

**PUBLIC PROSECUTOR VS- WILLIAM ROY**

**Coram:** Mr. Justice Oliver A. Saksak

**Counsel:** Georgina Kanegai and Josephine Tete for Public Prosecutor  
Francis Tasso for the Defendant

**Date of Plea:** 4<sup>th</sup> October 2019  
**Date of Sentence :** 16<sup>th</sup> December 2019

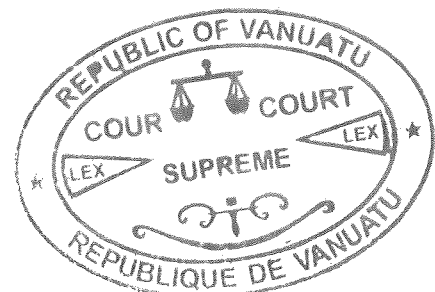
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**SENTENCE**

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1. William Roy you are for sentence today for having pleaded guilty to one charge of intentional assault causing injury of a temporary nature contrary to section 107 (a) of the Penal Code Act CAP.135.
2. This offence carries a maximum penalty of 1 year imprisonment.
3. The facts of your case are that you assaulted Eddie Kelep during a fight that occurred on 22<sup>nd</sup> April 2018 at Rontal School, Forari. You and your group were waiting for the victim's group to come for a reconciliation ceremony with a person called Morris. This was over a fight that occurred earlier in the morning of that day. However when the victim's group arrived they became abusive and were instigating a fight. The fight broke out and you then fought Eddie Kelep who had a knife with him at the time. He fell down but sustained no injuries.
4. Eddie Kelep went to hospital on 24 April 2018 with complaints about headaches due to being stoned with a stone. His skin was seen to be intact and was treated with painkiller. There was also pain on his left elbow due to being punched causing muscular pain but with no effects to the bone. The report confirms he was physically assaulted.
5. In considering and assessing your punishment. I have seen only written submissions from the prosecutions filed on 4<sup>th</sup> December 2019. Defence has filed late submissions and there is no pre-sentence report from Probation despite clear directions being issued on 19<sup>th</sup> November 2019. This will be dispensed with as there has been much delay since your guilty plea on 4<sup>th</sup> October 2019.
6. Although the medical report shows your victim suffered headaches due to a stone thrown at it, the charge does not support or is not consistent with the complaint and finding. The charge in Count 2 is a minor one. It is laid under section 107 (a) which is particularised as follows:-

*" William Roy, long 22<sup>nd</sup> April 2018 long afternoon, yu bin minim blong assaulthem man yah Eddie Kelep olsem we you bin faetem hem beh hemi no kasem any physical injury long body blong hem."*



7. It is on those particularised facts of the charge that you pleaded guilty to and, according to the principles established in PP.v. Kalosil and others [2015] VUSC 149 and R.v. Engert [1995] 84 A Crim R.67 and the numerous other cases cited in the Kalosil case submitted by the Prosecution, that is what you will be sentenced for.
8. You gave oral evidence at trial in relation to the charge of intentional assault under section 107 (b) on Richie Kelep. This happened during the same fight in which you also assaulted Eddie Kelep. Your evidence which the Court preferred are contained in paragraph 16 of the verdict dated 18<sup>th</sup> November 2019. You were acquitted on that charge.
9. The un rebutted evidence you gave was that Eddie Kelep held a knife during this fight. You were afraid of him in the sense he might use it on you or against your other friends. That is why you fought him causing the knife to fall out of his hand with Eddie falling down. And you fought to protect Morris who was injured by Eddie and his relatives earlier in the morning of 22 April 2018. And from that evidence you too were the victim of the counter-assault. You sustained injury to your head.
10. The Prosecution submits your starting sentence should be 7 months imprisonment. I accept that submission. I therefore convict and sentence you to 7 months imprisonment.
11. Defence submissions were filed late and does not affect this sentence and there is no pre-sentence report. But Prosecutions have submitted that you are a first time offender with no unblemished record. I deduct 1 month form your starting sentence of 7 months imprisonment. That leaves the balance of your sentence at 6 months.
12. I accept Prosecution submissions also that you are entitled to 1/3 reduction for your early guilty plea. 2 months are deducted for this mitigating factor. Your end sentence is therefore 4 months imprisonment.
13. Considering the circumstances of your offending I will suspend your end sentence of 4 months imprisonment under section 57 of the Penal Code Act for a period of 2 years. This means you do not have to go to prison today. You will return to your village and be of good behaviour. You must not commit this offence again or any other offences for which you would be charged and convicted. If you do, you will go to prison without further notice to serve your 4 months sentence.
14. The submissions that you should be sentenced also to community work and supervision are declined.
15. That is the sentence of the Court. You may appeal against it if you so choose in which case you should appeal within 14 days from today's date.

**DATED at Port Vila this 16<sup>th</sup> day of December 2019**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**

**Judge**

