

**PUBLIC PROSECUTOR**

**v**

**JEFF LOP**

*Date of Plea:* 24 May 2024  
*Date of Sentence:* 31 July 2024  
*Before:* Justice M A MacKenzie  
*Counsel:* Ms. L. Lunabek for the Public Prosecutor (Holding papers for Ms G Kanegai)  
Mr. E. Molbaleh for the Defendant

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**SENTENCE**

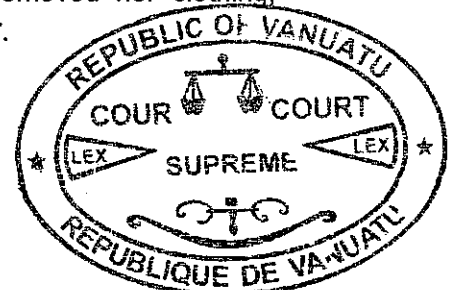
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**Introduction**

1. Mr Lop, you appear for sentence having pleaded guilty to one charge of unlawful sexual intercourse, contrary to s 97(2) of the Penal Code [CAP 135].
2. The maximum penalty is 15 years imprisonment.

**The Facts**

3. The victim is aged 13 years. At the time of the incident, you were aged 17 years.
4. On 3 November 2023, the victim got off a bus on the main road to her house at Erakor Half Road. You also got off a bus as the victim was making her way home. You called out to her. There was a brief conversation, initiated by you. You then approached the victim, grabbed her and took her inside your house. You removed her clothing, penetrated her vagina with your penis. You are a stranger to her.



5. The victim was afraid to tell her father as she feared she would be hit. She did though a few days later.
6. You admitted the offending when interviewed by police.
7. The age gap between you and the victim at the time of the offending was approximately 4 years.

### **Sentencing purposes/principles**

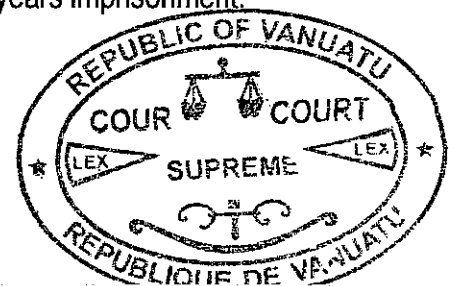
8. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

### **Approach to sentence**

9. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### **Starting point**

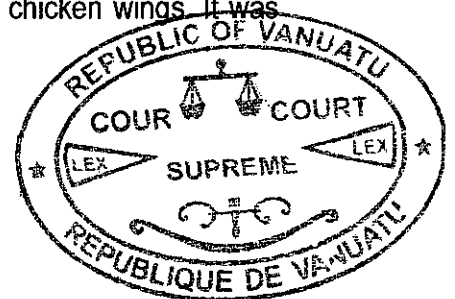
10. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and taking into account the maximum penalty for the offence.
11. The aggravating factors here are;
  - a. While opportunistic, the offending was deliberate.
  - b. The size disparity and age difference between you and the victim.
  - c. The victim's vulnerability because of her young age.
  - d. The victim was exposed to the risk of sexually transmitted diseases.
  - e. Use of force as you pulled her by the hand into your home.
12. There are no mitigating features of the offending itself.
13. Counsel have both cited cases to assist the Court with setting an appropriate starting point. The prosecutor submits that the appropriate starting point is 8 years imprisonment and Mr Molbaleh submits that the appropriate starting point is 3 years imprisonment.



14. I do not intend to discuss the cases cited in detail. A starting point of 8 years imprisonment is out of range. The leading case in this area is *Public Prosecutor v Gideon* [2002] VUCA 7. *Gideon* involved a charge of unlawful sexual intercourse laid under s 97(1) of the Penal Code. The offending in *Gideon* is more serious than the present case. The victim was 12, the defendant was in a position of trust in relation to the victim, was much older, the intercourse happened more than once and the victim was told not to tell. The victim suffered harm. The Court of Appeal said the starting point should have been no less than 6 years imprisonment.
15. A starting point of 3 years imprisonment is too low, given the aggravating factors I have had regard to. The recent case of *Public Prosecutor v Tulili* [2024] VUSC 201 confirms this. *Tulili* involved a charge of sexual intercourse without consent under s 90 and 91 of the Penal Code, which I accept is a different charge. However, *Tulili* did involve a one off incident so is of assistance. The victim was 17 years and the defendant was 20 years. The defendant grabbed the victim, dragged her into bushes and had non consensual sexual intercourse with her. There was a breach of trust involved. The starting point adopted by Trief J was 5 years imprisonment. The present case does not involve a breach of trust but the victim is younger than the victim in *Tulili*.
16. Taking the aggravating factors into account and the 2 cases I have referred to, I adopt a starting point of 5 years imprisonment.

#### **Guilty plea and personal factors**

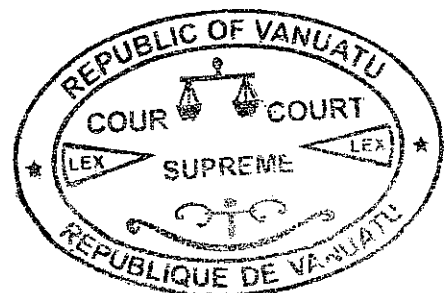
17. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. That equates to a discount of 20 months from the starting point.
18. You are now aged 18 years and a first offender. You were 17 at the time of the offending.
19. You are very remorseful and have learnt your lesson. This is detailed in the pre-sentence report and also your sworn statement.
20. You were in Port Vila temporarily to get a holiday job. Your plan was to go back to Tanna to continue with your education.
21. There has been a custom reconciliation ceremony. You took part. It was accepted. It involved some root crops, 5 x mats, a goat, kava, rice, calico, chicken wings. It was



21. There has been a custom reconciliation ceremony. You took part. It was accepted. It involved some root crops, 5 x mats, a goat, kava, rice, calico, chicken wings. It was gracious of the victim's family to accept the reconciliation. They voice a wish for you to serve a sentence on Tanna in the event that there is a community based sentence.
22. Youth has long been recognised as a mitigating factor in sentence. This is to acknowledge that there are neurological differences between young people and adults, and that young people generally have a greater capacity for rehabilitation. I assess that because of your age and willingness to take responsibility, there are good prospects of rehabilitation.
23. As you are a first offender, took part in a custom reconciliation, are remorseful, your age at the time and good prospects of rehabilitation, there is a further discount of 12 months from the starting point, which equates to 20 %.
24. You were remanded in custody for a period of 2 weeks and 2 days from 11 November to 27 November 2023. This is an effective sentence of one month and 4 days imprisonment. This was how the calculation was undertaken recently by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. So, I reduce the sentence by a further 2 months.

### **End Sentence**

25. Taking the starting point and the deductions just discussed into account, the end sentence is 2 years 2 months imprisonment.
26. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor.
27. Under s57, I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor v Gideon* [2002] VUCA 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse.
28. This was serious offending. On the other hand, I take into account that at the time of the offending, you were 17 years old. You had no prior convictions. You voluntarily admitted the offending to the Police when interviewed. You pleaded guilty at the first reasonable opportunity and there was a custom reconciliation ceremony with the victim's family.



29. In the sentencing of young offenders, the dual purposes of punishment and deterrence may need to give way to reform and rehabilitation in the interests of society that young offenders be rehabilitated and grow up to become responsible law-abiding members of society: *Hermomanley v Public Prosecutor* [2010] VUCA 25 at [17]. There is also a helpful discussion about the relevance of youth to sentencing (including suspension of sentence) in a recent decision of Hastings J, *Namaka v Public Prosecutor* [2024] VUSC 137. I adopt the observations made in that case.
30. I consider that the imposition of an immediate sentence of imprisonment on you with the consequence of exposing you to long term hardened criminals would be counter-productive and inappropriate.
31. I therefore exercise my discretion under section 57 of the Penal Code to suspend the sentence for 2 years. You are warned that if you are convicted of any offence during that 2 year period that you will be taken in custody and will serve this sentence of imprisonment, as well as the penalty imposed for the further offending.
32. This is an exceptional case given your youth and good prospects of rehabilitation. In such circumstances, an immediate custodial sentence is not required. This was the approach taken by the Court recently in *Public Prosecutor v Tulili*. Both counsel were aware of *Tulili*. Mr Molbaleh relied on *Tulili* to submit that the sentence should be fully suspended. Ms Lunabek submitted that the sentence should not be fully suspended. As she noted, *Tulili* is a Supreme Court decision and reminded the Court about the principle enunciated in *Public Prosecutor v Gideon* regarding suspension, as outlined above. I took Ms Lunabek's submission into account, but youth and prospects of rehabilitation have led me to take a merciful approach here.
33. In addition, you are sentenced to 100 hours community work.
34. You have 14 days to appeal against the sentence.
35. I make a permanent order suppressing the name and identifying details of the victim.

DATED at Port Vila this 31st day of July 2024  
 BY THE COURT

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 Justice M A MacKenzie

