

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

JOB TAMATA

Mr Justice Oliver A. Saksak

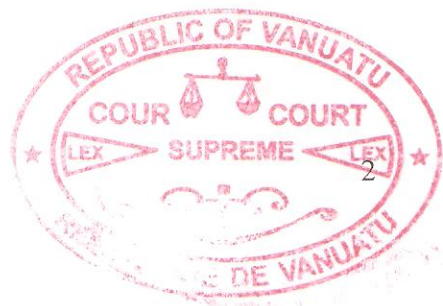
Mr Parkinson Wirrick for Public Prosecutor
Miss Jane Tari for the Defendant

SENTENCE

1. Job Tamata you pleaded guilty to one Count of Abduction contrary to section 92 of the Penal Code Act Cap 135 (the Act) on 3rd April 2012. You pleaded not-guilty to one count of Sexual Intercourse Without Consent contrary to section 91 of the Act for which you were tried. The Court has found you guilty of the charge and has convicted you in respect to the two charges.
2. The facts to which you have admitted in relation to the abduction charge are clear. On 22nd February 2012, you grapped the victim and complainant, a 9 year old little girl from the doorstep of her house. You carried her some distance to a PWMU House at about 9 O'clock in the night. There you blocked her mouth with a hand and removed her trousers and proceeded to have sexual intercourse with her. After that had happened you left her alone in the dark away from her house. She put her clothes back on and ran to her aunt. Finding the aunt was not at home, she then ran to her grand parents' house and immediately told her grandmother. The next morning she was accompanied to the police to make a formal complaint. A medical report was done to show there was redness of the vestibule and the vagina was bruised at 3 O'clock position. The victim felt pain in urinating.



3. The offence of abduction carries a maximum sentence of 10 years imprisonment and sexual intercourse without consent carries a maximum sentence of life imprisonment.
4. In considering and assessing your punishment, the Court is guided by the classic cases of Public Prosecutor v. Scott [2002] VUCA 29 and Public Prosecutor v. Gideon [2002] VUCA 7 as referred by the Public Prosecutor.
Defence Counsel referred the Court also to Scott and Gideon Cases and to Kalfau v. Public Prosecutor [1990] VUCA 9, Koilo v. Public Prosecutor [2010] VUCA 27 and Heromanley v. Public Prosecutor [2010] VUCA 25.
5. The case of Scott is very clear that the offence rape is always a most serious crime and other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. There is nothing exceptional in this case.
6. The case of Scott also establishes that where rape is committed by a person who abducts the victim and holds her captive, the starting point should be 8 years imprisonment. This starting point was endorsed by the Court of Appeal in the Koilo Case. Koilo's Case was more serious in nature in that it involved a group of defendants and two victims who were 18 years old. When we consider that the victim here was only 9 years old, it must be considered on the same degree of seriousness on that basis in order to achieve a deterrence effect, specially and generally.
7. Under those circumstances, you are therefore hereby sentenced to imprisonment as follows:-



(a) Count 1 – Sexual Intercourse Without Consent – 8 years imprisonment as the starting point. There is an uplift by 6 months for the following aggravating features –

- (i) The very young age of the victim.
- (ii) Breach of trust by the defendant being well known.
- (iii) Offences were committed at night and at an isolated place, putting the victim at risk of harm.
- (iv) The physical injuries sustained (although temporary) caused some emotional distress on the victim.

(b) For Count 2 – Abduction – 8 years imprisonment with no uplift. This will be served concurrently with the 8 years and 6 months imprisonment imposed in respect to Count 1, making a total sentence of 8 years and 6 months imprisonment.

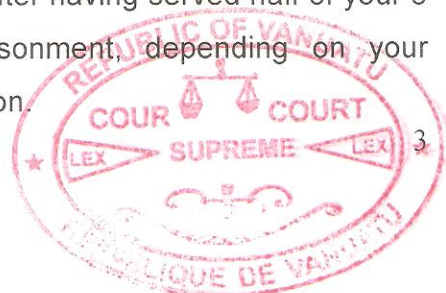
8. I now consider mitigating factors and accept that only the following factors are relevant –

- (a) Guilty plea at first given opportunity in respect to Count 2 – Abduction.
- (b) Being a first-time offender with no previous criminal record.
- (c) Being a young offender of 18 years old.

According to Gideon's Case, you are entitled to a 1/3 reduction for your guilty plea in respect to Count 1. This brings the total of 8 years 6 months down to 6 years and 2 months. For your young age, and being a first-time offender, I consider that a further reduction of one (1) year or 12 months is necessary so as to avoid a crushing effect.

9. You are therefore sentenced to serve the balance of 5 years and 2 months imprisonment at the Correctional Centre in Luganville.

10. You will be eligible to apply for parole after having served half of your 5 years and 2 months term of imprisonment, depending on your behaviour and attitude towards correction.



11. As indicated earlier, the purpose of the Court imposing high sentences is to serve the following purposes:-
- (a) To act as a deterrence for you and to others.
 - (b) To protect young girls and weaker members of the society.
 - (c) To mark the gravity of your offendings.
 - (d) To mark the public condemnation of your actions.
 - (e) To punish you adequately.
12. You have a right of appeal within 14 days if you so choose.
13. Your sentence is deemed to have commenced on 13th day of June 2012 when you were found guilty and convicted and remanded in custody.
14. The Prosecution asked for the VT5.000 paid by the defendant as surety be forfeited to the State as costs. This request is declined. The money was paid as surety for him to return on the next return date under supervision of Chief Sam Vulā. There is no allegation of breach of conditions, therefore that money should be returned to Chief Sam Vula in the first instance. I so Order.

DATED at Luganville this 3rd day of August 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

