

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

DERICK WILTON

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Lent Tevi for Public Prosecutor
Mr Jacob Kausiama for the Defendant

9th May 2006

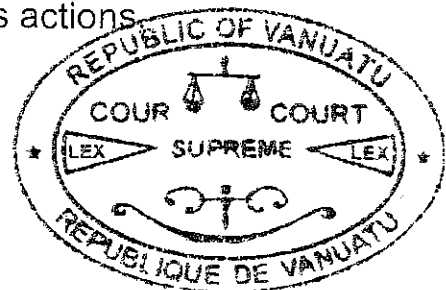
CONVICTION AND SENTENCE

Derick Wilton (DW) pleaded guilty to one charge of attempted rape contrary to section 28 and 91, and to one charge of attempted incest contrary to sections 28 and 95(1)(a) of the Penal Code Act [CAP.135] (the Act).

The victim is the defendant's own daughter, one of 6 children. The defendant is 35 years of age. The offence took place on 13th February 2006. The victim accompanied her father to the garden where he threatened her with a stone and a stick. He forced her to lie down and attempted to penetrate her. He ejaculated onto her clothing.

The aggravating features of this case were that:-

- (a) The victim is the daughter of the defendant.
- (b) As such her father stood in a position of trust.
- (c) However he breached that trust by his actions.



- (d) Some degree of threats and physical force was used.
- (e) A stick and stone were used as a means of threats.
- (f) The father is a mature person.

His only mitigating factors are that:-

- (a) He is a first-time offender.
- (b) He pleaded guilty at the first opportunity.
- (c) He has apologized, a sign of remorse and contrition.

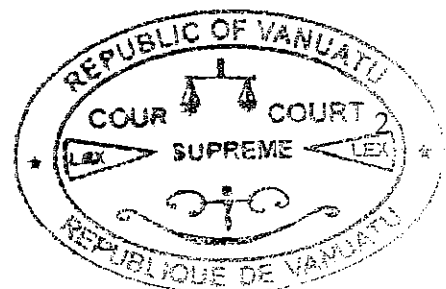
The aggravating features clearly outweigh his mitigating factors. There was clearly no attempt by DW to withdraw from the attempt. And his actions were not merely acts of preparation towards the commission of the offences. Attempts involve acts taken by the offender which is a step towards the commission of the crime of rape and/or incest, and that act(s) must be immediately connected with it. That is the requirement under section 28(1) of the Act.

DW had an ejaculation after he had tried to penetrate his daughter. Those are acts immediately connected with rape and incest. Section 28(4) of the Act provides that an attempted offence shall constitute an offence punishable in the same manner as the offence concerned, here rape and incest.

Rape carries a maximum penalty of life imprisonment. Incest carries a maximum penalty of 10 years imprisonment.

DW had clearly abused the trust placed upon him as a father to care and protect her. Instead he violated and abused her sexually.

This case calls for a custodial sentence to act as a deterrence to both the defendant and other men.



I therefore consider the following sentences to be appropriate for Derick Wilton:-

- (1) For Attempted Rape – 3 years imprisonment.
- (2) For Attempted Incest – 2 years imprisonment.


These two terms will be served concurrently to begin on the date he was first taken into custody. He will serve a total of 3 years in prison at Luganville.

I have taken his mitigation factors into account in imposing the above terms. The initial terms would have been 6 years for attempted rape and 3 years for attempted incest. The balance of those terms have been removed so as to arrive at the final figures above.

I therefore hereby sentence Derick Wilton to a term of imprisonment of 3 years with immediate effect.

DATED at Luganville this 12th day of May 2006.

BY THE COURT


OLIVER A. SAKSAK
Judge

