

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

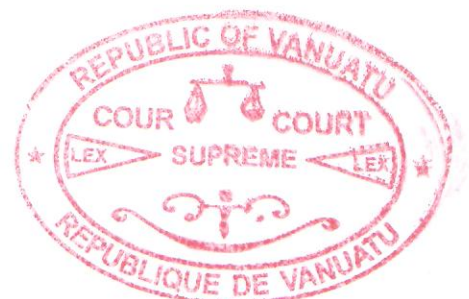
**JOHN ETIENNE**

Mr Justice Oliver A. Saksak

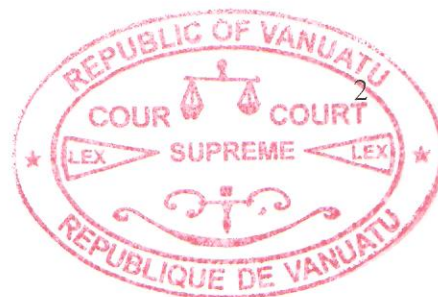
Mr P. Wirrick for Public Prosecutor  
Miss J. Tari for the Defendant

### **SENTENCE**

1. John Etienne you have been charged with one Count of Sexual Intercourse Without Consent Contrary to Section 91 of the Penal Code Act Cap 135 (the Act), and with one Count of Attempted Sexual Intercourse Without Consent contrary to Section 28 in conjunction with Section 91 of the Act.
2. These are very serious offendings which carry life imprisonment. Section 28(4) of the Act states that an attempted offence is punishable in the same manner as the offence concerned.
3. On 15<sup>th</sup> June 2012, you pleaded guilty to the two Counts laid against you. You have admitted to committing these offences on Sunday 11<sup>th</sup> March 2012. Your victim is a 5 year old girl born on 5<sup>th</sup> October 2006. You are 31 years old, that is 6 ½ times older than her. As a mature man you stood in a position of responsibility to your victim. Instead you saw fit to take advantage of her tender age to sexually abuse her.



4. You tricked this little girl and led her away from her home. You made her lie down on a concrete surface, removed her underwear and spread her legs apart. You then attempted to penetrate her vagina with your penis. Due to her physical differences between you and her it was impossible for you to penetrate her. But what you did to her caused her great pains resulting in her crying. You then dragged her along the cement surface resulting in her sustaining cuts and bruises to her back. You then inserted your left pointer and middle fingers into her vagina and forced an in-and-out motion up to six times, causing her extreme pain. She cried as a result of all these. You then led her back to the road and left her to walk to a nearby house where she was noticed in a distressed state and taken to hospital. She was examined and treated. The doctor's findings indicate your victim had suffered from vaginal bleeding, a torn hymen, torn perineum and vaginal wall. She was paranoid about it all during examination. Her self-esteem and dignity have been shattered and destroyed for eternity and she will no doubt live with this horrible experience all her entire life.
5. For such action, the only appropriate punishment for you will be a custodial Sentence. The Court notes your previous criminal conviction in 2009 when you were sentenced to 2 years and 7 months for sexual intercourse without consent. As such, there can be no other option available for you.
6. In considering and assessing Sentence, the Court is guided by the cases of Public Prosecutor v. Scott [2002] VUCA 29, Public Prosecutor v. Ali August, Criminal Case No. 14 of 2000, Public Prosecutor v. Gideon [2002] VUCA 7 as submitted by the Public Prosecutor. Defence Counsel also referred to the cases of Scott and Gideon and to Public Prosecutor v. Sur [2010] VUCA 29; Public Prosecutor v. Andy [2011] VUCA 14; and Public Prosecutor v. Kalfau [1990] VUCA 9.



7. The case of Scott is clear that the starting point for a person with a position of responsibility towards his victim should be eight (8) years imprisonment. The case lists 8 aggravating features for which the Court of Appeal said that –

*“Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.” (emphasis added).*

8. The aggravating features present in your case are –
- (a) The victim was very young during the rape and attempted rape at 5 years old.
  - (b) You (as defendant) have previous conviction in 2009 for the same offence of rape.
  - (c) The effect upon the victim both physically and mentally (with pain and physical injuries sustained) were enormous and will leave external scars on the victim.
9. However, from the accepted and admitted facts there were other aggravating features as follows:-
- (a) A breach of trust between you and the victim due to the closeness of relationship you had with the victim’s mother.
  - (b) The offences were committed at an isolated place and time, putting the victim’s life in danger if she refused or decided to escape.
  - (c) The degree of digital violations and attempted penile penetration causing injuries and destruction of the victim’s self-esteem and dignity.
  - (d) The mental stress and emotional effect on her as a result for life.



10. Taking these into account, your case falls within a higher degree of seriousness which warrants the starting point assessed at 12 years as the starting point for both counts.
11. Accordingly, you are convicted and sentenced as follows:-
- (a) Count 1 – Sexual Intercourse Without Consent – 12 years imprisonment.
  - (b) Count 2 - Attempted Sexual Intercourse Without Consent – 12 years imprisonment. These are to run concurrent with the 12 years sentence for Count 1.
12. I now consider your mitigating factors. Defence Counsel submitted only two factors –
- (a) Guilty plea at first given opportunity; and
  - (b) Good cooperation with the police.
13. According to the principle in Scott a 1/3 reduction will be given for guilty plea at the first opportunity. There will be no further reduction for good cooperation with the police.
14. In summary, you are convicted and sentenced as follows:-
- (a) Starting Point for both Counts 1 and 2 to run concurrently – 12 years imprisonment with no further uplift.
  - (b) In mitigation – 1/3 reduction from 12 years = 4 years deducted.
  - (c) The balance = 8 years imprisonment.



15. You are therefore sentenced ultimately to serve 8 years imprisonment at the Correctional Centre in Luganville.
16. Your sentence is deemed to have commenced on 8<sup>th</sup> June 2012 when you were first remanded in custody by the Magistrate's Court.
17. You will be entitled to apply for parole after having served up to 4 years of your 8 years sentence depending on your behaviour and attitude towards correction.
18. This high sentence serves the following purposes:-
  - (a) As a personal and general deterrence;
  - (b) As a public disapproval of your actions;
  - (c) To mark the seriousness of your offendings; and
  - (d) To punish you adequately.
19. You have a right of appeal within 14 days if you so choose.

DATED at Luganville this 3<sup>rd</sup> day of August 2012.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

