

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal
Case No. 20/2769 SC/CRML

BETWEEN: Public Prosecutor

AND: David Poida

Date: 15th April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr. P. Toaliu for the Public Prosecutor
Mr. H. Rantes for the Defendant

SENTENCE

A. Introduction

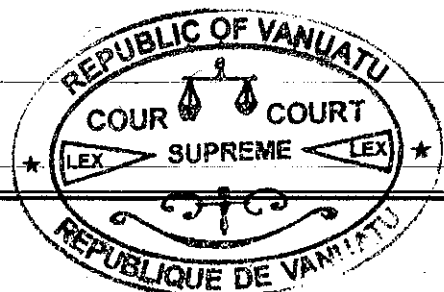
1. Mr Poida pleaded guilty to doing an act of indecency without consent. He was convicted on accepting the summary of facts.

B. Facts

2. On 3 June 2020, the 49 year old complainant went to her garden to get some vegetables. While there, Mr Poida, her brother-in-law, approached her from behind. He grabbed her and attempted to remove her trousers but failed. He then took out his penis and attempted to penetrate the complainant's vagina with his penis. She resisted and pushed him away. Mr Poida ended up ejaculating on the complainant's stomach.

C. Sentence Start Point

3. The sentence start point is to be assessed by looking at the maximum sentence for the offence and then factoring in the aggravating and mitigating factors.
4. The maximum sentence for this offending is a term of 7 years imprisonment.
5. The offending is aggravated by the close relationship between them, the fact that Mr Poida approached the complainant from behind without warning, and the fact that he ejaculated onto her. It is further aggravating that the indecency involved skin to skin contact



6. There is no mitigating aspect to the offending.
7. I set the sentence start point at 3 years and 4 months imprisonment.

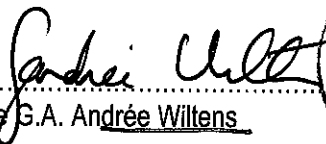
D. Mitigation

8. Mr Poida pleaded guilty at an early stage in the process, thereby sparing his sister-in-law the ordeal of having to give evidence against him. It indicates an acceptance of his wrong-doing and it has saved court time and expense. I reduce the sentence start point for these matter by 25%.
9. Mr Poida is 37 years old, a farmer. He has no previous convictions. He is widowed with 3 children, aged 9, 7 and 4.
10. Mr Poida has attended a custom reconciliation ceremony, and his apology and gifts were accepted by the complainant.
11. I further reduce the sentence start point by 6 months to take into account Mr Poida's personal factors.
12. The end sentence I impose is 24 months imprisonment.
13. I am prepared to suspend the sentence for 2 years due to the fact that Mr Poida has 3 young children to take care of whose mother has passed away. That plus his guilty plea and his custom reconciliation ceremony apology satisfies me I can exercise my discretion in this case.
14. Mr Poida need to stay offence free for 2 years in order to avoid going to jail for this case.

E. End Sentence

15. The defendant has 14 days to appeal the sentence if he disagrees with it.

Dated at Isangel this 15th day of April 2021
BY THE COURT


Justice G.A. Andrée Wiltens

