

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

**Criminal Appeal**  
**Case No. 23/758 COA/CRMA**

**BETWEEN:** **MIRTHO WARSAL**  
Appellant

**AND:** **PUBLIC PROSECUTOR**  
Respondent

**Date of Hearing:** 14 August 2023

**Coram:** *Hon. Justice J. von Doussa*  
*Hon. Justice R. Asher*  
*Hon. Justice O. Saksak*  
*Hon. Justice D. Aru*  
*Hon. Justice Viran M. Trief*  
*Hon. Justice E. P. Goldsbrough*

**Counsel:** *E Molbaleh and A Sarisets for the Appellant*  
*M Tasso for the Respondent*

**Date of Judgment:** 18 August 2023

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**JUDGMENT OF THE COURT**

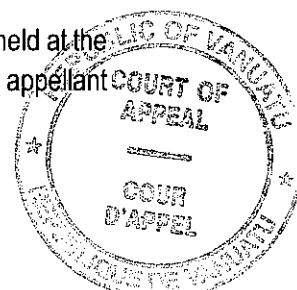
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**Introduction**

1. This appeal is against the sentence of 6 years imprisonment imposed on the appellant in the Supreme Court on 12 May 2023.

**The Facts**

2. The appellant pleaded not guilty to one charge of sexual intercourse without consent. Trial was scheduled for two days.
3. On the trial date, he sought leave to be re arraigned. Leave was granted and he pleaded guilty to the charge.
4. The appellant is a 23 year old man who was a new recruit at the Police College in Port Vila at the time of offending. The complainant was a 17 year old girl.
5. On 23 October 2022 the complainant joined a church service organized and held at the College. During the service the complainant left to go to the bathroom. The appellant



also left and followed her there. He asked her for her name. She told him she also has a brother attending the College who is a new recruit. He then asked: "bae yu solvem need blong mi."

6. After saying those words, he tried to remove the complainant's clothes but she resisted. The appellant however insisted and pulled the complainant by the hand into the toilet. He then undressed her and had sexual intercourse with her. After thanking her for solving his need, the appellant left the complainant.
7. Those facts were accepted by the appellant.

### **The Sentence**

8. In the Supreme Court the sentencing Judge after considering the maximum penalty of the offence charged, and assessing the aggravating and mitigating factors, adopted a start sentence of 8 years imprisonment.
9. The Judge then reduced the start sentence by 6 months for factors of age, defacto and family relationship and University studies being undertaken by his partner. For his clean past and being a first time offender, the Judge gave a further 6 months reduction. For remorse a further reduction of 6 months was made and for immaturity, 2 months reduction was made. Finally for a guilty plea on the date of trial the Judge allowed a reduction of 5%.

### **The Appeal**

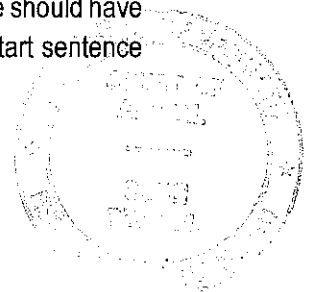
10. The ground of appeal is that the sentence is excessive and should be reduced.

### **Submissions**

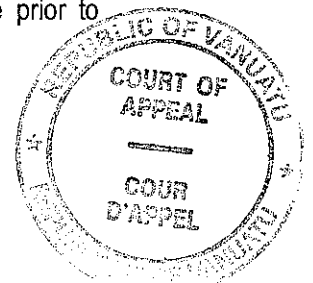
11. Mr Molbaleh argued that the Judge should have adopted the start sentence of 7 years instead of 8 years imprisonment. He argued further that the reduction of only 5% for guilty plea was far too low and that it should have been 10% or 15%.
12. The Respondent submitted that the start sentence of 8 years imprisonment was within range and that there was no error in the sentence imposed.

### **Discussion**

13. Before the sentencing Judge the respondent submitted the start sentence should have been between 5 – 9 years imprisonment. The appellant submitted the start sentence should be 5 years imprisonment.



14. The sentencing Judge applied the sentencing principles in the guideline's judgments of PP v Scott [2002] VUCA 2, PP v Gideon [2002] VUCA 7 and PP v Harry Rite [2016] VUCA CRAC 16/1735. By comparison with the case of Harry Rite where a starting sentence of 9 years was adopted the Judge saw some similarities but thought Rite's case was more serious than the appellant's case. The Judge adopted the start point for sentence of 8 years imprisonment.
15. The Judge had considered the aggravating factors of the appellant's offending which are listed at [13] –
- The sexual intercourse was unprotected. The offender exposed the victim girl to teenage pregnancy and sexually transmitted disease;
  - The offending occurred at the Police College where the civilian should be able to feel safe as it is a place where law enforcement officers are trained;
  - The appellant was recruited and trained at that College as a law enforcement officer;
  - The effect of this offending upon the victim was both physical or mental (after the offending, the victim felt disgusted, lonely, worried and she is afraid of the police officers in uniform);
  - There was force used beyond the commission of the offence of sexual intercourse without consent as the victim was grabbed by her wrist and pulled into the ladies' toilet;
  - There was a differential age between the appellant (23 years) and the victim (17 years old) at the time of the offending.
16. In our view the start sentence of 8 years imprisonment was within range and is not excessive. The appeal fails on this ground.
17. Mr Molbaleh further argued that the sentencing Judge awarded a 5% reduction for guilty plea which he submitted was too low. It was a very late plea and the appellant was fortunate to receive any deduction.
18. However, recalculating the deductions made to the start sentence and then reducing it down by 5%, the correct sentence should have been 78 months which in terms of years, is 6 years and 6 months. The end sentence imposed was only 6 years imprisonment. Effectively the sentencing Judge had made not a 5% reduction for guilty plea but about 11%, which fell within the submissions Mr Molbaleh made to the Judge prior to sentencing.



19. There was a complaint about the wrong date of the commission of the offence being 22 October 2023 but Prosecution informed this was purely a typing error. The correct date was 22 October 2022 when appeared in the Information before the Magistrate at the committal of the case and dated 3 February 2023. However, nothing turns on this to assist the appellant. It is no excuse for the late guilty plea.

**The result**

20. This appeal is therefore dismissed.

**DATED at Port Vila this 18<sup>th</sup> day of August, 2023.**

**BY THE COURT**



**Hon. Justice John William von Doussa**

