

PUBLIC PROSECUTOR

V

JOEL MORRIS VAKAU

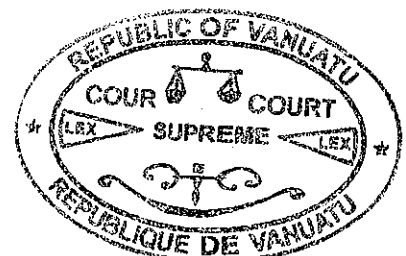
Hearing: *Thursday August 11th 2016 at 12 pm*

Before: *Justice JP Geoghegan*

Appearances: *Losana Matariki for the Public Prosecutor
Stephen Carlo (PSO) for the Defendant*

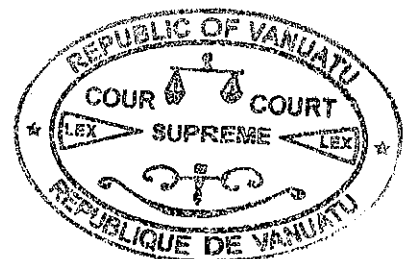
SENTENCE

1. Joel Morris Vakau you appear for sentence today in respect of one charge of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code. You entered a guilty plea to that charge on the day that your trial was due to commence on Epi. The maximum penalty for this offence is life imprisonment so it is a very serious offence.
2. There is no dispute as to the facts of your offending they are set out in the prosecution's submissions and it is important that I refer to those. The complainant, or more properly referred to, the victim in this case is 9 years old. You are 17 years old. On the 8th of April this year the victim and two of her sisters went to bathe at the river at around 17:00 hours. You then came by and you called the victim and when she came over to you, you told her that you wanted her to follow you so that you could check on a fishing line. She accordingly followed you. After about 100 metres you then told her to lie down and close her eyes and that when she opened her eyes she would see a fish and she did as you asked. You have then taken off your trousers, you

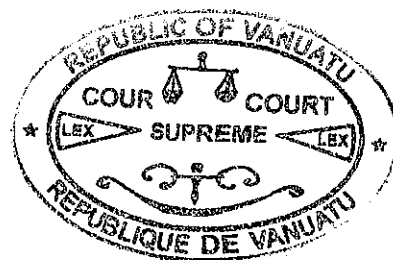


have removed her trousers and underwear and you have inserted your penis into her anus. You held tightly to her legs so that she would not struggle or move while you engaged in sexual intercourse with her.

3. The incident was a brief one but when you let her go you told her not to tell anyone. She went back to her sisters and she was distressed and immediately they reached home what had happened was relayed to the victim's mother. The police then became involved. Not surprisingly the incident caused a measure of discomfort and physical distress to your victim.
4. In short this was serious sexual offending against a very young and vulnerable victim. I have read your pre-sentence report. That portrays a picture of you as a responsible and decent young man. You are described as a leading youth in your church and your chief has described you as an icon to other youth. So that description of you is in complete contrast to this serious offending. What the pre-sentence report also tells me though is something about the victim and the impact of your offending on her. Her parents refer to her as having changed. She doesn't go out to play with friends any more, she misses school classes and she tends to stay at home. All of those things are consistent with the effect of serious sexual offending on a victim. And I can only express the hope that she will recover. The truth is that we will never really know. Your offending is likely to have an impact on her for the rest of her life. What troubled me in reading the pre-sentence report is that it refers to the main contributing factor to your offending as being an inability to control your sexual feelings and thoughts in an appropriate way and that is of real concern and I hope that you will receive appropriate assistance for that because if you do not you may well continue to present a risk to women in the community upon your release.
5. I have read the submissions of both the prosecution and the submissions of Mr Carlo. The prosecutor submits that an appropriate starting point for this offending is 8 years imprisonment and that is based on a number of factors:-
 - a) The seriousness of the offence.



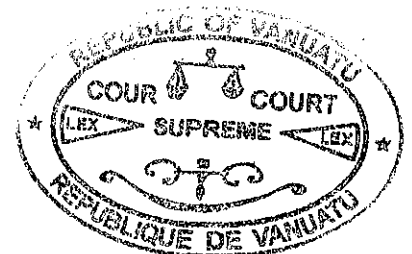
- b) The young age of the victim.
 - c) The use of force.
 - d) The age difference between you; and
 - e) The impact of your offending on the victim.
6. As to those factors I would observe that the seriousness of this offending is really reflected in the maximum penalty. What I have to determine is where this offending lies in the myriad of different circumstances in which the offence of rape is committed. As to the use of force it goes without saying that all rape involves the use of force. It is the nature and degree of the particular circumstances which are significant. What can be said here in your favour is that you have not used threats of weapons in the cause of your offending. The age difference between you is not necessarily an aggravating feature in this case. You are young yourself. What can be said is that the age of the victim is a seriously aggravating factor. As I have said the impact on the victim is also an aggravating feature although as mentioned we are never likely to know what the true impact of your offending upon this young and vulnerable child will be.
7. The prosecution have referred me to several cases involving rape sentences and I shall speak briefly about those.
8. In the case of the PP v. August Ali, the Chief Justice stated that for a rape committed without any aggravating or mitigating features a figure of 5 years should be taken as the starting point in a contested case. Given that that case was decided some 15 or 16 years ago and sexual offending against women and children seems to have continued at concerning levels in this country there may well be good reason to regard a higher starting point as appropriate.
9. A 6 year starting point was adopted by the Chief Justice in the case of PP v. Bulesa which involved the use by the offender of a bush knife in the offending. A 7 year starting point was adopted by the Chief Justice in the



case of PP v. Richard where the offending had involved planning, deception, force and threats when sex was refused. In that case the offender was 18 and the victim was 15.

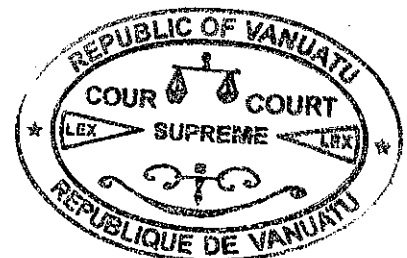
10. As I have said to you Mr Carlo has filed helpful submissions on your behalf. He suggests a starting point of between 6 and 7 years without taking into account your personal circumstances. He also urges me to adopt an end sentence of between 2 and 3 years and to then suspend that sentence in its entirety and to include community work, and I shall refer to that shortly. He refers to your youth, your remorse you albeit late guilty plea, your willingness to undertake a reconciliation ceremony, something which has been refused by the victim's parents and the fact that you are a faithful member of you church. He also refers me to article 37 of the Convention on the Rights of a Child which is an international convention applying to persons under the age of 18. He also refers to a Supreme Court decision in PP v. Maxime Pione.

11. I need to make a couple of observations about those submissions. Firstly I do not regard the United Nations Convention on the Rights of Children as having a particular applicability to this specific sentencing. It is not suggested that a sentence of imprisonment in itself is cruel and inhuman or involves degrading treatment, punishment or torture which are things that the convention is aimed at. What I do recognise however is that there are no detention facilities for young, which means that a prison sentence is likely to have a significant impact on you. The provision of separate detention facilities for offenders under 18 or even under the age of 20 is something I would suggest that the Government would be well advised to address. With reference to PP v. Maxime Pione that was an unusual case which I think turns on its own facts. It involved an offender aged between 16 and 17 at the time of the offending and a complainant aged between 12 and 13 at the time of the offending. It would appear that they were involved in a relationship of some kind. And although that case involved sentencing for rape the sentencing Judge observed that it could be referred to as sexual experimentation between



two teenagers without realising the legal consequences. This is not such a case. This is a case where, by deception, you have lured the victim away from her sisters to an isolated spot where you have then raped her in a brief but brutal episode.

12. In fixing the appropriate sentence I need to take account of the need to impose the least restrictive sentence possible, the need to provide, if possible, for your rehabilitation, the need to deter you and other from offending of this kind, the need to hold you accountable and responsible for your offending and the need to take account of the interests of the victim. This is a very difficult sentencing exercise as it involves serious offending against a very young victim and as I have said, you yourself are very young.
13. Looking at the circumstances of the case and the young age and associated vulnerability of the victim and taking into account the nature of the rape and the fact that you lured the victim away to a spot where you could undertake this offending, I consider an appropriate starting point, taking into account the necessary aggravating features to be one of 8 years imprisonment. From that I deduct 2 years to allow for your youth, your remorse and other factors which I have referred to in this sentencing. From the balance of 6 years I make a further allowance of 8 months to take account of your very late guilty plea which was entered on the morning of your trial. It is appropriate that an allowance is made for your guilty plea as you have, even at that late stage, saved the victim and her family from the distress of having to give evidence. From that I deduct a further 8 months to reflect the time that you have spent in custody already. That leads me to an end sentence of 4 years and 8 months imprisonment.
14. Having arrived at that sentence I then need to consider the issue of whether or not I should suspend your sentence as Mr Carlo submits I should. Put briefly this is a case where the seriousness of the offending outweighs any circumstances warranting suspension. The authorities in this area, and particularly in the case of Gideon, make it clear that men who sexually prey




on women forfeit the right to remain in the community. Despite your age it is important that the Court delivers a very clear message that men who engage in sexual violence against women may expect to be dealt with by the Court very firmly.

15. I am accordingly not prepared to suspend your sentence for those reasons.
16. I just want to end by saying this. Despite the fact that you are being sent to prison today, you are a young man and you have your life ahead of you. I read in your pre-sentence report that you want to be a fisherman with your own business or a mechanic similarly with your own business. You are still able to do that. After you have served your sentence of imprisonment, the path that you take will be entirely up to you. So I confirm your sentence of imprisonment as one of 4 years and 8 months.
17. You have 14 days to appeal that decision.

Dated at Port Vila this Thursday 11th day of August 2016

BY THE COURT


JP GEOGHEGAN
JUDGE

