

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

**Criminal
Case No. 19/614 SC/CRML**

PUBLIC PROSECUTOR

V

STEPHEN NALING

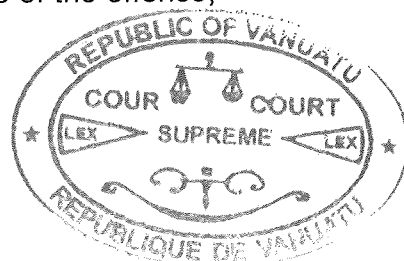
Before: Justice D. V. Fatiaki

Counsel: Philip Toaliu for the Public Prosecutor
Mrs Kylie Karu for the Defendant

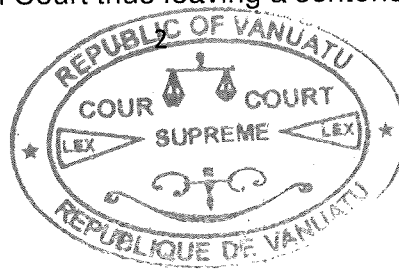
Date of Sentence: 19 June 2019

SENTENCE

1. On 2 April 2019 the defendant pleaded guilty (“*tru*”) to an offence of Attempted Sexual Intercourse Without Consent. After admitting the prosecutor’s brief outline of the facts, the defendant was convicted as charged. The defendant was then discharged on three (3) other offences that he was charged with, after the prosecution entered a “*nolle prosequi*” in respect of them.
2. The brief facts of the case are as follows: The defendant after consuming seven (7) bottles of Tusker beer and a bottle of Tequila Coffee went to the complainant’s house at Erakor Half Road and entered her bedroom armed with a bush knife which he placed on the complainant’s neck and warned her not to call out as he forcibly removed her skirt and trousers before sucking her vagina and dragging her outside. When they got outside the complainant managed to free herself from the defendant’s grasp and escaped to an aunt’s house nearby. After being arrested by the police, the defendant was interviewed under caution and he frankly admitted entering the complainant’s house with the intention of taking her outside to have sex and also cutting her neck when she refused.
3. Upon his conviction the defendant was remanded in custody and a pre-sentence report was ordered which disclosed the following personal details of the defendant:
 - The defendant now 18 years of age is originally from Middle Bush, Tanna but was living at Erakor Half Road at the date of the offence;



- The defendant is a first time offender and pleaded guilty at the first opportunity after frankly admitting the offence to the police;
 - The defendant has offered to perform a custom reconciliation ceremony to the complainant and her family who have indicated their expectation and willingness to accept it when it is performed;
 - The defendant was remanded in custody on 18 December 2018 and remains in remand after almost 6 months which is the equivalent of serving a sentence of 12 months imprisonment. By all accounts the defendant has been a model remandee;
 - The defendant tearfully expressed his remorse to the probation officer and stated that he was heavily intoxicated at the time and he regrets what he did to the complainant.
4. In this case the offending is aggravated by the following factors:
- The brazen home invasion and forcible abduction of the complainant;
 - The carrying and use of a potentially lethal weapon in the commission of the offence and causing a 9cm superficial laceration on the right side of the complainant's neck;
 - The fact that the complainant's mother regarded the defendant as: "*her real cousin brother*" and never thought the defendant could harm her daughter; and
 - The fact that the defendant had threatened to slit the complainant's throat if she raised the alarm.
5. Although defence counsel urges the adoption of a starting sentence of 5 years imprisonment as in Public Prosecutor v. Scott [2002] VUCA 29, this was a clear case of a home invasion followed by the forcible abduction of the complainant under threat of being injured by a bush knife that the defendant was carrying at the time. In such circumstances Scott's case says "*.....the starting point should be eight years*". Recognizing however that this is a case of Attempted rape, I adopt a starting sentence of 6 years imprisonment.
6. From that starting sentence I deduct 12 months for mitigating factors leaving a mid-sentence of $(72 - 12) = 60$ months. I discount the sentence by a further one third in recognition of the defendant's guilty plea which has saved the complainant from the ordeal of having to testify in Court thus leaving a sentence of $(60 - 20) = 40$ months




imprisonment. Finally the defendant is entitled to a deduction for the time spent in remand, rounded of to 6 months giving an end sentence of $(40 - 6) = 34$ months imprisonment.

7. I turn next to consider whether this is an appropriate case to fully suspend the defendant's sentence and whilst appreciating the time already spent in remand as well as the defendant's youth and the Court of Appeal's dictum in Heromanley v. Public Prosecutor [2010] VUCA 25, I do not consider such a course is appropriate in this case in light of its seriousness. Instead, the sentence will be partly suspended as follows: the defendant is ordered to serve a further 12 months in prison and the remaining term of: $(34 - 12) = 22$ months is ordered suspended for a period of 3 years during which time, the defendant is warned that if he is convicted of another offence he will be returned to prison to serve the unserved portion of this sentence namely, 22 months imprisonment before serving any new sentence imposed for his re-offending.
8. The defendant is advised of his right to appeal this sentence if he does not agree with it.

DATED at Port Vila, this 19th day of June, 2019.

BY THE COURT


.....
D. V. FATIAKI
Judge.

