

**IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU – Luganville,
Santo**
(Criminal Jurisdiction)

Criminal Case No. 25/3670 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

Port Vila

State

AND: Erickson Kue

Port Vila

Defendant

Date of plea: 9 December 2025
Date of sentence: 19 December 2025
Before: Justice B. Kanas Joshua
Counsels: Ms Betina Tamau, for the State
Ms Barbara Taleo, for the defendant

SENTENCE

Preliminary

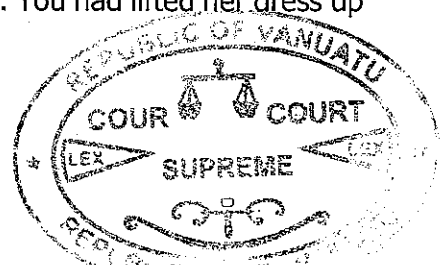
1. Prosecution had overlooked to file a submission for this case. She accepted that if the court had prepared a draft sentence, it should be given.
2. The sentence was prepared without a prosecution submission; however, research was carried out from similar cases to aide in completing the sentence.

Introduction

3. Mr Erickson Kue, you appear today for sentence having pleaded guilty to one count of act of indecency without consent, contrary to Section 98(a) of the Penal Code Act [CAP 135].
4. This sentence is to hold you responsible for your actions so others who also behave in this way can see that this is against the law and they can be punished, so they can stop their behaviour. This sentence should help you to rehabilitate, and must be generally consistent.

Facts

5. One night in September 2025, GT ("the complainant") was sleeping inside the house with her child. Her husband was attending a funeral at the time and had not returned home yet. GT had left the door to the room open so her husband can enter the house on his return. While she was sleeping, she felt a hand touching her buttocks and trying to remove her underwear. She opened her eyes and saw you beside her. You had lifted her dress up



to her hips and your hand was on her underwear attempting to remove it. She was shocked and called out for her grandmother. You got up and ran out of the house.

6. Under caution, and in court, you admitted to these facts.

Starting point

7. Sentencing is done in two steps.¹ The first step is to set a starting point. Reference is made to the aggravating and mitigating factors of the offending and the maximum penalty of the offence. The maximum sentence for the offence is 7 years of imprisonment.
8. The aggravating factors here are:
 - a. Breach of trust;
 - b. Some degree of planning;
 - c. Psychological effect on the victim; and
 - d. Loss of dignity for the victim.
9. There are no mitigating factors of the offending.
10. The following cases of *PP v. Gideon*², *Tangiat v. PP*³, *PP v. Johnson*⁴ and *PP v. Natiang*⁵, were used to determine a starting point. The underlying principle in *Gideon*, is that sexual offences warrant immediate custodial sentences. In *Tangiat*, the court of appeal stated that the touching of a victim's breast on the outside of her clothes "*falls at the lower end of the scale for this offence*" and considered that 9-12 months imprisonment was an appropriate starting point. In *Johnson*, a starting point of 2 years 6 months was imposed as a starting point. The defendant was charged with one count of act of indecency for touching the victim's breast and vagina over her clothes. In *Natiang*, the court imposed 16 months imprisonment as a starting point when defendant entered the kitchen where the victim was sleeping and touched her breast through her clothes and demanded sex from her.
11. The facts in the present case are similar to *Natiang*, however, it did not get to the point where the defendant demanded sex from the complainant. The starting point must be less than *Natiang*.
12. Defence submitted the cases of *PP v. Tari*⁶, and *PP v. Frank*,⁷ as guidelines to a starting point. In *Tari*, a starting point of 2 years imprisonment was set by the court. In that case the defendant had stood outside the room where the complainant was sleeping and reached inside and touched the complainant's vagina and breasts. In *Frank*, the court set a starting point of 12 months imprisonment. The defendant was drunk and approached the complainant from behind and grabbed her breasts and squeezed them. then he

¹ *Jimmy Philip v. PP* [2020] VUCA 40, which applied *Moses v. R* [2020] NZCA 296.

² [2002] VUCA 7.

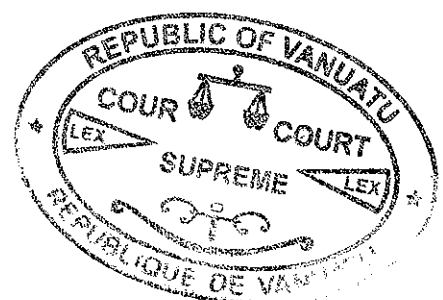
³ [2014] VUCA 5.

⁴ [2024] VUSC 373.

⁵ [2021] VUSC 116; Criminal Case 1095 of 2021 (25 May 2021).

⁶ [2025] VUSC 186.

⁷ [2025] VUSC 47.



removed his hands and left. The present case is similar to *Frank*, however, the defendant did not touch the complainant's breasts. An appropriate starting point should be between 12 – 16 months imprisonment.

13. I impose a starting point of 14 months imprisonment, as facts of the present case are very similar to *Natiang*.

Guilty plea and personal factors

14. The second step is to make the appropriate deductions for the guilty plea and personal factors to the defendant. I give $\frac{1}{3}$ reduction for the early guilty plea entered by the defendant, as this is his first encounter with the law. This brings the sentence to 9 months 10 days.

15. For the following personal factors, I make a further reduction of 2 months:

- a. The defendant is a first-time offender;
- b. He cooperated with the police
- c. He is remorseful and realizes the wrong committed;
- d. He has three children and is the sole provider for his family;
- e. He participates well in his community; and
- f. He has gardening and farming skills.

16. This brings the sentence to 7 months 10 days. Your time spent in remand must also be taken into account. You spent 4 weeks, which is equivalent to an effective sentence of 8 weeks or 2 months. In deducting this, your sentence comes to 5 months 10 days.

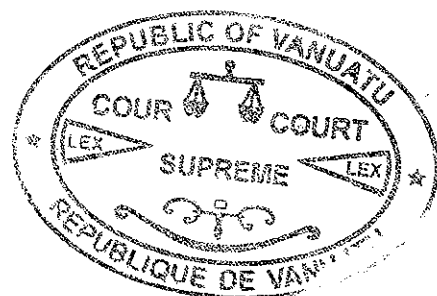
End sentence

17. Mr Erickson Kue, you are sentenced to 5 months, 10 days imprisonment.

18. You are 17 years old and a first-time offender. I am suspending your sentence for 12 months, under supervision. You must take this as an opportunity to be a better person and learn to make good decisions as you grow up. If you offend within the 12 months, you will be arrested and this sentence will be activated, in addition to any other penalty imposed for the further offending.

19. To assist with rehabilitation, I order

- a. That you must do 80 hours of community work;
- b. That you must attend an appropriate program offered by Probation services, to help you be accountable for your actions.



20. In addition, I order that all details leading to the identification of the complainant are permanently suppressed.

21. You have 14 days to appeal.

Dated at Port Vila on this 19th day of December 2025

BY THE COURT

