

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

Criminal
Case No. 25/2213 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: SIMON TIWOK
Accused

Date of Sentence: 13 November 2025
Before: Justice M A MacKenzie
Counsel: Mr C Shem for the Public Prosecutor
Mr A Bal for the Defendant (via video link)

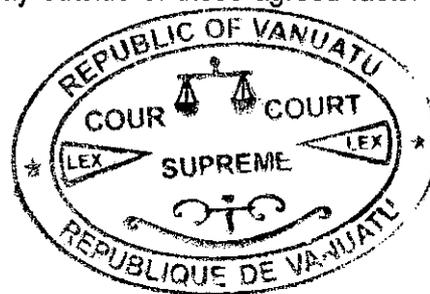
SENTENCE

Introduction

1. Mr Simon Tiwok you appear for sentence in relation to a charge of domestic violence contrary to sections 4 and 10 of the Family Protection Act and a charge of possession of a firearm without a licence contrary to sections 3(a) and 40 of the Firearms Act [CAP 198].
2. The maximum penalties for these offences are:
 - a. Domestic violence – 5 years imprisonment and or a fine not exceeding VT100,000.
 - b. Possession of a firearm without a licence – a fine not exceeding VT 20,000 or imprisonment not exceeding 6 months.

The facts

3. There is an agreed summary of facts. As a preliminary observation, having read the Prosecution's submissions, the summary of facts does not appear to reflect the true culpability of the domestic violence incident. A defendant is to be sentenced based on the agreed facts. A sentencing judge should not stray outside of those agreed facts.



Therefore, it is very important that an agreed summary of facts reflects what actually happened.

4. The victim is your partner. The two of you have been living together in a de-facto relationship since 2020 and have one child together. The two of you live at Teoumaville.
5. On 24 May 2025 at approximately 7pm, you came into the house, intoxicated, and physically assaulted the victim. She sustained injuries. She experienced significant fear and pain. You then discharged a firearm in your possession, further intensifying her distress.
6. The victim fled the house and fell on the main road. She was assisted by other women, one of whom contacted the Police.
7. The victim was seen by a doctor at the hospital. Unfortunately, the agreed summary of facts does not detail the victim's injuries. It should have. The summary of facts instead refers to disclosure of the medical report to the defendant. From the medical report, the victim sustained injuries to her head, being a laceration on her face, laceration on her upper lips and bleeding to the head.
8. There was a firearm at the property. This was a pump action shotgun. You do not have a licence for the firearm. Of note, the firearm is not registered in the national firearm's database.

Purposes / principles of sentencing

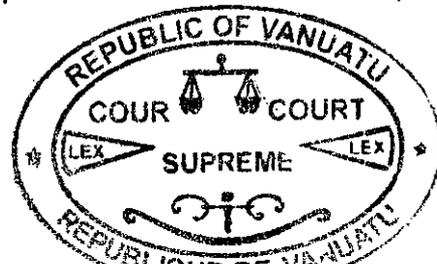
9. The sentence I impose must hold you accountable and must denounce and deter your conduct. It is not acceptable for men to hit women. The sentence should ensure you take responsibility for your actions and assist your rehabilitation. It must also be generally consistent.

Approach to sentence

10. Sentencing involves two separate steps *Philip v Public Prosecutor* [2020] VUCA 40 which applied *Moses v R* [2020] NZCA 2964.

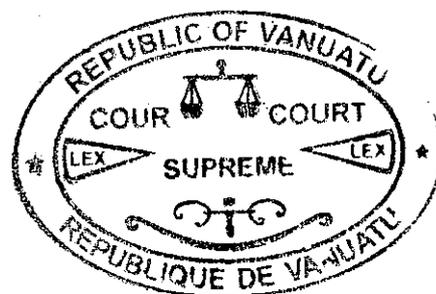
Starting point

11. The first step is to set a starting point taking into account the aggravating and mitigating factors of the offending and with reference to the maximum penalty for the offences. Here, the offences are different in nature, but form part of the same incident. Thus, I



intend to adopt a starting point reflective of the overall culpability of the incident. See *Kalfau v Public Prosecutor* [1990] VUCA 9.

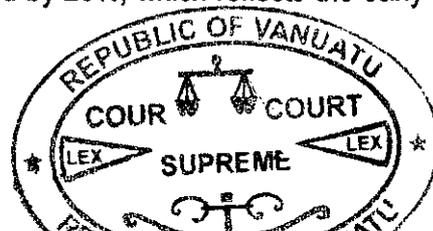
12. The lead offence is the domestic violence charge. The aggravating factors of that offence are:
 - a. The domestic violence included an actual physical assault and intimidatory behaviour by you.
 - b. The incident occurred in the family home, where the victim was entitled to feel safe.
 - c. The victim sustained injuries, as detailed. As noted in the summary of facts, the incident was also distressing to the victim.
 - d. The presence of a shotgun during the incident. A shotgun is a large firearm. During the incident, and after you physically assaulted the victim, the firearm was discharged, increasing the victim's distress. This was intimidatory and controlling behaviour on your part.
13. There are no mitigating features of the offending itself.
14. The Prosecutor submits that the starting point for the domestic violence charge should be between 18 months – 2 years imprisonment. For the Defendant, Mr Bal submits that the starting point for the domestic violence charge should be 18 months imprisonment.
15. While possession of a firearm without a licence charge is different in nature, it is highly relevant that the firearm was in your possession during the incident and that you used it after you had assaulted the victim, which increased her fear and distress. In that sense, the presence of the firearm is the standout aggravating factor, because it was used to intimidate and control the victim.
16. By way of cross check, I have considered *Public Prosecutor v Korikalo* [2024] VUSC 358. Mr Korikalo was charged with four charges of domestic violence relating to physical and verbal abuse of his wife on two separate occasions. On the first occasion, he was verbally abusive to the victim. On the second occasion, Mr Korikalo was intoxicated, punched the victim's backside and tore her dress off her. The starting point adopted was 18 months imprisonment. While *Korikalo* involved two separate incidents, it involved a moderate physical assault and psychologically harmful behaviour by the Defendant. As such, it has some similarities to the present case. Although the present case involves only one incident, I consider it to be more serious given the presence of the firearm and the fear and distress caused to the victim.



17. Accordingly, taking into account the aggravating factors I have referred to and *Korikalo* by way of cross check, I adopt a starting point of 21 months imprisonment for the domestic violence charge.
18. In terms of the possession of firearm without a licence charge, the Prosecutor submits that the starting point should be a fine in the range of VT 12,000 – 15,000. Mr Bal also submits that a fine be imposed for the unlicensed firearms holder charge.
19. I consider that a fine either as starting or end sentence is a wholly inadequate response to this type of offending. I appreciate that counsel's submissions were based on the sentence imposed in *Public Prosecutor v George* [2017] VUSC 51, but that is not binding on me. The aggravating factor for the firearms charge is the blatant disregard for firearms licencing laws. You did not have a firearms licence so were not entitled to have the firearm in your possession. You are a highly educated person, who has held senior positions. I infer you must have, or at least should have, known that a licence was required. A licencing system is a means to ensure good regulation and control of the possession of firearms, which is the purpose of the Firearms Act [CAP 198]. This is very important as firearms are lethal weapons and should not fall into the wrong hands.
20. Possession of a firearm without licence should be strongly condemned. There is a need for deterrence and denunciation to come to the fore, when people are willing to possess firearms without a licence, as you were. On a standalone basis, I would adopt a starting point of three months' imprisonment, to be added to the sentence. But totality needs to be taken into account. Accordingly, the sentence is increased by two months to reflect the overall culpability of the offending, bearing in mind totality.
21. Accordingly, I adopt a starting point of 23 months imprisonment to reflect the totality of the offending.

Step two: guilty plea and personal factors

22. You entered a plea of guilty plea to the possession of a firearm without a licence charge at the first reasonable opportunity. You pleaded guilty to the domestic violence charge a day before the trial, at the hearing for revocation of bail. Counsel have differing views as to the level of reduction for the guilty plea to that charge. The Prosecutor submits that due to the lateness of the plea, any reduction for plea should be below 15%. On the other hand, Mr Bal submits you are entitled to a one third reduction for the guilty plea for the domestic violence charge. That is because you pleaded guilty as soon as the charge was amended.
23. Under caution, you admitted to assaulting the victim, so a resolution to that charge could always been proposed and negotiated at a much earlier opportunity. Also, the amendment to the charge was advantageous to you. I do not agree that the reduction should be one third. The overall sentence is reduced by 20%, which reflects the early

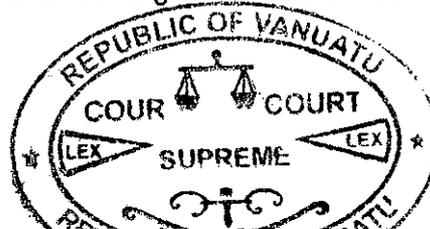


guilty plea to the firearms charge and the fact that the plea to the domestic violence charge came a long way down the track. Witnesses, other the victim, were ready to come to the trial and give evidence and the late guilty plea to the domestic violence charge meant that Court time and resources had been taken up in allocating a trial. That reduces the sentence by 4 ½ months imprisonment.

24. In terms of your personal circumstances, you are aged 49 years and are highly educated. You have a degree from USP and a Masters Degree from Victoria University of Wellington. You have held senior positions in Vanuatu. You are living with the victim and have a number of children. You are the sole income earner for your family. None of those matters are capable of mitigating the sentence.
25. In terms of mitigating personal factors, you do not have any previous convictions. You are remorseful and there has been a custom reconciliation and payment to your partner which included island food, 4 mats, 4 x 15 kg rice, 4 rolls of calico, VT 30,000, meat and 8 kg chicken wings. For prior good character and remorse, the sentence is reduced by 10%. The custom payment must be taken into account, and is also a sign of contrition and remorse. The sentence is reduced by 5% for that factor. The sentence is reduced by 15% for personal mitigating factors. That is a reduction of 3 ½ months.
26. You spent one day in custody, which is to be taken into account. The sentence is reduced by 2 days for this factor.

End Sentence

27. The end sentence is 14 months 28 days imprisonment. There is a sentence of 14 months 28 days imprisonment for the domestic violence charge, and a concurrent sentence of 2 months imprisonment for the charge of possession of a firearm without a licence.
28. Mr Bal asks me to suspend the sentence. The Prosecutor's submissions do not address suspension of the sentence. I asked Mr Shem about that. He accepts that suspension of the sentence is open to the Court in these particular circumstances.
29. Pursuant to section 57 of the Penal Code, there is a discretion to suspend a sentence of imprisonment, taking into the account the circumstances, the nature of the crime and the character of the offender. When exercising the discretion under s 57, the Court of Appeal in *Public Prosecutor v Garae* [2025] VUCA 37 recently affirmed the approach to the exercise of the discretion. A sentencing judge is to take into account all aggravating and mitigating factors relevant to the discretion. This requires a balancing exercise of the factors against, and the factors for, suspension.
30. There are factors which do not favour suspend of the sentence. In considering the nature and circumstances of the offending, this was a concerning domestic violence



incident involving a physical assault and intimidatory behaviour. It took place in the home, where the victim was entitled to feel safe. The presence of a firearm increased the victim's fear.

31. There are factors which point towards suspension. Domestic violence is always serious, but judges are required to properly assess the actual culpability on a spectrum of seriousness. In this case, the level of violence is moderate. There are also personal factors which favour suspension. You are a first offender, are remorseful, have made a custom payment, and there are good prospects of rehabilitation. You accept the need for rehabilitation and are motivated to undertake any community-based sentence. You appear to have insight into the fact that you have an anger problem. An added factor is that you financially support the victim, who is financially reliant on you, as noted in the pre-sentence report. If the sentence is not suspended, that financial support will be taken away from the victim, who has already suffered enough at your hands.
32. In summary, while this was a concerning incident of domestic violence for the reasons outlined, it is at the moderate end of the scale, and there are matters personal to you which means that the scales are tipped towards suspension of the sentence. A factor is that I am mindful of the victim's financial vulnerability. Further, there are good prospects of rehabilitation. You need to get your anger under control and are motivated to do so. The victim is not your punching bag.
33. Therefore, I will step back from an immediate imprisonment sentence given the balancing exercise I have undertaken. Suspending the sentence in combination with a sentence of supervision will meet the need for accountability, deterrence and denunciation.
34. The sentence is to be suspended for 2 years. You are warned that if you are convicted for any offence in the next 2 years you will be taken into custody and serve your sentence of imprisonment as well as the penalty for the further offending.
35. In addition, you are sentenced to one years' supervision to assist with your rehabilitation. It may be that you have both an alcohol and an anger problem. You are capable of, and motivated towards, rehabilitation. You need to take this opportunity to undertake meaningful rehabilitation.
36. You have 14 days to appeal.

DATED at Port Vila this 13th day of November 2025

BY THE COURT

Justice M A MacKenzie

