

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

Criminal
Case No. 20/700 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: HENERY TALI AND PHILIP SANDY
Defendants

Date of Hearing and Sentence: 11th August 2021
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor
Mr Steven Garae for Defendants

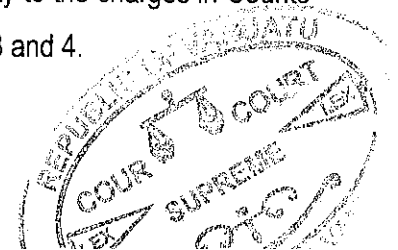
SENTENCE

Introduction

1. This case was called before Justice Trief on Gaua Island on 10th June 2021. Out of the total of 10 defendants only 8 were present and pleaded guilty to unlawful assembly, assault and criminal trespass. These were Tari Hosea, Brightly Ravos, George Ravos, Richard James Basil, Elwood Sandy, Micheal Ravos, Clement Boe and Fong Ravos.
2. The remaining defendants Henry Tali and Philip Sandy were not present.

Backgrounds Facts

3. The defendants were charged jointly as a group. They were charged with unlawful Assembly – section 69 PCA (Counts 1 and 3), Intentional Assault, section 107 (b) PCA (Counts 2 and 4) and criminal trespass, section 144 PCA (Count 5).
4. They pleaded guilty to the charges in Counts 1, 2 and 5 and not guilty to the charges in Counts 3 and 4. As a result Prosecutions entered nolle prosequi on Counts 3 and 4.



5. Justice Trief sentenced the 8 defendants on their pleas to start sentences of-
 - a) 2 years 6 months imprisonment for intentional assault,
 - b) 18 months imprisonment for unlawful assembly and
 - c) 7 months imprisonment for criminal trespass.

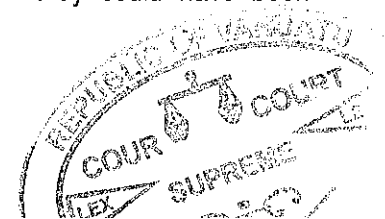
6. The Court deducted 25% (7 months) for guilty pleas and a further 6 months for personal factors. The end sentence for all 8 defendants were therefore-
 - a) 12 months imprisonment for unlawful assembly.
 - b) 17 months imprisonment for intentional assault causing temporary injuries, and
 - c) 4 months imprisonment for criminal trespass.

7. The Court backdated the sentences to 7 April 2021 allowing for 65 days already spent in custody from 18th December 2019 to 20 February 2020, and suspended all sentences. However the Court made a compensation order of VT 10.000 against each defendant payable by 4pm on 30th October 2021.
The Court further ordered each defendant to complete 200 hours of community service with 12 months supervision. The Court went further to order that in the event of failure to pay the compensation by the due date, each defendant would be remanded in custody for that failure.

Discussion

8. I had discussion with both Mr Boe and Mr Garae as to how best to progress the case to completion in the current circumstances where 2 remaining defendants are making it impossible for the case to be completed by not being present first on Gaua Island in June 2021, and again here in Luganville on 9th August when the case was listed by Notice and adjourned to 11 August 2021. How much more in terms of time and costs would be incurred by the State by adjourning the case back, and forth from Luganville to Gaua and back when the 2 remaining defendants were jointly charged with the 8 defendants who pleaded guilty as a group, and their statements to the police on 23rd December 2019 are clear they both have admitted to the unlawful assembly charge, and the intentional assault charge?

9. Mr Garae conceded the 10 defendants were charged as a group and that the pleas of the 8 defendants before Justice Trief on 10 June 2021 included the 2 remaining defendants namely Henry Tali and Philip Sandy, and as such there was no reason they could have been

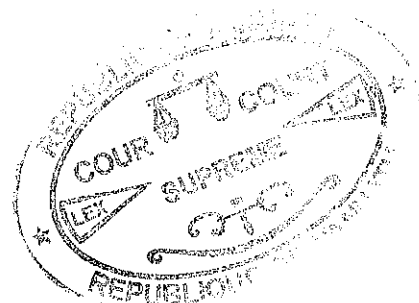


sentenced together with the others at the time. Mr Garae therefore did not have any issue with the Court's view that the remaining 2 defendants should receive the same sentences as the other 8 defendants.

10. Mr Boe did not object either to the suggestion by the Court that Henry Tali and Philip Sandy should receive the same sentences as the other 8 defendants. Mr Boe agreed that in the circumstances of the case, the charges in Counts 3 and 4 should also be nolle prosequi respectively.
11. Both Counsel agreed this would bring finality to the case without the State incurring further time and costs when it was clear they were jointly charged and the defendants here made clear admissions.
12. Accordingly I adopt that approach.

Facts

13. The facts are clear. In the morning of 17th October 2018 all these defendant gathered together at a Plantation at Qeteon area on Gaua Island and planned to assault Henry Sandy (Count 1). They then went to Sandy's house and assaulted him there (Count 5). As a result Mr Sandy suffered temporary injuries (Count 2) including extensive bruising to the neck, arms and torso, laceration to the right ear and skin close to right eye, marks of chain across his back, very serious confused right eye ball and several swellings seen on presentation.
14. All those facts were admitted by the defendants to the Police at interviews.
15. There were no mitigating circumstances for the offending.
16. Intentional assault with temporary injuries attract the maximum penalty of 5 years imprisonment. Unlawful assembly attracts a maximum penalty of 3 years imprisonment and criminal trespass attracts, 1 year (12 months) imprisonment as the maximum penalty. These are serious offendings.



17. The aggravating features were (a) group attack on an individual, (b) the unprovoked nature of the assault and (c) the degree of planning to attack the complainant.

Start Sentence

18. For all those factors combined, I set the starting sentence for Henry Tali and Philip Sandy at
- a) 2 years 6 months imprisonment, for intentional assault.
 - b) 18 months imprisonment for unlawful assembly and
 - c) 7 months imprisonment for criminal trespass.

Mitigation

19. In mitigation I allow deduction by 25% for guilty plea from the start sentences. That is 7 months deduction.
20. I have not had the advantage of a pre-sentence reports as none was produced or directed to be produced. In any event it is my view that for the same factors stated in paragraph 11 of the sentence of the Court dated 10 June 2021 I should deduct the defendant's sentence by a further 6 months.

End Sentence

21. That leaves the end sentences of Henry Tali and Philip Sandy to be-
- a) Unlawful assembly, Count 1- 12 months imprisonment.
 - b) Intentional assault causing temporary injuries Counts 2- 17 months imprisonment, and
 - c) Criminal trespass (Count 5) - 4 months imprisonment.
22. The sentences are concurrent for a total of 17 months imprisonment. And these are suspended under section 57 of the PC Act for a period of 2 years in which they must remain offence-free. If any of them reoffends within this period, he will serve 17 months imprisonment.
23. Further I order that Henry Tali and Philip Sandy pays compensation to the victim in the sum of VT 10.000 each, a total of VT 20.000. This shall be paid by 4pm on 30 November 2021. Failure to pay by this date will result in the defendants being remanded in custody to serve their 17 months imprisonment.



24. Finally I order that Henry Tali and Philip Sandy complete 200 hours of community work and 12 months supervision.
25. Separate orders will be issued in relation to the compensation, community work and supervision of the defendants.
26. The defendants may appeal against this sentence within 14 days if they do not accept it.

**Dated at Luganville this 11th day of August 2021
BY THE COURT**


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**Oliver Saksak
Judge**

