

BETWEEN: Public Prosecutor

AND: Simon Stephen
Defendant

Date: 12 June 2019
By: Justice G.A. Andrée Willems
Counsel: Ms B. Ngwele for the Public Prosecutor
Ms K. Karu for the Defendant

SENTENCE

A. Introduction

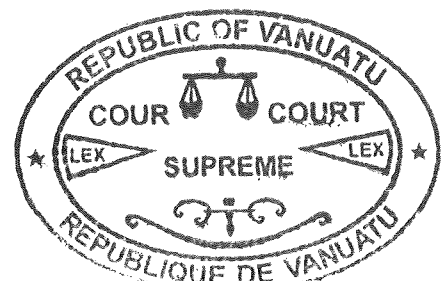
1. Mr Stephen pleaded guilty, in early 2010, to one charge involving him having sexual intercourse with a child under 15 years of age. The maximum sentence for such offence, at that time, was a term of 5 years imprisonment – it has since been increased to 15 years imprisonment reflecting the seriousness with which Parliament considers this type of offending.

B. Facts

2. Mr Stephen coerced the complainant, who was the just 14 years of age, out of her house and took to the back of the house where he disrobed her and forced her to engage in sexual intercourse with him. He was aged 27 years at the time.

C. Aggravating Factors of the Offending

3. There are aggravating factors to the offending. There was a significant age difference between them. He took no protective steps, thereby exposing the complainant to sexually transmitted disease and unwanted pregnancy. Most significantly, there was a breach of trust as Mr Stephen is the brother-in-law of the complainant.



D. Start Point

4. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 3 years imprisonment.

E. Personal Factors

5. There are a number of mitigating factors to take into account:

- Mr Stephen has no previous convictions – which enables a reduction of 4 months.
- Most significantly, there has been no further offending since 2010 – I reduce the sentence by 8 months for that factor.
- I take into account that he has spent some 3 months in custody – I further reduce the sentence by 3 months for that.
- Mr Stephen has participated in a custom reconciliation ceremony. I reduce the end sentence by 3 months due to his participation.
- The complainant has now forgiven Mr Stephen - I reduce the sentence by 3 months for that.
- There has been a very long delay between the offending and sentencing. It is clear that part of that time is attributable to Mr Stephen not appearing in Court when required, but there is also fault with the prosecution taking an inordinate length of time before deciding to not proceed with the second charge. I allow a discount of 6 months for this factor.
- Mr Stephen shows remorse and insight into his offending. He has good family and community support. He is now married with 3 children to support – he is the sole breadwinner. I further reduce the sentence by 3 months for these personal factors.
- Lastly, Mr Stephen pleaded guilty at the first opportunity – that entitles him to a discount of one-third of the sentence.

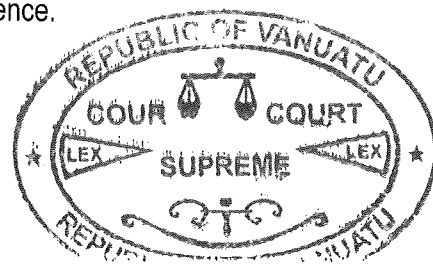
F. End Sentence

6. Taking all of those matters into account, the end sentence that is imposed is one of 4 months imprisonment.

G. Suspension

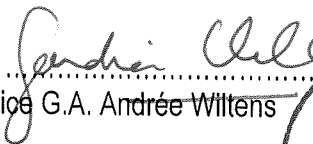
7. It is unusual to suspend a sentence for this type of sexual offending. But this is an unusual case. Firstly, it occurred over 9 years ago. Secondly, there has been no further offending. Also, Mr Stephen is not only remorseful, but he has also shown insight to his offending and has been forgiven by the complainant. In effect he has rehabilitated himself.

8. In the circumstances, I am prepared exceptionally to suspend the sentence.



9. Mr Stephen is sentenced to four months imprisonment suspended for 12 months.
10. He has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 12th day of June 2019
BY THE COURT


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Justice G.A. Andrée Wiltens

