)**.



66. The next question is whether I should consider your previous conviction on the offence of assault by the Christchurch District Court and uplifted the starting point sentence in the second step in line with Andy.
67. Mr. Mark Hurley submitted that the offence was committed by you in 2008. You were younger and there is now a length of time (10 years) over. Today you are more mature person. You are married over two years and you looked after the two (2) sons of your wife as your own. You are also residing in Vanuatu and you are now contributing to Vanuatu through your shipping industry and your company employs 26 people.
68. The prosecution acknowledges that you had a previous conviction for assault in New Zealand. The prosecution also acknowledges that it was back in 2008 that the offending occurred. The prosecution submitted that the Court should take into account your previous conviction in your sentencing in this case as an aggravating factor.
69. I take note of Mr. Hurley submission that you were a younger man in 2008 and with the passage of time you are more mature now. You are married and you have a family. You also have a shipping business in this country. However, in your sentence of 2010, the trial judge described some of your behaviour as being sinister. She identified your propensity for not being prepared to let a matter go, the most significant of which were perseverance and a strong desire to win.
70. This was the same sort of behaviour you showed in the evening of 20 March 2018 at Si Chuan restaurant when you told Mr. Quinto of your invoices of unpaid charges Mr. Quinto said he sent you a cheque of vatu 221, 000 you told him he lied . Mr. Quinto tried to avoid you by going into the dining room. You believed that he walked off and you followed him in the dining room as you were angry and aggressive towards him. You were perseverance and you have a strong desire to win as you have a propensity for not being prepared to let a matter go. In any event, giving notices to Mr. Quinto of the unpaid charges and have recourse to the counts is the simple answer. You did not do that which lead to the incidents of assaults on 20 March 2018.



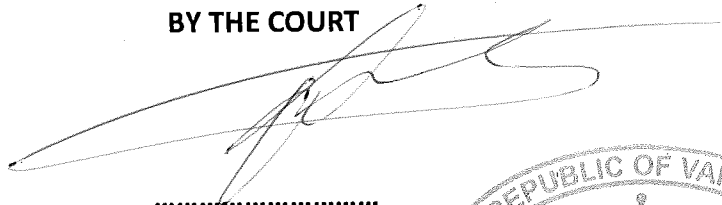
71. I accept the prosecution submission that I consider your previous conviction of assault as an aggravating factor.
72. I uplift your starting point sentence by 6 months to reflect your previous conviction of assault in 2009 which increased your sentence to 2 years starting point sentence on count 2. I sentence you to 6 months imprisonment in count 3. They are to be concurrent.
73. On the third step of the sentencing, I consider the aggravating factors and the mitigating ones and on balance, I give you an allowance of 10 months to reflect your mitigating factors as submitted by your lawyer including your substantive contribution to shipping industry of Vanuatu.
74. You are not entitled to one third ($\frac{1}{3}$) reduction as you did not enter guilty pleas to the offences charged against you.
75. Your end sentence is 14 months imprisonment.
76. The next question is whether or not your sentence of 14 months should be suspended?
77. Section 57 of the Penal Code is the relevant provision. There are three factors that the Court must consider before suspending an imprisonment sentence: First, the Court must have a view of the circumstances of the offending; second, the court must consider the nature of the particular crime and third, the court must consider your character as the offender.
78. In this case, I consider the circumstances of the offending and in particular the nature of the crime; and your character as the offender, I reach the conclusion that it will be wrong to suspend your imprisonment sentence of 14 months. That is not the first time, among other matters, that you assaulted women considering your behaviour's propensity for not being prepared to let a matter go. This imprisonment sentence is to have a deterrent effect on you and others also and at the same time it is to protect weak members of the community against violent actions resulting in serious damages, injuries on the bodies of these victims.



79. You are going to custody today Friday 12 July 2019 and your imprisonment sentence of 14 months is deemed to be effective from the date of 6 July 2019 as you have already spent 6 days in custody prior to your sentence today.
80. You have 14 days to appeal this sentence if you are unsatisfied with it.

DATED at Port Vila this 12th day of July, 2019.

BY THE COURT



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Vincent Lunabek
Chief Justice

