

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

Criminal
Case No. 21/3063 SC/CRML

BETWEEN: Public Prosecutor

AND: Gorden Garae
Defendant

Date: 22 November 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms J. Tete Public Prosecutor
Ms C. Thyna for the Defendant

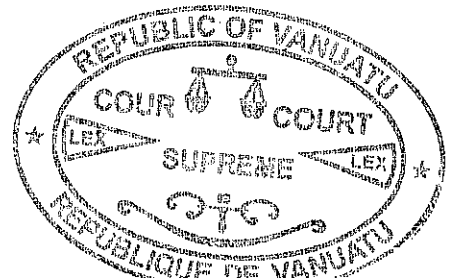
Sentence

A. Introduction

1. Mr Garae pleaded guilty to act of indecency without consent (x2), and sexual intercourse without consent.

B. Facts

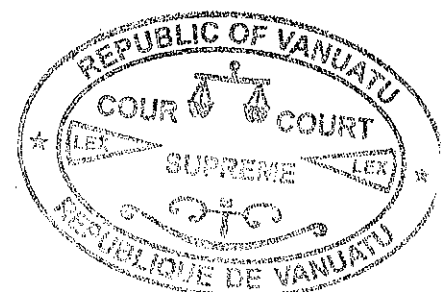
2. Mr Garae is the Pastor at the Apostolic Destiny Church, Erakor. QW is 15 years old, and attends that Church. LP is 20 years old and also attends that Church. Both were members of the Youth Ministry run by Mr Garae.
3. In 2019, when QW was only 13 years of age, she was practising for a skits (dancing) competition. During such practise, Mr Garae inappropriately touched QW's buttocks and kissed QW on the mouth, inserting his tongue into her mouth. This occurred on many occasions, despite attempts by QW to extricate herself from his attentions. He would hold her hips tight and pull her towards him so that he could force his tongue into her mouth – he only released her after she had been reduced to tears. QW was afraid to report these matters but thought she would not be believed due to his position as Pastor. [Charge 1]



4. In January 2021, a group of 6 youths went to Paunagisu Village for bible study, led by Mr Garae. They all slept in the one room, the boys and girls separated. Mr Garae insisted that QW place her bed besides his, away from the beds of the other girls. One night they went to sleep at 1am having earlier been to the beach. When everyone was asleep, Mr Garae tapped QW on her shoulder and called her name. She pretended to not hear and be asleep. He then pulled QW to his bed and started kissing her. QW tried to avoid him, but he insisted repeatedly that she kiss him back. QW refused. Mr Garae then reached his hand under her skirt and pulled down her underpants. He touched her vagina. At the same time, he was holding QW so she could not get away from him. Mr Garae then showed QW a condom and said "you won't get pregnant". QW did not want to have sex with Mr Garae and she continued to struggle, but he inserted his finger into her vagina before she succeeded in pushing him away and going off to sleep elsewhere. [Charge 2]
5. From July 2019, Mr Garae sexually harassed LP during and after skits practices run by the Youth Ministry. He persistently asked LP to allow him to use her body, as he wanted to have sex with her. This occurred so frequently that LP ceased to attend youth programmes. Once he became aware of her absence, Mr Garae contacted LP's parents to persuade her to return. She agreed to do so, but only if her father could also attend.
6. In November 2020, Mr Garae's sister-in-law passed away, and there was a gathering at his house for parishioners to pay their respects. The Youth Ministry assisted with cooking and serving of refreshments, and LP was involved in that. At one point, Mr Garae asked LP if she was tired and wanted to lie down. He showed her into a bedroom, before hugging her and kissing her on the mouth before leaving. He returned soon thereafter with a blanket which he gave her, but again kissed her on the mouth before leaving. LP then found a friend to stay with her so that these acts could not be repeated. [Charge 3]
7. When interviewed by the police, Mr Garae elected to remain silent.

C. Sentence Start Point

8. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
9. The maximum sentence for act of indecency without consent is 7 years imprisonment. For sexual intercourse without consent, the maximum penalty is life imprisonment. Section 89A of the Penal Code clearly sets out that digital penetration of the vagina equates to sexual intercourse.
10. There are no mitigating aspects to the offending. However, there are aggravating factors, including the following:
 - There is a gross breach of trust involved, with Mr Garae as the Pastor and Youth Ministry leader abusing 2 of his young female parishioners;
 - The offending is of a repeat nature, over a number of years, and involves 2 complainants;
 - There is a clear pattern of grooming in respect of both complainants;



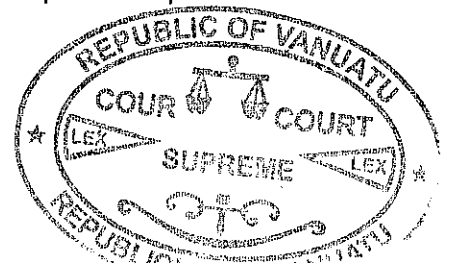
- QW was particularly young at the time of the offending, especially when comparing her age to that of Mr Garae;
 - The abuse took place in situations where the complainants should have felt safe – in their church, in the midst of a Church outing, and in their Pastor’s house with numerous others around at a time of mourning; and
 - The indecent acts involved skin on skin touching.
11. I adopt a sentence start point of 7 years imprisonment, on a global concurrent basis. In setting that as the start point I recognise that digital penetration is less serious than penile penetration.

D. Mitigation

12. Mr Garae pleaded guilty at the earliest opportunity. Further, it spared the complainants the need to give evidence in Court. In the circumstances, I am prepared to reduce the sentence start point for the prompt pleas by one-third.
13. Mr Garae is 40 years old. He is married, with 3 adult children.
14. He has no previous convictions. I also take note of the fact that he will have a significant fall from grace as a result of this offending becoming publicly known.
15. He claims to be remorseful and regrets that his reputation will be greatly affected. However, the PSR writer considers that Mr Garae showed no true remorse and tried to shift the blame for his offending to the complainants whom he suggested had offered themselves to him. That claim is not accepted by this Court. Mr Garae will be sentenced as the sole person responsible for his wholly inappropriate conduct.
16. Mr Garae states that he has attempted custom reconciliation ceremonies on 5 occasions, but the families of the complainants were not willing to entertain such. The PSR writer confirms the families have no interest in Mr Garae’s apologies.
17. For his personal factors, I further reduce the sentence start point by 6 months.

E. End Sentence

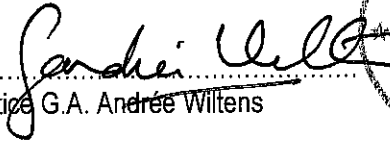
18. The end sentence I impose is 3 years 6 months imprisonment. I impose that on the charge of sexual intercourse without consent. On the indecent act without consent charges, I impose sentences of 12 months imprisonment on both charges. All the sentences will run concurrently.
19. Mr Garae has already spent time in custody. Accordingly, the sentence is to commence as from 4 September 2021.
20. This offending is extremely grave, given the position Mr Garae held. There is a plethora of authority from the Court of Appeal to the effect that where serious offending is of a sexual nature the possibility of the sentence being suspending is remote: *PP v Scott* [2002] 29 and *PP v Gideon* [2002] VUCA 7. I decline to exercise my discretion in this instance to suspend all or part of Mr Garae’s sentence.



21. All details leading to identification of QW and LP are permanently suppressed.

22. Mr Garae has 14 days to appeal the sentence.

Dated at Port Vila this 22nd day of November 2021
BY THE COURT


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Justice G.A. Andrée Wiltens

