

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

Cr. Case No. 209 of 2017

PUBLIC PROSECUTOR

-v-

TERRICK MASING
ROBERT KASSO

Coram: *Moses Peter*
Court Clerk: *Sidonie Lunabek*

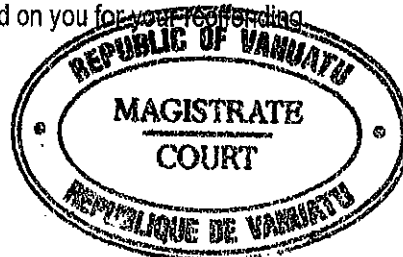
Appearances: *Lenry Young for the State*
Linda Bakokoto for Defendants
Defendants appear in Person

SENTENCING

1. Mr. Terrick Masing and Mr. Robert Kasso, you first appeared in court on 27th July 2017 and Mr. Kasso pleaded guilty on the charges of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP.135] whilst Mr. Masing pleaded not guilty on the charge.
2. The court set a trial hearing on 14 and 15th September 2017, however, counsel for the State amended the charge to Complicity to Intentional Assault contrary to section 30 and section 107 (b) of the Penal Code Act [CAP 135] and to which on the hearing of 4th August 2017, Mr. Masing pleaded guilty on the charge.
3. Today you appear for sentencing on the charge after time was allocated for sentencing submissions to be filed by both counsels.
4. The Complainant is Kerry Morris who lodged complaint to Police on 25th August 2015 alleging that on 21st August 2015 at around 11.00 am he and his friends were playing and having fun at an unoccupied property at Independence Park when you both approached them and assaulted him. By then, his friends had escaped the scene. He described the assault as perpetrated by Mr. Masing and was aided by Mr. Kasso. He suffered black eye on the shots inflicted on him in the assault.



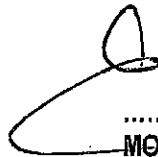
5. The witness statement of Lency Shem dated 25 August 2015 confirm seeing the defendants assaulting the complainant. A medical report of Dr. Steward dated 21 August 2015 reveals injuries sustained by the complainant and asserted the injuries derived from a physical assault.
6. The maximum penalty for Intentional Assault is 1 year imprisonment.
7. In considering and assessing your appropriate punishment, the Court has been assisted by the cases submitted by the Public Prosecutor in the case of Public Prosecutor v Kalsau [2009] VUSC 79. The defendant was sentenced to 4 months' imprisonment but suspended for 12 months on offence of Intentional Assault causing injury.
8. Defence Counsel submitted the cases of Public Prosecutor v Batick [2015] VUSC 174 where the defendant having pleaded guilty on the charge of intentional assault causing temporary injury with other related charges was sentenced to 2 months' imprisonment but suspended.
9. I have not had the benefit of a presentence report filed by the Probation Officer in the Correctional Services Department, but have been assisted by the submission from your legal counsel about circumstances of your offending and personal information generally about your responsibilities towards your spouse and children.
10. For your sentence, I set a starting point of 6 months' imprisonment for offence of Intentional Assault contrary to section 107 (b) of the Penal Code Act [CAP 135] taking into account the aggravating and mitigating factors below.
11. The aggravating factors taken into account are:
 - o Disparity of age between the Offender and the complainant.
 - o Breach of Trust by Police Officer (Terrick Masing) and ordinary citizens (victim).
 - o Joint Criminal enterprise by both defendants.
12. The mitigating factors taken into account from your counsel's submission were that:
 - o You are a first time offender
 - o You pleaded guilty at first given opportunity.
 - o Considerable delay in prosecution the case as it appears the complaint was lodged in August of 2015.
13. You are entitled to one third reduction of the sentence because of your guilty plea and that is 7 weeks' reduction which now leaves you with 17 weeks' imprisonment. I deduct another 5 weeks to commensurate with the delay in prosecuting the case.
14. You are left with a balance of 12 weeks of imprisonment.
15. In considering whether or not to suspend your sentence, I considered your commitments to your spouses and children, I have accepted to suspend your sentence for 12 months and in event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your offending.



16. In addition to the suspended prison sentence I order that Terrick Masing pays a fine of VT 15,000 and Robert Kasso pays fine of VT 10,000
17. The fines must be paid within 15 days failure of which will render the suspended sentence activated.
18. You have 14 days to appeal to the Supreme Court if you are not satisfied with this sentence.

DATED at Port Vila this 8th day of September 2017

BY THE COURT



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MOSES PETER
Senior Magistrate

