

PUBLIC PROSECUTOR

V

FLORIANO GILTERE

Hearing: 16 May 2011
Before: Justice Robert Spear
Appearances: Leon Malantugun for the State
Eric Molbaleh for the Accused

SENTENCE

1. Floriano Giltere you are for sentence on one charge of having unlawful sexual intercourse. This offending occurred back in 2005; more exactly. Christmas Eve of 2005.
2. The summary of facts is not disputed. The complainant had gone to visit her grandmother at her mother's store. You and a friend were there as well. You clearly came on to her, held her arms and kissed her. She ran off but you followed her. Eventually, the two of you had sexual intercourse and it would appear that it was consensual. There is no suggestion here that the sexual intercourse, when it eventually took place, was without the consent of the complainant. I note that the complainant was, at that time, a girl aged 13 years 9 months.
3. Be that as it may, this is an offence that carries with it a maximum sentence of 5 years imprisonment. In each case of this nature, the court has to be realistic and understand what might be a sexual experimentation between young people of a similar age and stage as against the real point of the

crime which is to protect the young and vulnerable from the sexual advances of older and more powerful adults.

4. It is not clear entirely when you pleaded guilty to the charge but it does appear that it in 2008 following your committal for trial. Regrettably, you did not answer to your bail to attend the sentencing hearing in 2009 and you have been a fugitive from justice since that time. In all, you have been hiding away from this case for over 2 years and the only reason you are in court today is because you have been arrested by the police pursuant to the warrant that was issued for your arrest in early 2009. I will deal with that again in a few minutes.
5. This offending, of course, as I have mentioned, is illustrative of a situation where an older person has taken advantage of a younger person and that has happened entirely for the purposes of sexual gratification. There was an age difference of just over 5 years between you and the complainant. While at 13 years 9 months, the complainant may well have been fully aware of what was happening, the point of this crime is to ensure that young girls (in particular) are also protected from themselves and thus protected from making foolish mistakes. Equally, it is designed to ensure that older men (even at 19 years of age) know that some things are off limits.
6. I note that a reconciliation ceremony has not taken place and there appears to have been some good reasons for that. However, the fact that you decided to skip bail and that you have been evading apprehension for now up to 2 years shows that you have not been serious in your desire to reconcile and you have not been prepared to face up to the consequences of your actions.
7. You are now 26 years of age, the father of a young child and you in a stable de facto relationship. That is all dealt with clearly and exactly by the probation officer in the pre-sentence report. You work as a farmer and sell produce in order to support your family.

8. Mr Molbaleh accepts the submissions from Mr Malantugun (for the State) that this is offending where the court first and foremost has to consider a sentence of imprisonment. As I have said, the circumstances of a case as this can vary widely and I place this at the lower end of a scale of seriousness although not at the very lowest end.
9. In my view, a starting point of 2 years imprisonment is appropriate. There is nothing here that would warrant an uplift from that. I have reached the point of 2 years imprisonment having regard, in particular, to your respective ages at that time. It is clear that you entered a guilty plea at an early opportunity and you would normally be entitled to a one third discount against the 2 years from that. However you have strung this matter out by skipping on your bail and accordingly I am going to halve the credit that would otherwise be given to you leaving a discount of only 4 months.
10. I am not making any further allowance for your youth because I have set the starting point of 2 years imprisonment having regard to your age at that time as well as the age difference between you and the complainant.
11. So the sentence of this Court is that you are to be imprisoned for 20 months. The question arises as to whether that should be suspended. I would have been far more attracted to a suspended term of imprisonment, either in whole or in part, if you had been prepared to take your sentence ack in 2009. However, ran away from this and that counts against you. I am not prepared to suspend your sentence.
12. You have been in custody for 13 days by my calculations from 3 May 2011 and so the sentence of this court is that you are sentenced to imprisonment for a term of 20 months imprisonment less 13 days.
13. You have 14 days to appeal this sentence if you are not satisfied with it.

ADDENDUM

14. At the conclusion of the sentencing hearing, Mr Molbaleh raised with me a concern that I had been informed by Mr Malantugun that the maximum sentence for this offence was 10 years imprisonment whereas, as Mr Molbaleh correctly pointed out, it was 5 years imprisonment. I realised that mistake prior to determining the sentence mistake which is why I adopted 2 years as the starting point..

BY THE COURT