

CR 201 - 2003

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU

Criminal Case No.201 of 2003
SC File No.11 of 2003

(Criminal jurisdiction)

PUBLIC PROSECUTOR

V.

ORMOL LUKE

**Coram: Mr Justice Oliver A. Saksak
Ms Cynthia Thomas -Clerk**

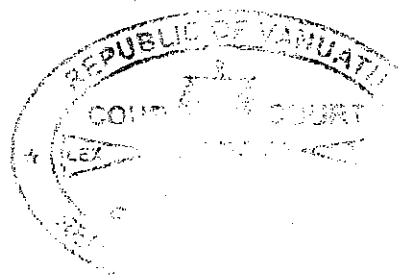
**Counsel: Ms Lines Moli for Public Prosecutor
Accused appears in person unrepresented**

Date: 20th November, 2003.

SENTENCE

The accused pleaded guilty to one count of Unlawful Sexual Intercourse on 12th November, 2003. He was charged under section 97(2) of the Penal Code Act [CAP.135]. Conviction was entered against him and sentence was deferred so that the prosecutor could prepare legal submissions in written form.

Ms Moli submits a number of cases previously dealt with by this Court and the Court of Appeal in relation to the offence of unlawful sexual intercourse. I am greatly assisted by those cases in considering the appropriate sentence on this young offender. But I apply the general principles of sentencing laid down by the Court of Appeal in the case of Public Prosecutor v. Keven Gideon. The facts and circumstances are not similar but the sentencing principles are very relevant.



I have considered Article 1 of the Convention on the Rights of the Child which defines that a child to mean every human being below the age of 18 years. I have considered that in the light of section 38(1) of the Act which clearly states that no person under 16 years of age shall be sentenced to imprisonment unless no other method of punishment is appropriate. But I note that in the case of Public Prosecutor v. Willie Ian Robert Criminal Case No.56 of 1997 this Court imprisoned a 17 years old to 4 years imprisonment for an offence under section 97(2) of the Act. The victim was in class six and she became pregnant.

This Court has the discretion to send this 17 year old boy to jail or sentence him in any other appropriate way such as may be a fine as in the cases of Public Prosecutor v. Eric Boe Criminal Case No.43 of 1993 and Public Prosecutor v. Ken Isaac Criminal Case No.44 of 1993.

However the Court of Appeal has laid down a very clear principle in the Gideon case that:-

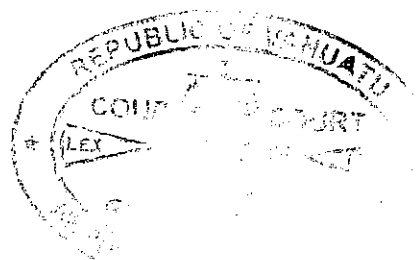
“.....Men who take advantage of young people forfeit the right to remain in the community”.

Applying that principle, I have no other alternative but to send this young man to jail. The maximum penalty for this offence is 5 years imprisonment. But I give credit to him for the following factors –

- (1) That he is young man of 17 years.
- (2) That he is a first offender.
- (3) That he pleaded guilty at the earliest opportunity to save a lengthy, costly and embarrassing trial.
- (4) His co-operation with the police during investigations.

He does not appear to show any remorse whatsoever.

Under those circumstances I consider that the appropriate sentence is a term of imprisonment for a term of 12 months.



He has spent 1 month and 3 weeks in custody awaiting his plea. I order that this period be deducted from the 12 months jail term. He serves only the balance of 10 months and 1 week.

A warrant of imprisonment is to issue accordingly.

DATED at Luganville this 20th day of November, 2003.

BY THE COURT


OLIVER A. SAKSAK
Judge

