

PUBLIC PROSECUTOR

-v-

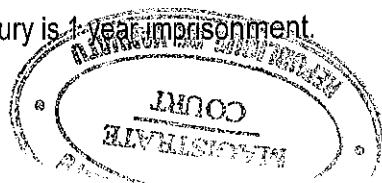
MICHAEL TUKU

Coram: Moses Peter
Court Clerk: Florina Ephraim

Appearances: Betina Ngwele for the State
Brian Livo for Defendant
Defendant appear in Person

SENTENCING

1. Mr. Michael Tuku, you first appeared in court on 26th October 2015 and pleaded guilty on the charges of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP.135].
2. Today you appear for sentencing on the charge after time was allocated for a pre-sentence report to be submitted by Probation Officer in the Correctional Service, and sentencing submissions to be filed by both counsels.
3. The brief facts of the case has it that on 30th April 2015, the Complainant Michael Vira lodged a complaint in the police against you for asking him to follow you to the Police Station after he met you at Bon Marche Central. He followed you to the Police Station on the believe that he will be speaking with another police officer.
4. Upon entering the Police Station, you led him into a room at back of the Police Station, which you closed the door and began the assault on him. While you were assaulting the Complainant, another police officer guarded the door to prevent him from escaping.
5. He said the assault on him went on for about 5 minutes until another police officer came and stop you.
6. Consequent to the assault, the Complainant sustained temporary injury on his body. The Complainant sought for medical treatment and a medical report confirmed the injuries he sustained.
7. The maximum penalty for Intentional Assault causing temporary injury is 1-year imprisonment.



8. In the case of **Public Prosecutor v Morris [1995] VUMC 5 CR 466**, the Court imposed three (3) weeks imprisonment but suspended for one (1) on David Morris, taking into account the victim he assaulted was his legal wife and that he was employed as a mobile force officer.
9. In **Public Prosecutor v Willie Ben & Ors VUMC**, the Defendants were fined VT 3,000 each with cost of VT 2,000 for assaulting the Complainant at Au Bon Marche Manples.
10. In **Public Prosecutor v Kalpukai Ronandie VUMC**, defendant assaulted Complainant and he sustained bruise on his face, wrist and damaged left ear drum. Court fined him VT 6,000 including cost.
11. Ms. Ngwele submitted that appropriate sentence to impose is VT 10,000 fine and a prosecution cost of VT 1,000.
12. The Court did not have a presentence report as ordered on 26th October 2015, however, is appreciative of character references submitted by Superintendent Jackson Noal Katenga and Detective Sergeant Risa Fred.
13. In the character reference report you realized your mistakes and fully understood the consequences it may have on your work as a police officer and your family as they rely heavily on your employment for daily sustenance.
14. I find your case different from other police officers charged on assaults happening outside your place of employment. The Police Act authorizes police officers to use reasonable force in order to prevent a crime or to assist in effective lawful arrest of a person who commits a criminal offence. You have no excuse of using reasonable force in this situation because the Complainant has voluntarily entered your Station on your request.
15. Whilst in your custody, you assaulted him using your fist. The use of force here is excessive and does not satisfy the reasons stated in section 36 of the Police Act [CAP.105]. I call this assault to payback for a wrong the Complainant might have done to you in the past.
16. The Criminal Justice system begins with the police arresting offenders upon lodging of complaints and investigation of offences. When the case reaches the court, only the court is empowered by law to punish the offender upon finding him or her guilty.
17. The Police officers have no right whatsoever to assault the accused when in their lawful custody because if they are seen to be offering some sort of punishment by using excessive force on the accused, then that defeats the whole purpose of the court having the power to impose punishments on criminal offenders.
18. Our system of governance upholds rule of law which means irrespective of your status in the society, everyone are subject to the law of our country.
19. I have seen accuseds brought into my court with swells on their faces. I asked them to explain their ordeal, and they said they have been assaulted by the police when in their custody.
20. I believe after many years of this unacceptable attitude by police officers, this is the first time that a complaint has finally reaches the court.



21. A sentence I will impose on each of you is to mark the seriousness of your offence and to set as an act of deterrence to each of you and to your colleague police officers.
22. Given the nature of your offence, I consider that the starting point for you shall be 4 month imprisonment.
23. The aggravating factors taken into account are:
- Police Officers assaulting an accused when in your lawful custody.
 - Accused sustained injury from the assault.
 - You abused your powers as Law Enforcement Officers.
 - The assault occurred where people relied on for safety and protection.
 - You assaulted accused using your fists.
 - You ensured the door is secured by another officer when you were assaulting the Complainant.
24. In considering the aggravating factor, I uplift this by 1 month making a total sentence of imprisonment to 5 months.
25. The mitigating factors taken into account from your presentence report and character reference from your superiors are:
- You are a first time offender
 - You are remorseful for your actions.
 - Willing to reconcile with the victim but he refused to accept it.
 - You are person with good fame and character in community and in workplace.
 - Committed yourself to make amendments in your life and to serve the people with dignity and respect.
26. You are entitled to one third reduction of the sentence because of your guilty plea and that is 7 weeks reduction which now leaves you with a balance of 13 weeks imprisonment. I deduct another 2 week for showing remorse for your action and that you are willing to participate in any custom ceremony with the victim as a sign of forgiveness.
27. You are left with a balance of 11 weeks of imprisonment.
28. In considering whether or not to suspend your sentence, I considered your character and dedication to your work and the respect given to you by your supervisors and family members, I have accepted to suspend your sentence for 12 months, however, in the event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
29. For completeness, you are ordered to perform custom reconciliation with the victim as a sign of forgiveness for the wrong done to him.
30. The Probation Officer at the Correctional Centre shall facilitate to reconciliation ceremony and shall produce a report to the court in 31 days from the date of this order.



31. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Port Vila this 4th day of May 2016

BY THE COURT



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MOSES PETER
Senior Magistrate

