

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**WILLIAM ROBERT**

Mr Justice Oliver A. Saksak  
Mrs Anita Vinabit – Clerk

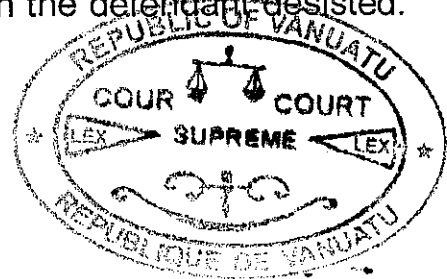
~~Mr Allan Obed for the Public Prosecutor~~  
Mr Peter Bartels for the Defendant

15<sup>th</sup> August 2006

## **SENTENCE**

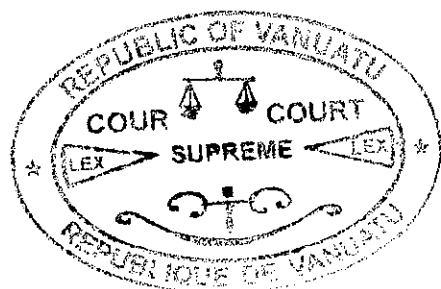
The defendant pleaded guilty to one count of attempted indecent assault contrary to sections 28 and 98(1) of the Penal Code Act CAP 135.

At the time of offending he was 20 years old. He is now 21 years old. His victim was a New Zealander on volunteer service aged 46 at the time of offending. The offence occurred on Saturday 1<sup>st</sup> August 2004. The victim was on her way to see a friend in the neighborhood. The defendant saw her and ran towards her. He then asked her for sex twice but she refused. The defendant then grabbed her hand and asked her the third time. At the same time he attempted to touch the victim's private part. The victim attempted to resist by using her elbow to strike the defendant's stomach after which the defendant desisted.



There followed a struggle however the victim managed to get free and kept walking on. The defendant followed her until the victim met up with her friend and asked her to identify the defendant who then ran away. The matter was then reported to the police. I have taken a little time to consider an appropriate sentence to impose on this defendant. The case of Public Prosecutor v. Keven Gideon was submitted by the Public Prosecutor for consideration and application. Defence Counsel objected to its application and urged the Court to distinguish it from the present case. Whilst it is distinguishable on its facts and circumstances, it is a case that supports the Court's decision to impose a suspended sentence on the defendant in respect to this case. It is also a case which lays down a clear principle in sexual offences that men cannot obtain sexual gratification at the expense of the weak and vulnerable.

I must therefore accept that the principles stated in Gideon's Case are applicable to this present case. The facts of the case appear to show that if the defendant did not have it her way, he would have it his way. He could have stopped when she refused his request two times. However he went beyond the second request and made a third, and without waiting for an answer, reaching for her private part and thereafter a struggle ensued. Those actions clearly display the defendant's desire for sexual gratification. And at her age of 46 and in the light of her reactions, the victim may not have been weak but as a female and being expatriate, she was vulnerable.



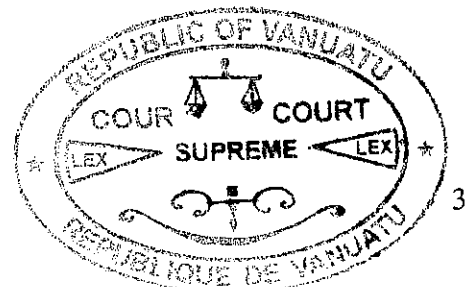
I am told that there existed a boy-friend and girl-friend relationship between the defendant and the victim at the time of the offending, but the court is cautious about this version as firstly it was told over the Bar Table. Secondly the victim does not disclose that in her complaint statement. Thirdly the defendant did not disclose that fact in his defense statement. In any event the actions of the defendant as clear from the facts do not support that contention and submission.

I accept that he is a first offender and that he pleaded guilty at the first opportunity. I further accept that he has spent one year and six months in custody whilst awaiting plea and sentencing.

However this is not the first case where young Ni-Vanuatu boys have behaved towards expatriate female volunteers. This is the third case that I have had to deal with in this category. In the previous two cases the court has had to impose custodial sentences based on the principles in the Gideon Case. The Court must be consistent in its sentencing.

As such I consider that the most appropriate sentence the Court can and will impose on the defendant is a custodial sentence, but for the mitigating factors which make the case extreme, the imprisonment term will be suspended.

This sentence serves the following purposes:-




- (a) To mark the Court's and the public disapproval of such behaviour and further to mark the gravity of the offence, regardless that it was merely an attempt.
- (b) To punish the offender appropriately and sufficiently.
- (c) To deter not only the offender but other men as well.
- (d) To protect the weaker portion of the society especially girls, women, expatriate female workers and tourists generally.
- (e) To protect the public image of the nation.

For these reasons, I now sentence William Robert to an imprisonment term of 10 months suspended for a period of 12 months from the date hereof. This suspension is made under the provisions of the Suspension of Sentences Act CAP. 67.

**DATED at Lakatoro this 15<sup>th</sup> day of August 2006.**

**BY THE COURT**

  
**OLIVER A. SAKSAK**  
Judge

