

**PUBLIC PROSECUTOR**

**v**

**SAMSON SAM**

*Date: 22<sup>nd</sup> September 2022*

*Before: Magistrate P. Toaliu*

*Counsel: Mr. Lenry Young for the Public Prosecutor*

*Mrs Kylie Karu for the defendant*

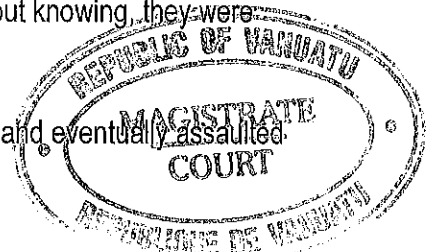
**SENTENCE**

A. Introduction

1. Mr. Sam was charged with two counts of domestic violence contrary to sections 4(1)(a) and 10(1) of the Family Protection Act No.28 of 2008.
2. On 9<sup>th</sup> September 2022, he pleaded guilt to both counts of domestic violence.
3. He accepted the summary of facts and was accordingly convicted on his own plea and the admitted facts.

B. Facts

4. Mr. Sam and the complainant were de-facto partners.
5. Sometimes on 4<sup>th</sup> October 2018, the complainant was working a night shift at her employment site when an uncle of Mr. Sam approached her and they conversed a while. Mr. Sam's uncle was attending a party close to where the complainant was working and he approached her to keep his ATM card and some cash while he attended the party. Without knowing, they were being watched by a jealous Mr. Sam.
6. In the morning, Mr. Sam confronted the complainant about this event and eventually assaulted her.



7. He dragged her out of the kitchen to a river bank next to their residence where he continued to assault her with a plastic pipe
8. Mr. Sam was eventually stopped by two boys.
9. The complainant was a month pregnant at the time of the offending.

#### C. Sentence Start Point

10. The sentence start point is to be assessed by having regard to the maximum sentence available for this offending, and factoring in both the aggravating and mitigating aspects of the offending.
11. The offence of Domestic violence carries a maximum penalty of 5 years imprisonment or a fine of 100,000VT or both.
12. The following are the aggravating factors:
  - a. A breach of trust;
  - b. The use of a weapon. Mr. Sam used a pipe to assault the complainant;
  - c. The repeated nature of the offending;
  - d. The offending happened within a family home where the complainant should be feeling safe at all times;
  - e. The offending extended to a public place where the complainant suffered a degree of embarrassment of being assaulted in public;
  - f. The pain and distress suffered by the complainant;
  - g. There was a degree of planning.
13. There are no mitigating aspects of the offending.
14. I set a starting point of 24 months imprisonment on a concurrent basis.

#### Guilty plea

15. Mr. Sam pleaded guilty at the first available opportunity. As such, he is given a 25% deduction for his guilty plea.

#### Personal Mitigation

16. Mr. Sam is 36 years old and has 4 children.
17. Prior to his current sentence, he was employed at Pro-Tyres.
18. He has offence free since 2018.
19. This matter was delayed for 4 years.
20. I allow a deduction of three months to reflect this delay.



Matters personal to the offender

21. Mr. Sam is a repeat offender. He was charged for the offences of domestic violence and Threats to kill that happened on 28<sup>th</sup> April 2018. He was sentenced on 7<sup>th</sup> June 2022 to 2 years and 8 months imprisonment. He is currently in custody serving his sentence.
22. I make an uplift of one month to reflect the fact that he has offended whilst on bail.

D. End sentence

23. Your end sentence is 16 months imprisonment for 2 counts of domestic violence.
24. I now turn to whether our sentence will be concurrent or consecutive to the sentence you are currently serving as I consider the case of *Kalfau v Public Prosecutor [1990]*.
25. I am of the view that imposing a consecutive sentence would be crushing on you and as such, I see fit that your sentence run concurrently with the sentence you are currently serving.
26. The sentence I will impose today will:
- a) Adequately punish you for your actions;
  - b) Send a message of deterrence to the community;
27. You have 14 days to appeal this sentence if unsatisfied.

Dated at Port Vila this 22<sup>nd</sup> day of September 2022

BY THE COURT



Philip Toaliu  
Magistrate

