

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

Criminal
Case No. 24/1239 SC/CRML

PUBLIC PROSECUTOR

v

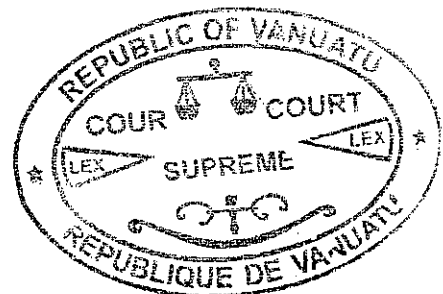
DANIEL MAHIT

Date of Plea: 24 May 2024
Date of Sentence: 31 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. L. Young for the Public Prosecutor
Mr. R. Rongo for the Defendant

SENTENCE

Introduction

1. Mr Daniel Mahit, you appear for sentence having pleaded guilty to eight charges. There are 3 charges of reckless driving causing death, contrary to s12 of the Road traffic (Control) Act [CAP 29]. There are 5 charges of unintentional harm causing temporary injuries, contrary to s 108(a) of the penal Code [CAP 135].
2. The lead offending is the 3 charges of reckless driving causing death. The maximum penalty is 5 years imprisonment or a fine not exceeding VT 500,000 or both.
3. The charges of unintentional harm causing temporary injuries have a maximum penalty of 3 months imprisonment.



The Facts

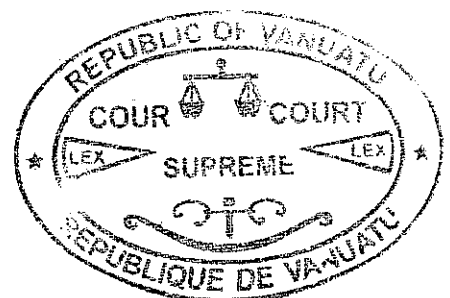
4. In the early hours of 10 June 2023, you were the driver of a grey Hilux truck. You were under the influence of alcohol at the time. You were parked outside Club 21. You say that you initially went home after drinking at Club 21, but then Sean Mahit insisted that you return and pick him up.
5. There were 8 passengers. One of the passengers, John Roy, was seated beside you in the front passenger seat. All the other passengers were in the tray of the utility vehicle. You had invited 2 of the passengers to follow you. The others followed the invited passengers. When you were about to leave one of the deceased also joined the others in the tray of the truck.
6. Another person offered to drive your truck but you refused this offer. Once you started driving, you overtook a bus and you were speeding. Mr Roy told you to control your driving. You did not. You continued to speed. The evidence is overwhelming that you were driving much too fast to the point that one of the passengers was frightened.
7. You lost control of the vehicle when overtaking going down a hill. 3 of the passengers sustained head injuries and were deceased at the scene. 5 other passengers sustained injuries as a result of the collision.

Sentencing purposes/principles

8. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent, and reflect the gravity of the offending.

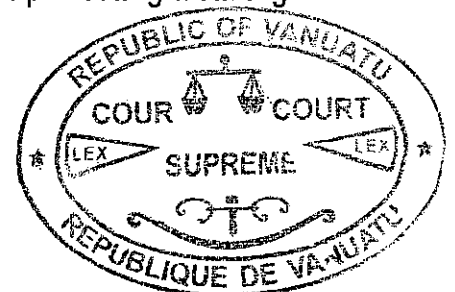
Approach to sentence

9. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

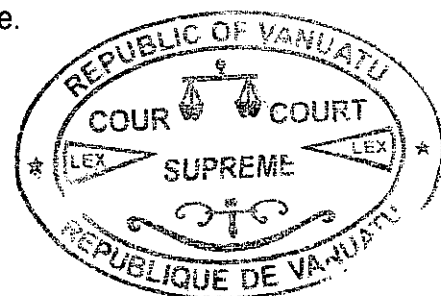


Starting point

10. The first step is to set a starting point to reflect the features of the offending itself, with reference to the maximum penalty for the offences.
11. The lead offences are the 3 charges of reckless driving causing death. I will take into account the aggravating features of the offending and other cases by way of cross check in setting a starting point.
12. The aggravating factors here are;
 - (a) You were driving under the influence of alcohol.
 - (b) You drove at an excessive speed, which caused you to lose control of the vehicle.
 - (c) You were asked to control your driving but you did not.
 - (d) Knowing you were under the influence of alcohol, you refused an offer to drive your vehicle.
 - (e) 3 victims suffered fatal injuries, and 5 others were injured. The scale of the harm is significant. Allied to that is the harm to the families of the deceased victims as outlined in the pre-sentence report. For example, the late Mr Lakita's wife has suffered greatly. Her husband, a Correctional Officer, was the breadwinner for the family and so as well as the emotional impact, there is a financial impact, as only one of their children can now go to school.
13. There are no mitigating features of the offending itself. In the pre-sentence report, you tended to shift the blame to Sean Mahit, saying that he insisted on you coming to pick him up and that he invited the passengers to get into the vehicle. These are not mitigating factors. You chose to go and pick up Sean and as the driver it was your responsibility to know who was in the vehicle and take steps if you did not want others in the tray of the vehicle.
14. Both counsel filed written submissions to assist with selecting the appropriate starting point for the offending. The prosecutor submits that the appropriate starting point is 3 and a half years imprisonment. Mr Rongo, on your behalf, does not specifically refer to a starting point, but assists the Court with cases which might help in setting a starting point. Both counsel made brief oral submissions.

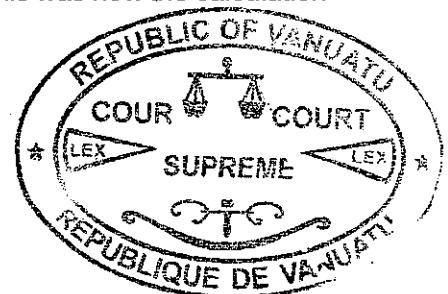


15. There are cases which assist with setting an appropriate starting point, including in particular *Public Prosecutor v Masanga* [2019] VUSC 117, and *Public Prosecutor v Malaki* [2010] VUSC100.
16. In *Public prosecutor v Masanga*, the defendant was sentenced in relation to one charge of reckless driving causing death. While intoxicated, the defendant drove his bus and hit the deceased who was standing outside Club 21. The aggravating factors included that he was under the influence, was speeding and that the vehicle was used as a weapon. The Court considered that it was intentional, deliberate and angry driving. The starting point adopted was 4 years imprisonment. No issue was taken with the starting point on appeal.
17. *Public Prosecutor v Malaki* is the most comparable factually. That said, there are differences. Mr Makali was sentenced for a charge of reckless driving causing death. He was driving a vehicle loaded with 22 passengers. The deceased, a child, was sitting at the back of the vehicle with his mother. As he drove down a hill, the heavily laden vehicle sped up, and the defendant lost the control of the vehicle. The vehicle zigzagged down the road and overturned which caused some of the passengers to jump out or get thrown out of the vehicle onto the road. A child sustained fatal injuries. The mother of the deceased child died few days later as a result of the injuries sustained from the accident. 18 other passengers sustained injuries. The starting point adopted was 4 years imprisonment. The aggravating features were the breach of trust given it was a heavy vehicle laden with passengers and the harm caused as a result.
18. The 2 other cases cited by Mr Rongo in his submissions involve a charge of unintentional harm, and not reckless driving causing death, although carry the same 5 year maximum penalty. As such, they are not of as much assistance.
19. Taking the aggravating features into account, and the cases I have referred to, I adopt a starting point of 3.5 years imprisonment, as submitted by the prosecutor. Arguably a higher starting point of 4 years imprisonment is warranted, given that was the starting point adopted in *Malaki*. In that case, although there were a much greater number of passengers, in the present case, you were under the influence of alcohol, were deliberately speeding and rebuffed an offer to drive your vehicle.



Guilty plea and personal factors

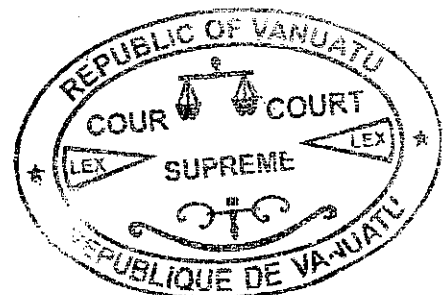
20. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. That equates to a discount of approximately 14 months imprisonment from the starting point.
21. You are now aged 30 years and a first offender. You are from Paama Island. You achieved well at school. You have been working as part of the RSE scheme and have a partner and child, currently living in Australia.
22. You are well regarded in your community and are very involved in a church, the Living Water Ministry. Your Chief and others are willing to support you.
23. You told the report writer you are remorseful and want to apologise to the victims, including the family of the 3 deceased. Of concern though, you shifted blame to Sean Mahit, who invited the majority of the passengers onto the truck, according to you. In addition, your description to the report writer of what happened would appear to minimise your actions as it is not consistent with the agreed summary of facts which sets out that you overtook a bus and that all injured passengers and an eye witness said you were speeding, and to the point where one was fearful. You said you were travelling at 40-80 km and lost control when you saw a bus light heading towards you. So any remorse has to be tempered by these matters.
24. Your family performed a custom ceremony on your behalf while you were in custody. This was in relation to the family of one of the deceased. It involved a pig, kava, local food crops and calico. It was not well received by Mr latika's wife, due to the loss suffered. Other victims are willing to take part in a custom ceremony
25. As you are a first offender, that there was a custom reconciliation towards one of the victims on your behalf, that you are willing to take part in reconciliation with other victims, your community contribution, support in the community, and potential remorse there is a further discount of 4 months from the starting point, which equates to approximately 10 %.
26. You were remanded in custody for a period of one month from 10 June to 10 July 2023. That is an effective sentence of two months imprisonment. This was how the calculation



was undertaken recently by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. So, I reduce the sentence by a further 2 months.

End Sentence

27. Taking the starting point and the deductions just discussed into account, the end sentence is 1 year and 10 months imprisonment.
28. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. The prosecutor opposes suspension of the sentence. Under s57 of the Penal Code, there is a discretion to suspend the sentence. I must take into account the circumstances, the nature of the offending and your character.
29. I acknowledge that you are a first offender, that your family performed a custom ceremony in relation to one of the victims, that you are well regarded and involved in your community and have a family. You are showing some signs of remorse. It needs to be genuine on a robust evaluation. These factors favour suspension.
30. On the other hand, this was a serious incident, and was a bad piece of driving which resulted in 3 passengers losing their lives and others being injured. You were under the influence of alcohol, were speeding and did not take heed of a warning to control your driving. There are some signs that you have minimised your role in the offending as detailed above. There is a need for accountability, deterrence and also denunciation. It was your responsibility to make decisions about whether to take passengers. You were the driver so the Court is concerned that you shift the blame to Sean Mahit, saying he invited them into the truck. This is particularly so as it was not safe for you to drive. Alcohol and speed are a potent combination. You and others in the community should understand that if people choose to drive under the influence and speed, with fatal consequences, then there will be a stern response. These factors point away from suspension of the sentence.
31. There is a need for rehabilitation as the pre-sentence report notes that the main factor was alcohol use. I do not see anywhere that you have done anything to address this to date.



32. Taking all relevant factors into account, the sentence will not be suspended. While I acknowledge the positive factors relating to your character, the nature and circumstances of the offending mean that that the sentence should not be suspended. Accountability, deterrence and denunciation require a term of imprisonment in this case.
33. The sentence is 1 year and 10 months imprisonment, to commence immediately. You were held in custody pending trial for 1 month. As such, I consider that you are ineligible for the commencement of the sentence to be deferred. In this regard, I have followed the recent approach taken by the Honourable Chief Justice to sentence commencement in circumstances where a defendant has been in custody for a short period of time and then released on bail pending sentence. I refer to, for example, *Public Prosecutor v lamak* [2024] VUSC 90 and *Public Prosecutor v Isno* [2024] VUSC 94. While s50 of the Penal Code is not explicitly addressed in those 2 cases, logically that was the approach taken by the Honourable Chief Justice to s50, given that the Court ordered the sentences to commence immediately.
34. You have 14 days to appeal against the sentence.

**DATED at Port Vila this 31st day of July 2024
BY THE COURT**

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Justice M A Mackenzie

