

**PUBLIC PROSECUTOR – VS – HENRY PAUL MOFET**

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Mrs. Losana Matariki for Public Prosecutor and State  
Mr. Henzler Vira for Defendant*

**Date:** *23<sup>rd</sup> May 2014*

**SENTENCE**


1. Hengry Paul Moffet you are for Sentence today for having pleaded guilty to one charge of Sexual Intercourse without consent contrary to section 91 of the Penal Code Act Cap 135.
2. The Offence of sexual Intercourse without consent is a very serious charge because it carries a maximum penalty of life imprisonment.
3. The Offence took place at a village on Tanna. The victim is a 69 year old woman with a disability. She cannot see clearly. She was weeding in her garden by herself. You walked up to her, threatened her that you would kill her dead and pushed her to the ground. She tried to resist but you squeezed her neck then had penile penetration with her without her consent. Although the victim could not see you, she recognized your voice. She was frighten of what you might do to her so she stopped struggling and remained quiet while you sexually abused her. After you had finished with her you left her and she returned to her house crying. Her family members found out and the matter was reported to the police who arrested you. You have accepted these facts.
4. Your offending in this case calls for a custodial sentence for the following reasons:-
  - a) To mark the gravity or seriousness of your offending.
  - b) To mark public disapproval of your action.
  - c) To serve as a deterrence to you and to others.
  - d) To punish you adequately and appropriately.
  - e) To protect the weak and vulnerable members of the community in particular girls and women.

The case of **Public Prosecutor v. Ali August** [2000] VUSC 73 and **Public Prosecutor v. Gideon** [2002] VUCA 7 are classic cases that provide authority for the Court to impose this punishment.

5. Both the Prosecution and defence Counsel submit the starting point should be 6 years imprisonment. The Court accepts that and therefore imposes an imprisonment sentence of 6 years as the starting point.
6. There will be an uplift of 3 years for the following aggravating features-
  - a) The victim being 69 years old and with physical disability.
  - b) There was a breach of trust between grandson and grandma.
  - c) The age disparity of 20 and 69 years.
  - d) The violence and threats used.
  - e) Past criminal record or conviction of Defendant.  
That brings sentence to 9 years imprisonment.
7. I have considered matters raised in your pre-sentence report and the mitigating factors submitted on your behalf by defence Counsel. I allow reduction for the following mitigating factors-
  - a) For guilty Plea – 1/3 reduction is allowed. Only 2 years of this are allowed in view of your past criminal record. Your sentence is now reduced from 9 years to 7 years.
  - b) For your cooperation with the police during investigation and interviews and your willingness to perform custom ceremony, 6 months are deducted from the 7 years leaving the balance of 6 years and 6 months.
8. You are therefore convicted and Sentenced to imprisonment for a term of 6 years and 6 months.
9. Your Sentence is backdated to 27 February 2014 when you were first remanded in custody.
10. That is the Sentence of the Court. You have a right of appeal against this Sentence within 14 days if you do not agree with it.

**DATED at Port Vila this 23<sup>rd</sup> day of May 2014**

**BY THE COURT**

  
**OLIVER.A.SAKSAK**  
Judge

