

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

Criminal Case No.2315 of 2016

**PUBLIC PROSECUTOR VS- ROGER SAMUEL &
RICOBERT JEREMIAH**

Coram: Mr. Justice Oliver A. Saksak

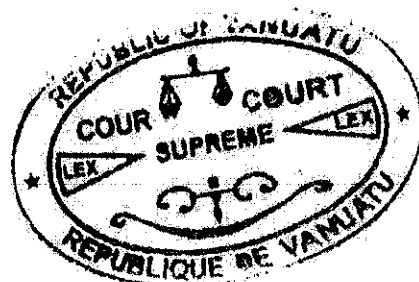
*Counsel: Ken Massing for State
Tom Joe Bolleng for Defendants*

Date of Plea: 26th August 2016

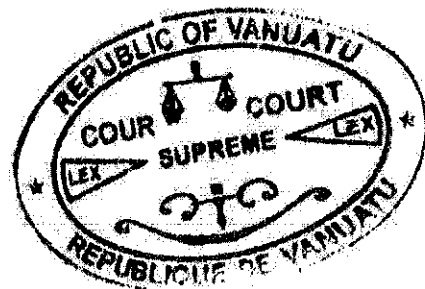
Date of Sentence: 31st August 2016

SENTENCE

1. Roger Samuel and Ricobert Jeremiah you are both in Court for sentence. Both of you pleaded guilty to one count each of unlawful Sexual Intercourse contrary to Section 97 (2) of the Penal Code Act [CAP 135] (the Act).
2. This is an offence which carries a maximum of 5 years imprisonment.
3. The facts of your offendings are simple and neither of you dispute the facts. In January 2016 you Roger Samuel had Sexual Intercourse with Rosie Matavussy a girl of less than 15 years but over 13 years of age. It happened in the garden where you asked her to lie down on the ground and you had penile penetration with her. Then on 9th march 2016 you Ricobert Jeremiah asked the same complainant to follow you to the house of one Joshua where you had penile penetration with her. Both offendings took place at Matantas, Big Bay. Complaints were lodged with the Police who investigated and upon interviews both of you admitted committing these offences.
4. In considering and assessing your appropriate sentences, I have taken into account your personal particulars contained in your respective pre-sentence reports filed by the Probation Service on 26th August 2016 and the submissions made by the Prosecution and the defence counsel.
5. In your reports each of you have shifted the blame at the complainant suggesting she was making inappropriate sexual advances which lured you into doing what you did. However that cannot afford you any defence or excuses.

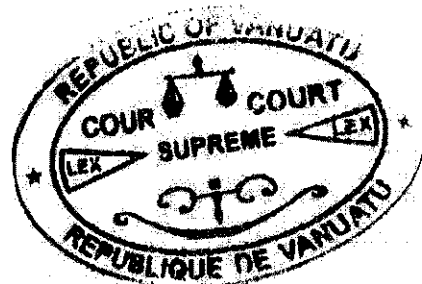


6. In sentencing both of you today the Court will adopt and apply the sentencing principles laid down by the Court of Appeal in Public Prosecutor .v. Gideon [2002] VUSA 7, and Public Prosecutor .v. Usimoli [2015] VUSC 67.
7. The Court must continue to impose sentences which will achieve the following purposes-
 - a) Mark the seriousness of your offendings,
 - b) Mark public condemnation of your unlawful actions,
 - c) Deter you and other likeminded men,
 - d) Protect young children and the vulnerable members of society, and
 - e) Punish both of you appropriately.
8. It has been submitted by the Prosecutions and defence Counsel that suspended imprisonment should be imposed and community-based sentences should be imposed as alternative options. I accept those submissions.
9. The Court will therefore impose sentences of imprisonment but with suspensions, supervision and community work.
10. Defence Counsel submitted for consideration Article 37 (b) of the Convention on the Right of the Child and Section 54 (1) of the Penal Code Act [CAP. 135] that imprisonment cannot be imposed on Roger Samuel because of his age of 16 years. However section 54 of the Vanuatu Penal Code does not provide any immunity to Roger Samuel. It applies only to a "child" of "under 16 years of age...." Roger Samuel is 16 years old and will be turning 17 in October 2016.
11. Further it is submitted by the Prosecution that there are three aggravating features such as-
 - a) Some degree of planning prior to committing the offences,
 - b) The psychological impact on the victim, and
 - c) The age disparity or difference between the defendants and the victim.
12. I reject the first two features. The facts do not show these features were apparent. As for age disparity it is accepted but only in respect to Ricobert Jeremiah whose age is given at 28 years. His age difference with the victim is 15 years. As a mature person, he was expected to take responsibility to protect and care. Instead he abused and took advantage of the victim's young age and her acting with impropriety.

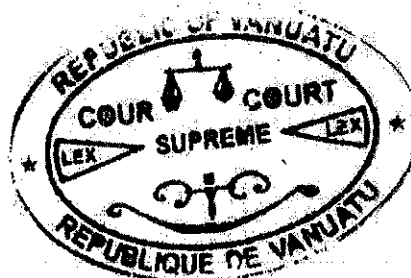


13. Taking these into account, I consider that the proper sentences will be sentences of imprisonment with the starting point of three years with suspensions, supervision and community work as follows-

- a)
- (i) For Ricobert Jeremiah, you are sentenced to a starting point of 3 years imprisonment for unlawful sexual intercourse as charged. There will be no uplift.
 - (ii) Your sentence is reduced by 12 months (1 year) for your early guilty plea, representing a 1/3 reduction. That reduces your sentence to 2 years imprisonment.
 - (iii) There is a further reduction of 12 months (1 year) for your mitigating factors such as good cooperation with the police during interviews and investigations, clean past record and willingness to perform reconciliation in custom and regrets.
That leaves the balance of sentence at 12 months (1 year).
 - (iv) However due to other personal particulars in your pre-sentence report I consider that your end sentence of 1 year should be suspended for 2 years, and I so order.
 - (v) Instead a Community based sentence of community work is imposed under section 58N of the Act. You are ordered to perform 200 hours of community service.
 - (vi) Your suspension is imposed under section 57 of the Act for a period of 2 years of good behaviour. If you commit this offence again or any other criminal offences for which you are charged and convicted, you will go to prison to serve your end sentence of 1 year (12 months) for this offending.
 - (vii) You have a right of appeal against this sentence within 14 days if you so choose.



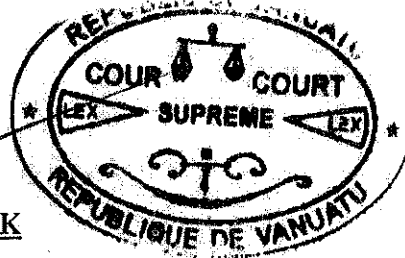
- b)
- (i) For you Roger Samuel, you are sentenced to a starting point of 3 years imprisonment for unlawful intercourse as charged. And there is no uplift.
 - (ii) Your sentence is reduced by 12 months (1 year) for your early guilty plea, representing a 1/3 reduction. That reduces your sentences down to 2 years imprisonment.
 - (iii) There is a further reduction of 12 months (1 year) for your mitigating factors such as good cooperation with the police during investigations and interview, clean past record and willingness to perform customary reconciliation and remorse. That leaves the balance of the sentence at 12 months (1 year).
 - iv) However due to your young age and the fact that you are still a student, I consider that your end sentence of 1 year should be suspended for 2 years, and I so order.
 - v) Instead a sentence of supervision is imposed under section 58 F of the Act. You will be placed under supervision for the full period of 2 years of your suspension to help you rehabilitate and not reoffend in future.
 - vi) Your suspension is imposed under section 57 of the Act for a period of 2 years of good behaviour. If you commit this offence again or any other criminal offences for which you are charged and convicted, you will go to prison to serve your end sentence of 1 year (12 months) for this offending.
 - vii) Finally you have a right of appeal against this sentence within 14 days, if you so choose.



2. Those are your sentences.

DATED at Luganville this 31st day of August 2016

BY THE COURT



OLIVER.A.SAKSAK

Judge