

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

**Criminal
Case No. 22/1464 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Esau Edward
Defendant**

**Coram: Justice Aru
Counsel: Ms. J. Tete for the Prosecutor
Mrs. P. Malites for the Defendant**

SENTENCE

Introduction

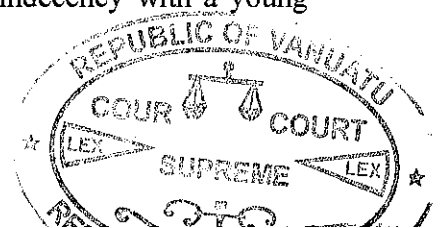
1. Mr Esau Edward pleaded guilty to one count of intentional assault, one count of act of indecency and one count unlawful sexual intercourse. This is his sentence.

The facts

2. The brief facts of the offending are that on 10 May 2022 the defendant took the victim to a vacant and abandoned property at Manples area, Port Vila where he removed her clothes, kissed her lips, opened her legs and licked her vagina.
3. The victim was afraid of the defendant and wanted to escape but he threatened to hit her with a rock and also used a stick to assault her on her legs. She was scared of him so she ran home crying and informed her aunt of the incident. They then approached the defendant and the victim identified him as the perpetrator. Thereafter a complaint was made to the Police by the victim's grandmother.

Sentence start point

4. The maximum sentence available for intentional assault where no physical damage is caused is 1 year imprisonment. For acts of indecency with a young



person the maximum sentence available is 10 years imprisonment and for unlawful sexual intercourse with a child under 13 years the maximum sentence available is life imprisonment.

5. The offending is aggravated by a number of factors. First, there is an age disparity of 29 years as the defendant is 36 years old and the victim was 7 years old. There is also an element of planning involved to commit the offending and a weapon was used to assault the victim. The victim impact statement shows that the victim is still terrified when hearing the defendant's name being mentioned and every time she walks to school she is always in fear of the defendant. There are no mitigating factors of the offending.
6. Taking unlawful sexual intercourse with a child under 13 years as the lead offence, I set a global starting point of sentence at 6 years imprisonment.

Mitigation

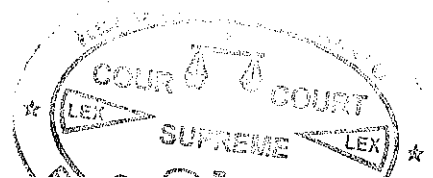
7. The defendant initially pleaded guilty to the charges of intentional assault and acts of indecency. He pleaded not guilty to the charge of unlawful sexual intercourse and only later sought to be re arraigned and pleaded guilty. The end sentence will be discounted by 15%.
8. No pre- sentence was filed as directed. Counsel submits that the defendant is 26 years old and is a first time offender and suffers from epilepsy. The end sentence will be reduced by 12 months. It was submitted that he performed a custom reconciliation by giving the following items to the victim's family: -

- 4 mats
- 1 wool mat
- 4 bundle 20 yards garment
- 1 bundle 40 yard garment
- 2 basket kumala
- 2 basket manioc
- 2 plastic kava

9. Taking these factors into account the end sentence will be further reduced by 6 months.

End sentence

10. The end sentence is therefore 3 years and 6 months imprisonment on the charge of unlawful sexual intercourse. The defendant is sentenced to 6 months



imprisonment on the charge of intentional assault and 12 months imprisonment on the charge of acts of indecency. The sentences are to be served concurrently with effect from **17 May 2022** when the defendant was remanded into custody.

11. The defendant has 14 days to appeal if he is dissatisfied with the decision.

DATED at Port Vila this 15th day of December, 2022
BY THE COURT

