

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

Criminal
Case No. 20/481 SC/CRML

BETWEEN: Public Prosecutor

AND: Ple Micah
Defendant

Date: 13 March 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr J. Garae for the Defendant

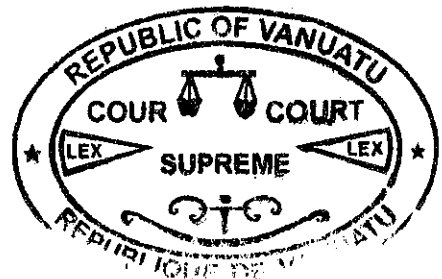
SENTENCE

A. Introduction

1. Mr Micah pleaded guilty to one charge of intentional assault. The maximum sentence for that offence is a term of 5 years imprisonment. It is a serious offence.

B. Facts

2. The complainant is Mr Micah's de facto partner. At 12.30pm on 31 December 2019, Mr Micah was drunk. He went to his partner's home, entered and pulled her outside. He forced her down to the ground. She resisted, but was unable to get away. He then bit her – on the ear, on her back and to her thigh. While trying to avoid him, she additionally received 2 lacerations to her fingers and her thigh, and she also received a swollen and bruised left eye.



3. When interviewed by the police Mr Micah made full admissions. He explained that while trying to hug his partner they both fell to the ground, which annoyed his partner and caused her to abuse him and his mother with foul language. He then retaliated in the manner described.

C. Aggravating/Mitigating Factors to the Offending

4. The aggravating factors to the offending are the breach of trust towards his then partner, and the fact that the offending took place at her home – where she is entitled to feel safe. The mode of the attack is also aggravating – the bites are likely to leave permanent scarring.
5. There are no mitigating factors to the offending.
6. The start point that I adopt as appropriate for this offending and for Mr Micah's criminal culpability is 18 months imprisonment.

D. Personal Factors

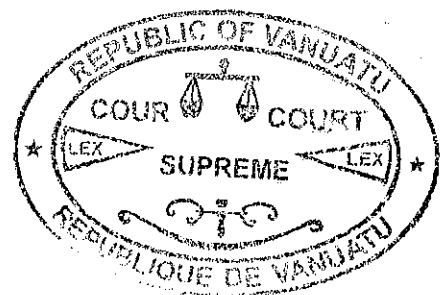
7. Mr Micah is 34 years of age, single, but with a young child to his de facto. He is a gardener and former fisherman. He has no previous convictions. He claims to be remorseful, and states that he wishes to marry his de facto.
8. There has been no custom reconciliation ceremony.
9. I allow a reduction from the sentence start point of 3 months for Mr Micah's personal factors.
10. The final factor I can take into account is Mr Micah's plea, which was given at the earliest possible opportunity. As well, the plea has meant that the complainant did not have to give evidence against him. Accordingly, I allow a discount for that and for the saving of Court time and expense as a result of the guilty plea, of a further 25%.

E. Sentence

11. The end sentence that I impose on Mr Micah is one of 11 months imprisonment.

F. Suspension

12. The law provides a discretion to suspend all or part of the sentence, pursuant to section 57 of the Penal Code, namely where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender".



13. Mr Garae submitted that the sentence be suspended, but provided no reasons for such a step to be taken. The imposition of a relatively short sentence is not a valid reason to suspend the sentence. There needs to be something out of the ordinary to justify that – either regarding the offender or the offending. There is no reason here to suspend any part of the sentence.
14. Mr Micah's sentence is back-dated to commence from 13 February 2020 to take into account time already spent in custody.

G. Conclusion

15. Mr Micah has 14 days in which to appeal this sentence if he does not agree with it.

DATED at Luganville this 13th day of March 2020

BY THE COURT

Gandra Uell
Justice G.A. Andrée Wiltehe

