

IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 17/1389 CoA/CRMA

BETWEEN: PUBLIC PROSECUTOR
Appellant

AND: SAMUEL ARU
Respondent

Coram: Hon. Chief Justice Vincent Lunabek
Hon. Justice John W. von Doussa
Hon. Justice Ronald Young
Hon. Justice Daniel Fatiaki
Hon. Justice Dudley Aru
Hon Justice David Chetwynd
Hon. Justice Paul Geoghegan

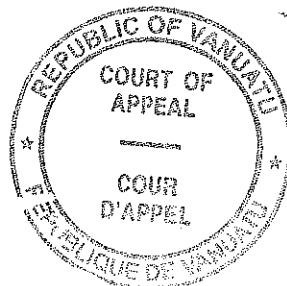
Counsel: Mr. T. Karae for the Appellant
Mr. B. Livo for the Respondent

Date of Hearing: 11 July 2017

Date of Judgment: 21 July 2017

JUDGMENT

1. This is an application by the Public Prosecutor for leave to appeal out of time against the sentence imposed by the Supreme Court on the respondent on 15 May 2017 after he pleaded guilty to an Information that charged him with five (5) counts of different sexual offences of varying seriousness committed against his step daughter over a period of 2 years.
2. Upon his conviction the Supreme Court sentenced the respondent to concurrent sentences of 5 years imprisonment on each count backdated to 6 January 2017 when he was first remanded in custody. In accordance with Section 94 of the Criminal Procedure Code ("CPC") the written sentence records that the respondent was advised of his right to appeal to the Court of Appeal within 14 days of the date of the sentence. Accordingly the time for lodging an appeal expired on 29 May 2017 [see: Section 201(1) of the CPC].



3. By Section 201(5) of the CPC the Appeal Court may extend time for filing an appeal [see: Gamma v. Public Prosecutor [2007] VUCA 19].

4. By an application lodged on 12 June 2017, the Public Prosecutor sought leave to appeal out of time against the sentence imposed on the respondent. The sole reason proffered in the application for the delay in appealing is:

"The applicant have taken some time to assess the sentencing judgment therefore the decision to appeal was delayed".

5. The application is unsupported by a sworn statement as it should have been. Such a sworn statement would have provided reason(s) for the delay and other information to assist the Court in the exercise of its unfettered discretion to extend the time limited under the section. Nor was the matter addressed in the appellant's written submissions.

6. Also relevant in assessing the merits of such an application is the strength of the appeal itself. The grounds of appeal set out in the memorandum of appeal are:

"The sentence was manifestly inadequate

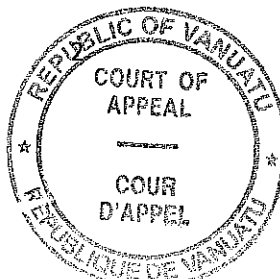
- (i) That the starting point was to (sic) low.*
- (ii) The sentence was wholly concurrent."*

7. The grounds of appeal that the starting point was too low and the sentences imposed were wholly concurrent clearly overlooks the prosecution's own sentencing submissions before the trial judge which clearly states:

"In light of all the above considerations, the state submits that the appropriate starting point for the charge of sexual intercourse without consent should be 8 years...."

and later:


*"In terms of sentence that will be imposed on the defendant on all three counts, we also submit that the sentence will be served concurrently as per the sentencing principle highlighted in **Kalfau v. Public Prosecutor [1990] VUCA 99.**"*

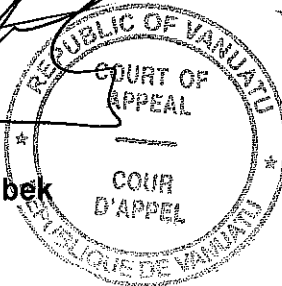


8. The prosecution accepted that the respondent was entitled to a 1/3 deduction for his guilty plea and other deductions to reflect his personal circumstances.
9. The Judge at sentencing accepted the Prosecutor's submissions. He started with an overall sentence of 8 years imprisonment and deducted one third for the respondent's guilty plea and four months for his "*clean past*" and co-operation with the police.
10. Given this appeal was filed out of time and that the appeal challenges the prosecution's own submissions before the sentencing judge, we do not consider it would be right or fair to the respondent to give leave to appeal out of time. Further while the sentence may be at the low end of the appropriate range for this offending we do not consider it is clearly outside the acceptable range.
11. For these reasons the application for leave to appeal out of time was refused.

DATED at Port Vila this 21st day of July, 2017

BY THE COURT


Hon. Vincent Lunabek
Chief Justice


REPUBLIC OF VANUATU
COURT OF APPEAL
COUR D'APPEL
REPUBLIQUE DE VANUATU