

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

Criminal Case No. 96 of 2010

PUBLIC PROSECUTOR

-V-

FRED JAMES

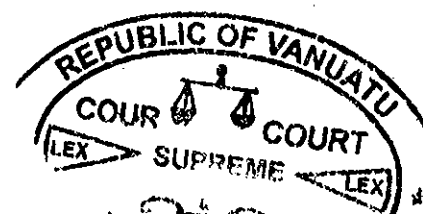
Coram: Justice N. R. DAWSON

Date of Sentence: 6th December, 2010

Counsel: Mr. F. Nwango for Public Prosecutor
Mr. W. Daniel for the Accused

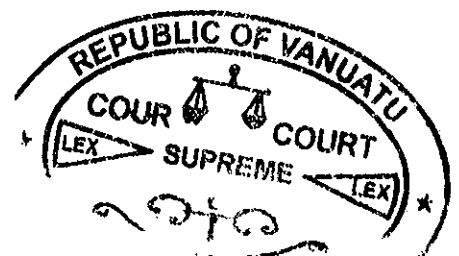
SENTENCE

1. Mr. Fred James appears today for sentencing on the counts of Unlawful Sexual Intercourse with a person of 14 years of age.
2. The facts are that from the month of January, 2010 to June 2010 at dates which are unknown Mr. James had sexual intercourse with the complainant, after threatening to kill her when he was demanding sexual intercourse. The first occasion happened was when Mr. James came for the complainant and her brother and asked them to follow him to go and shoot flying fox. They went to a yard and then came back to the complainant's house where the defendant told the complainant's brother to wait for them at the store and for the complainant to accompany him to his house to get the store key. Before arriving at the defendant's house the defendant caught hold of the complainant told her to lie down, forced her to do so against her will, took off her panties and had sexual intercourse with her. The complainant was kicking and trying to move and tried to push the defendant off her but could not.
3. The second occasion was when the defendant came at another unknown date when he held the complainant while threatening to kill her in a pig pen. He managed to force her down took off her panties and had sexual intercourse with her before leaving. The third occasion took place at the same spot, and the same acts were repeated on the complainant by the defendant. On the fourth occasion the defendant sent her daughter to go and call the complainant to follow them to their garden for some weeding. While in the garden the defendant told the complainant to go and get some pumpkin toppings and he told the others in the garden not to follow the complainant. The defendant followed her and repeated the same acts as he had committed on



previous occasions. He had two other attempts at having intercourse with her but was not successful on those occasions.

4. Finally the Defendant succeeded in getting hold of the complainant at his old building that he used as a shop to offend against her and on that occasion gave the complainant VT 2,000. On each of the occasions the defendant warned the complainant not to tell anyone about what they had done together. Eventually on 10th July, 2010 the defendant went to the complainant's house at about 6 in the evening and asked her to wait for him at the pig pen. The complainant refused, and then begin relaying the story to her aunty about what had been happening to her. The defendant was still waiting for her and asked the complainant and aunty what they were talking about but they did not tell him. The complainant then also relayed the story to her uncle and as a result they went to the Police station and told them what had been happening.
5. I have read the probation report and I have read the written submissions on sentencing from the Public Prosecutor and from counsel for the Defendant. In sentencing you today Mr. James, there are certain factors I need to take into account. The first is that I need to denounce your behaviour and make it absolutely clear to you and all men in the community that this form of offending is abhorrent and cannot be tolerated. I also need to take into account the factor of deterrence. You need to be sentenced in a way that will bring home to you and other like minded people what will happen to you if you offend in this way. Next, young girls in the community need to be protected from the sexual predation by men in the community. In the case of Talivo v. Public Prosecutor [1996] VUCA 2 it was said by the Court of Appeal, "*All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children and abuse that trust, we agree with the Chief Justice that they forfeit the right to remain within the community. In this case the custom dealing with the matter could not in and of itself be sufficient to deal with it.... The Court have an obligation to mark the community disapproval of it in a serious way*".
6. There are aggravating features to your offending. The first is the threatened use of force and actual force used against the complainant to put her in a position where she had no alternative but to have sexual intercourse with you. The victim was also vulnerable, you are a man I understand now 48 years of age and complainant was a mere 14 years of age. You used your age and your size and strength to offend against her against her will. There was some premeditation to your offending. From the facts it is clear that you had planned to commit some of the cases of unlawful sexual intercourse, then there are the number of times you have offended against that



particular complainant. There are at least 5 occasions where you had unlawful sexual intercourse with that 14 year old girl.

7. In mitigation, you entered an early guilty plea. You have expressed some remorse and you have offered a reconciliation ceremony, but I note that has been refused.
8. The probation report notes that in the writer's opinion you committed the offence due to your inability to deal with your sexual feelings in an appropriate matter. You also seem to claim that the victim consented to sex but you then go on to say that you felt sorry for what you did. It seems to be a conflicting emotion you have there. You have not performed a custom reconciliation ceremony towards the victim but you have made 3 attempts which have been refused by the victim and her family. They certainly cannot be blamed for that.
9. You are a person who maintains good participation within your community. You have no previous convictions and you have attempted a custom reconciliation ceremony. Those are factors I will take into account in your favour. After taking into account your offending and the aggravating features I have mentioned, I come to the view that an appropriate starting point will be to sentence you to a term of imprisonment of 4 years. I then take into account your good record and the other mitigating factors I have mentioned, and you are convicted and sentenced to a term of imprisonment of 2 years and 8 months. I note that you have been in custody since 27th July, 2010 so you have a balance to serve of 2 years 3 months and 21 days from today.
10. You have the right to appeal this sentence. For any appeal you must lodge a notice of appeal within 14 days of today's date.

Dated at Port Vila, this 6th day of December, 2010

BY THE COURT
REPUBLIC OF VANUATU
COURT OF APPEALS
N. R. DAWSON
Judge
SUPREME COURT
LEX
REPUBLIC OF VANUATU