

IN THE MAGISTRATE'S COURT AT SAVUSAVU
CRIMINAL JURISDICTION

Criminal Case No. 93 of 2016

STATE

v

OLIVER WHIPPY

Counsels : **Ms Elo. W** for the Prosecution
Accused in person

Sentence : **25 May 2018**

SENTENCE

1. Oliver Whippy today is for sentencing for one count of *Act With Intent To Cause Grievous Harm*.
2. On 23 May 2016 you waived your rights to counsel. On the same day you pleaded guilty to the charge on your own free will. I find your plea to be unequivocal.
3. The brief summary of facts are:-
"On 21 March 2016, the victim Melaia Haynes was sleeping at her house when she heard the accused Oliver Whippy calling her name. The accused was standing outside beside the window of the house. The accused asked the victim as to why she was having an affair with another man. The victim responded that

she was having an affair. The accused threw a pipe through the louvers. The victim evade the pipe and ran to the sitting room. When the victim was at the sitting room, the accused open the door, entered the house and throwing punches at the victim's head. The victim felt numb on her head. The accused grabbed a clam shell and hit the victim's forehead where the victim received injuries. The injuries are laceration on forehead on the midline with sharp incisions and bleeding, multiple swelling on the scalp, 1cm by 2cm hematoma on left side shoulder. The accused was arrested, caution interviewed and admitted to the allegation."

4. You admitted to the above summary of facts on 1 August 2016, and convicted as charged. You submitted oral mitigation on 16 September 2016.
5. The maximum penalty for the offence of *Act with Intent to Cause Grievous Harm* is life imprisonment. The tariff is from 6 months to 5 years imprisonment. For using of weapon, the starting point is 2 years and above.
6. The aggravating factors are:-
 - (i) Using of weapon (Clam Shell).
 - (ii) Weapon was used to strike the victim's forehead.
 - (iii) Continues punching on victim's head until it numb.
 - (iv) Injuries sustained by the victim.
7. The compelling mitigating factors are:-
 - (i) Seeking the court forgiveness.
 - (ii) Promise not to re-offered.
 - (iii) Seek the court Leniency.
8. This is a case for used of weapon. I pick 2 years and 6 months as my starting point.
9. I add 1 year for the aggravating factors, that increase your sentence to 3 years and 6 months imprisonment. I reduce 10 months for your mitigation and that reduce your sentence by 2 years and 8 months imprisonment.

10. I deduct 10 months and 2 weeks from your sentence as your one third entitlement for your early guilty plea. That reduce your sentence to 1 year, 9 months, and 2 weeks imprisonment.
11. From the court record, you were in remand for a period of 2 months. Accordingly, I reduce 2 months from your sentence. That reduce your sentence to 1 year, 7 months, and 2 weeks imprisonment. I am not giving any deduction for the period you have been serving for another case.
12. Your final sentence is 1 year, 7 months, and 2 weeks imprisonment.
13. In your mitigation you asked for a non-custodial sentence and request for a suspended sentence. I have considered *section 4* of the *Sentence and Penalties Act* and the principal of rehabilitation. There is no special circumstance shown to justify suspension of sentence. Noting the seriousness of this offence, this sentence is based on the principle of deterrent both specific and general to denounce such conduct.
14. Oliver Whippy, I now sentence you to 1 year, 7 months, and 2 weeks imprisonment to be served with immediate effects.
15. Since the accused is not present today, I will pronounce the sentence in absence of the accused. The sentence to run from the date the accused is arrested.

28 days to appeal

C. M. Tuberi

RESIDENT MAGISTRATE

