

PUBLIC PROSECUTOR VS- FRED MALTAPE

Coram: Mr. Justice Oliver A. Saksak

Counsel: Ken Massing for Public Prosecutor
Linda Bakokoto for Defendant

Date of Plea: 28th February 2018

Date of Sentence: 1st March 2018

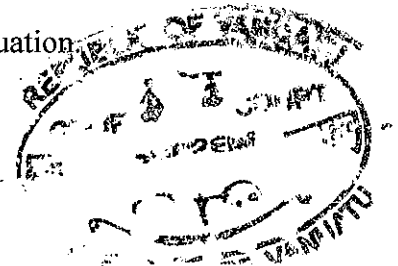
SENTENCE

1. Fred Maltape you appear for sentence today for having pleaded guilty to one charge of acts of indecency without consent contrary to section 98 (a) of the Penal Code Act [Cap.135]. The maximum penalty for this offence is 7 years imprisonment.

2. The facts are simple and you do not dispute them. The facts are as presented by the Prosecution in the amended brief of facts filed on 28th February. In the early hours of 7th January 2017 at a house belonging to the complainant and her husband at Bladiniere's Estate, Port Vila, you entered the house. You saw the complainant sleeping on a mattress. She was naked but had a blanket over her. Her husband was sleeping close by the door. In the morning at 5:30am the complainant awoke to find you lying on top of her. She thought it was her husband. Realising he was not she pushed you out, covered herself and alerted her husband.

The husband who is your cousin brother was angry and talked with you. The complainant felt distressed and cried. The matter was reported to the police on 9th January. The police interviewed you and you admitted to the act but that you had your clothes on at the time.

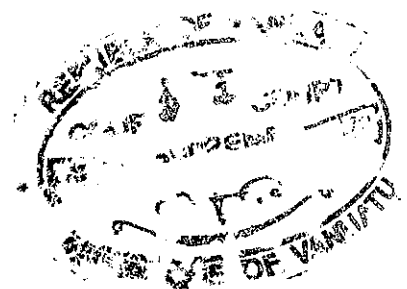
3. What you did is a disgrace to yourself, your cousin brother and his wife. You ought to be really ashamed of yourself. You are closely related to the husband of your victim. You breached that trust. You committed the act in the presence of her husband without her consent. You placed both her and you in a very humiliating situation.



4. The Court must now consider your appropriate punishment. Based on the cases referred by both Counsel, it is clear the appropriate punishment for you will be a custodial one. The case which the Court will usefully adopt is PP.v. Tangiat [2014] VUCA 15.

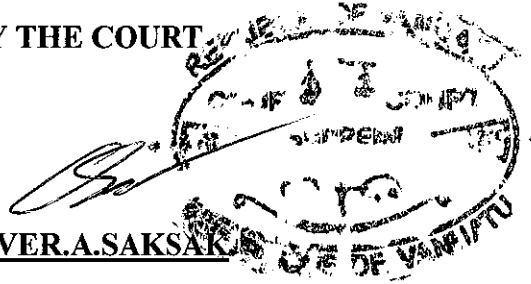
I accept defence Counsel's submission that your offending falls within the lower end of the scale for this category of sexual offending. There was no touching of any sort by the male organ with the female organ in your case.

5. For all those features I consider the starting sentence for you should be 12 months imprisonment. Accordingly I convict you and sentence you to a starting sentence of 12 months imprisonment for the one charge as admitted by you.
6. In mitigation, I accept you are entitled to a 1/3 reduction for early guilty plea. That leaves the balance at 8 months imprisonment.
7. For the other mitigating factors together, I deduct another 2 months leaving the balance of 6 months imprisonment.
8. And for your pre-custodial period, I deduct a further 2 months leaving your end sentence to be 4 months imprisonment.
9. I consider that your end sentence should be suspended for a period of 2 years on good behaviour under section 57 of the Penal Code Act.
10. And finally I accept the Prosecution's submission as conceded by defence Counsel that the Court imposes an additional sentence of community work of 150 hours. And I order accordingly.
11. That is the sentence of the Court. You have a right of appeal against this sentence if you so choose, but you have 14 days to do so.



DATED at Lakatoro this 1st day of March 2018

BY THE COURT



OLIVER A. SAKSAK

Judge