

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

Criminal
Case No. 21/3032 SC/CRML

BETWEEN: Public Prosecutor

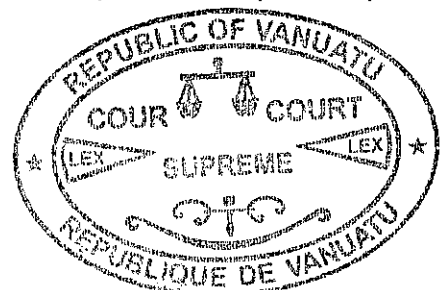
AND: Simon Pakoa Willie
Defendant

Date: 23 December 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr G. Simeon for Ms G. Kanegai for the Public Prosecutor
Ms K. Karu for the Defendant

Sentence

A. Introduction

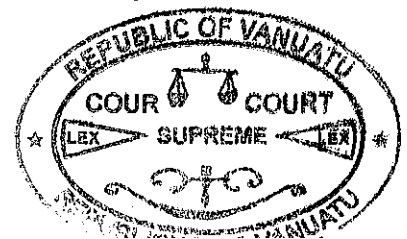
1. Mr Willie pleaded guilty to sexual intercourse without consent and intentional assault. He accepted as true and correct the summary of facts tendered.
2. However, I did not consider the summary to reflect the true criminal culpability involved. Accordingly, I scheduled a Newton Hearing.
3. Having heard the 19-year old complainant, TB, give her account in greater detail, Mr Willie's Counsel took instructions and challenged only 2 aspects of TB's evidence: whether a knife had been used and whether a piece of iron metal had been used.
4. Mr Willie elected to not give or call any evidence in response.
5. TB was an exceptional witness with clear, concise and consistent responses to all questions put. I accepted her as a credible and accurate witness.



6. I accept as a fact that Mr Willie had used a knife to re-inforce his threat that he would gouge out TB's eyes if she resisted him. The suggestion that Mr Willie was instead just holding a pair of sunglasses while making a threat to use his fingers to gouge out her eyes is rejected. That is just inherently unlikely and quite contrary to what TB told me.
7. There is however no mention in TB's interview statement to the police that Mr Willie also used a piece of iron metal during his abuse of her. It may well be that TB made mention of that to the police but the officer failed to record that. However, before I could accept a contested fact, I needed to have that fact proved beyond reasonable doubt. It was dark, and they were in a secluded area. TB was subjected to persistent terror. The possibility of a mistake cannot be set aside easily. It may well have been the knife Mr Willie was again brandishing.
8. In the circumstances, I concluded it not established beyond reasonable doubt that Mr Willie also used a piece of iron metal.
9. The other facts elicited during the Newton Hearing, over and above the summary of facts, and which were accepted by Mr Willie, form the basis of this sentencing exercise.

B. Facts

10. At around 7pm on 30 July 2021, TB, was celebrating Independence Day with some friends. Later, when at Seafront, she received a phone call from Mr Willie who was using her boyfriend, Jerome's, phone and claiming to be a friend of his. It was later confirmed that Jerome had no knowledge of Mr Willie having or using his telephone.
11. Mr Willie told TB that Jerome had passed out due to excessive alcohol consumption and could not breathe properly. He instructed TB to meet them at a particular location by the steps leading from PMC down to Unelco. TB promptly left where she was and went to meet them.
12. However, TB could not find them. Accordingly, she tried to telephone Jerome. Mr Willie answered and told her that she was too late, and that she should now take a bus to a friend's house at Tebakor to meet up with them. Again, TB went where she was told but could not find them, despite further phone calls which were again answered by Mr Willie.
13. While she was searching for Jerome in the Tebakor area, Mr Willie approached and took her into a yard, which he claimed was his. He instructed TB to wait while he checked on Jerome and to be quiet as his parents were unaware they had been drinking. On his return, he approached TB from behind. He grabbed TB by the neck, squeezing hard and choking TB. He instructed TB to make no sound or he would cut her throat. He used a knife, which he put to TB's throat, and threatened to gouge out her eyes if she did not do as he asked.
14. He then removed her clothes and his own. He attempted on numerous occasions and at different locations within the yard to penetrate her, but was unsuccessful. TB could feel his penis against her vagina. He made her hold his penis and assist him to try and penetrate her vagina. He made her stand up and bend over so that he could attempt to penetrate her from behind. He made TB perform oral sex on him. He dragged TB over to a broken-down truck where he tried to penetrate her from behind, holding her by the hair and in anger and frustration smashing her head against

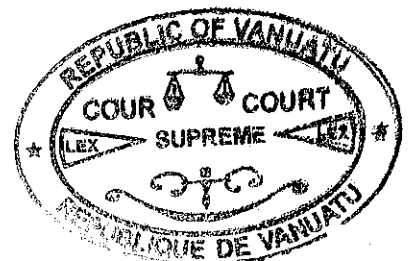


the truck. He admits also slapping her face causing temporary injuries. All the attempts at penetration were very forceful.

15. Mr Willie became annoyed at his lack of success in attempting to penetrate TB's vagina. After an interlude due to some dogs barking had made Mr Willie fearful of detection, he instructed TB to lie down. She did so. He then lifted both her legs up above her shoulders and forced his penis into her vagina. He used no protection.
16. Before Mr Willie departed, he took TB's I-phone. He told TB she could return the next day and claim it back. He instructed TB to not tell the police as he was concerned about what his father would do to him.
17. TB was terrified throughout the time she was with Mr Willie, and acceded to his demands only because of that. In all she estimated that he kept her for over 3 ½ hours - effectively having kidnapped her under pretext and restrained her by force.
18. A subsequent medical examination has found abrasions and bruises on TB's knees, a bruise to her back, her neck to be swollen and bruised, and with a further abrasion at the vaginal introital area as well as a laceration of the hymen.
19. Following arrest, Mr Willie was interviewed by the police and admitted the offending in general, without the detail of the aggravating factors.

C. Sentence Start Point

20. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
21. The maximum sentence for sexual intercourse without consent is life imprisonment. The maximum sentence for intentional assault is 5 years imprisonment.
22. There are no mitigating aspects to the offending. There are however aggravating factors which include:
 - The deception involved in tricking TB to meet up with Mr Willie on the pretext that Jerome had passed out and could not breathe properly. There is cruelty involved in the trickery, plus the fact that TB was persuaded to go to two different locations over time while her concerns for Jerome mounted;
 - Threatening to render TB blind if she did not do as he asked;
 - Repeatedly instructing TB to make no noise – on one occasion threatening to cut her throat if she made noise;
 - Instructing TB to not report the matter to the police;
 - The use of a knife to reinforce the threats of gouging out TB's eyes, so as to gain acquiescence;



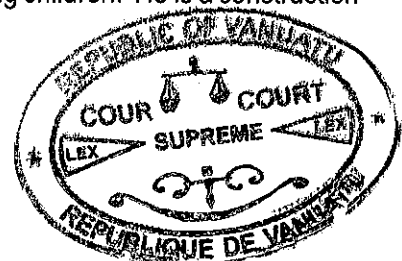
- The frequent choking of TB's neck, to further quell her resistance;
- There was pre-meditation and planning involved;
- Mr Willie was 25 years old: TB was only 19 and still a virgin – the age differential and difference in physical statures made it more difficult for TB to resist;
- The holding of TB by her hair and banging her head against a broken-down truck while attempting to penetrate TB from behind;
- The repeated violence – choking, smashing of TB's head against the truck and slapping TB's face;
- The physical injuries inflicted on TB;
- The additional indignities imposed on TB, such as making her manually assist his efforts at penetration, and forcing TB to engage in oral sex;
- The lack of protection used, thereby exposing TB to sexually transmitted disease and unwanted pregnancy;
- The taking away of TB's virginity;
- Effectively detaining TB for some 3 ½ hours against her will;
- The taking of TB's I-phone; and
- The effects of the offending on TB. Her Victim Impact Statement is testament to the horrific effects this callous and selfish offending has had on a young innocent woman. [I do not set out those effects here, but read the entire statement to Mr Willie in Court]

23. The sentence start point I adopt is 14 years imprisonment on a global basis, taking both offences into account concurrently. The offending was callous, cruel and barbaric. It is difficult to imagine what sexual gratification could possibly be gained by conduct of this kind. I consider that the principles of deterrence and holding Mr Willie accountable for his actions require a condign sentence to be imposed. I am guided as to the appropriate sentence start point by the Court of Appeal authority: *PP v. Scott* [2002] VUCA 29.

D. Mitigation

24. Mr Willie pleaded guilty at the earliest available opportunity. That indicates an acceptance of his wrong-doing, and it has spared TB the ordeal of having to give evidence at trial. However, I do not accept that the pleas demonstrate true remorse. The fact that a Newton Hearing was required demonstrates an attempt to minimise his offending. For the prompt guilty pleas, I reduce the sentence start point by 25%.

25. Mr Willie is 26 years old, in a de facto relationship, and with 2 young children. He is a construction worker by occupation.



26. He has no previous convictions.
27. He explained that his offending resulted from excessive alcohol consumption. That is no excuse and it is certainly not mitigation. I note also that TB stated she could not smell alcohol on Mr Willie. This suggestion is accordingly questionable.
28. He further told the PSR writer that TB had consented to his conduct – that is flatly and completely rejected. This statement reflects a lack of true remorse for the offending, and sits completely at odds with the VIS and the evidence TB gave during the Newton Hearing. The statement is pure fantasy.
29. Mr Willie states that there has been a custom reconciliation ceremony. However, his mother says otherwise, explaining that it was intended but could not occur due to the unavailability of TB. I note that Mr Willie has been incarcerated since his arrest, and could not therefore have participated in the ceremony. The VIS makes it clear that there will not be any custom reconciliation with TB.
30. For Mr Willie's personal circumstances, the sentence start point is further reduced by 8 months, which I consider generous. I allow this discount primarily taking into account Mr Willie's de facto partner and their 2 young children. But for that consideration, the discount would have 4 months.

E. End Sentence

31. The end sentence I impose is 9 years 10 months imprisonment. I impose that on the sexual intercourse without consent charge. I impose a concurrent term of 1 year 6 months imprisonment for the intentional assault charge.
32. Mr Willie has been incarcerated for this offending since 1 August 2021. Accordingly, to preserve his parole rights, his sentence will commence to run as from that date.
33. In certain circumstances the Court can suspend all or part of the sentence. However, that is not possible due to the seriousness of the offending and the type of criminal conduct involved: *PP v Gideon* [2002] VUCA 7.
34. All details leading to the identification of TB are permanently suppressed.
35. Mr Willie has 14 days to appeal the sentence.

Dated at Port Vila this 23rd day of December 2021
BY THE COURT

.....*Justice G.A. Andrée Wiltens*.....
Justice G.A. Andrée Wiltens

