

IN THE SUPREME COURT OF VANUATU

Crim Case

HELD AT LAKOTORO

Case No. 18/32/CRML

**BETWEEN: Public Prosecutor**

**AND: Peter Cliff**

Date of Hearing: 24 October 2019  
Court: G.A Andrée Willens  
Counsel: Mr L. Young for the Public Prosecutor  
Mr H. Rantes for the Defendant

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**SENTENCE**

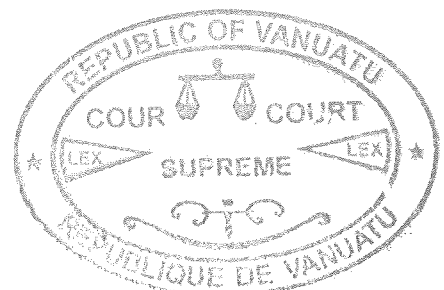
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A. Introduction

1. Mr Cliff pleaded guilty to a charge of sexual intercourse without consent. The maximum sentence for such offending is a term of life imprisonment.

B. Facts

2. In September 2017, the complainant was subjected to a series of rapes, after having been induced by a falsehood to leave a wedding celebration she was attending and accompany a young man to a secluded beach. The first rapist was acting on his own, and he left after perpetrating his offending on the complainant.
3. A group of other young men took advantage of what they had observed and they followed the complainant and her first assailant to the beach. After the first assailant had left, they took turns at also raping the complainant. They assisted each other in holding the complainant down, preventing her from crying out and by keeping watch to ensure that they were not disturbed. Mr Cliff was one of this group.



C. Sentence Start Point

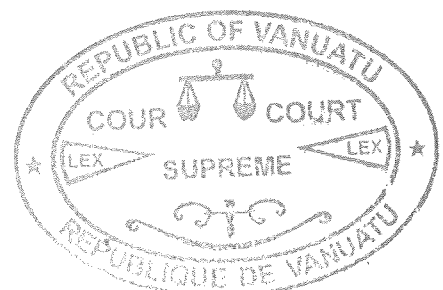
4. This case has been the subject of examination by the Court of Appeal as to the appropriate sentences for the offenders – *Korthy v Public Prosecutor* [2019] VUCA 19. The Court looked at the aggravating factors of the young men who perpetrated similar offending to that by Mr Cliff – they are fully elaborated in the judgment and are not repeated here. The Court considered the start point adopted by the Supreme Judge, dealing with sentence at first instance, of 12 years imprisonment was within range, although a significantly higher starting point would not have been interfered with.
5. Bearing in mind the desirability of parity of sentence, I adopt the same start point for Mr Cliff as that for the other offenders who share his culpability, namely 12 years imprisonment.

D. Personal Factors

6. Mr Cliff has no previous convictions – however, that factor carries little weight when looking at offending of this type and seriousness. He is 26, single and unemployed. He makes ends meet through his farming endeavours. He is said to be a good and helpful member of the community and his Church.
7. The PSR reveals he claims to be remorseful and regretful of his conduct. I accept that Mr Cliff made an immediate confession to the police when asked about this matter – why he then pleaded not guilty is a mystery. I do not equate Mr Cliff's subsequent conduct as showing remorse or co-operation with the authorities.
8. I note that there has been no custom reconciliation ceremony; although Mr Cliff has indicated a willingness to take part in such - it appears the victim's family have declined to participate.
9. In all the circumstances, I am prepared to reduce the sentence start point by 6 months imprisonment to take into account Mr Cliff's personal factors.

E. Plea

10. Mr Cliff pleaded guilty before me, but that was not his first opportunity to do so. He was first arraigned on 27 September 2018.
11. By pleading guilty on the day of trial, he spared the complainant the ordeal of having to give evidence – no small matter. However, he could, and should, have done so sooner to alleviate the undoubted stress she had to endure in the lead up to the day of trial. For that reason I reduce Mr Cliff's sentence by only 15%.



F. Suspension

12. The Court has a discretion, in certain legislated circumstances, to suspend the period of imprisonment imposed, either wholly or in part. The Courts have previously repeatedly stated that for offending of this type and seriousness, a suspended sentence is wrong in principle. Accordingly, I decline to exercise my discretion – there can be no suspension of any part of his sentence.

G. End Sentence

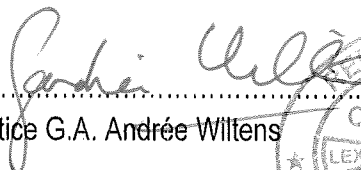
13. The sentence that Mr Cliff must serve is set at 9 years 8 months imprisonment.

14. Parity of sentence is desirable – so that each perpetrator is sentenced on a similar footing. The Court of Appeal's decision resulted in the person most similar to Mr Cliff being sentenced to 7 year 6 months imprisonment. That is largely as a result of the discount available for his prompt plea. However, it is easy to perceive a sense of unequal treatment were Mr Cliff required to serve such a substantially longer sentence. Accordingly, I further reduce the sentence to take that into account, so that Mr Cliff is to serve 9 years imprisonment.

15. The sentence is to commence from 19 September 2019 as recognition of time already spent in custody.

16. Mr Cliff has the right to appeal this sentence within 14 days if he so chooses.

Dated this 24<sup>th</sup> day of October 2019 at Lakatoro Supreme Court

  
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Justice G.A. Andrée Wiltens

