

**IN THE SUPREME COURT  
REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal Case No. 3993 of 2016

**PUBLIC PROSECUTOR**

-v-

**TERTER KENEDY**

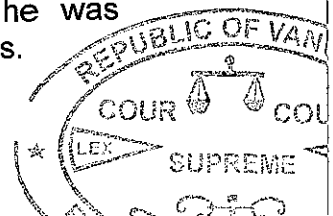
*Before Justice David Chetwynd  
Hearing 16<sup>th</sup> March 2017 (Written reasons published 22<sup>nd</sup> March 2017)  
Mr Boe for the Public Prosecutor  
Mr Garae for the Defendant*

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## Sentence

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1. Tertes Kenedy has entered a plea of guilty to a charge alleging he had unlawful sexual intercourse. The offence charged is contrary to section 97(2) of the Penal Code [Cap 135] and the section makes sexual intercourse with a person under the age of 15 an offence punishable, in this case, by a maximum sentence of 5 years. The section has been recently amended and the maximum sentence is now 15 years. For the reasons I set out in the case I heard earlier this week (*PP v Denny Malau*) the defendant will not face the increased sentence under the Penal Code (Amendment) Act No. 15 of 2016. Having entered a plea of guilty and admitted an offence which took place in April 2016 the defendant faces a maximum sentence of 5 years.
2. The facts are straight forward enough. The defendant was aged 21 and he met the young victim who was over 14 but under 15 years of age. Her birthday was on 25<sup>th</sup> October 2001. The defendant says he had consensual sexual intercourse with her. Unfortunately for Mr Kenedy the law states quite clearly that a person who is under the age of 15 cannot give consent and agree to have sexual intercourse. So whilst there may have been no force or coercion used, the sexual intercourse could not legally be consensual. The defendant says there was a boyfriend /girlfriend relationship but the facts do not quite bear that out. There is no indication the relationship is intended to continue and from what the young victim says this was not an example of a loving, caring relationship. This liaison looks very much like an older man taking advantage of a sexually mature but socially gauche young girl. This is precisely the kind of misalliance that the law tries to protect against.
3. The appropriate sentence is one of 21 months imprisonment. There are no particular aggravating features. The defendant has no previous history of offending. He does show remorse but once again it looks as if he is sorry he was caught and not particularly sorry for what he did. He told the Probation Officer he was willing to be involved in custom reconciliation but before that could be arranged he was remanded in custody. His sentence can be reduced by 3 months to 18 months.



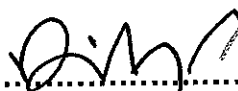
4. He has had the maturity and decency to admit his guilt at the earliest opportunity and is entitled to have his sentence reduced by 1/3<sup>rd</sup> to 12 months. He was remanded before plea for a period of time equivalent to 1 month time served. If that is deducted he has a sentence of 11 months left to serve.

5. I believe this is a case where suspension can be considered. The defendant is relatively young and it is appropriate for his sentence to be partially suspended. The defendant is not a violent rapist or sexual predator he is a typical young man whose behaviour was governed by something other than his brain. Even so, he must realise that the law protecting young girls must be respected and a short period of imprisonment is likely to strengthen his resolve not to be involved in similar situations in the future. I will suspend 9 months of his sentence for a period of 2 years. That means he will go to prison now for 2 months. When he is released he must behave for a period of two years. If he commits no further offences in that two years he will not be required to serve the remaining 9 months of his sentence. If he does commit further offences within the two year period he is very likely to be returned to prison and will be required to complete his sentence.

8 The defendant is reminded of what I said in court, namely if he is unhappy with the sentence handed down then he has the right to appeal. The time for appeal will start to run when his counsel receives a copy of these written reasons.

**Dated at Luganville this 16<sup>th</sup> day of March 2017.**

**BY THE COURT**

  
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**D. CHETWYND**  
Judge

