

PUBLIC PROSECUTOR .V.FABRICE AISSAV

Coram: Justice Oliver .A.Saksak

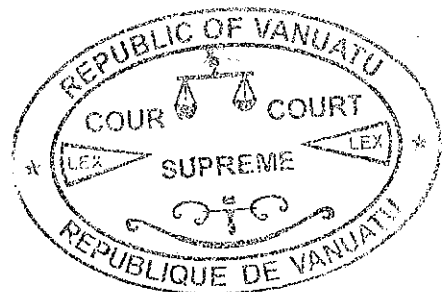
Counsel: Marie Taiki for Public Prosecutor
Stephen Carlo for Defendant

Date of Plea: 4th October 2016

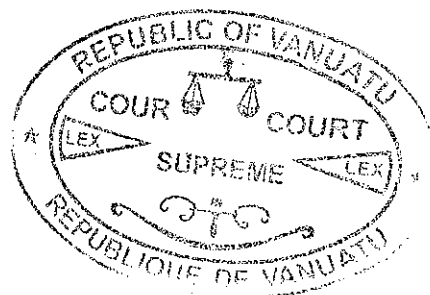
Date of Sentence: 3rd November 2016

SENTENCE

1. Fabrice Aissav you are in Court for sentence today for having pleaded guilty on 4th October 2016 to a charge of Causing Death by Reckless Driving contrary to section 12 of the Road Traffic (Control) Act [CAP. 29] (the Act).
2. The maximum penalties for this offence are (a) either a fine not exceeding VT 500.000 and/or (b) imprisonment not exceeding 5 years.
3. The facts are that on 1st January 2013 at or about 2:00pm at Mangaliliu you were driving a Unelco Office vehicle L200 D/C Reg NO. 1002. You had been drinking alcoholic liquor. You drove with three passengers namely Graham Miller, Lorry Robert and Claude Michel Tarioto. At a corner the vehicle you were driving swerved, causing it to overturn and roll over about four times before it stopped. Two of your passengers flew out of the vehicle and one remain in the vehicle due to seat belt. They were taken to the hospital by an ambulance however Claude Michel Tarioto died as a result of your reckless driving.
4. In assessing your appropriate sentence the Court adopts the sentencing principles in the following cases-
 - a) John Jenkinson .v. PP CRC 1/2000 VUCA
 - b) PP.v. Jack Joseph [2009] VUSC 22,
 - c) PP.v. Makali [2010] VUSC 100, and



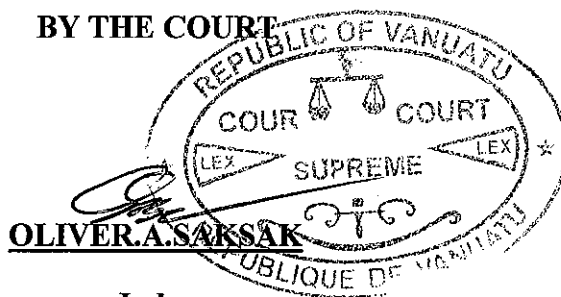
- d) PP.v. Nawia [2010] VUSC 52.
5. Therefore your sentence will be a custodial sentence, however it will be suspended.
6. The following are the aggravating features of your case-
- a) You drove under the influence of alcohol.
 - b) You drove too fast at a corner taking risks and with complete disregard for the safety and lives of your passengers.
 - c) You breached the trust they placed on you at the time.
 - d) You of course caused the loss of a life of one of your passengers.
 - e) The vehicle you used was not your own.
7. I consider that the starting points for you should be 4 years imprisonment with no further uplift. This is to-
- a) Mark the seriousness of your offending,
 - b) Mark public disapproval and condemnation of your actions,
 - c) Deter you and other like- minded drivers,
 - d) Punish you adequately, and
 - e) Protect innocent lives of passengers.
8. I therefore sentence you to a term of imprisonment for 4 years as the starting point.
9. I now allow some reductions due to your mitigating factors such as-
- a) For early guilty plea- 1/3 reduction = 16 months or 1 year, 4 months.
 - b) For clean past and cooperation with Police = 8 months.
 - c) Your end sentence is now exactly 2 years imprisonment.
10. Your sentence of 2 years imprisonment is however suspended for a period of 2 years under section 57 of the Penal Code Act [CAP.135]. This means that you must not commit any other offences for which you would be charged and convicted. If you do, you will go to prison to serve your 2 year sentence.



11. Further, pursuant to section 55 of the Road Traffic (Control) Act your driving license must be surrendered to the Court and you are hereby disqualified from driving for a period of 2 years during which your sentence is suspended.
12. I make no compensation orders against you today as that aspect may be subject of a separate civil proceeding.
13. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 3rd day of November, 2016

BY THE COURT



Judge