

BETWEEN: Public Prosecutor

AND: Jean Paul Policap
Defendant

Coram: Justice Aru

Counsel: Ms. M. Taikie for the Public Prosecutor
Mr. J. Garae for the Defendant

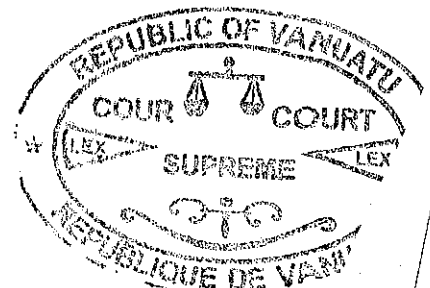
SENTENCE

Introduction

1. The defendant pleaded guilty to one count of sexual intercourse without consent and now appears for sentencing.

The facts

2. The facts as agreed are that the victim is around 59 years old and resides at Vureas Bay, Vanua Lava. She is the defendant's mother in law and both live within the same area. She is a person with special needs or disability and has eye sight impairment and mental incapacity with her speech as she is a slow thinker.
3. A complaint was lodged with the Police on 29 March 2021 against the defendant for committing sexual acts on the victim. The victim recalls that on 15 March 2021 she was in her yard with her 12 year old son picking up firewood when the defendant approached them.
4. The defendant gave some money to her son and told him to go and buy tobacco. When her son left, the defendant approached the victim and told her he had seen her and another man near some banana trees and asked whether they were having sex. The defendant asked to have sexual intercourse, the victim followed him inside the house. The victim then laid down and the defendant licked her vagina. The defendant knew the victim was a person with a disability. He then put his penis into the victim's mouth and the victim sucked his penis.
5. When the matter was reported, the defendant was cautioned and interviewed on 11 July 2021. He admitted the allegations.



Starting point

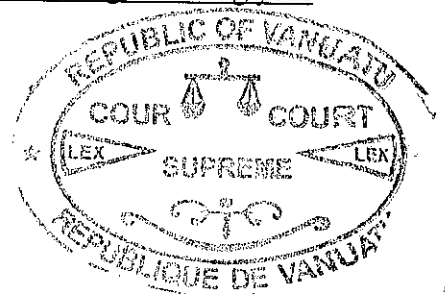
6. The starting point of sentence is assessed by considering the maximum sentence available and taking into account any aggravating or mitigating factors of the offending. Sexual Intercourse without consent is punishable by a maximum sentence of life imprisonment.
7. The offending is aggravated by a number of factors namely age disparity, vulnerability of the victim as a person with special needs, there was breach of trust as the defendant is the victim's son in law and there was an element of planning involved.
8. There are no mitigating factors of the offending.
9. The starting point of sentence is 4 years imprisonment.

Mitigation

10. The defendant initially pleaded not guilty to the charge. Following an amendment to the charge he was re arraigned and pleaded guilty therefore the sentence will be discounted by 25%.
11. There was no presentence report provided but I am thankful to Counsel for providing some personal factors about the defendant. He is a first-time offender therefore the end sentence will be reduced by 7 months. The defendant lives in a defacto relationship and has a 2 month old baby. He is the breadwinner of the family and also takes care of his father. He was described by his chief as an active member in his community and participates in community activities. It was also submitted that the defendant spent almost two months in custody. Taking these factors into account, I reduce the end sentence by a further 5 months.
12. A custom reconciliation was performed by the defendant exchanging the following items which were accepted by the victim:
 - One (1) pig worth VT 30,000
 - One stem of kava worth VT 3000
 - VT 10,000 cash
13. The end sentence is further reduced by 4 months.

End sentence

14. The end sentence is therefore 1 year 8 months imprisonment. Applying the principles set out in *Public Prosecutor v Scott and Tula* [2002] VUCA 29 and *Public Prosecutor v Gideon* [2002] VUCA 7 the sentence will not be suspended.
15. Pursuant to s50 of the Penal Code, as you have been on bail before this sentence was issued, you must present yourself to the Centre Manager of the Correctional Centre in Luganville, Santo by no later than 12 May 2023 unless you elect to begin serving your sentence immediately.



16. A suppression order is now issued regarding the name and identity of the victim. The victim is to be known only by the pseudonym "JW".

17. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Sola Vanualava this 28th day of April, 2023

BY THE COURT

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**D. Aru
Judge**

