

PUBLIC PROSECUTOR

V

YANO ANDRE

Date: 12 October 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mrs B. Tamau
Defendant – Mrs C. Dehivanua

SENTENCE

A. Introduction

1. The defendant Yan Andre pleaded guilty to unlawful sexual intercourse with child under the age of 13 years contrary to subs. 97(1) of the *Penal Code* [CAP. 135] (Charge 1) and to domestic violence contrary to para. 4(1)(c) and s. 10 of the *Family Protection Act* No. 28 of 2008 (Charge 2). Mr Andre is convicted on his own pleas and the admitted facts.

B. Facts

2. At the time of the offending, Mr Andre was 15 years old. He and the complainant JM are related.
3. On 21 January 2022 afternoon, JM who was 8 years old and her younger brother went to a river near their house at Ohlam village on Malekula island. She sat on the river bank waiting for her brother diving in the river. Mr Andre approached her and told her to follow him. He pulled her and they walked to a spot away from the river where Mr Andre told JM to lie down on her stomach, then he removed her skirt and underwear and pushed his penis into her vagina.
4. Later that day, JM's mother saw blood stains on JM's underwear and then JM told her what Mr Andre did to her earlier on.
5. On 23 January 2022, JM was medically examined at Norsup Hospital. Her medical report showed multiple superficial lacerations on her vaginal walls and bruising to her labia secondary to a blunt force trauma. The report concluded that the findings were highly suggestive of forced sexual intercourse having occurred.



6. Mr Andre subsequently admitted this conduct to the Police.
- C. Sentence Start Point
7. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentences set by Parliament.
8. The maximum sentences provided are:
- a. Unlawful sexual intercourse with child under the age of 13 years – life imprisonment; and
 - b. Domestic violence - 5 years imprisonment or a fine not exceeding VT100,000 or both.
9. There are no mitigating aspects to the offending however, it is aggravated by the following:
- a. Age differential of 7 years;
 - b. Breach of trust;
 - c. The defendant lured the complainant to a location where the sexual intercourse took place;
 - d. Skin-on-skin contact; and
 - e. The injuries and pain suffered by the complainant during and after the sexual intercourse.
10. Taking these matters into account, I adopt a global sentence start point of 6 years imprisonment.

D. Mitigation

11. I reduce the sentence start point by 33% for Mr Andre's early guilty pleas which has saved time and saved the need for the complainant to give evidence.
12. Mr Andre is 16 years old and lives with his uncle Janick Maltelour at Wala village, Malekula. He finished school after completing Year 7. He does gardening and rearing of livestock and earns money from planting and selling kava. He supports his widowed grandmother and also helps his father with his siblings' school fees.
13. He has no previous convictions although in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
14. Mr Andre with the support of his uncle Mr Maltelour performed a custom reconciliation ceremony with the complainant and her family involving VT50,000 which was accepted. Mr Andre is stated to be remorseful and regrets his offending. Mr Maltelour is stated to have had deep conversations with Mr Andre to condemn

the offending and reported to the pre-sentence report writer that Mr Andre has demonstrated changed behaviour since the offending and his arrest by the Police. Mr Andre clearly has the support of his family.

15. Mr Andre served 3 weeks in custody in the cell at Lakatoro Police Station.
16. I further reduce the sentence start point by 1 year for Mr Andre's personal factors and a further discount of 18 months for Mr Andre's young age and immaturity.

E. End Sentence

17. The end sentence I would have imposed is 18 months imprisonment.
18. However, subs. 54(1) of the *Penal Code* provides that a person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate. Although Mr Andre is stated to be 16 years old, his date of birth is not provided therefore I will treat Mr Andre as if he were under 16 years old.
19. The Court of Appeal stated in *Herromanley v Public Prosecutor* [2010] VUCA 25 that the need for reform and rehabilitation is paramount when sentencing young offenders. I consider that imposing a sentence of imprisonment on Mr Andre with the inevitable consequence of exposing him to long-term hardened criminals would be counter-productive and inappropriate. His excellent prospects of rehabilitation are better served by keeping him out of imprisonment, and this is practicable and consistent with the safety of the community given the family support that Mr Andre has and his insight into and accountability for his offending.
20. Taking all of those matters into account, the end sentence imposed as to both charges together is as follows:
 - i) 150 hours of community work; and
 - ii) 12 months supervision including attendance at the rehabilitation programs organised by the Department of Correctional Services.
21. Mr Andre has 14 days to appeal the sentence.
22. All details leading to the identification of JM are permanently suppressed.

**DATED at Lakatoro, Malekula this 12th day of October 2023
BY THE COURT**


Justice Viran Molisa Trief

