

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

**Criminal
Case No. 20/717 SC/CRML**

BETWEEN: Public Prosecutor

AND: Justin Yawissi and Samuel Jimmy
Defendants

Before: Justice Aru

In Attendance: Mr. T. Karai for the Public Prosecutor
Mrs. P. Malites for the Defendants

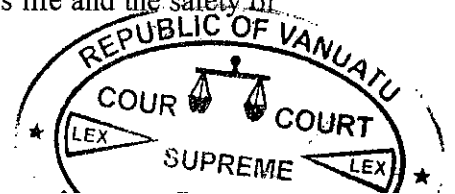
SENTENCE

Introduction

1. Mr Justin Yawissi and Samuel Jimmy you are in Court today to receive your sentence. You were each charged with one count of threats to kill a person. The maximum penalty for this offence is 15 years imprisonment.
2. You both pleaded guilty to the charges and I convict you both accordingly.

The facts

3. The facts are not disputed .You are both in your twenties and you reside at Ohlen whitewood.
4. On 26 February 2020 at around 5pm you were both reported to be drunk and disorderly and disturbing people and traffic on the public road leading to ohlen white wood. You were swearing and causing a nuisance holding up traffic. The matter was reported to the Police and the complainant who is also a police officer and other officers attended the scene. Upon arrival the complainant told both of you to go home and sleep. You responded with words to the effect that "*fuck the Police* "and became very aggressive. Mr Justin Yawissi you grapped the complainant's shirt and threatened him with words to the effect that "*I will cut your neck, I know where you live and I will go to your house and cut the necks of your family members.* "
5. Mr Samuel Jimmy you made the same threat to the complainant. The threats were repeated several times which made the complainant fear for his life and the safety of



the other officers accompanying him. Witnesses near the scene came to the road and saw and heard you swearing and threatening the complainant. He called other officers on general duty to assist and when they arrived they arrested you.

6. You were both cautioned and interviewed on 27 February and admitted the offending that you were drunk and remember arguing with the complainant.

Aggravating factors

7. You both uttered the same threats to the complainant which he understood that his life and that of his colleagues and family were in danger. You were both very drunk and disorderly and causing nuisance to passers – by and disturbing the flow of traffic on a public road.

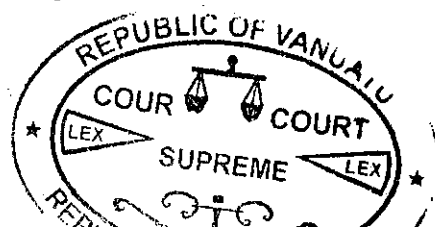
Starting point

8. In assessing the correct starting point, I have considered the submissions made by Counsel. By comparison to other cases of similar offending, this case ranks at the lower end of the scale. The defendants uttered the threatening words whilst fully drunk. And there was no presence or use of a weapon.
9. The starting point for your sentence is set at 2 years and 8 months imprisonment.

Personal factors

Samuel Jimmy

10. Mr Samuel Jimmy your pre-sentence report filed on 5 June 2020 states that you are from Tanna and you come from a family of two brothers and a sister and you are now 23 years of age. Currently you are living at Ohlen whitewood area. You have a good relationship with your chiefs and community.
11. You completed your education at primary level on Tanna then continued to help your parents with gardening to earn income. You have had some experience in seasonal work on the RSE scheme in New Zealand and you told your probation officer that you had plans to involve Mr Yawissi to join you doing seasonal work in New Zealand. You are a first time offender.
12. You filed a statutory declaration on 29 May 2020 alleging mistreatment and brutality by the Police against you. You say that after your arrest at the scene a number of officers repeatedly punched you on the head and kicked you on the chest and ribs and dragged you on the gravel road resulting in injuries to your left thigh. At the Police station you allege that you were assaulted and kicked again by the officers and lost conscious for a short time and you revived by the officers. Before being escorted to cell No 6 you state that the officers hosed you whilst in your underwear to clean you up. As a result of your injuries you were taken to the hospital for treatment.



Justin Yawissi

13. No pre-sentence report was filed on your behalf as directed. Counsel on your behalf submits that you are now 22 years of age. The prosecution confirmed in their submissions that you are also a first time offender. No other information was provided regarding your personal factors.
14. You also filed a statutory declaration on 29 May 2020 alleging Police brutality that you suffered mistreatment at the hands of the Police as well. At the scene after the arrest, you say the officers punched you on the head and kicked you several times on the body before you fell to the ground. At the Police station you allege that the officers punched, slapped you again and kicked you until you fell to the floor. Before taking you to cell No 6 they hosed you in your underwear. You were also taken to the hospital and had your injuries treated.
15. You are both in your twenties and both first time offenders. You were both remanded for a month. The one month is deducted from your sentence. Being first time offenders and you are both young adults another 4 months is deducted. The statutory declarations you filed are evidence that has not been tested to verify its truth. Having said that, Mr Karae however concedes and admits that the defendants were assaulted as alleged. He submitted that an appropriate deduction be allowed to reflect this. I will allow a reduction of 3 months.

Guilty plea

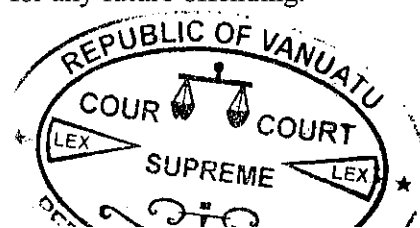
16. You admitted the offending to the Police and pleaded guilty on your plea day. You admitted the offending at the first available opportunity therefore you are entitled to the full one third discount on your sentence.

End sentence

17. The end sentence that each of you will serve is 12 months imprisonment.

Suspension

18. Counsel on your behalf submits that given your youth I should allow you an opportunity to rehabilitate by suspending your sentences or that you both be discharged without conviction. She submitted that the offending is at the lower end of the scale for this type of offending and you were both very drunk when you threatened the complainant.
19. I accept that the offending is at the lower end of the scale, however the threat was made to a Police officer, a man who is duty bound to enforce the law. Threatening to kill a law enforcement officer is behaviour that must be discouraged. A discharge without conviction will not serve that purpose in my view. A sentence must not only be seen as punishment for the crime but it has to serve as a deterrence for any future offending.



20. Both your sentences will therefore be suspended for a period of 2 years. In addition each of you will do 100 hours of community work with supervision for 6 months. Should you reoffend during the period of your suspension, you will be remanded to serve your full sentence.

Conclusion

21. You have 14 days to appeal if you are not happy with the decision.

DATED at Port Vila this 23rd day of June, 2020

BY THE COURT

