

PUBLIC PROSECUTOR

v

WILLIE SAM

Date of Plea: 19 November 2024
Date of Sentence: 30 January 2025
Before: Justice M A MacKenzie
Counsel: Ms G Kanegai for the Public Prosecutor
Mr KS Amos (holding papers for Ms L Bakokoto) for the Defendant

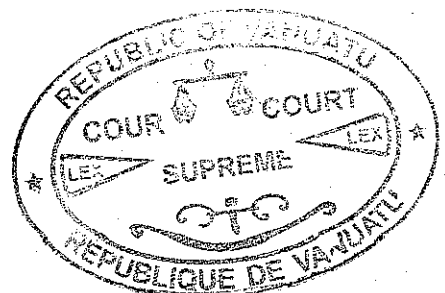
SENTENCE

Introduction

1. Mr Willie Sam, you appear for sentence having pleaded guilty to a charge of unlawful sexual intercourse contrary to s 97(1) of the Penal Code [CAP135]. The maximum penalty for this offence is life imprisonment.

The Facts

2. Both you and the victim are from Epi Island. At the time of the incident the victim was aged 8 years, and you were aged 21 years. On 28 April 2023, the victim was playing with two friends when you called out to her to come and watch a movie. You instructed the group that only the victim was to follow you. You took her into her family's bush kitchen, removed her clothing, held her firmly and penetrated her vagina with your finger. It was so painful that she pulled your hand away from her body. You told the victim that "she is your woman". The victim told her mother what happened, and a complaint was made to police.



Sentencing purposes/principles

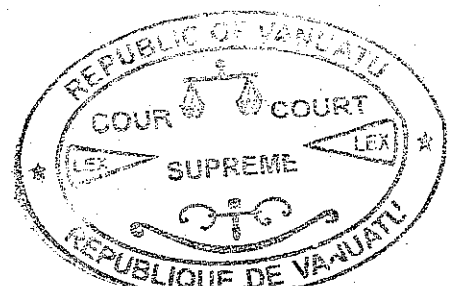
3. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

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

Starting point

5. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.
6. The aggravating factors are:
 - a. The incident took place in the victim's bush kitchen. She was entitled to feel safe in her own yard.
 - b. The victim was vulnerable because of her age and the age disparity. The victim was aged 8 years, and you were aged 21 years. The age disparity is 13 years.
 - c. There was a degree of premeditation and planning as you called out to the victim to follow you, and you isolated her from her friends.
 - d. While not as intrusive as penile penetration, the digital penetration was accompanied by force. You held the victim firmly. I infer that you forcefully penetrated the victim's vagina as it caused her significant pain.
 - e. The emotional and psychological harm to the victim. While there is no specific information about the impact, it is well recognised that harm can be longstanding and may not manifest itself until many years down the track.
7. There are no mitigating features of the offending itself.
8. The prosecutor submits that that the appropriate starting point for the unlawful sexual intercourse is 5 years imprisonment. Defence counsel submits that the appropriate starting point is 4 to 5 years imprisonment.
9. Both counsel recognise in their helpful written submissions that the offending in the present case does not involve penile penetration. Therefore, *Public Prosecutor v Andy*

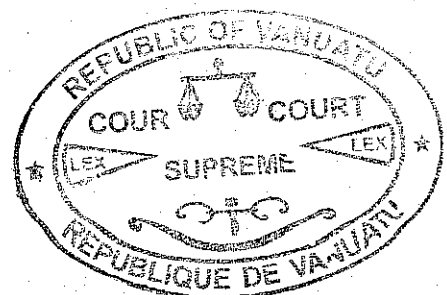


[2011] VUCA 14, and *Nampo v Public Prosecutor* [2018] VUCA 43 are applicable. Both cases discuss the distinction between penile and other forms of sexual intercourse, which should be recognised for sentencing purposes. As explained in *Nampo*, it has been clear law in Vanuatu that penile intercourse as opposed to other forms of penetration of the vagina is “more serious” and “more physically intrusive”

10. *Andy* involved unlawful sexual intercourse. The victim was aged 10 years and the defendant aged 30 years. The offending involved a one-off incident of licking of the victim’s vagina and then digital penetration. There was a breach of trust, and the victim was injured. The Court of Appeal said that a starting point of 6-7 years imprisonment was warranted. I accept that the factual circumstances in *Andy* are comparatively more serious. Another useful case is *Public Prosecutor v Sailas* [2024] VUSC 217, because it involved the same charge as the present case and there are some factual similarities. In *Silas*, the defendant gave the victim VT 200, took the 11-year-old victim into his bedroom, removed her clothes, opened her legs and inserted a finger into her vagina. While doing so, the defendant used offensive words, kissed the victim to her face and sucked on her breasts. After a review of sentencing cases involving digital penetration, the starting point adopted was 5 years imprisonment.
11. Taking into account both *Andy* and *Silas*, and the aggravating factors here, particularly the victim’s vulnerability because of her age, and that a degree of force was used, I adopt a starting point of 5 years imprisonment.

Guilty plea and personal factors

12. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea, which saved the victim from the trauma of having to give evidence. The sentence is reduced by 20 months imprisonment.
13. You are now aged 22 years and are a first offender. You were 21 at the time of the offending, and so relatively young. It is recognised that there are age related neurological differences between young people and adults. Young people tend to act with impulsivity, and not think through the consequences. Also, generally young people have a greater capacity for rehabilitation, as noted in *Public Prosecutor v Tullili* [2024] VUCA 54.
14. You have good family and community support. You are in a relationship. You say that you are sorry for your wrongful actions. While I accept that there is remorse expressed, you do lack some insight, given that you explained to the probation Officer that you had lustful thoughts when you saw the victim’s underwear.
15. For these factors, the sentence is reduced by 6 months (approximately 10%).



16. There has been a custom payment made following a custom ceremony. The payment was accepted by the victim's family. This must be taken into account. The custom payment was a pig, 2 kava stems, 5 bundles of bananas, 6 mats, 3 bundles of water taro, 3 bundles of calico, and VT 3500 cash. I reduce the sentence by 4 months for this factor (approximately 7 %).

End Sentence

17. The end sentence is 2 years 6 months imprisonment.
18. There is a discretion to suspend the sentence, in whole or in part, pursuant to s 57 of the Penal Code, taking into account the circumstances, the nature of the crime, and your character. Your counsel accepts that there are no exceptional circumstances here warranting suspension of the sentence.
19. As the Court of Appeal said in *Public Prosecutor v Gideon* [2002] VUCA 7, it will only be in an extreme or exceptional case that suspension could ever be contemplated in a case of sexual abuse. The approach to suspension of sentences for serious sexual offending has been recently reaffirmed in *Public Prosecutor v Tulili* [2024] VUCA 54. While I note that you are a first offender, are relatively young, accept responsibility, and have made a custom payment, this is serious offending. You took advantage sexually of a vulnerable young female. This must be strongly condemned. There is nothing exceptional about the circumstances, or your character so as to justify suspension of the sentence, and I decline to do so, either wholly or in part. Relative youth in this case, in and of itself, cannot give way to the need to impose a sentence which acknowledges the seriousness of the offending, and meets the need for accountability, deterrence and denunciation.
20. I impose an immediate sentence of imprisonment of 2 years 6 months. You have been in custody since 7 October 2024. Therefore, the sentence is to be backdated to commence from that date.
21. You have 14 days to appeal against the sentence.
22. I make a permanent order suppressing the name and identifying details of the victim.

**DATED at Port Vila this 30th day of January 2025
BY THE COURT**

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Justice M A Mackenzie

