

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

Criminal
Case No. 18/3187 SC/CRML

BETWEEN: Public Prosecutor

AND: Ryan Michel
Defendant

Date: 10 August 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr P. Toaliu for the Public Prosecutor
Mr H. Rantes for the Defendant

SENTENCE

A. Introduction

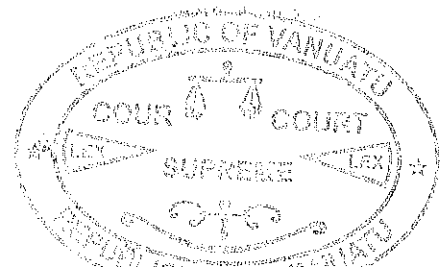
1. Mr Michel pleaded guilty to a charge of unlawful sexual intercourse with a child under the age of 15 years but over the age of 13 years.

B. Facts

2. In May 2017, Mr Michel asked JM, the complainant, to meet him at an abandoned home. There he asked her to remove her skirt and underwear. While she did that he took off his own clothes.
3. They then proceeded to have sexual intercourse for a short time, as JM had to return to school.

C. Sentence Start point and End Point

4. Following the acceptance into Vanuatu law of the rationale of *Moses v R* [2020] NZCR 269 by the Court of Appeal in *Jimmy v PP* [2020] VUCA, the sentence start point is arrived at by looking at:
 - a) The maximum sentence available; and
 - b) The aggravating and mitigating facts of the offending.



5. Thereafter the offender's personal circumstances must be factored in, whether they be aggravating or mitigating, in order to arrive at the appropriate end sentence.

D. Start Point

6. The maximum sentence available for this offending is a term of 15 years imprisonment. The maximum was increased from 5 years imprisonment on 24 February 2017. This offending occurred in May 2017.
7. The aggravating features of the offending include:
- Unprotected sex, exposing JM to pregnancy and sexually transmitted disease;
 - Age differential – Mr Michel was 22 years old, JM was only 13 years old; and
 - There was planning involved.
8. The mitigating feature of the offending is that it is accepted that the complainant participated willingly and that no force was used to compel compliance.
9. The sentence start point is set at 5 years imprisonment.

E. Personal Factors

10. Mr Michel pleaded guilty at the first available opportunity. This has spared the complainant from having to give evidence, and saved Court time and expense. It is also an indication of an acceptance of wrong-doing. The discount for this factor I set at 25%.
11. Mr Michel is 24 years old, with no previous convictions. He remains single, but now has a girlfriend.
12. He is a resourceful, contributing member of his community. He also cares for grandmother – for which credit is due.
13. There has been a delay in the bringing of this prosecution, which is a mitigating factor.
14. For Mr Michel's personal factors I further reduce the sentence start point by 9 months.

F. End Sentence

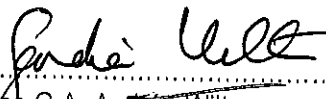
15. The end sentence that I impose is 3 years imprisonment.
16. Given the nature and seriousness of the offending there is no possibility of suspending the sentence.



17. Mr Michel had 14 days to appeal.

18. All details leading to the identification of JM are permanently suppressed.

Dated at Port Vila this 26th day of August 2020
BY THE COURT


Justice G.A. Andrée Wiltens

