

Public Prosecutor

V

Austine Charley

Date of SENTENCE: **12th day of November, 2021 at 9:00 AM**
Before: **Judge Aru**

In Attendance: **Micheline Tasso for the Public
Prosecutor**
Fotuviri Kalsakau for the Defendant

SENTENCE

Introduction

1. Mr Austin Charley pleaded guilty to one count of intentional assault and 4 counts of domestic violence. He now appears for sentencing.

The facts

Count 1

2. On 6 January 2021 at Manples area the defendant came home in the early hours of the morning and assaulted his young biological brother on the left side of his face with his right hand. The complainant fell to the ground and the defendant kicked him again in the same place.

Count 2

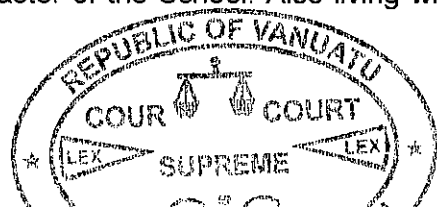
3. Whilst the complainant was lying on the ground the defendant kicked him on the mouth and broke one of his teeth. The defendant's uncle intervened and stopped the defendant from further assaults on the complainant.

Count 3

4. On 14 July 2021 the defendant's mother was on her way to work at Manples area when she met the defendant on the road. There was no one else on the road. When the defendant saw her he said: "Yu kan face ia bai mi kilim yu tedei". Following that the defendant took a wooden stick and threw it at his mother. She avoided being hit by the stick and scolded the defendant before walking home.

Count 4

5. On 21 April 2019 the defendant was living at Vila North School where his adoptive father was the Deputy Head Master of the School. Also living with



them was his biological sister. At around 5.00pm when their parents were not home, the defendant's sister was with her friends in her room when the defendant entered the room and went directly to his sister and kicked her on the right ribs and punched her on the left side of her face. At that moment she peed in her pants as a result of the assault. Her friends who were present were traumatised by the defendant's behaviour towards his sister. After the assault the defendant returned to his room and turned on loud music. When their mother returned the complainant reported the incident to her. Their mother spoke to the defendant but he did not listen so the complainant and their mother left the defendant alone in the house and they went to Manples area as this was not the first time the defendant behaved towards his sister in this manner.

Count 5

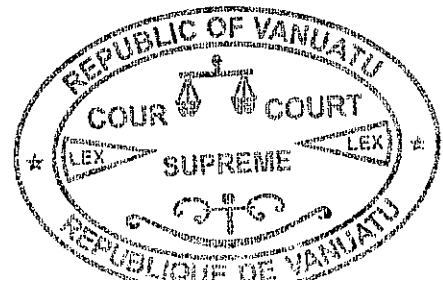
6. On 2 September 2018, the defendant's father took some food on a plate to the defendant. When he approached the defendant, the defendant stared at his father and told him: "bae mi kilim yu ded". The defendant grabbed the plate and threw it outside. As the incident happened inside the school boundary other teachers saw the incident and were scared of the defendant as this was not the first time he acted in this manner.

Starting point

7. The starting point of sentence is determined by considering the maximum sentence available for the offending and taking into account any aggravating or mitigating factors. For intentional assault the maximum sentence available where damage is of a permanent nature is 10 years imprisonment. Domestic violence is punishable by a term of imprisonment of 5 years or a fine not exceeding VT 100,000.
8. There are a number of aggravating factors. First there were 4 different complainants and the offending was repeated. There was also a breach of trust as the offending occurred in a home and in one instance in front of young children. A weapon was used. The defendant's actions caused his family members to fear for their lives as the defendant's actions resulted in physical injuries to two of the complainants.
9. There are no mitigating factors of the offending.
10. The lead offence in this case is intentional assault. The overall starting point of sentence is 3 years imprisonment to be concurrent.

Personal factors

11. When considering the guilty plea, it was not entered at the earliest opportunity. Before the information was amended the defendant entered a not guilty plea to the charge of intentional assault and the matter was managed for trial. The trial did not proceed, as the information was amended and he pleaded guilty to all the charges including the charge of intentional assault. The sentence will be reduced by 6 months for the late guilty plea.



12. The Pre-Sentence Report states that the defendant is 26 years old and is a first time offender. He completed his education at Year 10. He has also done a one year auto mechanics course at the Vanuatu Institute of Technology. He is unemployed and lives with his parents. His father confirmed to the writer that the defendant gets aggressive when under the influence of cannabis but otherwise he takes part in community activities .He is a member of the Presbyterian Church.
13. A custom reconciliation was performed to the complainants/members of his family and they confirmed to the Probation officer that they accepted it and have forgiven him. Items exchanged by the defendant were :
- 2mats
 - Some food root crops
 - VT 2000 cash
14. The defendant was remanded into custody on 15 July 2021 on the application of the Prosecution for bail to be revoked and currently remains on remand.
15. Taking into account these personal factors the sentence is further reduced by 6 months.

End sentence

16. The end sentence on the lead offence (intentional assault) is therefore 2 years imprisonment. For each count of domestic violence the defendant is sentenced to 4 months imprisonment to be served concurrently.
17. The overall concurrent sentence is 2 years imprisonment to be served with effect from **15 July 2021**. Considering the circumstances of this case the sentence will not be suspended.
18. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 12th day of November 2021

BY THE COURT

Dudley Aru
Judge

