

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

**Criminal
Case No. 19/2193 SC/CRML**

BETWEEN: Public Prosecutor

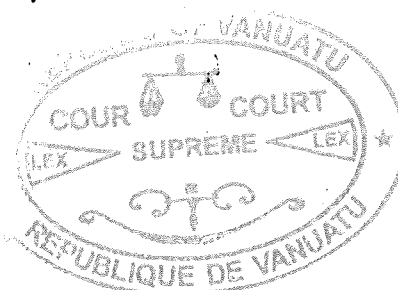
AND: Jessy Wai

Defendant

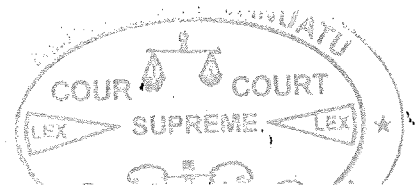
Date of Plea : 9th December 2019
Date of Sentence: 13th December 2019
Before: Justice Oliver.A.Saksak
In Attendance: Damien Boe for Public Prosecutor
Steven Garae for Defendant

SENTENCE

1. Jessy Wai you are for sentence today for having pleaded guilty to one charge of causing death by reckless driving contrary to section 12 of the Road Traffic (Control) Act Cap.29 and to one count of unintentional harm contrary harm causing death contrary to section 108 (c) of the Penal Code Act Cap.135.
2. The maximum penalty for the first offence is a fine not exceeding VT 500.000 or imprisonment not exceeding 5 years or to both. And further second offence the maximum penalty is 5 years imprisonment.
3. On 7 June 2019 at about 22.00 hours at Black stone area, East Ambae you drove Steven Pakeo's truck Registration No. PPT 357. You drove carelessly and recklessly. You had no valid driving licence at the time. And you were under the influence of alcohol. You had been drinking with friends that day. You bought a bottle of wine from Lemus Shop. Then you bought some more bottles of wine at Charlot's and went off to South Ambae. After drinking there you headed back to Saratamata. On the way you asked Steven Pakeo if you could drive. He said no but you insisted and Steven Pakeo moved away and let you drive. You drove at high speed. The passengers behind signalled to you to slow down or stop. You did not do so and one of the passengers jumped out. Not long after that the vehicle went off the road, hit the ground and turned over causing all passengers to fall off. Steven Pakeo get out of the truck and shone his mobile phone light around to check the passengers. One of them was discovered dead. He had blood passing from his mouth and nose. Upon interview you admitted being drunk and driving without a valid driving licence. You admitted driving carelessly and recklessly at the time.



4. You have been charged with technically the same offence but under two different legislations, one a statutory offence and the other a criminal offence. The only difference is that the statutory offence carries an additional punishment of a monetary fine of VT 500,000. The better approach was to have made the charges alternate so that you could plead and as long as the plea was guilty, the other charge would be disregarded but taken only as an aggravating feature.
5. Here you have pleaded guilty to both so that for the Court to impose two separate penalties for both charges which was technically the same, would in my view be imposing a double punishment on you. Therefore I will impose a sentence only in respect of the charge in Count 1 which is causing death by reckless driving and treat the second charge only as an aggravating feature.
6. Your case is almost similar to that of PP v Wells [2008] VUSC 88 but that was a charge laid under section 108 (c). The defendant in that case like you did not have a valid driving licence. And unlike you the deceased was not a passenger in the defendant's car. The deceased was a pedestrian. But it appears to me that facts and circumstances of your case put your case a little more serious than Well's case.
7. The aggravating features of your case were that
 - a) You did not have a valid driving licence.
 - b) You drove at high speed and carelessly and recklessly.
 - c) You forced Steven Pakeo away from the driving wheel and took over and put your passengers at great risk, one of them actually risked his life by jumping off.
 - d) You ignored the warning and pleas of your passengers to slow down or stop.
 - e) You were heavily drunk.
 - f) And you caused the loss of life of one your passengers to whom you owed a duty of care.
8. Taking all those factors together with the seriousness of the offence you committed, I consider that the appropriate sentence for you is to be a sentence of imprisonment. And the starting sentence shall be 4 years imprisonment with no uplift. I therefore convict and sentence you to a term of 4 years imprisonment.
9. In mitigation I take note of your personal history and character and your contributions to the community through your past employments and engagements. You have a clean past with no previous criminal record. You cooperated well with the police by surrendering yourself voluntarily to them after the accident and you have performed custom reconciliation with the relatives of your victim. For all these I reduce your sentence of 4 years by 2 years. Your balance is 2 years imprisonment.
10. I deduct this further by 1/3 for your guilty plea leaving the balance and end sentence to be 1 year and 4 months.



11. You are therefore sentenced to an end sentence of 1 year and 4 months imprisonment with immediate effect commencing today.
12. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you disagree with it.

DATED at Luganville this 13th day of December 2019

BY THE COURT


OLIVER.A.SAKSAK

Judge

