

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: MICHAEL TABINGERE
Accused

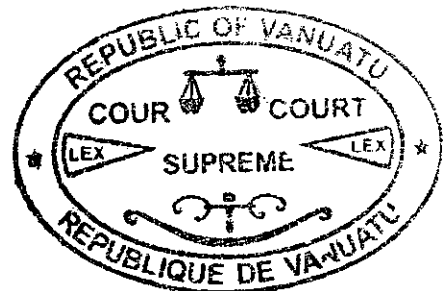
Date of Sentence: *14th day of June, 2024*
Before: *Justice W. K. Hastings*
Counsel: *Ms. L. Lunabek for Public Prosecutor*
Mr. J. Garae for the Defendant

SENTENCE

1. Michael Tabingere, You appear for sentence having pleaded guilty to one charge of sexual intercourse without consent, contrary to s 90A of the Penal Code [Cap. 135].
2. The maximum penalty for this offence is life imprisonment.

Background

3. The offending took place in 2021. You were 20 years old at that time. The victim was 15.
4. At around 6:30pm on Sunday 19 September 2021, you and a person named Joy went to Johnas shop where Marie called out to Joy. The victim saw that Marie was intoxicated and told Joy to run. Marie told Joy to not to run and told you to chase the victim. You caught her at a cattle gate and forced her to go towards the bush. She did not want to. You threatened and assaulted her and put your hands on her mouth so she would not scream. You pushed her onto the ground and took off her skirt and shirt. You pushed your penis into her vagina.
5. When you put your clothes back on, she put on hers and ran away. You caught up with her and pulled her back into the bush. She was crying. A passerby shone a light into the bush and she managed to run away again. Again you caught up with her and forced her to go near the sea by grabbing her hand. She escaped again, and this time ran to the main road where she met a person and told him what happened.



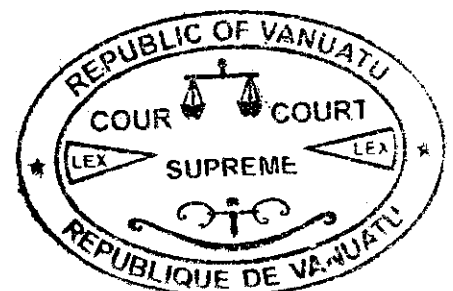
6. The sentence I impose must denounce your conduct, deter you and others from the same or similar offending, provide for public safety, encourage you to take responsibility for your actions, and provide for your rehabilitation to the extent it can.

Starting Point

7. I turn now to establish a starting point.
8. I identify the following aggravating factors of the offending:
 - a. The sex was unprotected, exposing the 15 year old victim to the risk of pregnancy or sexually transmitted diseases.
 - b. There was degree of violence used during and after the offending. You pushed her onto the ground, and afterwards, you grabbed her hand twice to stop her running away. I infer from you pulling her back into the bushes the first time, and forcing her to go near the sea the second time, that you were considering more offending against her.
 - c. An age difference of 5 years is not great but a 15-year-old girl is markedly more vulnerable than a 20-year-old man. I give this less significance as an aggravating factor.
9. There are no mitigating factors related to the offending.
10. These aggravating factors place this above the lowest starting point band in *PP v August* [2000] VUSC 73. A starting point of 6 years imprisonment is appropriate.

Personal Factors

11. I now turn to personal factors.
12. First, you are entitled to a one-third discount for your guilty plea. That is the equivalent of a discount of 24 months from the starting point.
13. Second, you are a young first-time offender with no previous convictions. You were 20 years old at the time of the offending. Your youth and previous good character warrant a discount of 15%, or 11 months, from the starting point.
14. Third, the pre-sentence report records your remorse. I accept it is genuine. Your remorse warrants a discount of 5% from the starting point, which is the equivalent of 3 months and 2 weeks.
15. Fourth, there has been a 3 year delay between the offending and the resolution of this matter. That warrants a discount of 6 months from the starting point.



End Sentence

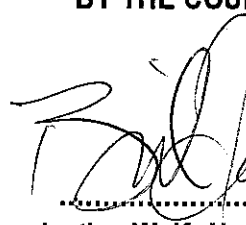
16. This brings me to an end sentence of 2 years, 3 months and 2 weeks imprisonment.
17. I turn now to consider suspending your sentence under section 57 of the Penal Code which requires me to consider the circumstances, the particular nature of the crime, and your character.
18. I understand that you and your mother are willing to perform custom reconciliation ceremony, but the victim's family wanted to wait for the outcome of this case in Court so it has not happened. I am told that you are a quiet person who helps with community work in your village and that you, of all your siblings, are your grandmother's primary caregiver. I do not, however consider that these matters, while positive, warrant suspending your sentence. The aggravating factors I have identified and the very serious nature of this charge do not justify the suspension of the 2 years, 3 months and 2 weeks sentence of imprisonment.

Result

19. I impose an immediate custodial sentence to achieve the purposes of this sentence that I mentioned earlier, which include denunciation and deterrence.
20. You are also ordered to undergo sexual rehabilitative programmes with Probation Services.
21. By virtue of section 50 of the Penal Code, no sentence of imprisonment may be enforced until the time for appeal of such sentences has expired or you earlier elect to begin serving your sentence.
22. You have 14 days to appeal this sentence.

DATED at Pangi, South Pentecost this 14th day of June, 2024

BY THE COURT


Justice W. K. Hastings

