

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

Criminal
Case No. 19/3128 SC/CRML

PUBLIC PROSECUTOR

v

**JOE WALVILOW
NICK WALVILOW
JOSHUA WALVILOW
PETER WALVILOW
ZEDRICK NAPUAT WALVILOW**

Date: 2 December 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr S. Blessing
Defendants – Mr W. Kapalu

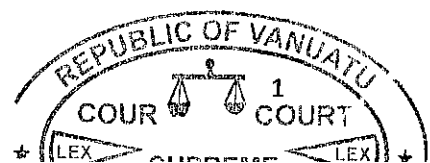
SENTENCE

A. Introduction

1. Messrs Walvilow pleaded guilty and accepted the summary of facts relating to 1 charge of riot and 4 charges of intentional assault.

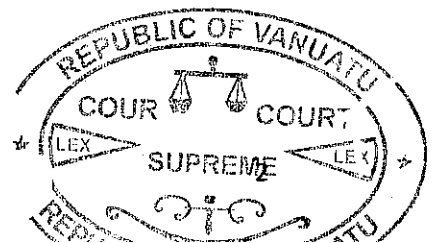
B. Facts

2. In the evening of 13 August 2019 through to the early hours of 14 August 2019, 26 year old Harry Walvilow and some relatives drank home brew. Harry Walvilow returned to his house at breakfast time. His 70 year old father Marcel Walvilow, 60 year old mother Elizabeth Walvilow and others were already up. The Defendants assembled with the intent to assault Harry Walvilow (Count 1) and went to the latter's house, led by Joshua Walvilow. The Defendants are all related and are closely related to the complainants Harry Walvilow, Marcel Walvilow, Elizabeth Walvilow and Ella Marcel.
3. Joshua Walvilow ran to Harry Walvilow and punched him in the head multiple times. Peter Walvilow hit Harry Walvilow's head and about his body with an iron bar repeatedly. Nick



Walvilow threw stones at Harry Walvilow (Count 4). Harry Walvilow fell to the ground and lost consciousness immediately. He was bleeding profusely.

4. At the same time, the other Defendants Nick Walvilow, Joe Walvilow and Zedrick Napuat Walvilow assaulted Marcel Walvilow by punching and kicking him all over his body. They were all wearing safety boots (Count 2).
5. Elizabeth Walvilow ran to her son lying on the ground, attempted to take hold of him and begged the Defendants to stop. Instead of doing so, Peter Walvilow struck her back with the iron bar and she fell to the ground. He continued to hit her head and eyes repeatedly. Nick Walvilow kicked her head and eyes with his safety boots. Peter Walvilow stabbed Elizabeth in her face with the iron bar while she was unconscious on the ground. All the Defendants continued to assault her despite the fact that she was already felled to the ground and defenceless (Count 3).
6. Harry Walvilow and his parents were all inert on the ground and bleeding profusely. They were all unconscious. The Defendants assaulted them with an iron bar, punched them and kicked them with their safety boots. The Defendants struck, punched and kicked them on their heads, eyes, face, ribs, legs and other parts of their bodies. They continued to do so even though it was apparent that all 3 were unconscious (Counts 2, 3 and 4).
7. The Defendants stopped for a little while but returned and again assaulted Harry and his parents. Ella Marcel attempted to intervene but Joe Walvilow punched her right jaw (Count 5) so she took flight.
8. Other villagers approached but they too were chased away. Villagers including the elderly and children fled to nearby villages as they were afraid of the Defendants. They stayed away for about a week, too scared to return to their village.
9. Harry Walvilow regained consciousness after 2 hours. He was in the village dispensary covered all over with bandages. He continued to bleed profusely.
10. His parents were comatose. They and Harry were airlifted to Port Vila and admitted to the Vila Central Hospital. They regained consciousness at the hospital, Elizabeth doing so in September 2019. Both remained at the hospital for 2 months after that.
11. Ella Marcel remained at the dispensary at Erromango. Her jaw swelled and she was unable to eat properly until very recently.
12. The injuries suffered by the complainants include:
 - Marcel Walvilow – permanent injuries including left eye haemorrhage, both eyes bruised, coma and bruises to the right shoulder, right chest, lower back and left mid back. His short term memory and recall is affected.



- Elizabeth Walvilow – permanent injuries including bruising over left cheek areas, multiple bruises across the mid and lower back, persisting pain over left jaw and coma. She now has limited vision in one eye and cataract in her left eye.
- Harry Walvilow – temporary injuries including lacerations to right scalp measuring 3cm long and deep, laceration to right mastoid region measuring 1cm long and deep, laceration to tip of left ear, muscle injuries to left jaw, muscle injuries to left arm and right eye periorbital hematoma.
- Ella Marcel - temporary injuries including painful jaw, appetite affected, left hand swollen and painful when moving and chest pain.

13. Police officers travelled to Erromango to arrest the Defendants. The Defendants elected to remain silent.

C. Discussion

14. The sentence start point is assessed by having regard to the maximum sentences for the offending and factoring in the aggravating and mitigating aspects of the offending.

15. The maximum sentences for these offences are:

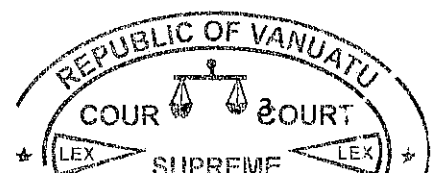
- Riot – 10 years imprisonment;
- Intentional assault causing permanent injuries – 10 years imprisonment; and
- Intentional assault causing temporary injuries – 5 years imprisonment.

16. The aggravating factors are:

- Gross breach of trust;
- A group attack on individual complainants;
- The unprovoked nature of the assault;
- The weapons used, being an iron bar and kicking the victims using safety boots;
- Attacks to the head, the most vulnerable part of the human body;
- The assault was repeated, continuing until the victims were rendered unconscious and afterwards as they lay on the ground; and
- The physical and psychological impacts of the assault on the victims.

Joshua Walvilow

17. After the Defendants assembled with the intent to assault Harry Walvilow, Joshua Walvilow led them to Harry's house. The global sentence start point I adopt is 6 years imprisonment (72 months) with a higher sentence for riot (Count 1) than for the other Defendants.



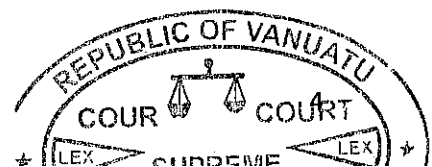
18. The Defendants pleaded guilty at the earliest available opportunity. However, given the strength of the Prosecution case, the Defendants had little option but to plead guilty. The guilty pleas warrant a 25% (18 months) deduction.
19. Joshua Walvilow was 22 years old at the time of the offending. He is a farmer. He is in a de facto relationship and has 1 child. He has no previous convictions. I deduct 2 months for the personal factors, and a further 4 months for his youth.
20. Taking all of those matters into account, the end sentences imposed concurrently are:
- a. Riot (Count 1) 2 years 6 months imprisonment;
 - b. Assault causing permanent injuries (Counts 2 and 3) 4 years imprisonment; and
 - c. Assault causing temporary injuries (Counts 4 and 5) 2 years 6 months imprisonment.

Peter Walvilow

21. Peter Walvilow was the worst offender in the assault of the complainants, using an iron bar as well as his safety boots. He struck Harry Walvilow's head and body repeatedly with the iron bar. He struck Elizabeth's back with the iron bar and she fell to the ground. He continued to hit her head and eyes repeatedly. While she was unconscious on the ground, he stabbed her face with the iron bar. Peter Walvilow's sentences for assault will be higher than for the other Defendants. The global sentence start point I adopt is 8 years imprisonment (96 months).
22. I deduct 25% (24 months) for the guilty pleas.
23. Peter Walvilow was 34 years old at the time of the offending. He is a farmer. Peter Walvilow is in a de facto relationship and has 4 children. He pays school fees for all 4 children. He has no previous convictions. I deduct 2 months for the personal factors.
24. Taking all of those matters into account, the end sentences imposed concurrently are:
- a. Riot (Count 1) 2 years imprisonment;
 - b. Assault causing permanent injuries (Counts 2 and 3) 5 years 10 months imprisonment; and
 - c. Assault causing temporary injuries (Counts 4 and 5) 4 years imprisonment.

Nick Walvilow

25. The global sentence start point I adopt is 6 years imprisonment (72 months).
26. I deduct 25% (18 months) for the guilty pleas.



27. Nick Walvilow was 18 years old at the time of the offending. He is a Year 10 student and is now missing classes. He has no previous convictions. I deduct 2 months for the personal factors, and a further 8 months for his youth.

28. Taking all of those matters into account, the end sentences imposed concurrently are:

- a. Riot (Count 1) 2 years imprisonment;
- b. Assault causing permanent injuries (Counts 2 and 3) 3 years 8 months imprisonment; and
- c. Assault causing temporary injuries (Counts 4 and 5) 2 years 6 months imprisonment.

Joe Walvilow

29. The global sentence start point I adopt is 6 years imprisonment (72 months).

30. I deduct 25% (18 months) for the guilty pleas.

31. Joe Walvilow was 46 years old at the time of offending. He is a farmer and married with 10 children. He pays school fees for 5 of them. He has no previous convictions. I deduct 2 months for his personal factors.

32. Taking all of those matters into account, the end sentences imposed concurrently are:

- a. Riot (Count 1) 2 years imprisonment;
- b. Assault causing permanent injuries (Counts 2 and 3) 4 years 4 months months imprisonment; and
- c. Assault causing temporary injuries (Counts 4 and 5) 2 years 6 months imprisonment.

Zedrick Napuat Walvilow

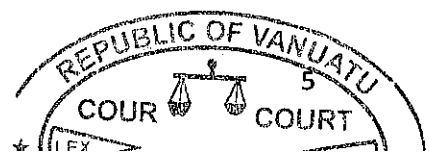
33. The global sentence start point I adopt is 6 years imprisonment (72 months).

34. I deduct 25% (18 months) for the guilty pleas.

35. Zedrick Napuat Walvilow was 19 years old at the time of the offending. He is a Year 10 student and is now missing classes. He has no previous convictions. I deduct 2 months for his personal factors, and a further 6 months for his youth.

36. Taking all of those matters into account, the end sentences imposed concurrently are:

- a. Riot (Count 1) 2 years imprisonment;



- b. Assault causing permanent injuries (Counts 2 and 3) 3 years 10 months imprisonment; and
- c. Assault causing temporary injuries (Counts 4 and 5) 2 years 6 months imprisonment.

D. Suspension

37. Given the circumstances of the case and the nature of the crime, immediate custodial sentences must be imposed to express society's denunciation of such sustained, unprovoked, violent criminal conduct and to fulfil the sentencing principle of deterrence.

E. Other

38. The Defendants have 14 days to appeal these sentences if they disagree with them.

**DATED at Port Vila this 2nd day of December 2020
BY THE COURT**

VM Trief
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Viran Molisa Trief
Judge

