

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

GLEN MICHAEL

Mr Justice Oliver A. Saksak

Mr P. Werrick for the State

Mr B. Livo and Miss J. Tari for the Defendant.

SENTENCE

1. Glen Michael you pleaded guilty to one count of Sexual intercourse without consent contrary to Section 91 of the Penal Code Act Cap 135.

The maximum penalty for this offence is life imprisonment.

2. You have admitted having sexual intercourse with a 15 year old girl. It happened on 17th February 2012 when the complainant was washing her clothes in the river. You then asked her for sex but she refused because you are her first cousin. Despite her refusal you still approached her, grabbed her by her hands and led her away from the river into the bushes. There you forcibly removed her shirt , skirt and underwear. Then you forced her to the ground and began fondling her before having sexual intercourse with her. After ejaculating you then left the girl, who later put



her clothes back on and returned to the village and reported the incident to her partner.

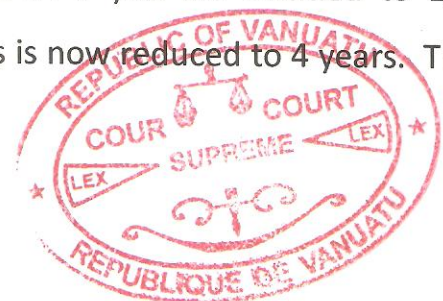
3. You do not dispute those facts. You were not intoxicated in any way at the time. You did this in your right frame of mind and you are willing to accept responsibility for that. You have not provided any reason at all for your offending. You just did it because you wanted to have it your way without stopping to think the girl was your first cousin. Because you did it to her, you can do it again to another girl, who may or may not be related to you. It does not seem to matter to or be of any bother to you. That being the case the Court is of the view that you pose a threat to society or community. The Court of Appeal said in the case of Public Prosecutor v. Scott [2002] VUCA 29 said:

“The time has long come when all men must know and understand that women have the right to control what they do with their bodies and what sexual activity they involve themselves in. If they cannot or will not recognize that fundamental position then they cannot remain within the community”

4. Applying this principle to your case, a custodial sentence is the only appropriate punishment for you for your offending. This punishment serves the following purposes :-
- (a) A deterrence for both you and other young men from acting in this way.
 - (b) Mark the gravity of your offending.
 - (c) To show the public condemnation of your behavior.
 - (d) To punish you adequately.



5. I consider the following to be the aggravating features of your case -
- (a) The young age of the victim being 15 years old.
 - (b) The breach of trust between you and her as first cousins.
 - (c) There was some degree of physical force used against her prior to sexual intercourse taking place.
 - (d) There was digital penetration by a finger prior to penile penetration.
 - (e) No preventative measures were used putting the victim to risk of infection and teenage pregnancy.
 - (f) The offending occurred in the bushes in isolation putting the victim's life at risk of grievous bodily harm or death had she resisted the offender's demands.
6. Taking all that together, I consider that a sentence of imprisonment for a term of 6 years as the starting point with no uplift is appropriate.
7. I acknowledge that you are a young man of 17 years old. However you are above the age of a minor and there is no impediment in imposing a sentence of imprisonment. I accept there have been recent cases in this Court where young offenders in your category have been sentenced to imprisonment. These are these cases of PP v. Willy Ansen, Criminal Case No. 7 of 2011; PP v. Scotty Sevan & Another, Criminal Cases No. 42 & 43 of 2011, and PP v. Sammy Tugu, Criminal Case No. 25 of 2011.
8. I now consider your mitigating factors. The first being your early guilty plea. Based on PP v. Gideon [2002] VUCA 7 you are entitled to 1/3 reduction for this. Your sentence of 6 years is now reduced to 4 years. The



other factors which are of relevance are (a) you have no previous convictions; (b) you are a first-time offender (c) your good cooperation with the Police and (d) you are a young man. I consider that some credit should be given to you for these. I therefore further reduce your sentence of 4 years by 6 months leaving the balance at 3 years and 6 months.

9. In summary you are sentenced to a term of imprisonment for 3 years and 6 months.
10. You have been in custody since 23rd February 2012. So that you do not lose your parole entitlement, your sentence of 3 years and 6 months must be taken to have commenced on 23rd February 2012.
11. That is the Sentence of the Court. You have a right of appeal within 14 days if you so choose .

DATED at Luganville this 19th day of March 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

