

**BETWEEN: PUBLIC PROSECUTOR**

**AND: ANNETH OWE  
EDWIN HARRY  
Accuseds**

**Date of Sentence:**

18 July 2023

**Before:**

Justice EP Goldsbrough

**Counsel:**

Boe D for the Public Prosecutor

Garae J for the Accused Owe

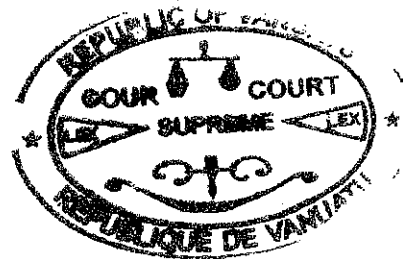
Willy R for the Accused Harry

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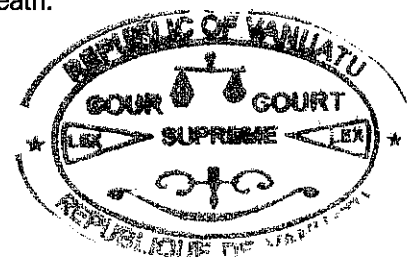
### SENTENCING REMARKS

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1. Anneth Owe and Edwin Harry, you have both pleaded guilty to the offence of killing an unborn child. Anneth became pregnant to the brother of her boyfriend, who had travelled overseas. After he had gone overseas, she took up with his little brother, Edwin and as a result was carrying his child. On learning that she was pregnant, Anneth approached various people with a view to procuring an abortion using custom leaf medicine.
2. When that was unsuccessful, she and Edwin began to investigate other means of killing the unborn child. With her consent, Edwin began bouncing on her belly, trying to kill the child. Finally, they went to a kava plantation, and she lay on her back with Edwin jumping on her until finally blood came out of her private parts. She gave birth to a still born child.
3. The plan successfully executed, Edwin took the deceased child, and it was buried.
4. Neighbours knew from observing her that Anneth had been pregnant and now she was no longer. Rumours began and it was not long before a concerned person reported suspicions to the police. The grave was discovered, and the dead child revealed wrapped in cloth.
5. Both cooperated with the police, Edwin indicated the location of the shallow grave allowing it to be recovered. Anneth was several months pregnant when the scheme was carried out. Her boyfriend, elder brother of Edwin was to return, and as she was in a de facto relationship with him, this pair decided on this plan.



6. From both submissions and the pre-sentence report it is clear that Edwin Harry was the lead character in formulating this plan. To that extent, he must bear the burden of a more severe sentence than Annette. The difference though, should not, in the view of this Court, be too significant as she is described as bright and fit and so can make decisions for herself.
7. The maximum penalty for this offence is life imprisonment. The Court looks at the maximum available penalty together with those factors making the offence more serious than others to determine a starting point for the eventually sentence. Here the aggravating features are the degree of planning involved, this was not a spur of the moment accident, it was a planned killing, the degree of force applied to the expectant mother, the helpless situation of the unborn child, the attempt to hide the body and the specific intent to kill the child or at least cause the child to be born dead.
8. This is not a case of infanticide and should not be dealt with as such, where there is concern for the mental health of the mother who may still be suffering from the effects of giving birth. This mother had not given birth. Whilst she may have been concerned about an unwanted pregnancy, it was too soon to be suffering the effects of childbirth and becoming a mother. Equally, her co-accused who was a party to the pregnancy could not have been so affected. His only concern was that his elder brother might find out. Nor is this case comparable to *R v Michael Maetarau* [2017] SBHC 126 in that in that case the offender was much younger and had no intent to kill the unborn child [at para 8].
9. A starting point is set at twelve years for Edwin Harry and eight years for Annette Owe. No other cases of killing an unborn child are reported in Vanuatu save *PP v Dick* [2010] VUSC 167 where that charge was discontinued and replaced with an assault charge, where a sentence of three months suspended was imposed. There the offender hit a pregnant woman who shortly after being assaulted miscarried. She was carrying the child of the offender's husband. Other cases of infanticide coming before the Court of Appeal in Vanuatu have been considered but with so many points of difference, those cases do not offer great assistance. Whilst her mind must have been affected by worry and concern over the unwanted pregnancy with her boyfriend's brother and pressure applied by her new boyfriend, her mind was not affected by post-natal illness.
10. The pre-sentence report reveals that the father of the child was the instigator of the offence and that the mother was persuaded to go along with it. It also reveals otherwise normal family backgrounds and, as is too often the case, how highly the male offender is spoken of by his church. That could not, in my view, sound more incongruent than in this case where an unwanted child has had his or her life taken away for the selfish needs of the mother and father. Surely the Church must take a position on this?
11. It is reported that neither offender has previous convictions. There has been a reconciliation between the de facto partner of Annette, the brother of Edwin Harry. There is, of course, no one to speak for the dead child, whose parents are responsible for his death.



12. Both offenders have entered guilty pleas at an early stage and co-operated after the crime was reported, even though they attempted not to be found out by burying the dead baby. For the guilty plea a reduction of sentence is appropriate.
13. The starting point is therefore reduced to give credit for the guilty plea. For Edwin it is reduced to 8 years and for Annette Owe to 5 years and 4 months. Allowance must be given for the pre-sentence custody which in the case of each offender was six weeks or 42 days. A reduction of 84 days is therefore made to reflect that period.
14. There is no other mitigation that the Court should take into account, other than the previous good characters, which given the serious nature of this offence does not carry a great deal of weight. The remorse, if any, is shown in the guilty plea for which each offender has been credited with the maximum 33% reduction in sentence.
15. Edwin Harry you are sentenced to 7 years 9 months and 6 days imprisonment. Suspension of the sentence has been considered but ruled out given the seriousness of this offence. That sentence will be deemed to have taken effect from the day that you were taken into custody for this offence, which day was 29 May 2023, following your arrest for failing to turn up at court on 24 February 2023.
16. Annette Owe you are sentenced to 5 years 1 month and 6 days beginning on 1 August 2023, unless you elect to begin it sooner as you have come to court to be sentenced whilst on bail and the terms of section 50 of the Penal Code apply to you. Suspension of your sentence was ruled out for the same reason as given above.
17. You have 14 days if you wish to appeal against this sentence, which you have a right to do.

**DATED at Luganville, Santo, this 18<sup>th</sup> day of July, 2023.**

**BY THE COURT**

*EP Goldsbrough*

**EP GOLDSBROUGH**  
Judge.

