

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

Criminal
Case No. 21/2663 SC/CRML

BETWEEN: Public Prosecutor

AND: Alwin Charly

Date: 21st April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms M Taiki for the Public Prosecutor
Mr M. Vire for the Defendant

SENTENCE

A. Introduction

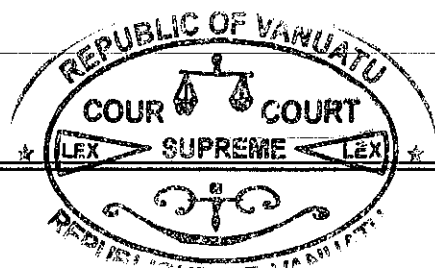
1. Mr Charly pleaded guilty to causing death by reckless driving and intentional harm causing death.

B. Facts

2. At around 5am on 4 September 2020 Mr Charly was driving a Blue Mazda BT50 with several passengers on board. Mr Charly held no valid driving licence, his vehicle was not issued with a road worthiness certificate or public vehicle permits, and Mr Charly held no third party insurance.
3. On the journey from Espikils Bay, North West Malekula to Lakatoro the vehicle's brakes ceased to operate. In fact the right front wheel brake disk pads fell off the vehicle. However Mr Charly continued on regardless. At Tivel Creek the vehicle descended a hill and Mr Charly lost control. He went sideways down the road for 20-25 metres, righted the vehicle, but then over-corrected and rolled the vehicle. It ended upside down resting on its roof.
4. Four were passengers injured; and 4 passengers were killed as a result of the accident.

C. Sentence Start Point

5. The sentence start point is to be assessed by having regard to the maximum penalty for each offence and factoring in the mitigating and aggravating aspects of the offending.



6. The maximum penalty for causing death by reckless driving is 5 years imprisonment. As well, Mr Charly is liable to have his driving licence taken off him for up to 5 years. The maximum sentence for unintentional harm causing death is also 5 years imprisonment.
7. There are no mitigating aspects to the offending. However there is an element of duplication in the charges in that both charges allege the conduct concerned resulted in the loss of life.
8. The aggravating factors to the offending include:
 - Mr Charly did not hold a valid driving licence and therefore should not have been driving.
 - His vehicle had not passed the current road worthiness test, and should not have been on the road;
 - His vehicle was not permitted as a public transport vehicle, and Mr Charly should not have been operating the vehicle as a public transport vehicle;
 - The fact that Mr Charly had at least 8 passengers on board;
 - The fact that Mr Charly continued to drive after his vehicle's brakes had ceased to operate;
 - That caused the vehicle to speed up going downhill which caused Mr Charly to lose control;and
 - the fact that 4 people were injured, as well as the four lives lost. The injuries suffered by those who survived were serious in that each required hospitalisation in order to recover.
9. This case is so serious in terms of criminal culpability that a sentence start point of 4 years imprisonment is called for. That sentence reflects the total criminal culpability of the 2 charges on a concurrent basis.

D. Mitigation

10. Mr Charly is entitled to a discount for a prompt plea. In my view the maximum discount where the evidence is as strong, as it is in this case, is 20%. The discount reflects Mr Charly's acknowledgement of wrong doing and the saving of Court time/expense. I do not consider his pleas demonstrate true remorse.
11. Mr Charly is 65 years age, married with 7 children, one of whom is still of age school. He currently sustains his family through gardening.
12. Mr Charly is the head elder of the Seventh Day Adventist Church and a tribal leader in his community. He has no previous convictions.
13. Mr Charly claims to be very sorry for the loss of life he has caused as well as the injuries to others. In explanation for the offending, Mr Charly stated to the PSR writer that he had changed the vehicle's brake pads 3 days prior to the accident. He believed black magic was at play in causing the accident.
14. He told the PSR writer that the chiefs from his village and tribe had performed custom reconciliation ceremonies with the people of Pinalum village, Wala and Atchin. He further advised he and his brothers are planning to hold further ceremonies with the families of the deceased.

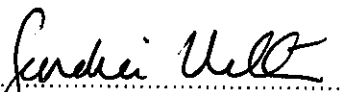


15. For his personal factors I further reduce the sentence start point by 6 months.

E. End Sentence

16. The end sentence imposed is 2 years 8 months imprisonment. I impose that on both charges concurrently.
17. Mr Charly has been remanded in custody prior sentencing. Accordingly, to preserve his parole rights, the sentences are to run from 7 September 2020.
18. In addition, Mr Charly is disqualified from holding or obtaining a driving licence for a period of 5 years, which is the maximum period possible. The purpose of this aspect of the sentence is to ensure that Mr Charly is not able to re-offend in a similar way in the future.
19. The sentence will not be suspended. The primary sentencing purpose is to hold Mr Charly accountable for his conduct and to deter him and others from acting this way in future.
20. Mr Charly has 14 days to appeal the sentence if he disagrees with it.

Dated at Luganville, this 21st day of April 2021
BY THE COURT


Justice G.A. Andree Wiltens

