

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 19/3135 SC/CRML**

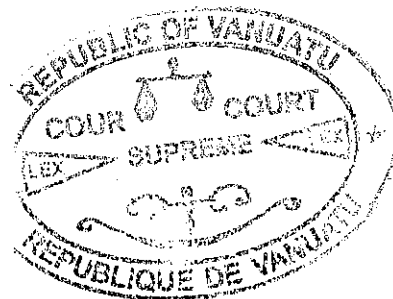
BETWEEN: Public Prosecutor

AND: Stephen Kalo
Defendant

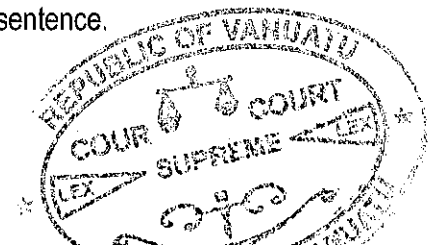
Date of Verdict: 19th December 2019
**Date of Hearing of
Submissions:** 25th February 2020
Date of Sentence: 28th February 2020
Before: Justice Oliver Saksak
In Attendance: Philip Toaliu for Public Prosecutor
Marisan P Vire for the Defendant

SENTENCE

1. Stephen Kalo, you are for sentence today after the Court found you guilty on 19th December 2019 of one charge of domestic violence and one charge of unintentional harm.
2. Domestic violence carries a maximum penalty of 5 years imprisonment or a fine not exceeding VT 100.000. And the offence of unintentional harm carries a maximum penalty of 3 months imprisonment.
3. The victims of your offendings were your defacto partner and your male child of 2 months old at offending. In the afternoon of 20th October 2019 you hit your defacto partner with a belt which accidentally hit your son's knee also causing injury and bleeding. Your partner was breastfeeding the child at the time. It happened within the confines of your home where they were supposed to be loved and protected. As a Magistrate and a father it was inappropriate of you to treat your defacto partner in the way that you did. In doing so, you accidentally and unintentionally caused harm to your little son. You have acted in a serious breach of trust. I consider these are serious aggravating features.
4. The Court directed the filing of pre-sentence report and written submissions as to sentence on 19th December 2019. A pre-sentence report dated 7th January 2020 was seen only on 12th February 2020. The prosecution filed its submissions on 21st January 2020 one day after they were due. You had until 3rd February 2020 to file your submissions. You filed late submissions on 17th February 2020.



5. I heard Mr Boe and Mrs Vire orally in relation to those submissions on 25th February 2020.
I assess your punishment therefore in the light of those submissions and your pre-sentence report.
6. The prosecution submitted your starting sentence for unintentional harm should be 2 months imprisonment and a starting sentence of 2 to 3 years imprisonment for the domestic violence charge. Prosecution relied on the Supreme Court case of PP v Malliwan [2018] VUSC 29 when the Court sentenced the defendant to a starting sentence of 2 years but reduced it to 16 months imprisonment suspended for 2 years.
7. Prosecution also relied on the cases of PP v Pita [2017] VUSC 177, PP v Furet [2018] VUSC 22 and PP v Robert [2018] VUSC 136.
8. Based on these cases prosecution submitted your starting sentence should be 3 years imprisonment and for the mitigating factors in your pre-sentence report, the sentence should be reduced to 2 years suspended for 2 years.
9. Mrs Vire submitted that the Court should follow the sentencing principles in PP v Malliwan rather than on the other three cases of Pita, Furet or Robert. By comparison those three cases were more serious than yours which counsel so submitted fall within the lower end of the scale. I accept your offendings fall within the lower end of the scale, but the aggravating features warrant a higher starting point.
10. All those cases show one common feature and that is that for all sentences involving domestic violence, the common penalty imposed were sentences of imprisonment with suspension. The lengths of sentences differed and varied based on circumstances of each case.
11. Applying those principles to your case, the appropriate punishment the Court will impose on you will be a custodial sentence but with suspension.
12. Acts of domestic violence by man of your status on your defacto partner must be condemned so as to be a deterrent for you and others with the same kind of mentality. It may have been that the complainant had acted inappropriately towards you at the time but there is no evidence of that. And even if there was, you should have exercised restraint. What you did was a tragedy for you because it may eventually result in the loss of your job.
13. Considering the aggravating features of your offendings together with the seriousness of the offences committed, I accept prosecution's submission that a starting sentence of 3 years imprisonment is warranted. There will be no further uplift.
14. I treat the charge of domestic violence as the head or lead offence. I therefore sentence you as follows-
 - a) For domestic violence, to 3 years imprisonment as the starting sentence.



- b) For unintentional harm, to 2 months imprisonment to be served concurrently with the 3 year sentence for domestic violence.

Altogether you are sentenced to a concurrent sentence of 3 years imprisonment.

15. In mitigation, I note first your character and personal history given in your presentence report. Secondly I note the reasons you have given under the Head "offending" in your report. Thirdly I take note of the 9 mitigating factors submitted by Mrs Vire at page 72 of your sentencing submissions. These are in brief summary-

- a) Your Chief George Daniel speaking well and highly of you being a reliable and resourceful person in your community.
- b) Your financial contribution to your local church at seaside, Tongoa.
- c) Your insight into your offending.
- d) Your expressed remorse and acceptance of responsibility and undertaking not to reoffend.
- e) Your motivation to undertake rehabilitation.
- f) Your intention to perform customary reconciliation ceremony.
- g) Your intention and agreement of the complainant to reunite and restore relationships and the family.
- h) You being the only sole breadwinner for your young family.
- i) Your clean past record and contributions to the nation as a lawyer and Magistrate.

16. For all these factors together I allow a reduction of your 3 years sentence by 1 year and 8 months. Your end sentence is now 1 year and 4 months or 16 months imprisonment.

17. As indicated earlier your end sentence of 16 months imprisonment is suspended for a period of 2 years from the date hereof. This suspension is made under section 57 of the Penal Code Act on good behaviour. This means you do not have to go to prison today. But for the next 2 years you must be of good behaviour. If you commit any further offences for which you would be charged and convicted, you will go to prison to serve your sentence of 16 months.

18. I encourage you to go home and perform the clinim face and custom reconciliation ceremony and to restore your relationship with the complainant and reunite with her and your son.

19. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not accept it.

DATED at Luganville this 28th day of February 2020

BY THE COURT


OLIVER.A.SAKSAK

Judge

