

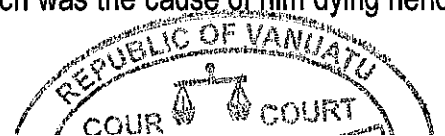
BETWEEN: Public Prosecutor

AND: James Tom Naura
Defendant

Date: 2nd June 2023
By: Justice R.L.B Spear
Counsel: Mr T. Karae for the Public Prosecutor
Mr W. Kapalu for the Defendant

SENTENCE

1. James Tom Naura, you are sentenced having pleaded guilty to the charge of intentional assault resulting in death - an offence established by section 107(d) of the Penal Code [CAP 135]. It carries a maximum penalty of 14 years' imprisonment.
2. You entered your plea of guilty on the 3rd of May 2023. That plea was not entered at the first available opportunity but you are still entitled to credit for entering a guilty plea as that has saved the State the cost of a trial, saved the family of the victim the ordeal of having to suffer the ordeal of a trial and, of course, it reflects your acceptance that you have done wrong and that you are remorseful.
3. The offending happened on the evening of 24th July 2022. You had been with other people including the deceased. You had all been drinking. It was clear that you were intoxicated and no doubt so were the others. You had been at Club 21 and when that closed you moved to the Anchor Inn. You and your drinking mates travelled to the Anchor Inn in your bus. When you arrived at the Anchor Inn, you found that it was closed. However, for reasons that have not been explained but can safely be attributed the level of intoxication that prevailed, a disagreement then arose between yourself and the deceased. He was swearing and making abusive remarks. You took exception to this. You went around to the back of your bus and you punched him to the head. That punch was delivered with such force that the deceased was knocked to the ground and, it would appear that he died there.
4. The assessment was that he died as a result of a severe head injury caused by blunt force trauma to the head. Whether he died because of the punch or whether he died because of his head hitting the ground has not been established. What is clear, however, is that your punch was the cause of him dying hence



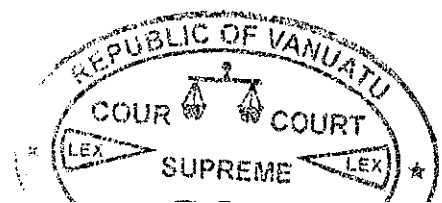
this charge. When you were arrested, you made no admission and indeed you had entered a plea of not guilty at one stage. The case was destined for a trial until your plea of guilty.

5. I have received written submissions from both the prosecutor and your defence counsel. They have been helpful to establish how the sentencing assessment should be made.
6. What is required is that I assess a starting point for this offending and then move to determine whether there are any aggravating or mitigating circumstances relating to the offending that should be taken into account. It is only then that I move to consider matters personal to you that should affect the sentence.
7. When I come to assess your culpability, I need to have regard effectively to two principal matters. The first is exactly what you did on that particular night. The second is the sentencing range in respect of which the starting point is to be considered.
8. This case is different to many, it involved one punch at a time when there was obviously some disagreement between yourself and the deceased. That one punch could well have caused no harm at all to the deceased or just moderate harm in the nature of an injury. However, that is not what happened and it one of the risks that are run by those who resort to violence. Be that as it may it was only one punch albeit with fatal consequences.
9. I can tell you now that the fact that you were intoxicated cannot reduce your culpability, it cannot be taken into account as a matter of mitigation.
10. An offence of this nature can be committed across a very broad range from a slight assault that has terrible consequences such as occurred here through to a particular vicious and violent attack that is prolonged over a period of time and which results in death. That requires each case to turn primarily on its own facts.
11. I consider, however, that the case authorities require me to adopt a starting point of four years imprisonment for this offending. Mr Karae argued for a starting point of four and a half to five years and with reference to *Public Prosecutor v. Ierogen [2002] VUCA*. However, but that case can be distinguished on its particular facts and indeed every one of these cases has to be considered on their individual facts.
12. As I've said, you pleaded guilty and Mr Karae in his submissions accepts that 25% credit is appropriate for the plea of guilty. albeit not entered at the first reasonable opportunity. If it had been then the credit would be 33%.
13. You are 41 years old, in a de facto relationship of some years standing, and you have five children together. Two of your children are at secondary school level, two are at primary school and there is a young boy at a pre-school. You are the sole bread-winner of the family and you work as a bus driver.
14. You have no previous convictions and it is accepted by the probation officer in the corrections report that you are genuinely remorseful for what you have done. The probation officer reports that you live in the community under the care of Chief Peter Jeremiah, that you are well regarded by your Chief who speaks highly of you as being a hard working member of the community. Indeed, it is reported that the Chief was



surprised to hear that you had committed this offence and that you were drunk as he was not aware that you were someone who drank alcohol. The Chief indicated to the probation officer that he believes that you have learned from this sorry incident and that he hopes that you are given a second chance.

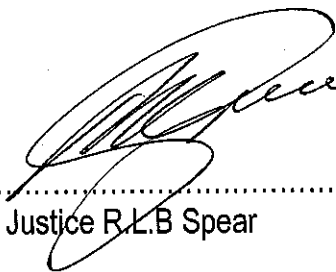
15. I note that you have never had any formal education. Instead, you worked within a custom life from a young age back on your home island of Tanna. It was not until you moved to Port Vila that you met your current partner, started a family and obtained work driving a bus. The Probation officer reports that you are ambitious for your children knowing that they need to have a good education if they want to advance in life.
16. What is abundantly clear is that this was an impulsive and spontaneous act, it was not one planned or thought out in advance. It was not one where you had set out to harm a person but the result of an impulsive act that sadly has had such terrible consequences.
17. The probation officer also refers to the custom reconciliation ceremony that has taken place which resulted in goods to a value of VT116, 000 being given to the family of the deceased. That reconciliation ceremony took place on the 14th of May 2023 and it was, as custom requires, organised by the Chiefs involved with both respective families. There are photos attached to the pre-sentence report that explained the goods that were provided as part of the reconciliation ceremony.
18. The probation officer reports that the family of the deceased have accepted your apology and your offer made at the time of the reconciliation process as being in recognition of your sorrow at their loss.
19. Sentencing for an offence such as this must have regard first to the seriousness of the offending. This is to ensure that this Court is not seen of being tolerant of violent offending. It is important that you are held fully to account for what you have done. However, the Court is also required to have regard to the possibility of your rehabilitation so that, where that is possible, you have the opportunity to rebuild your life.
20. I consider that a starting point of 4 years' imprisonment should be adopted given that this appears to have been an impulsive act involving only one punch.
21. For your guilty pleas I allow you 25% credit against the sentence would otherwise be imposed. That is what is accepted by the prosecution and, while I consider that it is slightly higher than I would otherwise have allowed, I am not prepared here to depart from the concession of the prosecution.
22. For your participation in the custom reconciliation ceremony resulting in acceptance of your apology and remorse by the deceased's family I allow another 15%.
23. For the fact that you are someone with no previous convictions and otherwise of good character I allow a further 15%. Clearly this was conduct out of your usual character.
24. So that amounts to a total of 55% credit against the sentence that would otherwise be imposed.



25. Applying that to the adjusted starting point of 4 years or 48 months imprisonment that results in a sentence of 21 months imprisonment that I consider to be a fair and just response by this Court to your offending.
26. The issue then is whether that should be suspended. A suspended sentence should be imposed when there is a genuine prospect of an offender benefiting from avoiding an immediate prison sentence and committing himself or herself to staying offending free. Having regard to the assessment by the probation officer, by your chief and your personal circumstances, it appears clear that you are someone who deserves that opportunity. You are someone whom it can be confidently accepted will respond positively to the opportunity to stay out of prison. However, that will be coupled with community work.
27. You are accordingly sentence to 21 months imprisonment that is suspended for 2 years. I record that the sentence of 21 months imprisonment, if activated, would need to take account that you spent two weeks in custody on remand.
28. You will also carry out 100 hours community work.
29. You have 14 days to appeal this sentence.

Dated at Port Vila this 2nd day of June 2023

BY THE COURT



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Justice R.L.B Spear

