

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

Criminal
Case No. 21/1829 SC/CRML

BETWEEN: The Public Prosecutor
Prosecutor

AND: Terry Vari
Defendant

Coram: Justice Aru
Counsel: Ms. M. Taiki the Public Prosecution
Mrs. M. Virefor the Defendant

SENTENCE

Introduction

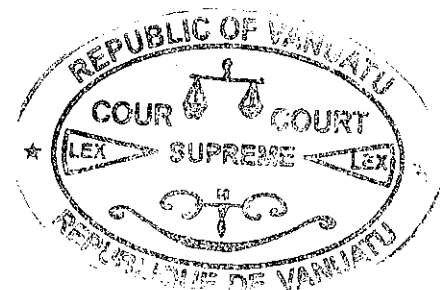
1. Mr Terry Vari pleaded guilty to one count of sexual intercourse without consent and one count of act of indecency with a young person.

The facts

2. In summary, the facts are that on 27 February 2021 at Banban area, Luganville, the victim a young boy of 14 years of age was asleep in an armchair in a relative's home .The defendant who is the victim's cousin was sitting next to him. He then proceeded to suck the victim's penis and masturbated at the same time. The victim was asleep and unaware of what the defendant was doing to him. Three men, Jeffrey Moli, Lyndon Vira and Robinson Toa were drinking kava and playing billiard in a nakamal nearby came to the house and saw the defendant in the act. Lyndon Vira woke the victim and told him what he defendant did. When the defendant was arrested and cautioned, he admitted the offending.

Starting point

3. When determining the starting point of sentence I need to consider the maximum penalty of the offence and any aggravating or mitigating factors of the offending. Sexual intercourse without consent is punishable by a maximum penalty of life imprisonment. The maximum penalty for acts of indecency with a young person is 10 years imprisonment. The offending is aggravated by the fact that there is an age disparity as the victim was 14 years old and the impact of the offending psychologically on the young victim will remain with him for some time. There are no mitigating factors of the offending.



4. The lead offence is sexual intercourse without consent which involved sucking of the victim's penis .The starting point of sentence is 5 years imprisonment. For the act of indecency the starting point of sentence is 3 years imprisonment. The starting point of sentence which is to be concurrent is 5 years imprisonment.

Personal factors

5. The defendant admitted his offending to the Police and entered a guilty plea when called to take his plea. Considering the strength of the prosecution case had the matter been tried, the sentence is reduced by 25 percent for the guilty plea.
6. The Same Day Report filed states that the defendant is a first time offender with no previous convictions .He is 22 years old and completed his education at Year 9 at Bombua Secondary School and later took tourism courses at the Lonoc and Vanuatu Institute of Technology .He opened his own business as harbour Wrecks Restaurant where he earns his income to support his family .He is an active member of his community and supports community activities. His adoptive father speaks highly of him and says the defendant may have been influenced by others.
7. He is a member of the Pillar of Fire Universal Church .He regrets his actions and intends to perform a custom reconciliation ceremony but none has been done as yet.
8. The sentence is reduced by 12 months after taking into account the defendant's personal factors.

End sentence

9. The end sentence is rounded of to 2 years imprisonment effective from 30 April 2021 when the defendant was remanded into custody.
10. The defendant has 14 days to appeal if he is not happy with the decision.

DATED at Luganville this 18th day of June, 2021

BY THE COURT

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D. Aru
Judge

