

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

Criminal
Case No. 23/1913 SC/CRML

PUBLIC PROSECUTOR

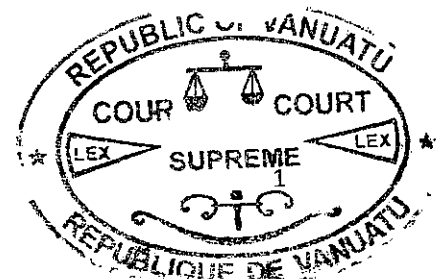
v

JONAH SIMON

Date: 4 September 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr G. Simeon
Defendant – Mr J. Garae

SENTENCE

1. Mr Simon pleaded guilty to two charges of unlawful sexual intercourse contrary to subs. 97(2) of the *Penal Code* [CAP. 135].
2. At night on 25 June 2023, Mr Simon asked the 13-year old complainant LM to go home with him at Radio Station area on Santo. During the night, he removed her clothes, lay on top of her and had sexual intercourse with her (Charge 1). He had sexual intercourse with her again the following day at his house (Charge 2). LM left Mr Simon's house with her parents and Police officers who had come looking for her.
3. Mr Simon had asked LM her age and she replied that she was 19 years old. However, it is no defence to this offending that the accused believed that the child was of or over 13 years old: subs. 97(3), *Penal Code*.
4. Mr Simon admitted his offending to the Police.
5. The maximum penalty for this offence is 15 years imprisonment.
6. It is an aggravating factor of the offending that the sex was unprotected exposing the complainant to the risk of sexually transmitted infection and pregnancy, a degree of planning and the physical and mental effect on the complainant.
7. There are no mitigating aspects to this offending.



8. I adopt a sentence start point of 3 years imprisonment as appropriate for this offending and for Mr Simon's criminal culpability.
9. I reduce the sentence start point by 33% for Mr Simon's early guilty plea which has saved time and saved the need for the complainant to give evidence.
10. Mr Simon is only 18 years old and was 17 when he committed the offending. He left school at Vanua Lava island after year 6. He has a part time job at Century Store in Luganville as a cargo boy earning VT2,000. He has no previous convictions and is willing to participate in a custom reconciliation ceremony. He is stated to be remorseful. He served 17 days in custody prior to sentencing.
11. There needs to be a discrete discount for Mr Simon's youth and immaturity. The prospects of rehabilitation are good. For those reasons I further reduce the sentence start point by 12 months.
12. The end sentence imposed is 1 year imprisonment.
13. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."
14. I have regard to Mr Simon's youth, his part-time employment, his strong prospects for rehabilitation, plus the fact that he has no previous convictions and has spent 17 days in custody prior to today in respect of this charge. I therefore exercise my discretion and suspend the whole of the sentence for 2 years. Mr Simon is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentence of imprisonment, as well as the penalty imposed for the further offending.
15. In addition, Mr Simon is to undertake 60 hours community work and 12 months supervision.
16. Mr Simon has 14 days to appeal the sentence.
17. All details leading to the identification of LM are permanently suppressed.

DATED at Port Vila this 4th day of September 2023
BY THE COURT


Justice Viran Molisa Trief

