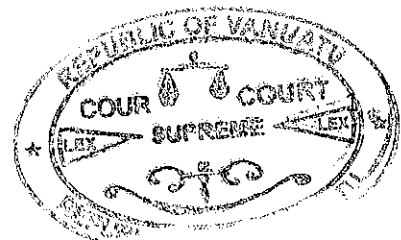


PUBLIC PROSECUTOR VS. CHRISTIE MAWA

Date of Sentence: ***Tuesday, December 6th, 2016,***
Before: ***James Paul Geoghegan***
In Attendance: ***Counsel – Lendry Young (PPO) for the Public Prosecutor***
Counsel - Tom Botleng for the Defendant

SENTENCE

1. Mr Mawa you appear for sentencing today on 1 charge of sexual intercourse without consent pursuant to section 90 and 91 of the Penal Code. It is a representative charge meaning that there was more than one incident of rape in this case but the victim has been unable to be precise about when the incidents occurred. The maximum penalty is one of life imprisonment.
2. The summary of facts which is not disputed refers to two incidents of rape in November and December 2015. At that time the victim was 11 years old and you were 16 years old. The brief facts are set out in the Prosecution submissions.
3. On the first occasion in November 2015 you asked the victim to go fishing with you and you got in a canoe and went out to sea. But instead of fishing you went to a village to look for fish bait. At that village you began talking flirtatiously with the victim and holding her in a manner which made her feel uncomfortable and afraid. You told her that you were going to have sex with her and she began crying out of fear as she was young and you are older. You have then removed her clothes and you have pushed your finger inside her vagina and then had sexual intercourse with her.



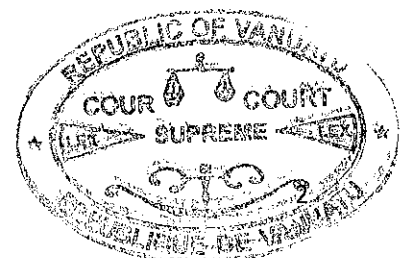
She has tried resisting and she has endeavored to scream out but you have blocked her mouth. You have told her not to tell anyone about your offending.

4. The second incident occurred a month later at Alak village. The victim was looking for fish bait when you approached her and chased the other children she was with away. You grabbed her and told her to follow you have told her again that you will have sex with her. She again refused but you removed her clothes and had sexual intercourse with her again resisting. She has tried to kick and scream but you blocked her mouth so that she could not shout out. She has made a complaint and to your credit you have accepted responsibility.
5. I have read your pre-sentence report. It is clear that you have not had the benefit of any real education. It is concerning to read that you had minimized your offending by referring to her trying to chase you. She was 11 years old at the time and could never have been in a position to consent to have sex with you. She is simply not old enough to do so. I put that down to your lack of maturity. Having said that, you are recorded as having expressed remorse and are deeply sorry for what happened.
6. Your family has endeavoured to conduct a customary reconciliation ceremony with the victim's family although they have expressed reluctance at the adequacy of what has been provided.
7. You are, not surprisingly given your age, a first time offender.
8. The Prosecution refers to the applicable authorities of **Public Prosecutor v. Gideon**¹, **Public Prosecutor v. Scott and Tula**² and **Public Prosecutor v. August Ali**³ which underline the seriousness of offending of this kind and provide sentencing guidelines. **August Ali** refers to the adoption of a starting point of 5 years in the case of rape committed by an adult, without taking into account aggravating or mitigating features. Various aggravating features which may be present in offending of this kind are referred to in that judgment.

¹ [2002] VUCA 7

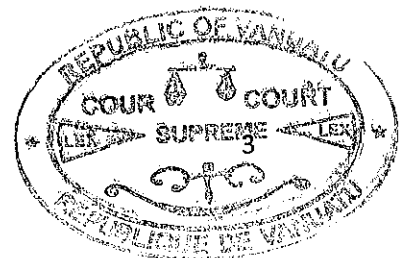
² [2002] VUCA 20

³ [2002] VUSC 73



9. There is also a reference to the case of **Public Prosecutor v. Malikum**⁴ which involved a 16 year old offender who sexually violated a 3 year old victim by inserting a piece of wood into her vagina. A non-custodial sentence of 24 months supervision and 100 hours community work was imposed in respect of one count of rape and one of unlawful sexual intercourse.
10. The Prosecution have referred to a number of aggravating features in this case as follows:-
- a) The age of the victim. As I have already said she was 11 years old and very young at the time.
 - b) The fact that you were 15 years old at the time of the offending.
 - c) That there was a breach of trust because the victim refers to you as her uncle.
 - d) That there was premeditation involved in your offending by luring the victim into a canoe and on the second occasion the deception of looking for fish bait to get the victim on her own.
11. I need to make a comment in respect of some of those aggravating features. As to the first, there has been some lack of clarity around your age. Although I initially thought you were 15 at the time of the offending it appears from the facts that you were 16. However I do not consider your age to be an aggravating feature of the offending. If you were significantly older that would certainly be an aggravating feature, but if anything, your age is a reason to adopt a lower starting point or to provide a significant allowance for youth in determining an appropriate sentence.
12. Secondly, while there is reference to a breach of trust I do not consider that that can have as great a relevance as it normally would if you were older. You were 16 and my assessment is that you would not necessarily have had the maturity to appreciate the concept of trust created by close family relationships. Therefore I do not consider that to be an aggravating feature in the particular circumstances of this case.
13. The Prosecution submits a starting point taking into account aggravating features of 7 years with an allowance then for a guilty plea.

⁴ [2010] VUSC 111

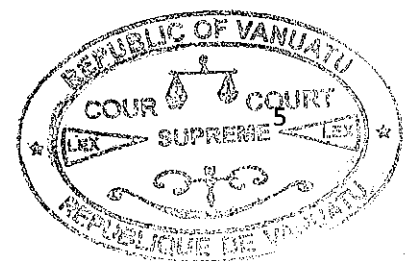


14. Mr Botleng has referred to all of the mitigating features which present themselves on your behalf and which apply in this case, although he did not emphasize your youth which I actually regard as a significant factor. He submitted that an end sentence of 18 months imprisonment would be appropriate. However in respect of a related sentencing he accepted that that end sentence was not appropriate and I have said that I do not consider an end sentence of 18 months imprisonment as adequate to address the seriousness of this offending and I shall discuss that shortly.
15. It is submitted by Mr Botleng that a suspended sentence could be supplemented by community work and supervision. In that regard I note that the Prosecution, taking into account your age, support the possibility of a suspended sentence rather than a sentence of imprisonment.
16. I have had concerns about the possibility of community work requiring you to mix with adult offenders so I stood the sentencing down earlier to enable counsel to make enquiries about community work and how that would actually operate in practice in your case. I have been advised by counsel that if community work were imposed Probation or Corrections will separate you from any adult offenders and that is a significant factor in my assessment.
17. This is a very difficult sentencing exercise. If you were 25 at the time of your offending rather than 16, the starting point for this offending would not be nor less than 8 years taking aggravating features into account. But you were 16. Effectively a boy only 5 years older than the victim. That is not to minimize the offending or to excuse it, but any sentencing exercise must take into account your lack of maturity and the corresponding impediment in respect of an appreciation of the seriousness of your actions and the consequences of those actions. Neuroscience has established that young offenders cannot and should not be treated as adults and for very good reason.
18. Adopting a 6 year starting point taking into account the aggravating features I have identified appears appropriate in all the circumstances. Given your age I consider that an appropriate allowance for your youth and other factors is one of 30% which equates to 21 and ½ months. I will then allow a further deduction of 1/3 for the entry



of your guilty plea which reduces the sentence to 2 years and 9 and 1/2 months which I round down to 2 years and 9 months.

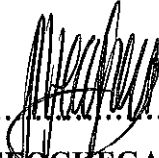
19. While I am not bound to refer to the computation of a custodial sentence I consider that it is appropriate to do so and unlike the Chief Justice in **Malikum**, while I am satisfied that your circumstances render a custodial sentence inappropriate, I consider that I should impose a suspended sentence to ensure that you are aware of the seriousness of your offending and to ensure also that there is an active deterrent in place to deter you from further offending.
20. I am satisfied that you understand the concept of a suspended sentence and the consequences of a breach of that suspended sentence that having been explained to you by Mr Botleng prior to sentencing.
21. What I must emphasize to you is if you breach the suspended sentence you will go to prison.
22. I am satisfied that I should also impose community work as a further punitive factor, given that I am now satisfied that you will be separated from other defendants, and supervision to provide for your rehabilitation.
23. I also take into account in coming to this conclusion, the fact that you have already been in custody since 15 June 2016, a period of almost 6 months. I certainly hope that has emphasized the seriousness of your offending.
24. For these reasons you are sentenced to imprisonment for 2 years and 9 months. That sentence will be suspended for 3 years. I am satisfied that you have had, as I said, the effects of the suspended sentence explained to you. Your sentence is deemed to have commenced on 15 June 2016.
25. You are also sentenced to 2 years supervision on condition that you are to undertake such courses, training, treatment or counselling as directed by your Probation Officer to address the causes of your offending and that you complete such courses, training treatment or counselling to the complete satisfaction of your Probation Officer.
26. You are also sentenced to 200 hours Community Work.



27. You have 14 days to appeal this sentence.

DATED at Port Vila this 6th day of December, 2016.

BY THE COURT


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JP GEOGHEGAN
Judge

