

PUBLIC PROSECUTOR
-v-
SAMSON NAPUATI

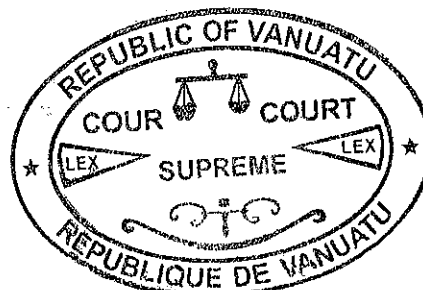
Coram: V. Lunabek - CJ

Counsels: Mrs. Bertha Pakoasongi for Public Prosecutor
Mrs. Kylie Karu for the Defendant

Date of Delivery: 10th day of September 2018

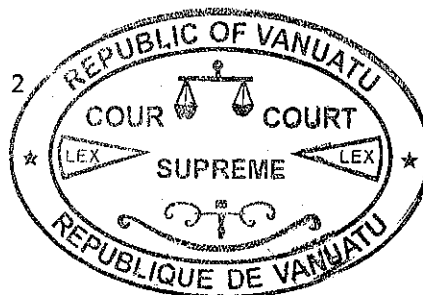
SENTENCE

1. Defendant Samson Napuati, this is your sentence. You are charged and entered guilty pleas on each of the following three counts and convicted on each of them on 3rd July, 2018:
 - Threats to kill a person, contrary to section 115 of Penal Code; (count 1)
 - Intentional assault, contrary to section 107 (c) of Penal Code; (count 2)
 - Escape, contrary to section 84 of Penal Code. (count 3)
2. The brief facts of the offending are provided by the prosecution. You accepted the facts before you entered guilty pleas on them. The summary of these facts is this -
3. You live together with your de facto partner (one Meriam Lulu) since 2004 and at one time during the year 2013 you told your partner that you were going to kill her. You directly threatened to kill her in person sometime between the month of January to November 2013 in connection with serious sexual abuses you committed on a child girl under your care.
4. On the 9th December 2013, you were appearing before the Supreme Court at Dumbea Port Vila for sentence on these sexual offences. You were sentenced to an effective and immediate term of imprisonment for these very serious sexual offences.



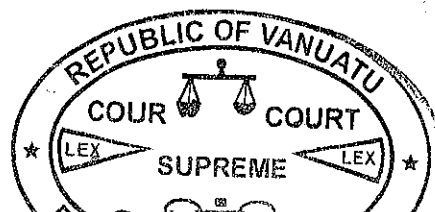
[Handwritten signature]

5. And as the correctional officers were moving you out from the Dumbea Court room after sentencing and before you were going to be hand-cuffed you run away from the correctional officer's lawful custody.
6. You escaped by running away from the Dumbea Court room and down passed the Australian High Commission down the cement steps into town (Port Vila). You found your way to the Kuwai take away restaurant where your partner worked.
7. You went into the kitchen and picked up two knives on that 9th December 2013.
8. On that same date, your partner saw you walking towards her holding two (2) knives. She ran away in the direction of the former BB wharf away from you.
9. You then chased her and purposely tripped her and stabbed her on her chest.
10. Your partner was quickly rushed to the hospital where she received medical treatment.
11. The Correctional officers chased you down the stairs and into the town and eventually caught you after you had already assaulted your partner.
12. You too you stabbed yourself twice with the knives before the correctional officers caught you back and they got the paramedics rushed you too to the hospital.
13. On the 6th January 2014, Meriam Lulu lodged her complaint with the Port Vila Police station.
14. On the 11th of July 2014, you were cautioned and interviewed.
15. The medical report was conducted on the same day the incident occurred on 9th December 2013. The injuries your partner (complainant) has sustained are of permanent nature. The consequence of the injuries on her health is that they affected her ability to do normal day to day activities. She is now a disable person.



[Handwritten signature]

16. A pre-sentence report is filed dated 24th July 2018. The prosecution filed ~~submissions on 27th July 2018 and your defence lawyer filed submissions in response and on mitigations on 27th July 2018.~~
17. The prosecution refers to **Walker v Public Prosecutor (2007) VUCA 12** -where the court stated in effect that "cases of this nature must always warrant imprisonment to reflect the seriousness of offending" in respect to the offence of threats to kill a person. They refer also to the case of **PP v Batick (2015) VUSC 174** where the Defendant was sentenced to 3 and half years and 8 months and suspended for 2 years for the offence of intentional assault causing permanent injuries. The prosecution also refers to the decision of Supreme Court of South Australia in **R v Shepper bottom no. SC CRM-00-250 (2001) SASC 31 (14 March 2001)** as there is no case authority on the offence of escaping lawful custody.
18. The Prosecution submits that the Court imposes a sentence which reflects the serious nature of the offence and the aggravated circumstances of the offending and that it is appropriate as a punishment for the Defendant, deterrence for others and rehabilitates the offending behavior of the Defendant.
19. Your defence lawyer acknowledges that the offences you have committed are serious offences. She refers the Court to the following case authorities in relation to each offence:
- Threats to kill:
 - **Public Prosecutor –v- Brookman [2012] VUSC 1717;** and
 - **Walker –v- Public Prosecutor [2007] VUCA 12.** Your defence lawyer says the circumstances of this case show that the threatening accompanied some other serious offences.
 - Escape:
 - **Public Prosecutor –v- Bae [1995] VUSC 15** where the accused pleaded guilty to five (5) counts of escaping legal custody (Correctional Centre) where he was lawfully kept to serve his imprisonment terms. The first time, he escaped he went to visit a friend; the second, he went to see his wife; the third,

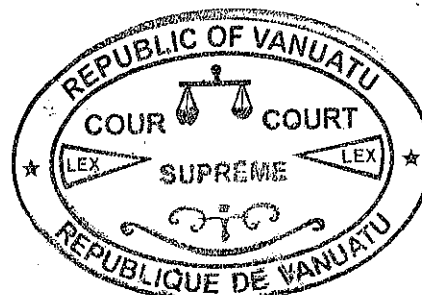


he went to his house to get his bank passbook; the fourth, he went with another detainee to get kava; and the last occasion when he was apprehended, he had gone to his home for lesson studies. The judge noted that: *"It does seem to me that the offences are really disciplinary matters rather than constituting truly criminal behavior."* The judge sentenced the accused to 7 days imprisonment on each concurrently. Your defence lawyer says the facts of your case are similar to the case in **PP –v- Bae [1995]** and asked the court to apply the same reasoning in your present case.

- Intentional assault causing permanent injury.
- **Public Prosecutor –v- Kaloran [2014] VUSC 14;**
- **Public Prosecutor –v- Batick [2015] VUSC 174;**
- **Public Prosecutor –v- Noel [2012] VUSC 230.**

20. Your defence lawyer also refers to the approach adopted by the Court in **Public Prosecutor –v- Andy [2011] VUCA** and asked the Court to follow in this case.

21. In mitigation, your lawyer submitted that you were 33 years of age at the time of offending. You cooperated with the police and admitted the offence you pleaded guilty at these offences at the first time opportunity given to you. You are a good and responsible man. You started to live with the complainant in 2004. You accepted the complainant to your home with her son of 8 months old. You took care of the complainant and her son to the date. You went to detention for your previous conviction on 9th December 2013. You were released on parole on standard and special conditions to remain until your sentence ends on 07 November 2020. You took the initiative to reconcile with the complainant and the responsibility to fully support the complainant with her current medical condition. Your partner (the complainant) is entirely depending on you. You are the sole bread winner. You have performed a custom reconciliation to the complainant and her family and exchanged gifts. You are remorseful. Your lawyer also says there were delays of some 4 years before you were dealt with and the Court should allow some time for this.



22. Your lawyer submits further that a non-custodial sentence should be passed on you because if an imprisonment sentence is imposed on you, it will deeply affect your unemployment situation of your disable wife and son in the secondary school. A letter from your wife was produced to that effect.
23. Your lawyer finally submits that if an imprisonment sentence is imposed, it should be suspended for 3 years to run consecutively with your parole period that will end on 7th November 2020 and that these offences are not breach of parole.

The Relevant Law

24. Section 115 of the Penal Code provides:

"115. Threats to kill person

No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

Penalty: Imprisonment for 15 years."

25. Section 84 of the Penal Code says:

"84. Escape

No person being in lawful custody shall escape from such custody.

Penalty: Imprisonment for 5 years."

26. Section 107 (c) of the Penal Code says:

107. Intentional assault

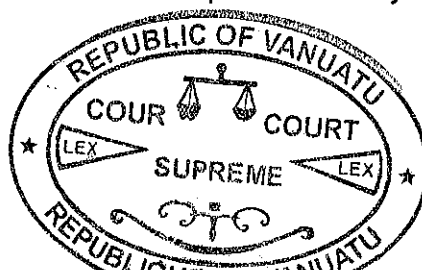
No person shall commit intentional assault on the body of another person.

Penalty: (a)

(b)

(c) if damage of a permanent nature is caused, imprisonment for 5 years;

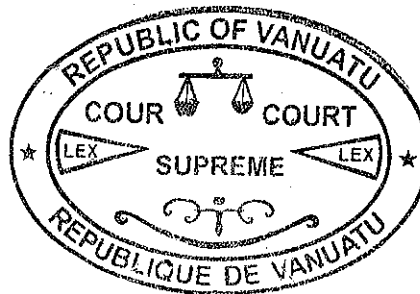
29. The offence of threats to kill a person carried a maximum penalty of 15 years imprisonment. The penalty for intentional assault with permanent injury carries 5



years imprisonment and the offence of escape carries a penalty of 5 years imprisonment.

30. You have committed and pleaded guilty to serious offences as reflected by the severe penalties imposed by law. The court when sentencing you must reflect the seriousness and the aggravating circumstances of your offending.
31. When considering your sentencing, I have in mind the principles and guideline judgments set by the Court of Appeal in **Walker -v- Public Prosecutor** and others.
32. It is noted that the circumstances or the reasons why you directly caused threats to kill your partner (complainant) arose out of your previous convictions over sexual offences you were sentenced for on 9 December 2013. The threats to kill your partner occurred between January and November 2013 before you were sentenced. About a month after the threats you were sentenced on 9 December 2013 for those sexual offences on the child also under your care. Before you were hand - cuffed, you escaped the correctional officers' lawful custody. You run to the restaurant where your partner was working, you took two (2) kitchen knives; you chased your partner and stabbed her with the knives. She received very serious injuries on her body which are of permanent nature. She was rushed to the hospital and received medical treatments and to save her life.
33. It is material for the sentencing approach to consider the offences of threats to kill the complainant in count 1 and the intentional assault causing permanent injuries on the body of the complainant in count 2 as the most serious crimes. The offence of threats to kill in count 1 is the leading offence. The offence of assault causing permanent injuries is treated as the executing part (materialization) of the offence in count 1 and be considered as aggravating features and to have any concurrent sentence effect.
34. The offence of escape is a separate offence of its own and be considered as such on consecutive sentence effect on the overall circumstances of these offences committed between November and 9th December 2013.

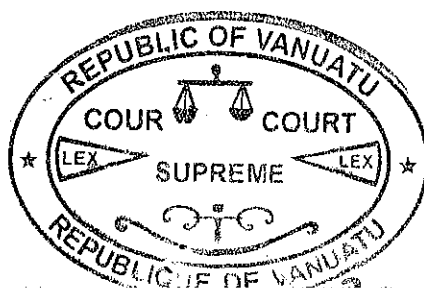
6



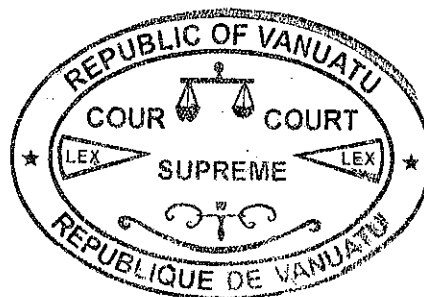
A handwritten signature in black ink, appearing to be a stylized letter 'A' or similar character.

35. On 9 December 2013, you escaped in order to execute your threats to kill your partner. The following aggravating factors exist in this case:

- (a) You caused the complainant to be afraid of you as she knew you were to carry out your threats.
- (b) You run away from Dumbea Hall to town after being sentenced for serious sexual offences and it was a serious defiance to the law and authorities.
- (c) You ran into the kitchen of the restaurant where your partner was working. The kitchen is not yours but belonged to your partner's employer.
- (d) You took two (2) knives (weapons) and you chased your partner with the two knives.
- (e) You used the knives to stab your partner.
- (f) Your partner sustained injuries which are of permanent nature.
- (g) The injuries affect your partner's ability to do normal day to day activities. She became then dependent as she is now a disable person.
- (h) Your actions constituted a serious breach of trust as you cannot control your anger or frustrations. Your partner is no longer saved but she has to live with her new imposed conditions of life.
- (i) You have previous convictions of very serious sexual offences over a child under your care on 5 November 2013 when you admitted and pleaded guilty to those offences and were sentenced for 7 years. At the time of your sentence on 9 December 2013, your convictions were already recorded. The next question is whether they are relevant to be considered as aggravating factors to your current sentence. I answer yes because out of the situations or circumstances of these offences the series of the second offences in this current case occurred. Your first convictions are relevant circumstances personal to you and considered as aggravating factors.



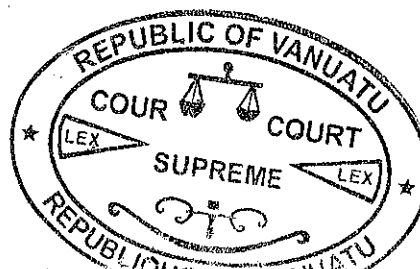
36. You are sentenced to 7 years imprisonment as a starting point sentence for the ~~threats to kill a person and 3 years imprisonment for intentional assault with~~ permanent injuries in counts 1 and 2. They are to be served concurrently. That means you will serve the two sentences of 7 years and 3 years imprisonment at the same time which in effect means you will serve a total of 7 years. In addition, you are sentenced to 3 years imprisonment for the offence of escape in count 3 and to be consecutive with the above sentences.
37. The sentences are to be served consecutively as the offence of intentional assault causing permanent injuries is directly connected with the offence in count 1 as the execution of the offence of threats to kill the complainant in count 1. (The complainant was saved because she was quickly rushed to the hospital and she received medical treatment). The offence of escape under s.84 is a standalone offence in the circumstances of this case.
38. Contrary to what your defence lawyer submitted, I consider the seriousness of the circumstance of the offence of escape in this case as constituting truly criminal behaviour with the intention to commit criminal offences. The circumstances are not those of trying to avoid serving sentences. The facts of **PP -v- Bae [1995] VUSC** are really disciplinary matters. But the facts of this present case are not and they are distinguished from the case of **PP v Bae [1995] VUSC 174**.
39. You are sentenced to a total cumulative head sentence of 10 years imprisonment.
40. In mitigation, you are entitled to the following allowances/discounts for:
- Cooperating with the police and admitted the offences: 6 months;
 - Perform custom reconciliation ceremony with the complainant partner- with the presentation of items (1 stub of kava, 1 local chicken, 3 roll of calico and 1 mat). The custom reconciliation ceremony was accepted by your partner and her family and you accepted the complainant and her son and you take care of the complainant with her current medical conditions: 36 months; and



[Handwritten signature]

- Delays considerations: You committed these offences on November and 9 December 2013. You were arrested on 7th July 2014. You were trial in July 2018. The state took 4 years to deal with your prosecution. You are entitled to a further discount of 6 months. To recap, so far from your term of 10 years imprisonment, some allowance of 4 years is given.
- You also entered guilty pleas at the first opportunity given to you by the Court. You are entitled to one third of 4 years terms.

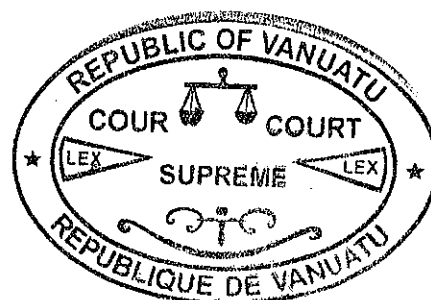
41. Your end sentence is 3 years and 4 months imprisonment.
42. The next question is whether the circumstances of this case justify that I suspend your imprisonment term of 3 years and 4 months.
43. Your defence lawyer submitted that a suspended imprisonment sentence is to be made as you are unemployed; you have a disable wife and son in secondary school. She attached the letter provided by your wife explaining her current situation with you and a recent medical report of the wife showing her medical condition. A custodial sentence will be prejudicial to the family she submitted. Your lawyer relies on **PP v Batick [2015] VUSC 174**.
44. It is also said that the sentence of imprisonment should be suspended for 3 years to run consecutively with your parole that will end on 7th November 2020 as these offences are not breach of your parole conditions.
45. I accept that these offences committed between November and December 2013 are not in breach of parole conditions as they are committed just after you are sentenced but before you are released on parole with specific conditions imposed. The above situation cannot be used to impose an end sentence which is not proportionate to the circumstances of the offences like the present.
46. I consider that the caring of the disable wife and the situation of the son in the secondary school (as compassionate reasons/factors) are important and legitimate considerations. But they are one thing and may be relevant for mitigating considerations and they have been considered; however, it is another matter to suspend an imprisonment sentence for very serious criminal offences involving



physical violence with the use of deadly weapons on a woman who happen to be your partner in such an apparent domestic but cowardly and confrontational issue.

They are not factors that are directly relevant to be taken into account in the consideration of suspension of the sentence as they are not directly concerned with you personally and individually to prevent you or affect you or limit your physical capabilities or health from serving your term of imprisonment sentence.

47. The pre-sentence report shows that you committed these offences at 33 years of age and you are now 44 and in good health condition and despite your mitigating factors, the aggravating factors outweigh the mitigating ones.
48. I note the facts of **PP v Batick [2015] VUSC 174** involved the accused intentionally assaulting his partner with a bush knife causing her injuries on her body with a fractured arm and threatened to kill her. That is the similarity between that case and the present case. To the extent of their similarities, the facts of the present case are more serious with injuries of permanent nature caused on the body of the complainant partner rendering her dependant after these incidents (as she is now a disabled partner). That is the first distinguishing factor between these two cases. The other factor which renders this case more serious and distinguishable from the Batick case, is that Accused, Samson Napuati, you were already sentenced on 9th December 2013 and in the custody of the authorities, however, you escaped their lawful custody (not to avoid serving your sentence) but to commit criminal offences of intentional assault causing injuries of permanent nature on the body of your partner rendering her a disabled person.
49. In this case, an immediate custodial sentence is warranted based on the serious circumstances of this case. These are prevalent offences, with more and more matters of this type coming before the Courts. Imprisonment is necessary for various reasons: First, to mark the gravity of the offences; second, to emphasize public disapproval of these offences; third, to serve as warning to others; fourth, to punish offender like you in this case; and the last but not the least is to protect women in the society.



50. You are ordered to serve the term of 3 years and 4 months imprisonment with immediate effect.

51. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

DATED AT PORT VILA, this 10th day of September 2018



Vincent Lunabek

Chief Justice

