

**BETWEEN:** STEPHEN SARGINSON  
Appellant

**AND:** PUBLIC PROSECUTOR  
Respondent

**Date of Hearing:** 5 November 2024

**Coram:** Hon. Justice M. O'Regan  
Hon. Justice R. White  
Hon. Justice O. A. Saksak  
Hon. Justice D. Aru  
Hon. Justice V. M. Trief  
Hon. Justice E. P. Goldsbrough  
Hon. Justice M. A. MacKenzie

**Counsel:** P. K. Malites and K. S. Amos for the Appellant  
J. Tete for the Respondent

**Date of Decision:** 15 November 2024

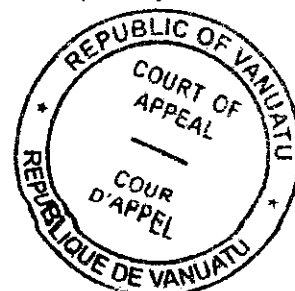
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## JUDGMENT

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### Introduction

1. The appellant pleaded guilty to one charge of domestic violence contrary to ss 10(1) and 4(1) of the Family Protection Act 2008 and one charge of threatening to kill contrary to s 115 of the Penal Code [CAP. 135].
2. He was sentenced to a term of imprisonment of one year, nine months and 29 days. The primary Judge declined to suspend that sentence.
3. The appellant now appeals to this Court. The focus of the appeal was on the decision of the primary Judge to refuse to suspend the appellant's sentence.

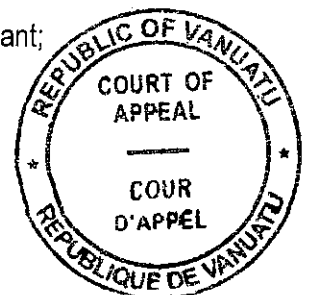


## Facts

4. The victim of the appellant's offending was his spouse, with whom he has two children. They had been in a spousal relationship for nine years at the time the offending occurred. At that time, the victim was 24 years old and the appellant was 49 years old.
5. The background to the offending was that the victim had travelled to Australia in 2023 for seasonal work. She began an affair with another man and became pregnant to that man. On her return to Vanuatu the appellant asked her about the affair. She admitted it and admitted that she was pregnant.
6. Subsequently, the appellant found the complainant talking on the phone with the man with whom she had had the affair. The appellant confronted the victim and thereafter assaulted her. The agreed summary of facts described this offending as the appellant assaulting the victim four times all over her body with his hands and legs, following which the appellant instructed the complainant to clean herself due to the blood she had lost as a result of the injuries she sustained.
7. The appellant then sent a voice message to the man with whom the victim had had an affair threatening to kill him.
8. After the incident the victim was taken to hospital. She was treated there and it was confirmed that she was pregnant.

## Sentence

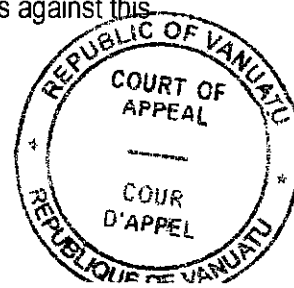
9. The maximum sentence for the domestic violence charge is five years' imprisonment or a fine not exceeding VT100,000, or both. The maximum sentence for threatening to kill is 15 years' imprisonment.
10. The primary Judge set a starting point of three years and six months' imprisonment for the charge of threatening to kill and a starting point of two years' imprisonment for the act of domestic violence. He indicated that the final sentences would be concurrent.
11. In setting the starting point the Judge took account of the following aggravating factors:
  - a) The breach of trust, given that the victim was the appellant's spouse and mother of his two children;
  - b) The fact that the domestic violence was inflicted while the victim was pregnant;



- c) The fact the offence occurred in the presence of children and other members of the victim's family; and
  - d) The offending involved emotional exploitation of a vulnerable person.
12. The primary Judge then considered the mitigating factors. In particular:
- a) The appellant was 49 years old and a first-time offender with no previous convictions;
  - b) The appellant demonstrated genuine remorse;
  - c) The offending occurred after the appellant learnt his wife had been impregnated by another man; and
  - d) The appellant had performed a custom compensation with the victim and her family, which involved the provision of goods of substantial value. This had been accepted by the victim's family.
13. The primary Judge allowed a reduction of six months (approximately 15 per cent) for those mitigating factors. In addition, the Judge gave a further reduction of 33 per cent to reflect the appellant's early guilty pleas.
14. The reductions for mitigating factors reduced the starting point of three years and six months' imprisonment to 22 months' imprisonment. A further reduction of one day was made to reflect that the appellant had been kept in the custody of the police for 24 hours.

### Suspension

15. The primary Judge then considered whether to exercise the discretion under s 57 of the Penal Code Act. The Judge decided that suspension was inappropriate and that a custodial sentence was necessary for these reasons:
- a) To mark public disapproval of this type of offending against women and mothers of children;
  - b) To serve as punishment for this offence;
  - c) To serve as a deterrent against the appellant and other like-minded defendants against this type of offending; and



- d) To serve as protection against women as vulnerable members of society.

### **The appellant's submissions**

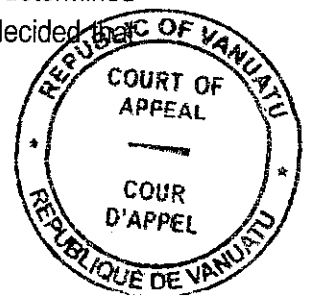
16. The appeal was advanced on two grounds, namely,
- a) The sentencing Judge erred by placing so much weight on the appellant's offending and failed to wholly or partially suspend the sentence;
  - b) The primary Judge erred in not considering the personal circumstances of the appellant when determining that the sentence would not be suspended.
17. As is apparent, there is no challenge to the other aspects of the sentence, and the argument before us was entirely directed to the question as to whether the sentence should have been wholly or partially suspended.

### **Too much weight on the offending**

18. We can deal with this aspect of the appeal briefly. The sentencing Judge took an orthodox approach in assessing the seriousness of the offending while setting the sentence. Inevitably, that was also reflected in the consideration of the suspension of the sentence. We see no error in this regard.

### **Personal circumstances**


19. The essence of the argument advanced on behalf of the appellant is that, while the sentencing Judge identified the mitigating factors relating to the appellant in setting the term of imprisonment, he did not refer to them again when he came to address the discretion under s 57 of the Penal Code Act in relation to suspension. It is argued that this indicates that the primary Judge did not take account of those mitigating factors in relation to the suspension as should have occurred.
20. We accept that the primary Judge did not specifically refer to the personal mitigating factors in the discussion of the s 57 discretion. But it is clear that the Judge did consider those factors, having just carefully enumerated them earlier in the sentencing judgment. The Judge was concerned at the seriousness of the offending, and, given the considerations he identified, determined that it was not appropriate to exercise the discretion to suspend the sentence under s 57. As the Judge determined that no suspension of the sentence was justified, we deduce that he must also have decided that any partial suspension of the sentence under s 58 was inappropriate.



- 21. We see the Judge's refusal to suspend the sentence as within the sentencing discretion.
- 22. We therefore dismiss the appeal against sentence.

DATED at Port Vila, this 15<sup>th</sup> day of November, 2024.

BY THE COURT

  
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Hon. Justice Mark O'Regan

