

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

Criminal
Case No. 19/2673 SC/CRML

BETWEEN: Public Prosecutor

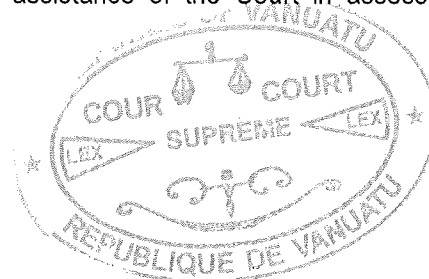
AND: John Ure

Defendant

Date of Plea : 9th December 2019
Date of Sentence: 13th December 2019
Before: Justice Oliver.A.Saksak
In Attendance: Damien Boe for Public Prosecutor
Steven Garae for Defendant

SENTENCE

1. John Ure you are for sentence today for having pleaded guilty to one charge of unlawful sexual intercourse contrary to section 97 (2) of the Penal Code Act Cap. 135. The maximum penalty for this offence has been increased by Parliament on 24th February 2017 from 5 years to now 15 years imprisonment. This increase shows your offending is serious.
2. You are 19 years old and your victim, a student is only 14 years old. She is 5 years younger than you. On 6 April 2019 at 8:30 hours at De Quiros Park, Chapius II you had unlawful sexual intercourse with the girl. You met the girl randomly and invited her to follow you to a Nambanga tree. You then asked her for sex. She did not respond then you proceeded to remove her clothes and made her lie down on some coconut leaves on the ground. You then removed your clothes and placed yourself on top of her and had sexual intercourse with her. She then went home and told her mother about it. A complaint was made to the police who apprehended you and questioned you. You admitted to the police you had committed the offence.
3. What made your actions criminal is that the girl was only 14 years old. As such she is still subject to the protection of the law, despite she may have been acting strangely in a manner that made you think she had agreed to having sex with you. Consent is not a relevant factor in unlawful sexual cases, rather it is the underage of the girl.
4. So what is the appropriate punishment the Court can impose on you today? I have seen submissions from both the prosecutor and defence lawyer and take note and account of the cases they both make references to for assistance of the Court in assessing appropriate sentence for you.



5. The classic cases to follow are PP.v. Gideon [2002] VUCA 7 and PP.v. Scott [2002] VUCA 29 which make it plain and clear that in this type of sexual offending the only appropriate punishment is to be a custodial sentence.
6. And for how long the sentence will be I am guided by PP v Simon Anthony [2019] VUSC 30 which has some similar factors to yours.
7. The aggravating features in your case are (a) the young age of the victim, (b) the age disparity between yours and hers (14 years to 19 years), (c) Her feelings of guilt and shame for loss of dignity and (d) some degree of planning on your part.
8. Taking all these together with the seriousness of the offence, the appropriate punishment for you is sentence of imprisonment and your starting sentence is 4 years imprisonment with no uplift. I therefore convict and sentence you to a starting sentence of 4 years imprisonment.
9. In mitigation, I take note of your Same Day pre-sentence report and the mitigating factors listed by your lawyer. The relevant factors are (a) your age, (b) your clean past record (c) your good cooperation with the police and early admission of guilt to them, and (d) your willingness to perform custom reconciliation ceremony showing remorse.
10. For all these together I allow a reduction of 2 years leaving the balance at 2 years imprisonment.
11. Then you pleaded guilty to the Court at earliest opportunity on 9th December 2019. For that you are entitled to 1/3 reduction which is 8 months. These are deducted from your balance of 2 years imprisonment leaving your end sentence at 1 year and 4 months.
12. Then I take account of your pre custodial period the 5 months that you have been remanded in custody from 30th July 2019 when you were first remanded in custody. So that you do not lose your parole privilege I order that your end sentence of 1 year 4 months be backdated to 30th July 2019.
13. There will be no suspension of sentence as submitted by your lawyer.
14. That is your sentence. You have a right of appeal within 14 days if you do not agree with it.

DATED at Luganville this 13th day of December, 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

