

PUBLIC PROSECUTOR

V

SMITH SIMON

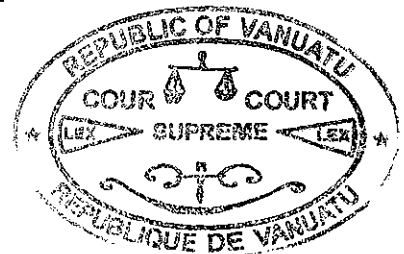
Hearing: Friday October 28th 2016 at 9 am

Before: Justice JP Geoghegan

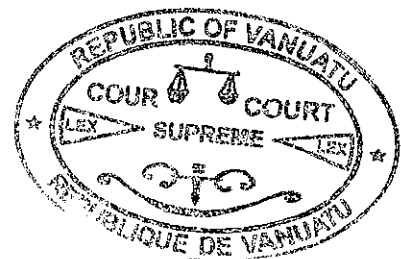
*Appearances: Damien Boe for the Public Prosecutor
Stephen Carlo (PSO) for the Defendant*

SENTENCE

1. Smith Simon you appear today for sentence in respect of one charge of unlawful sexual intercourse contrary to section 97 (2) of the Penal Code Act. The maximum sentence for that offence is 5 years imprisonment. You appear in Court as a first time offender.
2. The facts of the matter are set out in paragraphs 2 and 3 of the prosecution submissions. The complainant was living in the same village as you, the village of Epule. She was 13 years old at the time of your offending.
3. On the day of the offence which was October 18th 2015, the complainant and her sister had contact with you and another individual at a coconut plantation. You asked to exchange a mobile phone with the complainant and that was done. You told the complainant later to come to your home to collect your phone and when she did so she stayed with you that evening and you engaged in intercourse with her. Subsequent to that the matter became known to her parents and a complaint was made to the police.



4. Your guilty plea was entered on the first day of your trial. At that time you were facing an alternative charge of rape but it became clear from the evidence given by the complainant that you were in some type of relationship, albeit an unlawful one, and that the intercourse that you engaged in with the complainant was entirely consensual.
5. Accordingly you can receive little credit for the entry of a guilty plea coming at that time.
6. I have read your pre-sentence report and acknowledge that you have not had a particularly easy upbringing having been adopted at 3 months of age and then losing your adoptive mother who died when you were 9. You have very limited education having been educated at primary level only but you have a very close relationship with your adoptive father who speaks very positively of you. He described you as proactive in your home and community and as being helpful to him. You are actively involved in your church.
7. You have never had paid employment and you are dependent upon subsistence farming. One thing that was clear from the report is that you appear to be deeply and genuinely remorseful for your offending.
8. You clearly did not think about the inappropriateness of engaging in sexual intercourse with a girl as young as the complainant and you have stated to the probation officer that you did not know that what you were doing was against the law, and I suspect that that is correct.
9. Yours unfortunately is not an uncommon case and clearly there is a need for significant education both for girls and boys throughout Vanuatu to ensure that they are more aware of the difficulties of sexual relationships between young people and the potential consequences of engaging in them.

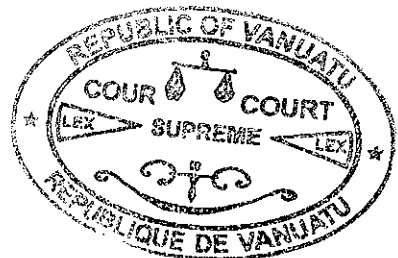


10. Your family has conducted a reconciliation ceremony with the victim's family but her family, perhaps understandably, has concerns about you returning to the village.
11. The victim fortunately does not appear to have suffered any significant consequences as the result of this offending.
12. I have read submissions prepared by your counsel and by Mr Boe for the Public Prosecutor. Mr Boe refers to the Court of Appeal decisions in PP v. Gideon¹ and PP v. Ali August² which emphasize the clear need for the Court to condemn the abuse of women generally and young victims particularly. In Gideon the Court of Appeal expressed the view that it will only be in extreme cases that suspension of a sentence could be contemplated in the case of sexual abuse.
13. Mr Boe makes reference to the case of PP v. Enoch Shing³ which involves one count of unlawful sexual intercourse where the victim was 14. An end sentence of 1 year and 6 months was imposed. In that case the offender was 28 years old. He was twice the age of the victim. That is not the same as your case as you were 18 at the time of the offence and victim was 13.
14. Mr Boe refers to the aggravating features here being the age of the victim and the effect of the offending upon her. But obviously the age of the victim in these cases is also a necessary component of the charge. Mr Boe submits that an appropriate starting point is one of 2 years imprisonment increased to 3 years for aggravating factors. While Mr Boe suggest that a 6 month allowance could be given for your guilty plea, I disagree with that as you pleaded on the first day of your trial, as I have said and after the complainant had given evidence. Your plea did shorten the trial, that any allowance for that must be minimal.

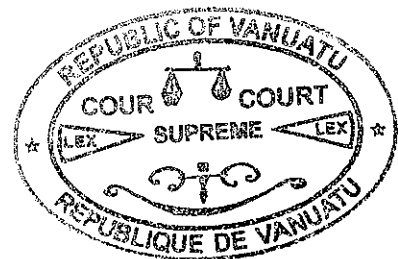
¹ [2002] VUCA 7

² [2002] VUSC 29

³ [2015] VUSC 6



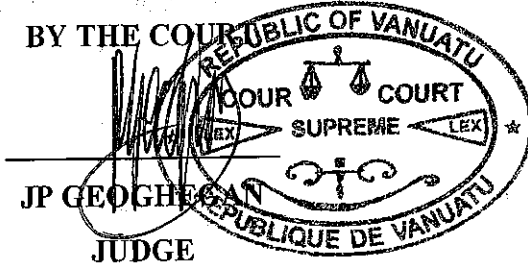
15. Mr Carlo has referred me to two authorities involving young offenders like you. In those cases, each involving the parties in a relationship, suspended sentences and community work were imposed. Mr Carlo proposes a starting point to two years with a deduction for a guilty plea and the imposition of community work and supervision on a suspended sentence.
16. Looking at the authorities I consider that an appropriate starting point taking into account the appropriate aggravating features is one of 20 months imprisonment.
17. This was one occasion in circumstances where there was clear consent. What must be emphasized however, is that the law that applies here is designed to protect young girls not only from exploitation by others but to protect them from themselves and the foolish decisions which can sometimes be made by someone without the majority to make a full and considered decision about such matters.
18. I consider that your clear remorse, your late guilty plea and your family's reconciliation with the victim's family justify a 6 month reduction.
19. Your final sentence of is therefore one of 14 months imprisonment.
20. As you have been in custody since April 1st your sentence is deemed to have commenced from that date. That should mean that you are eligible for almost immediate release.
21. For those reasons I do not need to consider the imposition of a suspended sentence because you have effectively served your sentence. I also am unable in those circumstances to impose community work or supervision but Mr Simon I hope that this has been a salutary lesson for you in terms of the wrongfulness of this action and I do hope that you are now able to move on having learned something from this and you are able to rebuild your life.



22. You have 14 days to appeal this sentence.

Dated at Port Vila this 28th day of October 2016

BY THE COURT



JP GEORGHEAN
JUDGE