

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

**Criminal
Case No. 21/3499 SC/CRML**

BETWEEN: The Public Prosecutor

**AND: Townen Isaiah
Defendant**

Coram: *Justice Aru*

Counsel: *Ms. M. Taikie for the Public Prosecutor
Mr. J. Garae for the Defendant*

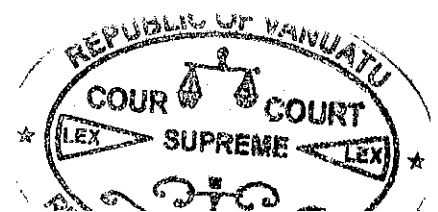
SENTENCE

Introduction

1. Mr Townen Isaiah pleaded guilty to a single charge of unintentional harm causing death.

The facts

2. On Wednesday 15 September 2021 on Malekula, the defendant was driving a dark blue Isuzu single cabin truck with registration No CT19433.
3. During the day he picked up a number of passengers including the deceased and his girlfriend. While transporting the passengers, the deceased bought a bottle of hannapier, a bottle of napoleon and a tin of coca cola and were drinking in the vehicle. Two of the passengers were dropped off at Barrick and one at Litzlitz. The remaining passengers continued to drink. One of the passengers was dropped off at a wedding at Litzlitz. The remaining passengers were the deceased's girlfriend and the deceased who fell asleep and was lying down in the back of the truck.
4. On the same day around 5 pm the Police received a complaint. about some boys drinking in the defendant's vehicle causing disturbances. The Police found the defendant and stopped the truck. They saw the deceased sleeping in the back of the truck. On noting that the defendant was not drunk they returned the car keys to him and left.
5. The defendant then drove past the Police at high speed. On his way he lost control of the vehicle and it hit a drainage and rolled over. The defendant ran into the bushes. The



deceased was found lying near the drainage facing upwards. Witnesses at the scene helped to pull the deceased from underneath the vehicle and he was taken to the hospital at Norsup. He was unconscious and bleeding from his nose and other parts of his body.

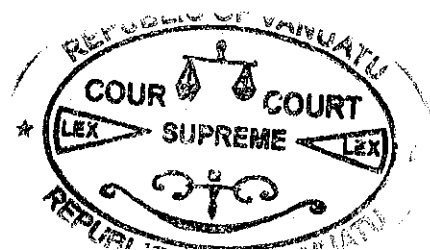
6. On examination it was found that the deceased had suffered an open wound behind the head, bruising on right knee and face, swelling on the neck, laceration on lower region of the back and left wrist and dislocation of his right knee. He was declared deceased at around 6.45 pm in the evening.
7. The defendant was cautioned and interviewed and admitted to driving at a speed of 80 to 100km/ph when the front wheel of the truck broke leading to the accident.

Starting point

8. When determining the starting point of sentence, I am required to consider the maximum sentence available for the offending and also take into account any aggravating or mitigating factors. For unintentional harm causing death the maximum sentence available is 5 years imprisonment.
9. The main aggravating factor is that the defendant was driving at great speed which damaged a tyre causing the vehicle to roll over. There was complete disregard for the safety of his passengers which led to a loss of life.
10. There are no mitigating factors of the offending.
11. The starting point of sentence is 3 years imprisonment.

Personal factors

12. First the guilty plea. It was entered at the earliest opportunity. The defendant also admitted the offending to the Police when he was interviewed. I allow the full one third discount for the guilty plea.
13. The Pre-sentence Report states that the defendant is 27 years old from Atchin, North East Malekula. He is single and is a first-time offender. He completed his education at Year 9 and relies on his parents for financial support. He also earns income from selling copra.
14. The defendant says a custom reconciliation was performed by his father to the families of the deceased but he is not aware of it and is willing to perform one.
15. He was remanded into custody on 23 September 2021 and remains on remand. He has spent roughly 72 days in custody.



16. Taking these factors into account the sentence is further reduced by 12 months.

End sentence

17. The end sentence is therefore 12 months imprisonment. Considering the circumstances of this case the sentence will be suspended for a period of 2 years and in addition the defendant is ordered to perform 100 hours of community work.

18. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Luganville this 25th day of November, 2021

BY THE COURT

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D. Aru
Judge

