

N THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 19/538 C/CRML

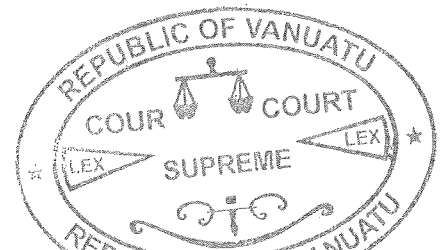
BETWEEN: Public Prosecutor

AND: Chanel Yolou
Defendant

Date of Plea: 25th November 2019
Date of Sentence: 6th December 2019
Before: Justice Oliver Saksak
In Attendance: Laura Lunabek for Public Prosecutor
Pauline Kalwatman for the Defendant

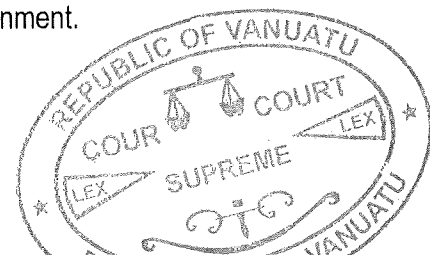
SENTENCE

1. The accused was re-arraigned on 25 November 2019. He pleaded guilty to a charge of attempted sexual intercourse without consent (Count 1) and to a charge of abduction (Count 2). He is appearing for sentence today.
2. These are serious charges. The former carries a maximum penalty of life imprisonment while the latter carries a maximum sentence of 10 years imprisonment.
3. The accused was a student at the Matarisu French Primary School on North Efate. He was 15 years and 10 months old when he committed the offences on 6th March 2019. The victim and complainant was a 11 year old girl attending the same school.
4. The victim and her 2 friends Christine and Jimmy were walking to school. They were all in school uniforms. The defendant approached them and asked if Christine could follow him. He held onto Christine's hand but she and Jimmy ran away. The defendant then carried the victim and ran off with her into the bushes.
5. Christine and Jimmy went to school and reported the incident to other students and teachers. They all ran back to the scene. Meanwhile the defendant having carried the victim into the bush put her down, removed her clothes and removed his penis and tried to insert it into her vagina three times. She complained of much pain and was crying. He slapped her on her face and put his hand over her mouth so she could not call out. She says the defendant ejaculated. When he heard the students approaching and calling out the victim's name, the defendant left and ran away. The students took the victim back to school. They found her shirtless. She was holding onto her skirt and pantie and was crying. She was covered with mud. She cried and hugged the principal who took the victim to her house to have a bath. The Principal saw the white sticky



substance on the victim's leg which she said smelt like semen. She cleaned the victim up and then took her to Paunagisu Health Centre for a medical check up.

6. The medical report dated 13 March 2019 indicates redness in vestibule around the uretha consistent with attempted penile sexual intercourse done under coercion. The hymen was confirmed to be intact.
7. From those facts I gather the aggravating features of the offendngs to be (a) young age of the victim, (b) her being carried away into the bushes, (c) the force used against her, (the slapping and blocking of the mouth) (c) the isolation of the victim, (d) the risks posed to her life if she refused, (e) the risk of underage pregnancy and indecency involved (the spilling of semen over her legs) and (g) the breach of trust placed on him as more senior in age.
8. The Prosecutions submitted a starting sentence of 5 years imprisonment for attempted sexual intercourse without consent and 3 years imprisonment for abduction. Further Prosecutions agree that due to the young age of the defendant his sentence should be suspended. There is a recommendation of 100 hours of community work.
9. Defence counsel submitted that any sentence of imprisonment be suspended due to young age. Defence also submitted in favour of a community work order and supervision order.
10. I note the cases cited by the Prosecutions and defence Counsel. None of them are very similar in nature, facts and circumstances of this case.
11. I note also the clear sentencing principles set out by the Court of Appeal in PP.v. Scott [2002] VUSC 73, Tabeva.v. PP [2018] VUCA 55, and Hermanley .v. PP [2010] VUCA 25.
12. I note further the provision of section 54 of the Penal Code Act [CAP. 135] and Article 37 of the Convention on the Rights of child.
13. Finally I take note of the defendant's pre-sentence report dated 3rd October 2019.
14. Taking all those factors together, it is my view that the appropriate sentence the Court will impose is to be a custodial sentence, but it will be suspended with supervision and community service.
15. And in my view the starting sentence shall be 6 years for attempted sexual intercourse without consent and 4 years imprisonment for abduction. There is no uplift. These are to be served concurrently. The total sentence shall be 6 years imprisonment as a concurrent sentence.
16. In mitigation I consider his clean past record, good cooperation with the police and willingness to perform custom reconciliation ceremony to be relevant factors. For these, 1 year is deducted from the total sentence of 6 years leaving the balance at 5 years imprisonment.



17. For early guilty plea, I accept he is entitled to the full 1/3 reduction which means, a further 1 year and 8 months are deducted from the 5 years sentence remaining. The end sentence is now 3 years and 4 months.
18. Chanel Yolou, I now convict and sentence you to an end sentence of 3 years and 4 months imprisonment as a concurrent sentence in respect of the two charges to which you pleaded guilty.
19. Due to young age, this term of imprisonment is suspended for a period of 3 years from the date of sentence. This suspension is made under section 57 of the Penal Code Act. This means you do not have to go to prison today. You must return to your family and be of good behaviour. You must not commit this offence or any other criminal offences for which you would be charged and convicted. If you do, you will go to prison to serve your term of imprisonment.
20. In addition I sentence you to 80 hours of community work. You will perform the 80 hours by clearing the bushes at the site of the burned Supreme Court Building under the Supervision of Probation and Correctional service. A separate order will be issued to that effect.
21. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Port Vila this 6th day of December, 2019

BY THE COURT

OLIVER.A.SAKSAK

Judge

