

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

CRC 25-2004

Criminal Case No.25 of 2004

PUBLIC PROSECUTOR

-v-

TARIP WILLIE

Coram: Justice Treston

**Counsel: Mr Tevl for Public Prosecutor
Mr. Tavoia for Accused**

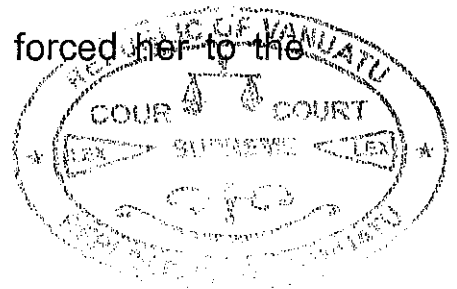
Date of Plea Hearing: 26 January 2005

Date of Sentence: 26 January 2005

SENTENCE

You appear for sentence today on one count of Rape to which you have pleaded guilty. The maximum potential penalty for that count under the Penal Code is life imprisonment. That means that it is a very serious charge indeed.

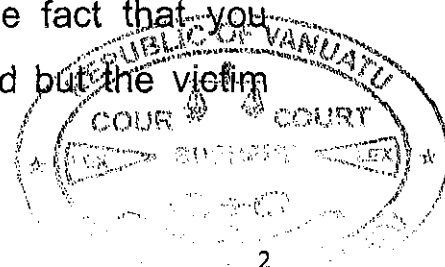
I have heard the facts that led up to this charge and to your now plea of guilty that we heard yesterday. Clearly you and your friend had been drinking heavily of home made brew and you were drunk. You came across the victim and her boy friend and in fact assaulted her boy friend before you offered to take the victim to her home. Although you indicated you were going to take the victim home, you took her to the Survival School and into a classroom. You then, despite the fact that she made clear that she did not want to have any intercourse with you, forced her to the



ground by pushing her to the cement floor. You had dragged her to the classroom and had taken down her trousers and her panties. She struggled against you but you made her lie down on the floor and you removed your clothes and lay on top on her. She refused to spread her legs out but you forced her to do so. You tried to kiss her she objected to that but you forced that upon her as well. And it was during the time and you lay on top of her that you penetrated the victim with your penis. She suffered pain but you persisted in the sexual intercourse. You then both walked home and you asked her not to tell anybody about what had happened.

First of all let me say that the fact that you may have been drinking home brew does not mitigate the matter significantly but I will refer to that shortly.

I must when I sentence you take into account various factors such as the need to make you accountable for harm to the victim and the community at large. I must denounce such conduct and endeavour to deter you and like minded offenders from offending in this way. In so doing of course I must bear in mind my responsibility to protect the community. I must consider the range in which your offending occur and I will mention that shortly also. I will adopt the least restrictive outcome that I can as far as you are concerned in sentencing and I must take into account your circumstances including your domestic responsibilities. I will also take into account the fact that you endeavoured have a custom settlement organised but the victim and her family declined that.



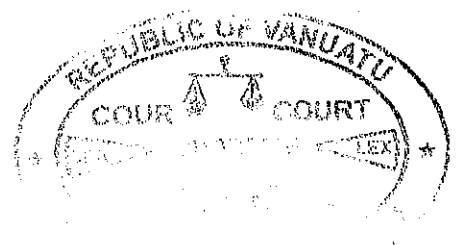
Sentencing generally involves a of aggravating and mitigating factors and I identify the aggravating features this case as follows:-

The first fact of aggravation was that actual violence was used by you in forcing yourself upon the victim. I also take into account a degree of vulnerability that the victim had in the circumstances because you had earlier beaten up her boy friend and you were some years older than her. She was also known to you as you have live closely together.

By way of mitigation I take of course into account the following factors:-

First your plea of guilty. That has of course avoided the necessity of the victim going through the trauma of giving evidence in Court. I don't necessarily agree that simply pleading guilty shows your remorse, but your remorse is demonstrated by your endeavour to effect a custom settlement. I also take into account the fact that you are a first offender and previously of good character.

I have already mentioned the fact of liquor and your intoxication but I say of course that the Court must not take into account by way of mitigation that at the time you were affected by the voluntary consumption of alcohol.

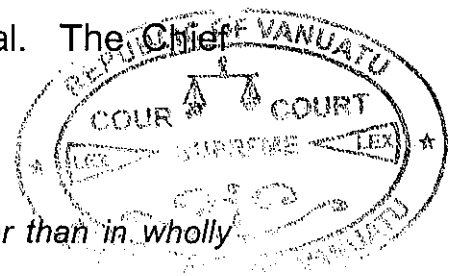


The prosecutor has submitted that the appropriate sentence would be in the range of 4 years imprisonment because of the force that you used and the maximum penalty involved.

You are 24 years of age and the victim is now 17 but was 16 at the time. In submissions on your behalf your lawyer is candid as to what you have done and what the facts were. On a personal basis you have a de facto relationship with your girl friend and you and she have a daughter aged 2 months. She is here in Court supporting you. She has four children from an earlier relationship and you have a child also from a previous relationship. She works at Au Bon Marche and you have the opportunity of starting a job with a road repair company. You have been looking for a job for a long time. You have no previous criminal history as I have already said. Of course, as has been submitted, I take into account the opportunity that you tried to obtain under section 119 of the Criminal Procedure Code [CAP.136] in an endeavour negotiate compensation by custom.

The principles for sentencing in cases of rape in this Republic have been set out in the Chief Justice's decision of the Public Prosecutor V. August, Criminal Case No.14 of 2000 and that has been subsequently approved by the Court of Appeal. The Chief Justice said this:

- *"The offence of rape is always a serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence. That was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the*



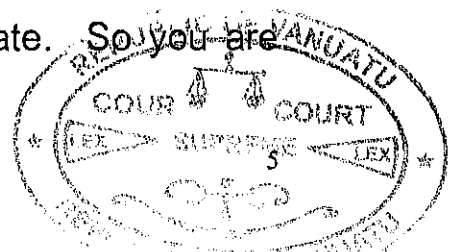
gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last by no means least to protect women".

The Chief Justice went on to say:

"For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as a starting point in a contested case".

He then said if a defendant pleads guilty the sentence should be reduced by 1/3 depending on the circumstances including the likelihood of a finding of not guilty had the matter been contested. He then said that previous good character is of only minor relevance. As the Court of Appeal has said that is the appropriate approach to take in matters of sentencing of this kind.

I take the starting point of 5 years and add 6 months to that because of the violence used in this instance which was more than was necessary. You dragged the victim into the school, stripped her of her clothing, forced her to the ground and then, even though she expressed her unwillingness, you forced her legs apart to have your way with her. I reduce that sentence of 5½ years or 66 months by 1/3 leaving a balance of 44 months. From that figure of 44 months, I further give you credit for your attempts to achieve a custom settlement and I also give you credit for the one month and one day that you spent in custody. That in my view results in a term 40 months which is effectively 3 years and 4 months imprisonment and I sentence you to that term now, having given you such allowances as I consider are appropriate. So you are



sentenced Mr Willie to 3 years and 4 months imprisonment. A warrant will be prepared and you will be taken immediately from this Court to the jail to serve your sentence.

You have the right to appeal against this sentence within 14 days if you wish.

Dated at Port Vila, this 26th day of January, 2005.

BY THE COURT



P. I. TRESTON
Judge

