

PUBLIC PROSECUTOR

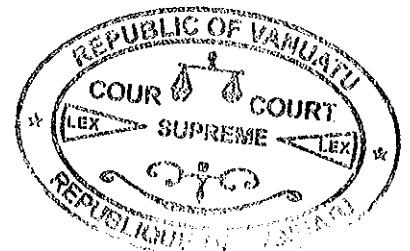
V

ENOCK TAO

Hearing: 25 October, 2012
Before: Justice Robert Spear
Appearances: Ken Massing for the Prosecution
Henzler Viru for the Defence

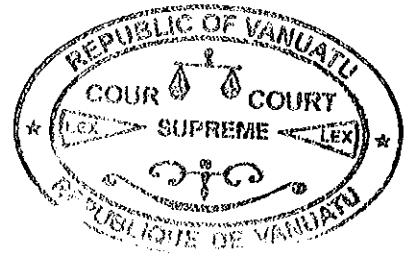
SENTENCE

1. Enock Tao you are for sentence having pleaded guilty to one count of having sexual intercourse without consent. You pleaded guilty to that charge at the time of your arraignment on Tanna on 20 August 2012.
2. This is a tragic case particularly as the offending was against your wife. You came home one night, drunk, and without making any overture to your wife you forced her legs apart and inserted your fingers into her vagina. You did so in such a way that it caused her considerable pain. She sat up and somehow managed to stop you from progressing with your obvious intentions. She complained to the police. She said that she had reached the point where she could not put up with your unwanted sexual abuse anymore as you did not consider that she had a say on whether you could have sex with her. She considered that you were treating her as a sexual slave.
3. When you were interviewed by the police, you indicated that, at this particular time, you believed that you were entitled to have sex with you wife in your bedroom whenever you



wanted to and that your wife was not able to resist your advances. You now recognise that you were wrong in that belief and that your wife, like any woman, was entitled to say, No and that had to be respected.

4. The sexual act involved in this case, as I have mentioned, involved the insertion of your fingers into your wife's vagina. The Penal Act includes this as a form of sexual intercourse. Of course, it is not sexual intercourse in the sense that that term is generally understood which involves the penetration of the woman's genitalia by the penis.
5. The first issue is whether there should be a sentencing distinction drawn within this offence between insertion of a man's fingers into a woman's vagina (digital penetration) and where there is the full sexual act involving the insertion of the penis into the vagina (rape). In overseas jurisdictions, such a distinction is carefully drawn between those two forms of sexual acts and, in my view, it is appropriate that such a distinction is drawn here.
6. I consider that a starting point of 4 years imprisonment is appropriate for this type of offending but that is, of course, just a starting point.
7. I am satisfied that you are now deeply remorseful for what you have done. You now understand that your wife had the right to say No. You want to resolve the differences with your wife but that will prove difficult as she says that she has fallen out of love with you. She has also left Tanna and is now residing in Port Vila. Regrettably, this is meant that she has left your 5 children down on Tanna but her explanation through the victim impact statements is that she was ostracised to some extent by your family who blame her for putting you in this position. There is some implicit complaint made against the complainant that she has deserted her children. If, indeed, that complaint has been made then it fails to recognise the reality of what has occurred down in this small village community on Tanna where the complainant was made to feel as if she was the one responsible for the fact that you were in custody.
8. Obviously, the complainant wants to make a life now away from you and she has felt that the only way she can do this is by moving away from Tanna which has meant that she has had to leave the children. That is a consequence that flows directly from your offending.
9. Be that as it may, I accept that you are genuinely remorseful and for that reason I allow you a 9 month discount against the sentence that would otherwise be imposed on you. I also allow you a full 1/3rd credit for your early guilty plea. That brings me down to a net figure of 26



months imprisonment which I round down to 24 months imprisonment or 2 years. That appears to be the appropriate term of imprisonment for this type of offending given your callous disregard for your wife's rights and your basic lack of understanding of human decency.

10. The fact that you were intoxicated at that time cannot be taken into account as a mitigating factor.
11. Mr Vira has argued that the sentence should be suspended and I certainly have the power to do so either in whole or in part. I am prepared to meet that submission half way. I propose to sentence you to a term of 2 years imprisonment but suspend the second year to recognise in particular the somewhat unusual circumstances surrounding this offending, your genuine remorse, your early guilty plea and the fact that the sooner you are reunited with your children the sooner you will be able to provide for them. However I am not prepared to suspend the full sentence as you must leave this Court today knowing that you have committed a terrible wrong against your wife and for that you must be held fully to account.
12. So, you are sentenced to 2 years' imprisonment which will be deemed to have commenced on 20 August 2012 when you were first taken into custody. You will serve the first year of that term of imprisonment and the second year will be suspended for a term of 2 years. This means that if you are convicted of an offence within 2 years of your release you will be recalled to serve that second year along with any further period that your offending requires. Mr Vira would you be so good as to explain the implications of that sentence to the defendant at the conclusion of this hearing.
13. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

