

PUBLIC PROSECUTOR
V
JENNESY TARI

Dates of Plea: 30 October 2024
Coram: Hon. Chief Justice V. Lunabek
Counsel: R. Siri for the Public Prosecutor
K. B. Karu for the Defendant
Date of Sentence: 16 December 2024

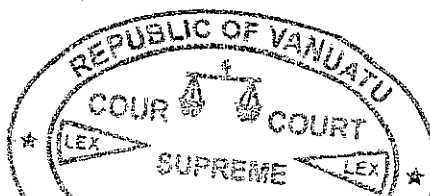
SENTENCE

I. Introduction

1. Mr Jennessy Tari ("*Mr Tari*"), you appear today for sentence having been pleaded guilty to one count of Intentional Assault causing temporary injury, contrary to Section 107(b) of the Penal Code Act and one Count of Domestic violence, contrary to Sections 4(1)(a) and 10(1) of the Family Protection Act.

II. Background – Facts

2. The complainant in this case is your biological father. He is 54 years old and he is a construction worker. He is from the island of Ambae and he resides at Mele village.
3. You are 24 years old, you are from Ambae/Mele and you had been previously residing with your father (the complainant) at Mele village. You are the biological son of the complainant.
4. The complainant alleges that on 11 July 2024, sometimes around 20:30hours, at Mele area on Efate, he (your father) had come back home from drinking kava, when you started swearing at him for no apparent reason. When he (the complainant) told you off for your abusive and insulting language, you proceeded to take a piece of firewood and strike the left hand of your father (the complainant), causing him a fractured distal ulnar (Count 1).



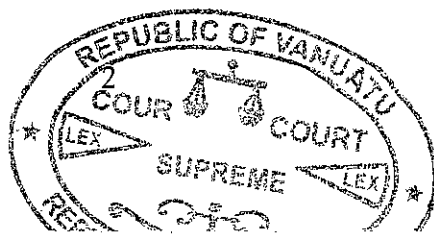
5. You then struck your father (the complainant) for the second time, aiming for his head. But fortunately, the complainant had managed to block the full impact of the blow with his left hand. However, he had still sustained an open wound atop his head (scalp), requiring 6 sutures/stitches to close the injury (Count 2).

III. Sentencing purposes/principles and approach to sentence

6. The purpose of the sentence I impose on you today is that it must hold you accountable and must denounce and deter your conduct. The sentence should ensure that you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.
7. Sentencing involves 2 separate steps: Jimmy Philip v Public Prosecutor [2020] VUCA 401 which applies Moses v R [2020] NZCA 296.

IV. Sentence start point

8. I will first set a starting to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalties for the offences.
9. The maximum sentence for intentional assault causing temporary injury is 5 years imprisonment.
10. The maximum sentence for domestic violence is an imprisonment not exceeding 5 years or a fine not exceeding VT100,000, or both.
11. In this case, the maximum sentence in the both charges is 5 years imprisonment which is available. I will set a starting point on a global basis to reflect the totality of the offending.
12. The aggravating factors here are:
 - (a) Breach of trust – you and the victim are related. The victim is your biological father;
 - (b) The offending occurred at home when the victim should feel safe;
 - (c) The victim sustained injuries on his body, though, of temporary nature – fractured distal ulnar on the victim's left hand; and also wound atop the victim's head (scalp) requiring 6 sutures/stitches to closed the injury;
 - (d) The use of a pieces of firewood (weapon) to cause the damage on the body of the victim;



(e) The repeated nature of the offending.

13. There are no mitigating features of the offending itself.
14. Both counsel have cited cases to assist the Court with setting an appropriate starting point. The prosecutor submits there should be a global starting point of 3 years imprisonment including 6 months uplift for the defendant's previous convictions. Mrs Karu submits that the appropriate starting point is 18 months imprisonment (including an uplift of 6 months for the previous offending).
15. The leading case in this area is *Bakeo v Public Prosecutor* [2023] VUCA 24 on judicial consideration of properly established relevant mental illness, or reduced mental capacity, as a basis for reduced culpability and therefore a reduced sentence. In *Bakeo*, the Court of Appeal observed:

55. *"Both the Supreme Court and this Court had available to it a medical report by Dr Jimmy Obed. Dr Obed a psychiatrist, had been asked to assess whether a defence of insanity was available for Mr Bakeo. He concluded that the defence was not available but in the course of his report he made some observations about Mr Bakeo's mental health.*

56. *As relevant he said:*

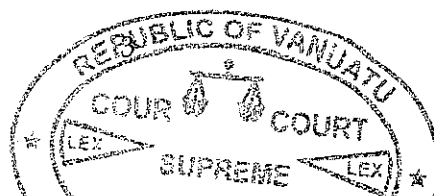
"Mr Bakeo's limited capacity to reason at the time of the offence, diminished his ability to consider alternative choices of his actions and to fully reason about the consequences of his actions.

Mr Bakeo's diminished ability to reason, could be attributed to an underlying psychotic episode possibly triggered by use of illicit substance at, or around, the time of the offence"

57. *There was evidence that Mr Bakeo had consumed marijuana shortly before the offending.*

58. *The Judge gave a three-month deduction from the sentence for personal circumstances, including the fact that Mr Bakeo was a patient at MindCare Clinic. It seems probable that Mr Bakeo first saw the MindCare clinic after these events when a plea of insanity was being considered.*

59. *We consider a further deduction in mitigation for what is Mr Bakeo's limited intellectual function, apparently arising from his mental illness. As Dr Obed observed it was likely that Mr Bakeo had a limited capacity to reason, to weigh up alternative actions and to consider the consequences of his actions. These factors are directly relevant to Mr Bakeo's offending and the choices he made that day. It is difficult to understand why Mr Bakeo reacted so violently that day. He had been frustrated by the refusal to purchase his empty bottles and the fact there was no food for him to eat. But his reaction to these relatively*

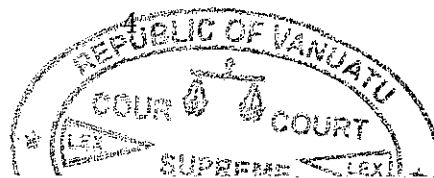


minor frustrations was wholly out of proportion. This reduced capacity diminished his responsibility for the offending. In those circumstances we consider a total reduction of 12 months imprisonment was proper rather than the three months given."

16. I fix a sentence start point of 3 years imprisonment as appropriate.
17. There is to be an uplift to take into account of your previous convictions:
 - (a) On 15 December 2021, you had been convicted and sentenced to 3 months imprisonment suspended for 6 months for domestic violence perpetrated against your father the current complainant in the present case;
 - (b) On 18 April 2023, you were convicted and sentenced to 14 months and 7 days imprisonment for domestic violence perpetrated against your father, the complainant in the current case.
18. The uplift is 6 months.
19. The global starting point is 3 years and 6 months imprisonment.

V. Guilty plea and personal features to the Defendant

20. You pleaded guilty at the earliest opportunity. You are entitled to a one-third discount to your guilty plea. That equates to a discount of 14 months ie, 1 year and 2 months from the starting point.
21. You are 22 years of age. You are unemployed. You wish to apologize to the Court and particularly to your father (the victim) and your family, for your actions. I assess that you are genuinely remorseful.
22. I reduce the sentence by 4 months to reflect remorse.
23. Your sentence is reduced now to 24 months ie, 2 years imprisonment.
24. You have a history of mental condition which caused you to currently on antipsychotic treatment. You had reported improvement on your condition after your last assessment on 10 September 2024 (see Psychiatry Report by Dr Obed Jimmy dated 11 September 2024 and the Mental State Evaluation of Jenessy Tari – 14 October 2024).
25. I take it that, although you have a mental health condition, it is clear that a plea of insanity would not succeed, as your condition did not render you incapable of understanding the



consequences of your actions. At the time of the offending, you were aware that your actions would harm your father and result in your imprisonment. The issue was not your inability to understand, but rather your lack of control over your temper, having been angered by your father shouting at you.

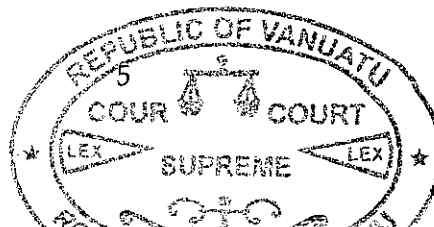
26. Your father was aware of your conditions but continued to provoke by shouting at you.
27. I give you a further reduction allowance of 3 months to reflect your mental health conditions.
28. Your sentence is further reduced to 2 years and 3 months imprisonment.

VI. End Sentence

29. Taking the starting point and the deductions just discussed above into account, the end sentence is 2 years and 3 months imprisonment on each of the two counts concurrently.
30. I note that you were arrested and remanded in custody on 13 July 2024 and you are still in custody when you appear for sentence today.
31. The time you have already spent must be deducted from your sentence of 2 years and 3 months imprisonment.
32. Mrs Karu submitted that based on your special circumstances – namely, your history of mental health issues, though showing improvement, and the facts you have already spent 5 months in pre-custody – this should be considered sufficient punishment and warrants a discharge with conviction. I take note of that.
33. I take note also of what your father (Mr Erick Tari) told the writer of the pre-sentence report that you are his son and he had known you since birth. Your father stated that you were violent every time when you got upset with any issues within your family. In addition, he stated that currently when you are remanded, they are happy and feel safe by themselves. He said that he is still feeling pain with his forehead and that he had fear towards you, Mr Jenessy Tari, if you are to be released from custody.
34. Section 25 of the Penal Code says:

"25. Failure of plea of insanity

- (1) *If a plea of insanity fails, it shall be open to the court to find the accused guilty of the charge. The court may decide that the accused, although not insane within the meaning of section 20, was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind*




or any inherent cause or induced by disease or injury, as diminished his responsibility for his acts.

(2) If an accused is found guilty but with such diminished responsibility, the court may make such order with respect to his custody and treatment as is necessary for the safety of others and his own well-being."

35. In the present case, I consider and apply section 25(2) of the Penal Code Act. Your sentence of 2 years and 3 months imprisonment is not going to be suspended as the offending is serious; and it is necessary to keep you in custody for the safety of others and your own well-being.
36. You are ordered to serve 2 years and 3 months imprisonment which are deemed to start on 13 July 2024 to take into consideration the time you have already spent.
37. While in custody in the Correctional Facility, you shall continue with your treatment with antipsychotic medication and you shall comply and adhere to the treatment you are receiving.
38. You have 14 days to appeal this sentence if you are unsatisfied with it. The appeal period starts at the date of this sentence.

DATED at Port Vila, this 16th day of December, 2024.

BY THE COURT


Hon. Chief Justice Vincent LUNABEK

