

PUBLIC PROSECUTOR

-V-

WILKINS REYNOLD

Coram: D. V. FATIAKI

Counsels: Mr. S. Blessing for the State
Mr. B. Livo for the Defendant

Date of Decision: 18 September 2012

SENTENCE

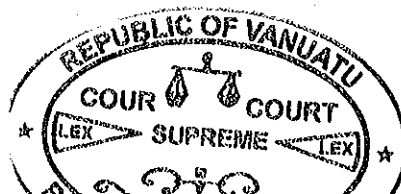
1. The defendant was convicted after trial for an offence of **Sexual Intercourse Without Consent**. The brief facts of the case taken from the court's verdict is as follows:

"6. ... the claimant testified that at **no** time did she ever consent to sexual intercourse with the defendant. Her evidence is that she started seeing the defendant after **May 2011** for traditional treatment for a condition she had at the time. She suffered from paralysis down her left side and pain on the backside and womb. She was pregnant at the time. She said the defendant had used traditional leaves and kava in his treatment of her and also massaged her body using oil. On several occasions he had spat kava on her and had even spoken in foreign tongues. She paid for her treatment with kava, cigarettes and cash.

7. On the day of the incident when she and the defendant had entered the massage room, the defendant sent some children out of the room and pulled the curtains. He then made her lie face-down topless and he proceeded to oil her body and massaged her on the shoulder and back. Then he asked her to turn around and face the ceiling and he proceeded to oil and massage her body on the chest and down to the legs.

8. The complainant testified that the defendant pushed her shoulders down and quickly removed her panty and proceeded to push his penis into her vagina and she felt him "pump twice" before he withdrew from her. In the complainant's words: "Hi fuckem mi". After the defendant withdrew, the complainant, in her shock and surprise, said to him: "hey, wanem fasin yu mek long mi" (hey what did you do to me?). The defendant got off her, pulled his trousers up and said: "yu no panic, yu no shout, mo yu no harem nogud, from me treatem evri woman sem" (Don't panic, don't shout, don't feel bad because I treat every woman in the same manner).

9. The complainant quickly got dressed, left the room and rang her partner who came and took her home.



10. *She told her partner what the defendant did to her and later that evening they returned to the defendant's house and her partner assaulted him and demanded a refund of the VT23,000 paid for her treatment. The defendant refunded VT10,000."*

later, in its verdict the Court described the intercourse as being "*sudden, opportunistic and fleeting*". It was also a solitary incident during the course of 6 weeks when the defendant treated the complainant.

2. I am grateful to the probation officer for the helpful pre-sentence report submitted to the Court and from which I extract the following personal details of the defendant:

- He is 42 years of age, married with 3 children aged 10, 5, and 3 years and a fourth on the way;
- He attended **Arep School** from 1980 to 1990 and left at year 10;
- He joined the **Vanuatu Mobile Force (VMF)** on probation in 1992 in the Riffle Section and rose to the rank of Lance Corporal in 2005;
- He is the sole breadwinner of his family;
- He is a first offender and has been remanded in custody since 2 August 2012 after his conviction;
- He is an active and useful member of his community and a helpful advisor to his chief on law-related matters;
- He is highly regarded by his superiors in the **VMF** as evidenced in a reference provided by the Acting Commander, VMF;

3. The pre-sentence report also makes reference to a kastom reconciliation ceremony being performed by the defendant to the victim, her family and chiefs at which a pig, mats, baskets of local food and an envelope of cash was presented and accepted.

4. The complainant, however whilst confirming that there was a kastom ceremony, denies that she was personally informed of it nor was she present at the ceremony but, in any event, she does not and will not accept any kastom process because:

"(a) She spent VT23,000 for traditional herbs treatment and he failed to offer a professional treatment, the kind of treatment he used to offer to his other patients who are now healed; and

(b) She feels inferior to her families, friends and community."

5. To the probation officer, the defendant stated that he regrets his offending behavior and is sorry about what he had done to the victim. "*He did not expect or plan the offence, it just happen so quickly*". He acknowledges that as a **VMF** officer, his community look up to him as a law-abiding citizen and role

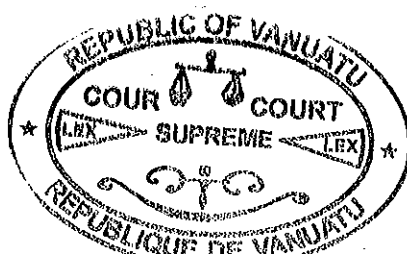


model and “*rely on him for peace and security*”. “*He admits that his action has violated the trust, he once had and ruined his reputation.*”

6. Unfortunately, despite his conviction and the sentiments expressed to the probation officer, the defendant still maintains “... *that the complainant consented to have sex with him*”, and claims another contributing factor, “... *was that he was facing some issues with his wife within his family home ...*”, as if, somehow, by blaming his wife, his culpability and personal responsibility for his own disgraceful behavior is excused or justified. Wilkins Reynolds the only thing that these two factors indicates is that you lack normal self control and genuine remorse.
7. Sexual Intercourse Without Consent as you will know from being a long-serving member of the security forces, is the most serious sexual crime in the **Penal Code** with a maximum penalty of life imprisonment.
8. Although I accept that your offence was “*opportunistic*”, in your words, “*just happen so quick ...*”, and was not repeated and caused no physical injuries to the complainant, it is aggravated by the following features:
 - By your own admission, what you did to the complainant was a gross violation of her trust in you as a police officer and as a traditional healer. That trust included, undressing for you in private and allowing you to oil and massage her body;
 - At the time of the incident, the complainant was pregnant and suffering from partial paralysis of her body making it difficult for her to resist your unexpected advances; and
 - You charged a substantial fee to “*treat*” the complainant and you accept that “*sexual intercourse was never part of her treatment*”;
9. I do not doubt that the defendant has learnt a salutary lesson from having been remanded in custody since 2 August 2012 but the primary duty of the Court must be the protection of women and the deterrence of would-be offenders.
10. In **PP v. Ali August** [2000] VUSC 73, the Chief Justice set out the principles applicable in the sentencing of rape cases when he said:

“The offence of rape is always a serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case.”

For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case.....”




11. In **PP v. Scott** [2002] VUCA 29 the Court of Appeal trenchantly endorsed the above principles when it said:

"There can be no room for any deviations from these fundamental and essential principles. The rights of women (to control what they do with their bodies and what sexual activity they involve themselves in) must be recognized maintained and uphold."

12. As already pointed out above, the appropriate starting sentence for an offence of Sexual Intercourse Without Consent in a contested case, where there are **no** aggravating features, is 5 years imprisonment. In your case, Wilkins Reynold, although you pleaded "*not guilty*", there are aggravating features that cannot be ignored.
13. Accordingly, I consider a starting point of 6 years imprisonment is appropriate. I add a further 1 year for aggravating factors making a sentence of 7 years imprisonment, from which, I deduct 3 years in recognition that this is your first offence and further, that you were assaulted by the complainant's partner soon after the incident and you refunded the complainant VT10,000 of the fees charged for her treatment. I am also mindful of the fact that you have been in custody for 5 weeks and that imprisonment, is more likely to have a greater impact on you as a serving **VMF** officer. No doubt the prison authorities will be aware of this and will act to ensure your safety in prison.
14. It is never an easy task to send a family man who is a sole breadwinner to prison, but the adverse effects on your family is an inevitable result of your own actions for which you must bear sole responsibility.
15. Your final sentence Wilkins Reynold is four (4) years imprisonment which I do not consider appropriate to suspend.
16. You have 14 days to appeal this sentence if you do not agree with it.

DATED at Port Vila, this 14th day of September, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

