

BETWEEN: Public Prosecutor

AND: Jimmy Kalpukai
Defendant

Date: 28 September 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr K. Massing for the Public Prosecutor
Ms K. Karu for the Defendant

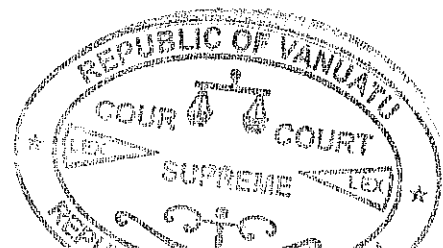
Sentence

A. Introduction

1. Mr Kalpukai pleaded guilty to 2 charges of unlawful sexual intercourse with a young person under the age of 15 years. They are Charges 2 and 4. Charges 1 and 3 were dismissed.

B. Facts

2. The complainant in this matter, AD, was born in December 2005.
3. From July 2019 to April 2020, AD resided with Mr Kalpukai, her "cousin daddy", at Endu Village, south east Ambrym. Over that period, when AD was minding her little brother, Mr Kalpukai frequently invited AD to his house as he wanted to have sexual intercourse with her. On several occasions he took photographs of her naked.
4. Charge 2 relates to an occasion on 8 April 2020, when Mr Kalpukai forced AD into his room, removed all her clothes and inserted his finger into her vagina a number of times. She asked him to stop due to the pain she felt, but he did not. He later made her lie naked on the bed while he took photographs of her in that state.



5. Charge 4 relates to what occurred on 9 April 2020. Again, Mr Kalpukai forced AD into his room. He removed all her clothes and told to bend over. He inserted his penis into her vagina while standing behind her. Then he made her lie down on his bed and inserted his penis into her vagina until he ejaculated.
6. The matter came to the attention of the authorities due to Mr Kalpukai's wife and his daughter discovering the naked photographs of AD on his phone. When interviewed by the police, Mr Kalpukai admitted his offending.

C. Sentence Start Point

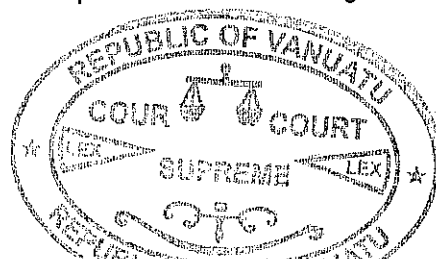
7. The sentence start point is to be assessed by having regard to the maximum penalties available for the offending and factoring in the aggravating and mitigating aspects of the offending.
8. Unlawful sexual intercourse with a young person has a maximum sentence of 15 years imprisonment.
9. There are 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;
 - The repeat nature as well as the duration of the offending;
 - The age differential between them;
 - The indignity of being forced to pose nude so that photographs could be taken; and
 - Exposing AD to sexually transmitted disease and unwanted pregnancy.
10. I adopt a sentence start point of 6 years imprisonment, on a global concurrent basis.

D. Mitigation

11. Mr Kalpukai pleaded guilty at the earliest available opportunity. He spared AD 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%.
12. Mr Kalpukai was 46 years old at the time of the offending, married with 4 children. Previously he was a construction worker, but is currently a seller of kava. He is the sole bread-winner for the family. The youngest child has some illness.
13. He has no previous convictions. He has participated in a custom reconciliation ceremony involving a pig, 2 mats, one head of kava and local food. The gifts and apologies were accepted by AD's family.
14. For his personal factors I further reduce the sentence start point by 6 months.

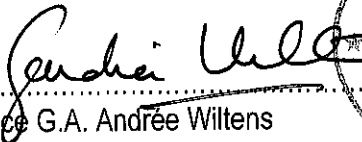
E. End Sentence

15. The end sentence I impose is 3 years 6 months imprisonment. I impose that on both charges concurrently.



16. Mr Kalpukai has already served one months imprisonment prior to sentencing. Accordingly, the sentence start date is back dated to 28 August 2021.
17. 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.
18. All details leading to the identification of AD are permanently suppressed.
19. Mr Kalpukai has 14 days to appeal the sentence.

Dated at Port Vila this 28th day of September 2021
BY THE COURT


Justice G.A. Andrée Wiltens

