

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

Criminal
Case No. 21/1821 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: JOHN JOHNNY
Defendant

Date of Sentence: 7 September 2021
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr Paul Sarai for the Public Prosecutor
Mr L. Moli for the Defendant

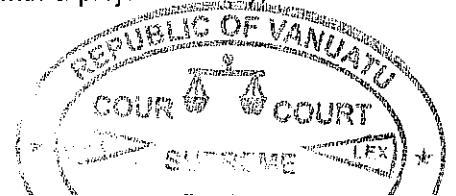
SENTENCE

A. Introduction

1. Mr John Johnny pleaded guilty to threatening language and sexual intercourse where consent was obtained by threat of intimidation.

B. Facts

2. On 17 September 2017, Mr John was 17 years old and a student at Tafea College, Tanna. The complainant MI was similarly 17 years old and also a student. They were in what is described as an on-off relationship.
3. John Johnny asked MI to follow him from the library to the basketball court. She declined. He then went away and made an emissary go and ask MI to join him out the basketball court, as he had something to give her. Again MI declined, as she was busy with a project. Finally, both



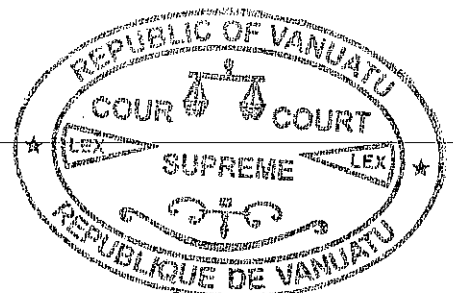
John Johnny and the emissary together went to the library to ask MI to follow John Johnny. He said that if she declined, he would damage her computer.

4. MI was fearful, and accordingly she went with them. When they arrived at the basketball court, MI asked why she had been taken there. John Johnny said to her: *"This is where your life ends."* And he then took out a small axe from his pocket to reinforce his words. Fortunately, your friend then interceded and took the axe away from you.
5. John Johnny then said that he wanted to end the relationship, but first he wanted to have sexual intercourse with her there and then. He walked down to a creek and MI followed out of fear. There she removed her clothes and he had sexual intercourse with her, knowing she was only consenting out of fear. Afterwards he instructed MI to wait until he said it was permissible for her to leave.
6. To remove his anger, MI offered to continue their relationship. This appeased John Johnny, and he permitted her to leave.
7. MI left crying. When she met a fellow student she told him what had occurred, which led to the police becoming involved.

C. Sentence Start Point

8. The sentence start point is to be assessed by having regard to the maximum penalties available for the offending and factoring in the aggravating and mitigating aspects of the offending.
9. Sexual intercourse with consent by means of threat of intimidation has a maximum sentence of life imprisonment. The maximum sentence for threatening language is 3 years imprisonment.
10. There are no mitigating aspects to the offending. However, there are aggravating factors, including the following:

- There is a breach of trust involved;
- The offending was pre-meditated with a degree of planning;



- John Johnny's controlling behaviour; and
- Possession of a lethal weapon to emphasise the threats made.

11. I adopt a sentence start point of 6 years 6 months imprisonment, on a global concurrent basis.

D. Mitigation

12. John Johnny pleaded guilty at the earliest available opportunity. He spared MI the need to give evidence, and his pleas are an indication of his remorse and his acceptance of wrong-doing. For his prompt pleas, I reduce the sentence start point by 33%.

13. John Johnny was 17 years old at the time of the offending, and a student. He is now 21 and is continuing with his education at USP.

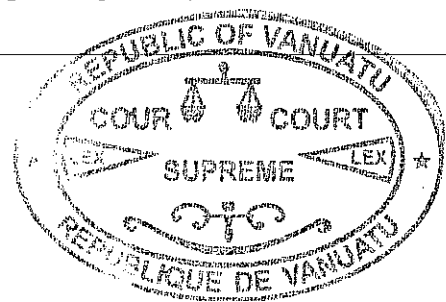
14. He has no previous convictions. He has participated in a custom reconciliation ceremony involving a cow, 6 stumps of kava, 8 mats and a selection of root crops. The PSR indicates the gifts and apologies were accepted by MI.

15. There is no explanation for almost 4 years delay in this matter coming to conclusion. The matter must have weighed on John Johnny's mind for that period. It is further relevant that there has been no re-offending from the time of the incident until the date for sentencing.

16. For his personal factors, including the lack of previous convictions and subsequent offending, I further reduce the sentence start point by 8 months. For his youth and immaturity, a further reduction of 12 months is warranted. Finally, I allow a 4-month reduction for the unexplained delay occasioned.

E. End Sentence

17. The end sentence I impose is 2 years 4 months imprisonment. I impose that on the sexual intercourse charge. In respect of the threatening language charge, I impose a sentence of 3 months imprisonment, to be served concurrently.



18. John Johnny has already served one months imprisonment prior to sentencing. Accordingly, the sentence start date is back dated to 6 August 2021.
19. The charges are very serious. The Court of Appeal has frequently stated where serious sexual offending has occurred it is inappropriate to suspend the sentence. That sentiment is binding on me. Accordingly, there will be no suspension of any/all the sentence.
20. All details leading to the identification of MI are permanently suppressed.
21. John Johnny has 14 days to appeal the sentence.

DATED at Port Vila this 7th day of September 2021

BY THE COURT



Judge G.A Andrée Wiltens

