

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

Criminal
Case No. 24/1344 SC/CRML

PUBLIC PROSECUTOR

v

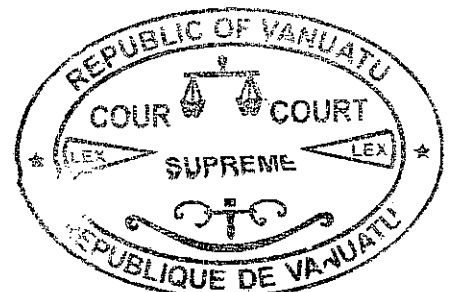
PRESLEY VUREINA

Date of Plea: 17 June 2024
Date of Sentence: 7 October 2024
Before: Justice M A MacKenzie
Counsel: Public Prosecutor - Mr L Young
Defendant – Mr K S Amos (Holding papers for Ms A Yeeon)

SENTENCE

Introduction

1. Mr Presley Vureina, you appear for sentence having pleaded guilty to four charges relating to two victims, your stepdaughters. I formally enter convictions in relation to the charges.
2. In relation to victim one, AV, there are 3 charges of unlawful sexual intercourse, contrary to ss 97(1) and 97(2) of the Penal Code [CAP 135].
3. In relation to victim two, JP, there is a charge of sexual intercourse without consent contrary to ss 90(b)(iii) and 91 of the Penal Code [CAP 135].
4. The maximum penalties for these offences are:
 - a. Unlawful sexual intercourse, contrary to s 97(1) of the Penal Code – life imprisonment
 - b. Unlawful sexual intercourse contrary to s97(2) of the Penal Code- 15 years imprisonment



- c. Sexual intercourse without consent contrary to ss 90(b)(iii) and 91 of the Penal Code-life imprisonment

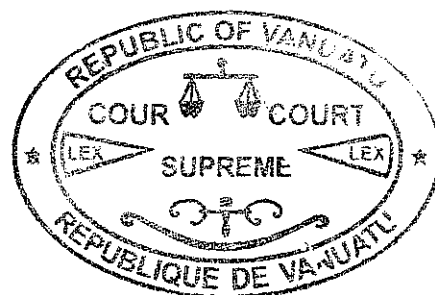
The Facts

Victim One – AV

5. On 3 occasions, you had sexual intercourse with AV. The offending took place between 2015 and 2017.
6. On the first occasion in 2015, AV was aged approximately 11 years. You asked her to accompany you to the bushes. Once there, you removed her trousers and underpants. You forced AV to lie on the ground. She refused. So, then you threatened to stab her with a knife. She then lay down on the ground. You inserted your penis into her vagina. She felt pain and cried. You told her not to make any noise.
7. The second occasion was in 2016. AV was aged about 12 years. You asked AV to follow you to the garden. You asked her for sex. AV refused. You threatened to cut her with the knife. You removed her trousers and underwear. You made her lie down on the ground. You penetrated her vagina with your penis.
8. On the third occasion, when AV was aged about 13 years, you had sexual intercourse with AV in the bushes when nobody was around.
9. AV became tired of your behaviour. In 2021, AV gained the courage to report the offending to her mother and the police.

Victim Two- JP

10. On an occasion in September 2017, you asked JP to follow you into the garden. JP was aged 15 years. You asked her for sex but she refused. You had a knife. You threatened to cut her with the knife if she refused to have sex with you. JP feared for her life so gave in. You removed her trousers and underwear. She lay on the ground. You opened her legs and penetrated her vagina with your penis. JP was kicking while you had sex with her, so you held her firmly. She was embarrassed. You told her not to tell her mother.



Police interview

11. When interviewed by police, you admitted having sexual intercourse with AV from 2017 -2021, but denied having sexual intercourse with her in 2015 and 2016. You denied having sexual intercourse with JP.

Sentencing purposes/principles

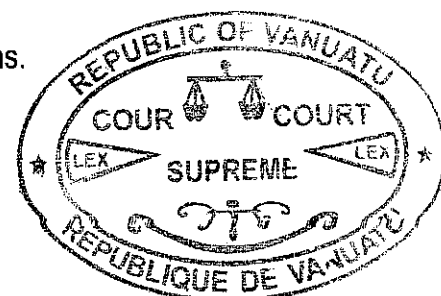
12. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

Approach to sentence

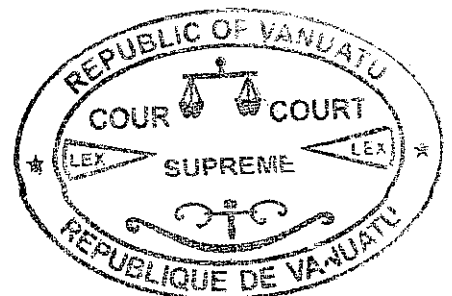
13. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

14. 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 penalties for the offences.
15. The aggravating factors here are;
 - a. Scale -there are 2 victims.
 - b. While taking opportunities that presented themselves, the offending was deliberate and involved some planning. You asked both victims to either go into the bushes or the garden with you.
 - c. Breach of trust- the offending involved a significant breach of trust as both victims are your stepdaughters. You used both victims for your own sexual gratification.
 - d. Both victims were vulnerable because of their ages and the age disparity between them and you. When the offending in relation to AV started, she was 11 years and you were 35 years. The age disparity is 24 years. The age disparity between you and JP is 22 years.
 - e. The victims were exposed to the risk of sexually transmitted diseases.
 - f. The offending against AV occurred on three separate occasions.



- g. Threats and use of a knife. You threatened to cut or stab AV with a knife. You also threatened to cut JP with a knife. You had a knife in your possession when you made that threat. This can only have been so as to compel both victims to have sexual intercourse with you.
16. There are no mitigating features of the offending itself.
 17. 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 her written submissions, Ms Taleo submits that the appropriate starting point is 5-8 years imprisonment on a global basis.
 18. The Court of Appeal has discussed concurrent and consecutive sentences in a number of cases including *Kalfau v Public Prosecutor* [1990] VUCA 9, *Boesaleana v Public Prosecutor* [2011] VUCA 33 and *Apia V Public Prosecutor* [2015] VUCA 30. There is a useful summary of these cases in *Nampo v Public Prosecutor* [2018] VUCA 43.
 19. In summary, where sentencing involves more than one victim and a number of charges, the Court of Appeal has said that it is often beneficial to decide what is the most serious offending and to impose a lead sentence on that which properly takes account of all aggravating factors and then to impose concurrent sentences in respect of other offending as that is appropriate.
 20. I consider that a global starting point is appropriate. The most serious offending here are the two charges of unlawful sexual intercourse contrary to s97(1), and the charge of sexual intercourse without consent.
 21. In relation to unlawful sexual intercourse, the leading case in this area is *Public Prosecutor v Gideon* [2002] VUCA 7. Like the present case, Gideon involved a charge of unlawful sexual intercourse laid under s 97(1) of the Penal Code. The victim was 12, the defendant was in a position of trust in relation to the victim, was much older, the intercourse happened on 4 occasions and the victim was told not to tell. The victim suffered harm. The Court of Appeal said the starting point should have been no less than 6 years imprisonment. The offending in relation to AV is more serious than *Gideon* for 2 reasons- first there were threats to stab or cut the victim with a knife. Second, the breach of trust in the present case is more significant as it is a parent/child relationship. In *Gideon*, the defendant was the boyfriend of the victim's aunt.
 22. The offending against JP constitutes sexual intercourse without consent because the consent was obtained by fear of bodily harm. Therefore, *Public Prosecutor v August* [2000] VUSC 73 and *Scott v Public Prosecutor* [2002] VUCA 29 apply. According to

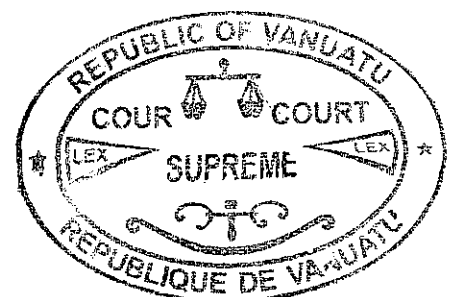


those two cases, where a rape is committed by a person who is in a position of responsibility towards the victim, the starting point should be 8 years imprisonment.

23. The starting point in this case must be higher than 8 years imprisonment, as submitted by defence counsel, with reference to both the aggravating factors and other cases by way of cross check. For example, in *Public Prosecutor v Kemkem* [2020] VUSC 283, a starting point of 8 years imprisonment was adopted for a one-off incident of unlawful sexual intercourse involving a neighbour and a 7 year old child. In *Public Prosecutor v Vetgon* [2024] VUSC 271 a starting point of 9 years imprisonment was adopted for two charges of unlawful sexual intercourse involving a 12 year old and a male relative. The offending in the present case is more serious than either *Kemkem* or *Vetgon*, given that the offending here involves two vulnerable victims and offending that was not one off offending. The offending against AV took place on 3 separate occasions.
24. I consider that a global starting point of 11 years imprisonment is appropriate, taking into account the aggravating factors and the cases I have referred to.

Guilty plea and personal factors

25. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. That equates to a discount of 44 months from the starting point.
26. You are now aged 49 years and a first offender. The pre-sentence report records that you have apologised to both victims and you say that you have delivered fines. This has not been verified. While you say you are upset about the offending, this must be tempered by your minimisation and justification of the offending, as detailed in the pre-sentence report. Relevantly, you;
 - a. Disagree that you threatened the victims.
 - b. Said that your wife's unfaithfulness was one of the reasons why you had sexual intercourse with her daughters. This, on any analysis, is remarkable.
 - a. That the sexual activity was all consensual. That completely overlooks AV's age, the use of threats and the power imbalance arising from the age disparity and the parent/child relationship. It also overlooks the presence of the knife and the threat made to JP. You lack insight.
27. You say that you are upset about taking advantage of the victims. That needs to be tempered with the minimisation and justification of the offending. There can be no separate discount for remorse. While it need not be exceptional, it needs to be actually

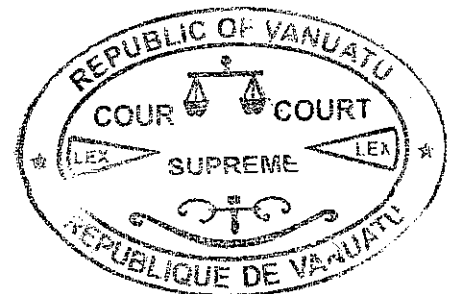


experienced. The minimisation and justification of the offending speak against genuine remorse.

28. As you are a first offender, there is a further discount of 6 months from the starting point, which equates to approximately 5 %.
29. While delay in the prosecution is regrettable, no reduction for that factor is warranted. Your liberty has not been restricted in any meaningful way and it has allowed you the opportunity to apologise to the victims.

End Sentence

30. Taking the starting point and the deductions just discussed into account, the end sentence is 6 years 10 months imprisonment. There are to be concurrent sentences of 6 years 10 months imprisonment on charges 1, 2 and 4. There is a concurrent sentence of 4 years imprisonment on charge 3.
31. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor.
32. 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.
33. You have no prior convictions. You pleaded guilty at the first reasonable opportunity, and have apparently apologised to the victims. However, this was serious offending, given the aggravating factors detailed above. You took advantage of your position of trust in relation to two vulnerable victims for your own sexual gratification. That there are two victims is relevant. You used threats to compel compliance. Your minimisation of the offending is concerning. The justification of your wife's infidelity is remarkable. It demonstrates a lack of insight and distorted thinking. Finally, you failed to appear for sentence and a warrant was issued for your arrest. You have avoided being sentenced.
34. The circumstances, both in relation to the offending and you personally, are a long way from being exceptional or extreme so as to warrant suspension of the sentence. Accountability, deterrence and denunciation are important sentencing purposes, given the nature of the offending. A stern response is needed. Exploitive sexual behaviour towards 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. Relevantly, you also failed to appear for sentence, which shows a lack of regard for the seriousness of the offending and the



sentencing process. In all the circumstances outlined, I decline to suspend the sentence.

35. You failed to appear for sentence on 1 August 2024. A warrant was issued for your arrest. The arrest warrant was executed on Thursday 3 October 2024. You have been held in custody since then. Therefore, s 50 of the Penal Code does not apply. The sentence is to commence immediately; *Jack v Public Prosecutor* [2024] VUCA 39. To take account of your time in custody, the sentence start date is backdated to 3 October 2024.
36. You have 14 days to appeal against the sentence.
37. I make a permanent order suppressing the name and identifying details of the victims.

**DATED at Port Vila this 7th day of October 2024
BY THE COURT**

Mackenzie
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Hon. Justice M A Mackenzie

