

PUBLIC PROSECUTOR

V

TOM WELLS

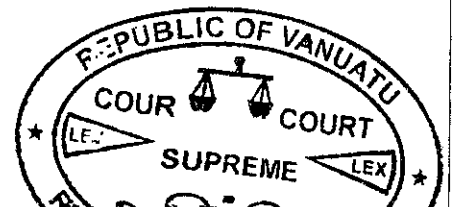
Coram: Chief Justice Lunabek

Counsel: Mr. D. Boe for the Public Prosecutor
Mr. A. Bal for the Defendant

Date of Sentence: Friday 8th June 2018

SENTENCE

1. Tome Wells, you are charged with one count of unintentional harm causing death, contrary to section 108 (c) of the Penal Code.
2. On 6 June 2018, at Luganville Santo, you entered a guilty plea for that offence.
3. You accept the summary facts of your offending which is provided by the prosecution.
4. The summary of facts is as follows:
 1. A formal complaint was made against you on the 28th of October 2018 for the offence of unintentional harm causing death by driving negligently.
 2. On the 27th of January 2018 around 17: 30 pm you were driving a Nissan Navara, Registration numbers 122 and were travelling from East Cost of Santo on the main road headed to Luganville.
 3. At saraotu area without due care and diligence you drove struck the deceased on the middle of the road and the deceased immediately fell lying down on grass at the left side of the road.
 4. The deceased was accompanied with his three friends and they were walking together on the road at that time when the deceased was struck by the truck you were driving.



5. You drove the deceased and arrived at the North Base Hospital in Luganville and the deceased was pronounced death at the hospital by Doctor Laurence Sere Boe.
6. You kept driving you felt to stop at the scene at which the accident had occurred.
7. You said you did not stop the truck because the deceased need to be taken to the hospital.
8. After dropping the deceased at the hospital you drove to the police station and you reported the incident.
9. At the time of the incident you did not hold a driving license. Your driving license expired and you did not renew it.
10. You were cautioned and interviewed by the police, you admitted that you were driving the truck registration 122 and you drove struck the deceased and he died at the hospital.

The Law

"UNINTENTIONAL HARM

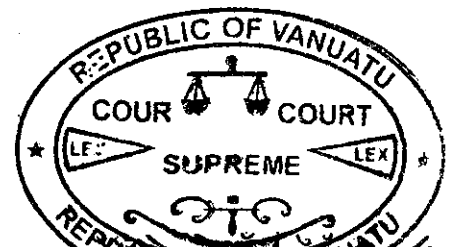
108. No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe any law.

Penalty:

- (a) if the damage so caused is purely temporary, imprisonment for 3 months;*
- (b) if the damage so caused is permanent, imprisonment for 2 years;*
- (c) if the damage so caused results in death, imprisonment for 5 years."*

5. When I consider your sentencing today I read and consider the prosecution submissions. I read and consider the submissions filed by your lawyer on your behalf. In addition, I have the benefit of reading the Sam Day Report provided by the Probation Office to assist the Court in your sentencing.
6. The prosecution refers to many cases on this type of offending under section 108 (c) of the Penal Code Act. These cases include:-

- **Public Prosecutor –v- Kaltang [2002] VUSC 9;**
- **Public Prosecutor –v- Nakat [2014] VUSC 121;**
- **Public Prosecutor –v- Newell [1998] VUCA 2;**
- **Public Prosecutor v Poilapa [2012] VUSC 20;**



- **Public Prosecutor v Yatibu [2018] VUSC 28;**
- **Public Prosecutor v Bob [2007] VUSC 13;**
- **Public Prosecutor v Livo [2014] VUSC 9;**
- **Public Prosecutor v Moli [2017] VUSC 58.**

7. Your lawyer also refers the Court to some case authorities with the following additional ones:

- **Jenkinson –v- Public Prosecutor [2000] VUCA;**
- **Public Prosecutor –v Elane – Criminal Case 107 – 11 (26 August 2011);**
- **Public Prosecutor –v- Tabi – Criminal Case No.13 of 2009.**

8. These cases have a common factor – caused the death of a person without the intention of doing so but through unlawful acts of the drivers of the vehicles like you did on 27 January 2018.

9. It is a basis common fact that:

“a Criminal Court in determining sentences on this sort of charge cannot possibly put a value or an appreciation of the life which is being lost. ... what the Court is concerned to do is to assess the criminal culpability of the wrongdoer” (Newell –v- PP [1998] VUCA 2).

10. In this case, you were not taking reasonable care and as a result you struck the deceased with your truck and at that point in time you do not have a proper driving license. Your driving license had expired but you did not renew it.

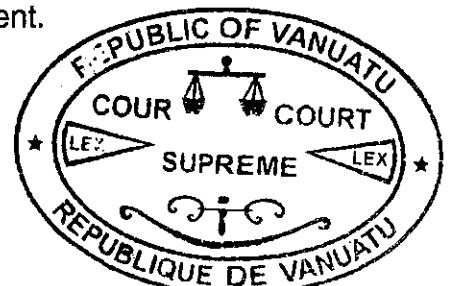
11. A starting point sentence of 3 years imprisonment should be appropriate. However, here, you do have an aggravating factor personal to you which is that you did not renew your driving license. And so you drove on the public road without a driving license when you caused the death of the deceased on 27th January 2018. An appropriate starting point sentence is be 4 years.

12. You are entitled to one third (1/3) reduction to reflect your early guilty plea. Your sentence is reduced to 2 years and 8 months imprisonment.

13. You are 40 years of age. You are a first time offender. You served some time in custody and released on bail. You cooperated well with the police. You are remorseful of what you did. You are now looking after the parent of the deceased. You also promised the parents of the deceased to purchase a land and build a standard house for the deceased’s mother.

14. An allowance of 10 months will be awarded to you to reflect mitigating factors.

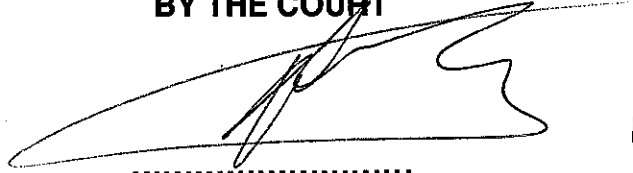
15. Your end sentence is 1 year and 10 months imprisonment.



16. The next question is whether the circumstances of your offending on 27 January 2018 justify a suspension of your imprisonment.
17. I assess the circumstances of your offending, the mitigating factors, I think they justify a suspension. Your term of 22 months imprisonment is suspended for a period of 2 years.
18. You have 14 days to appeal against this sentence if you are unsatisfied with it.

DATED at Luganville this 8th day of June, 2018

BY THE COURT



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Vincent Lunabek
Chief Justice

