

PUBLIC PROSECUTOR

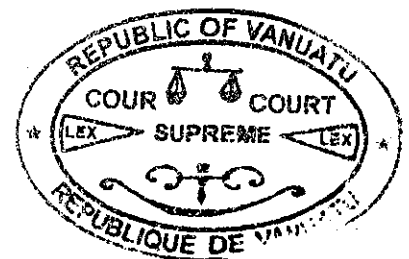
V

JAMESON KALATEI

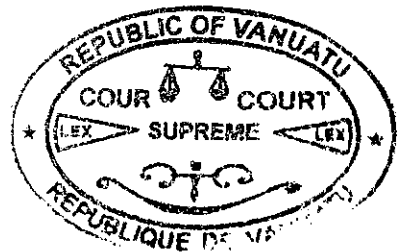
Sentence: Thursday 28 April 2016 at 2 pm
Before: Justice JP Geoghegan
Appearances: Damien Boe and Philip Toaliu for the Public Prosecutor
Stephen Carlo (PSO) for the Defendant

SENTENCE

1. Mr Kalatei you appear for sentencing in respect of two charges, the first being a charge of threatening to kill, an offence carrying a maximum term of imprisonment of 15 years and the second offence being one of intentional assault causing temporary injury being an offence which carries a maximum term of one year imprisonment.
2. The facts of the offending are not disputed and I take those facts from paragraphs 5, 6 and 7 of the prosecutor's submissions. Those facts tell me that on December 2nd 2015 the victim was severely beaten by you with a wooden stick which caused fractures to her left leg and arm. You punched her in the face and threatened her with words to the effect "I must beat you to death, you are the one that put me in prison".
3. After the assault the victim was not allowed to go to the hospital despite the fact that she had huge swelling on her leg and arm. She stayed at home unattended until one of your relatives came and took her to hospital where she was treated.
4. On January 5th 2016, she was brought to the Vila Central Hospital where she was treated and examined.



5. The submissions of the prosecution have referred to previous alleged assaults and threats to the complainant. I need to emphasize that I take no account of any of those matters and take account only of this offending and your previous convictions.
6. You have previous convictions of threatening to kill, intentional assault, malicious damage to property and theft in respect of which you were sentenced to 16 months imprisonment. That was in 2012.
7. I have read your pre-sentence report which tells me that you are 28 years old and that you and the victim have an 11 month old daughter. You have work skills as a mechanic and more recently as a carpenter. You were employed until your remand in custody. It is clear from that report that you clearly have a problem controlling your anger and you have caused concern not just for the victim but for your family and in that regard I refer to page 3 of your pre-sentence report where the report writer interviewed your father. The relevant paragraph of the report says, *"Mr James Kalatei described Mr Jameson, his son to be quite in character and always respects his mother and elders but when he started taking cannabis, it has changed him into a different person, making him so aggressive and abusive and that this is not the first time that he has committed this wrongful act as he has already served an imprisonment sentence for this same offence. Mr James stated in his words that "I am tired of my son, I have done everything for him but he never changes and he threatens everyone around him including his new de facto partner along with his brother's wife. This causes a separation in our families."*
8. At this point it is appropriate to refer to the fact that the prosecution submissions referred to previous incidents of you assaulting the victim and clearly there is reference to previous incidents in the pre-sentence report. I need to emphasize to you that in sentencing you today I am placing no weight on those references to previous incidents. The only thing that I can take into account in sentencing you today are your previous convictions for similar offending.

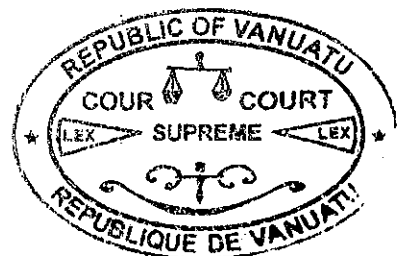


9. The pre-sentence report and the victim impact report reveal that the victim is clearly frightened of you. And in a loving relationship she is entitled to look to you for support and protection as is your tiny and vulnerable daughter, but instead of that your partner is fearful of you and that is something that you need to reflect on very carefully. It is evident from the pre-sentence report that you have caused not just her distress but members of your own family distress because of your behaviour and conduct.

10. As I have said the injuries which you have caused to the victim cause her ongoing pain and restricts her ability to carry out everyday tasks, including caring for your daughter.
11. I acknowledge in this sentencing process that your family undertook a custom ceremony on your behalf and I acknowledge also that you have stated that you were wrong for assaulting the victim and you expressed insight into your behaviour.
12. Looking at the submissions of counsel and sentencing; for sentencing purposes the lead offence here, the most serious offence is the charge of threatening to kill. But both offences involve exactly the same incident and the same essential facts.
13. Counsel are agreed that this offending carries a starting point of between 3 to 4 years. They also expressed agreement in their submissions that there should be an uplift of 12 months although I think that that is in the context of aggravating factors relating to the offending and also because of your previous convictions.
14. This was a serious assault by any account. The victim suffered fractures to her arm and her leg, you also struck her in the face. You used a weapon in the course of your threats and during the assault. You also prevented the victim from seeking medical attention when it would have been clear to you that such attention was needed. These are all seriously aggravating features of your offending. The threat to kill her was not an empty threat. It was

accompanied by serious violence and would have caused her real and genuine fear for her own life.

15. Looking at the offending alone I consider a starting point of 4 years to be appropriate. I do not consider a 12 month uplift appropriate as it runs a danger of double counting in respect of the aggravating features of your offending but I consider an uplift of 6 months to be appropriate to take into account your previous convictions for similar offending, those convictions having been entered only 3 years ago. That leaves a sentence of 4 ½ years before taking into account mitigating features and your guilty plea. I reduce the sentence by 2 months to take account of the reconciliation ceremony, although strictly speaking that was undertaken by your family. From the remaining 4 years and 4 months I deduct 17 months for your guilty plea which leaves an end sentence of 2 years and 11 months imprisonment.
16. The question then is whether your sentence may be suspended. In considering that issue I need to have regard to section 37 of the Penal Code which emphasizes the need to have regard to the possibility of keeping offenders in the community as far as is practicable and consistent with the safety of the community. I also need to have regard to the interests of the victim, to hold you accountable, of the need to provide for your rehabilitation and the need to deter you and others from offending of this kind.
17. Taking into account the circumstances of the offending and your own personal circumstances, I decline to suspend the sentence. This was very serious offending. In a society which is wracked by violence by men towards women, the Court needs to send a clear message regarding the absolute unacceptability of your conduct.
18. In addition this is your second conviction for offending of this kind.
19. Accordingly in respect of these charges you are sentenced on the charge of threatening to kill to 2 years and 11 months imprisonment. The charge of intentional assault causing temporary injury you are sentenced to 9 months

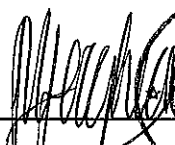


imprisonment. Those sentences are to run concurrently. Your sentence is deemed to have commenced on 7th of January 2016 to take account of the time that you have spent in custody and pursuant to section 94 of the Criminal Procedure Code I notify you that you have 14 days to lodge a notice of appeal against this decision.

20. ~~At the end of sentencing I advised counsel that unfortunately I have not activated the tape recorder immediately upon the commencement of sentencing and accordingly I would have to reconstruct the first part of my sentencing note which I indicated I was able to do easily as they simply cover the charges, the facts and the previous convictions. I advised counsel that I would send those sentencing notes to counsel and if they had an issue with any of the matters contained therein that I would discuss that with them further.~~

Dated at Port Vila this Thursday 28th day of April 2016

BY THE COURT


JP GEOGHEGAN
JUDGE

