

PUBLIC PROSECUTOR

V

MARALYNE SMITH

Date of Sentence: 28th July, 2021

Before: Magistrate FSam

In Attendance: Mr Sarai_P for the State

Mr Moli_L for the Defence & Defendant.

Copy: The State Prosecution, The Public Solicitor, Defendant.

SENTENCE

Introduction

1. The defendant Ms Smith pled "I tru" to all three counts of Domestic violence against her on the 14th of July, 2021, and this was recorded as her Guilty pleas.

2. Having considered the defendant admitting the summary of facts presented by the Prosecution, as well as her guilty pleas, she was convicted of all the counts against her.

Facts

3. On the 15th of May, 2021 at Manples area, the defendant reportedly came home drunk and had her shower with her clothes on. Still with her wet clothes on her body, she went to her baby son, George, of 8 months old, who was then crying and carried him for breast feed.



4. Baby George was obviously uncomfortable with the defendant being wet and carrying him, and refused being fed, and after several attempt of trying to feed the baby, the defendant then assaulted him by slapping him on his right side of the face with her hands, and then the defendant assaulted her baby son again on his stomach and leg, and when close-by witnesses tried to stop her, she threw the baby to the ground, while using the words 'why worry, he's a bastard child'. The witnesses then, were afraid that the defendant might kill her baby, that they reported the matter to the Police.

Sentencing Starting Point

5. Consideration is made to the maximum penalty of the offence of domestic violence and aggravating and mitigating factors to the offending to set an appropriate starting point.

6. The maximum penalty for domestic violence is VT 100,000 fine or 5 years imprisonment or both.

7. The aggravating factors to the offending include:

- The defendant being the victim baby's biological mother, and he was supposed to feel protected under the defendant's care, however the defendant abused this trust the baby child had towards his mother;
- The baby victim is only a vulnerable 18 month old male baby;
- The offending occurred at home where the baby should feel safe and protected, but this trust was abused by the defendant mother;
- The defendant was drunk and wet when she committed the offence.

8. There is no mitigating factor to the offending.

9. I consider the cases cited by both Prosecution and Defence, and while the nature of offending in these cases differ from the case before us, I treat this case with careful consideration, particularly with the view that it involves a victim infant who is supposedly to be under the care and protection of his defendant mother, but this was abused by the defendant where the victim baby had to suffer some consequential



pain from the amount of force applied by her defendant mother upon him at the particular time of offending. This clearly is no way to treat a child, more so your very own child, who is only an infant of 18 months old. The defendant's actions towards her baby victim, clearly goes against the constitutional right of her infant son being a vulnerable person, under Article 5 (k) and her actions even go against her fundamental duties awarded her as a parent to his innocent child under Article 7 (h). Her actions was even disapproved of by her community members who had to interfere in order to safe her baby at that time.

10. Article 3 of the Convention on the Rights of the Child is another significant provision to consider in this case, sub articles (1) and (2) provide as follows:

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

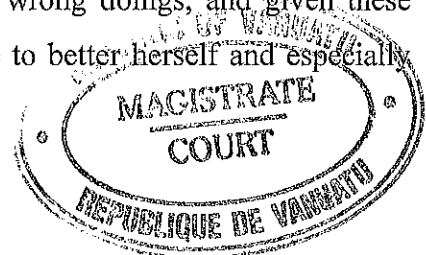
2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

(Underlined my emphasis)

11. In consideration of the relevant statutory provisions and factors, I set a global sentence starting point of 1 year imprisonment.

Personal Factors

12. The personal factors relevant to the offender include her being a 23 year old young mother, with the baby victim in this case being her only child and currently under her care, she has no prior convictions. Mr Moli has submitted on her behalf that the defendant has shown remorse over her actions, and her appearances in court has shown she has learnt a lesson from her wrong doings, and given these factors she still has time to rehabilitate and change to better herself and especially



properly exercise her duties and responsibilities towards her infant child. I note that she has also graduated with a diploma in Project leadership and management

13. The defendant has also spent 48 hours pre custody in cell 6 over her offending in this case and this is also considered.

14. I make deductions for her personal factors by 2 months.

Guilty Plea

15. Ms Smith had entered guilty pleas to all three counts at the earliest available opportunity given her. By doing so, she saved the prosecution cost and time to run a trial.

16. I award a 1/3 deduction for her guilty pleas.

End Sentence

17. Taking all factors into consideration, I impose the following end sentences:

- Count 1: Domestic Violence 6 months imprisonment
- Count 2 Domestic Violence 6 months imprisonment
- Count 3 Domestic Violence 6 months imprisonment

18. The end sentences are to run concurrently effective as of today.

Suspension

19. In considering suspension of sentence I take into account the defendant's infant child is currently under her care, with no reported violence towards him since the offending, and whilst she has a chance to rehabilitate in order to better herself and her commitment towards protecting and caring for her victim child, I award the defendant this chance.



20. I therefore suspend her concurrent sentences to 2 years given the nature of the offending and she is warned not to reoffend within the suspended period, and in the event she does reoffend, suspension of sentence will be uplifted and she must serve her sentences accordingly.

21. The defendant has 14 days to appeal this sentence if she is not happy with it.

DATED at Port Vila, this 28th day of July, 2021.

BY THE COURT



FSam

Magistrate

