

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

Criminal Case No. 25/1026 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Port Vila

State

AND: Harry Jimmy
Port Vila

Defendant

Date of plea: 4 June 2025
Before: Justice B. Kanas Joshua
Counsels: Mr Jordan Aru, for the State
Mr Kylie. Karu, for the defendant

SENTENCE

Introduction

1. Mr Harry Jimmy, you appear today because you pleaded guilty to the charge of threats to kill, on 4 June 2025.
2. The maximum sentence for threats to kill is 15 years imprisonment.

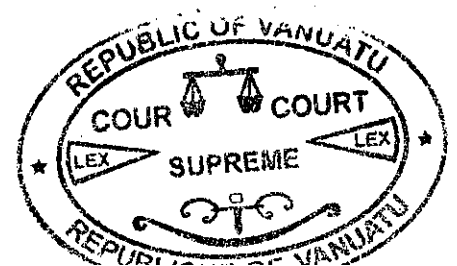
Facts

3. On 4 June 2025, you admitted and confirmed that
 - a. On 4 February 2025, around 10:20am, you threatened Jack Kamisak after a physical altercation at the Wan Smol Bag compound, when you said to him that you will go home and return. The words were followed with you going home and returning with a machete. You searched the compound and found the complainant and chased him with the machete and repeatedly saying you will cut him today.
 - b. The incident occurred after the complainant, who is a security guard, had asked you to leave the premises due to your disruptive behavior, as you were drunk and disturbing the peace of patients in the WSB clinic.
 - c. The complainant was scared by your actions and had to arm himself for self-defence when he took a rock and hid. Your wife intervened to remove the machete.

Sentencing purposes/principles

4. You must be held responsible for your actions so others who behave in the same way, can see that this is against the law and has serious consequences, so they can stop their actions. This sentence should help you to rehabilitate, and must be generally consistent.

Approach to sentence



5. The sentence approach taken is in two steps, as in *Jimmy Philip v. Public Prosecutor*¹, which applied *Moses v. R*².

Step 1 – Starting point

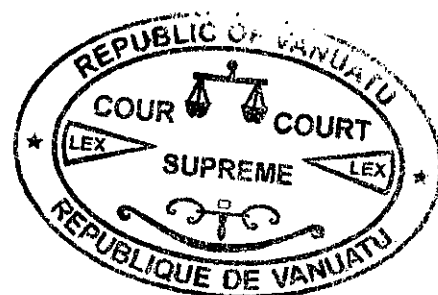
6. The first step is to set a starting point. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence. The aggravating factors here are:
- The defendant used a machete as a weapon.
 - The situation was actively escalated after the physical altercation, when the defendant went home, armed himself, and returned to carry out his threats.
 - The incident occurred at a public health facility, disrupting its services and causing alarm among staff and patients.
 - He searched for the complainant and chased him around the compound.
 - He made multiple verbal threats to kill the victim.
 - The defendant's actions caused fear in the victim's life, as he had to flee for safety and hide.
 - The defendant's wife had to intervene to defuse the situation.
7. There are no mitigating factors of the offending.
8. Prosecution referred to the case of *PP v. Joseph*³ as guide to starting points. The court adopted a starting point of 2 years imprisonment for 2 counts of threats to kill. The defendant had confronted the complainant with a machete, threatening to cut her into pieces and chased her with the machete.
9. Prosecution submitted a starting point of 24-36 months imprisonment.
10. Defence referred to two cases as guides to starting points. In the case of *PP v. Brookman*⁴, the court divided threats to kill into the following 4 categories:
- The charge is laid with a more serious charge where the victim is threatened before, during and after the more serious offence has been committed as commonly occurs in cases of sexual offences;
 - The charge is laid where there is an immediate actual attempt by the defendant to carry out the threat, such as, swinging the knife or discharging a firearm;
 - The charge is laid where the threat is made whilst the defendant is armed with an offensive or lethal weapon; and
 - The charge is laid where the threat is made directly between strangers or unequal parties in a "face-to-face" situation accompanied with vulgar abuse and delivered in a menacing manner.

¹ [2020] VUCA 40.

² [2020] NZCA 296.

³ [2020] VUSC 196; Criminal Case No. 1265 of 2020 (28 August 2020).

⁴ [2012] VUSC 171.

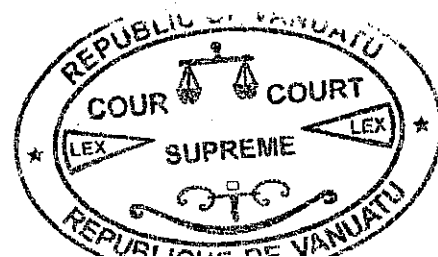


11. The second case submitted is *Walker v. PP*⁵. The court of appeal stated that cases of threats to kill must warrant imprisonment sentences to reflect the seriousness of the offence. The court upheld the sentence given in the court below, of 2 years imprisonment, suspended for 1 year. It was a part imprisonment sentence where the appellant is to serve the first 12 months in prison, and the other 12 months suspended on good behavior. The appellant had directly threatened the victim by saying he would "cut off his head".
12. Defence submitted that the current case fell in lower end of the third category described in *Brookman*, as the offence did not accompany any other offences and was unplanned. In the current case, the defendant acted in a drunken state. In comparing the case of *Walker*, defence submitted that the current matter is less serious as the defendant did not act out of calculated anger or premeditated intent to cause fear. His actions were committed under the influence of alcohol. A starting point of 3 years was submitted to be appropriate.
13. I adopt a starting point of 18 months imprisonment. I find that the case of *Joseph* is a helpful guide as it is similar to the current one. There were 2 counts of threats to kill, as opposed to 1 count of threats to kill in the current case. This offence falls in the higher end of the fourth category in *Brookman*. The act was done face-to-face, with vulgar abuse, and delivered in a menacing manner.

Step 2 – Personal factors

14. The second step is to make the appropriate deductions for personal factors. Two deductions are made in this part. The first deduction is for the guilty plea. The prosecutor agreed that the guilty plea warrants a deduction of 10-33% discount. Defence submitted that a 1/3 reduction is appropriate. I consider that the defendant pleaded guilty at the earliest opportunity and think a 1/3 reduction is appropriate, bringing the sentence to 13 ½ months imprisonment.
15. The second deduction is from the other mitigation factors. Defence submitted the following factors:
 - a. The defendant is a first-time offender and cooperated with the police and the court.
 - b. He is married with 4 children and is the sole breadwinner in the family.
 - c. He is remorseful and willing to perform reconciliation with the complainant.
 - d. He is employed as a security officer but also does farming to support his family.
 - e. Good character reference was made of the defendant in the PSR.
 - f. Time spent in pre-sentence custody – 14 days.
16. Prosecution acknowledged that the defendant's time in pre-sentence custody must be deducted. Fourteen days equates to an effective sentence of 28 days. Defence conceded with prosecution on this.

⁵ [2007] VUCA 12.



17. As a first-time offender who cooperated with the police, the defendant shows his understanding of the consequences of his actions and that he is remorseful. His family depends on him for support and he has been described as a respectful man and participates in his community. For these reasons, I give a reduction of 1 month for the other mitigating factors.

End sentence

18. Mr Harry Jimmy, I am sentencing you to 12½ months imprisonment for the charge of threats to kill.

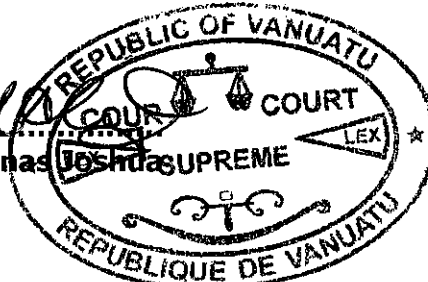
19. You will be 47 years old this year, and you have a family who depends on you. In the PSR, your wife described you to be a good husband and father. You are a first offender and you are old enough to understand that consumption of alcohol can lead to serious repercussions. Your son describes your behavior as unusual, however, since the incident you have learnt your lesson. For these reasons, I am suspending your sentence for 12 months, under my discretion in Section 57 of the Penal Code Act CAP 135. Suspending your sentence will help towards your rehabilitation. If you offend within this period, you will be arrested and this sentence will be activated, in addition to any other penalty imposed for the further offending.

20. To assist with your rehabilitation, I order that you do 50 hours of community work.

21. You have 14 days to appeal.

Dated at Port Vila on this 16th day of July 2025

BY THE COURT

Justice B. Kanas
Justice B. Kanas
The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. The words "COURT" and "SUPREME" are prominently displayed in the center, with "LEX" and a star on the right side.