

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

Criminal
Case No. 24/395 SC/CRML

PUBLIC PROSECUTOR

v

JOE VETGON

Date of Plea: 17 June 2024
Date of Sentence: 12 September 2024
Before: Justice M A MacKenzie
Counsel: Mr L Young for the Public Prosecutor
Mr JS Garae (Holding papers for Ms B Taleo) for the Defendant

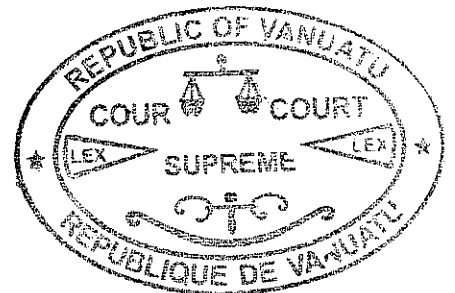
SENTENCE

Introduction

1. Mr Joe Vetgon, you appear for sentence having pleaded guilty to two charges of unlawful sexual intercourse, contrary to s 97(1) of the Penal Code [CAP 135].
2. The maximum penalty for unlawful sexual intercourse, contrary to s 97(1) of the Penal Code is life imprisonment.

The Facts

3. On 2 occasions in 2023, you had sexual intercourse with the victim, MV. MV was aged 12 years at the time. You were aged 22 years. The two of you are related. MV calls you her "cousin daddy". The offending happened on Malekula.



First occasion

4. On 27 September 2023 at about 7pm, you invited MV to a secluded area. This was near a Banyan tree. You asked her to remove her clothes. She did so. She lay down on the ground. You inserted your penis into her vagina, and moved it back and forth before removing it from her vagina. MV felt pain in her vagina. The next day she saw blood on her vagina.

Second occasion

5. On 3 December 2023, you asked MV to go with you to a copra shed. She followed you. Once there, you instructed her to undress herself. You undressed yourself and asked her to lie down. She did so. You inserted your penis into her vagina and had sexual intercourse with her. You ejaculated on the ground.

Police interview

6. When interviewed by police under caution, you admitted having sexual intercourse with MV.

Purposes and principles of sentencing

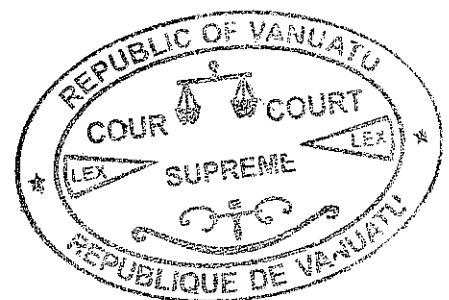
7. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

8. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

9. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offences.
10. The aggravating factors here are;



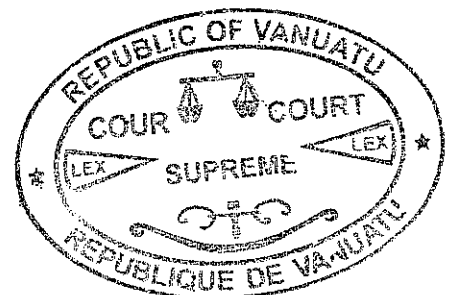
- a. This was not a "one off" incident. There were two separate occasions when you had sexual intercourse with the victim.
 - b. While taking opportunities that presented themselves, the offending was deliberate and involved planning. You asked the victim to go with you and you took her to secluded areas.
 - c. Breach of trust- the offending involved a significant breach of trust as the victim is related to you and calls you daddy. You used MV for your own sexual gratification.
 - d. The victim was vulnerable because of her age and the age disparity. She was 12 years, and you were 22 years. The age disparity is 10 years. In addition, she was vulnerable because you took her to isolated locations to have sexual intercourse with her.
 - e. The victim was exposed to the risk of sexually transmitted diseases because the offending involved unprotected penile penetration.
 - f. While harm is always inherent in this type of offending, the victim felt pain and saw blood after the first incident. There is no information about the psychological impact on the victim. Often, harm becomes obvious as a victim gets older.
11. There are no mitigating features of the offending itself.
 12. Counsel have both cited cases to assist the Court with setting an appropriate starting point. The prosecutor submits there should be a global starting point of 10 years imprisonment. In the written submissions, Ms Taleo submits that the appropriate starting point is 5-8 years imprisonment on a global basis, with the sentences to run concurrently.
 13. The leading case in this area is *Public Prosecutor v Gideon* [2002] VUCA 7. Having regard to the cases that counsel have referred to involving unlawful sexual intercourse, starting points ranging between 6- 8 years have been adopted, whether for a one-off incident or not. For example, in both *Public Prosecutor v Kemkem* [2020] VUSC 283 and *Public Prosecutor v Tanis* [2023] VUSC 45 starting points of 8 years imprisonment were adopted for one off incidents of unlawful sexual intercourse. *Tanis*, in particular, provides some assistance, because of the factual similarities. In that case, the victim was 11 years at the time of the offending. The defendant was 17 years. They were related as the defendant was a brother to the victim. One day, she woke up to find the defendant in her room. He had sexual intercourse with her and ejaculated outside. There was also a second incident which resulted in a charge of indecency. The aggravating factors relevant to setting the starting point of 8 years imprisonment are similar to the present case.



14. Briefly, I do not find one of the cases cited, *PP v Rarua* [2023] VUSC 266 to be of assistance. As the learned justice explained, the victim was 13 and so the maximum penalty is 15 years imprisonment, and not life imprisonment.
15. Given the aggravating factors, and the starting points adopted in *Tanis* and *Kemkem* for one off incidents, I consider that the appropriate starting point is 9 years imprisonment, which reflects that it was not a one off incident, the breach of trust and the victim's vulnerability.
16. One final point is that the submission that the victim willingly participated in the sexual activity and showed no sign of reluctance or fear is unattractive. Those factors do not mitigate the offending. The submission overlooks the victim's vulnerability because of her age, and the power imbalance arising from the family relationship and the age disparity. As the Court of Appeal said in *Gideon* many years ago, "*children must be protected. Any suggestion that a 12 year old has encouraged or initiated sexual intimacy is rejected. If a 12 year old is acting foolishly then they need protection from adults. It is totally wrong for adults to take advantage of their immaturity*".
17. There is a global starting point of 9 years imprisonment.

Guilty plea and personal factors

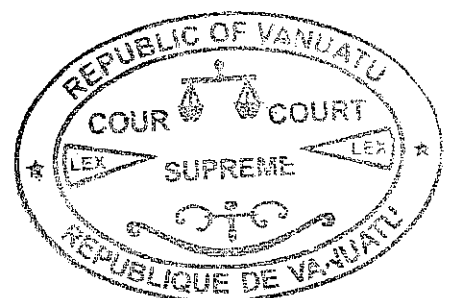
18. You are entitled to a one-third discount for your guilty plea. The prosecutor submits that the discount should only be 25 percent. However, there was an early guilty plea, and the plea saved the victim from having to give very personal evidence and re live what happened to her. That equates to a discount of 3 years from the starting point.
19. You are now aged 23 years and a first offender. You were 22 at the time of the offending.
20. The pre-sentence report records that you are living on Malekula and are currently doing gardening activities to earn a living. You have a self-reported health issue. You feel pain with a hot stomach caused by witchcraft. You have a good relationship with your family. You realise what you did was wrong and apologise. You cooperated with police. There has been a custom reconciliation. A pig, and 2 stems of kava have been given to the victim and family. This has been accepted. While you say you realise what you did was wrong, this needs to be tempered by your minimisation of the offending, as detailed in the pre-sentence report. Relevantly, you say effectively that the sexual activity was initiated by the victim putting her hand onto your trousers with intent to touch your private part.
21. As you are a first offender, cooperated with police and have some remorse, as evidenced by the reconciliation process, there is a further discount of 10 months from the starting point, which equates to approximately 10 %.



22. You spent 3 weeks in custody from 7 February to 1 March 2024, an effective sentence of 6 weeks imprisonment. The sentence is to be further reduced by 6 weeks for this factor.

End Sentence

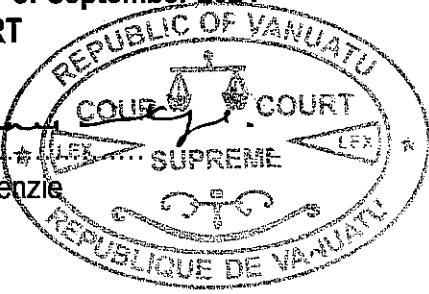
23. Taking the starting point and the deductions just discussed into account, the end sentence is 5 years 2 weeks imprisonment. I impose concurrent sentences of 5 years 2 weeks imprisonment on each charge.
24. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor.
25. Under s57, I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor v Gideon* [2002] VUCA 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse.
26. You have no prior convictions. You pleaded guilty at the first reasonable opportunity, show some remorse and have completed a custom reconciliation with the victim and her family. Those factors point towards suspension of the sentence. However, this was serious offending, given the aggravating factors detailed above. You took advantage of your position of trust in relation to a vulnerable victim for your own sexual gratification on two separate occasions. You should have been protecting MV, not taking advantage of her for your own sexual needs. As Mr Young noted in a brief oral submission, you are assessed by the pre sentence report writer to pose a risk in the community. Those factors point away from suspension of the sentence.
27. The circumstances, both in relation to the offending and you personally, are neither exceptional nor extreme so as to warrant suspension of the sentence. Accountability, deterrence and denunciation are important sentencing purposes, given the nature of the offending. Deterrence is important here. A stern response is needed. Children need to be protected. Sexual activity with vulnerable young females must be strongly condemned, as recognised by the Court of Appeal in *Public Prosecutor v Gideon*. Suspension of the sentence would send a very wrong message both to you and others. Whether or not the victim was willing is irrelevant. It is an offence to have sexual intercourse with a child under 13 years as MV was here. This is something you need to understand.
28. I decline to suspend the sentence, after weighing and balancing the competing factors.



29. The sentence of 5 years 2 weeks imprisonment is to start immediately. While you have been on bail, you were remanded in custody for 21 days. Section 50 of the Penal Code does not then apply; *Jack v Public Prosecutor* [2024] VUCA 39.
30. You have 14 days to appeal against the sentence.
31. I make a permanent order suppressing the name and identifying details of the victim.

**DATED at Port Vila this 12th day of September 2024
BY THE COURT**

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Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written in an arc at the top, and "REPUBLIQUE DE VANUATU" is written in an arc at the bottom. In the center, the words "COUPE COURT" are written above "SUPREME". On either side of the central emblem, the word "LEX" is written.