

**BETWEEN: Public Prosecutor**

**AND: Naparo Henry**  
Defendant

*Date:* 10 August 2020  
*Before:* Justice G.A. Andrée Wiltens  
*In Attendance:* Mr P. Toaliu for the Public Prosecutor  
Mr H. Rantes for the Defendant

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**SENTENCE**

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**A. Introduction**

1. Mr Henry pleaded guilty to an act of indecency without consent.

**B. Facts**

2. Mr Henry was 23 years of age in December 2016. The complainant BN was then 16 years of age.
3. BN had been swimming with friends on 30 December 2016 when she chanced to meet Mr Henry. He suggested to her that they consume home brew together the next evening, a proposal BN accepted.
4. They met up the next evening, and sat under a burao tree drinking home brew. BN began to feel intoxicated, and shortly after lost consciousness. She woke up in a house, partly undressed. She had no recollection of that, and when she asked Mr Henry he told her he also did not know. However, he had some homebrew remaining which he wanted to share with her.
5. However BN had enough and wanted to go home. Mr Henry accompanied her.
6. An independent eye witness Niomi filled in the details. She went to Yan's house to purchase cigarettes, heard some noises in a back room and was told it was BN and Mr Henry. When she went to check, she found BN asleep but vomiting, with Mr Henry sleeping nearby.



7. Niomi could not waken BN, even with Mr Henry's help. Mr Henry lifted up BN's head and put it on his lap while speaking to her, in his attempt to wake her. He put his hands against BN's breast and stomach, and then pushed his hands under BN's skirt and between her legs, touching her vagina. He called out to BN, but there was no reaction.
8. Niomi went to get some water with salt to make BN clear her head. When she returned, she assisted Mr Henry to lift BN into the kitchen. On the way there BN's bra and underpants fell off. BN was placed on the ground and Mr Henry again lifted up BN's head against him. He pushed his hands down under her skirt again and touched her vagina. Again BN did not respond.
9. Niomi then got help to place BN back inside the house, before leaving with Mr Henry.
10. When interviewed by the police Mr Henry admitted he and BN had been drinking together and that they had ended up at Yan's house. He stated that he did not recall who had assisted in picking up BN and putting her inside the house, but he did recall leaving the house with the witness Niomi.

### **C. Sentence Start point and End Point**

11. Following the acceptance into Vanuatu law of the rationale of *Moses v R* [2020] NZCR 269 by the Court of Appeal in *Jimmy v PP* [2020] VUCA, the sentence start point is arrived at by looking at:
  - a) The maximum sentence available; and
  - b) The aggravating and mitigating facts of the offending.
12. Thereafter the offender's personal circumstances must be factored in, whether they be aggravating or mitigating, in order to arrive at the appropriate end sentence.

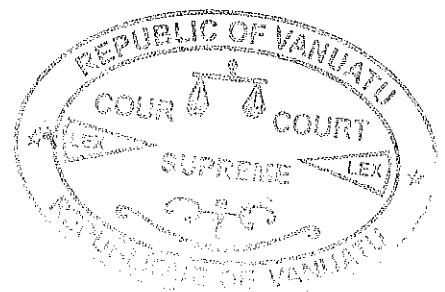
### **D. Start Point**

#### a) Maximum Penalty

13. The maximum sentence available for this offending is a term of 7 years imprisonment.

#### b) Offending

14. The aggravating factors of the offending include:
  - The vulnerability of BN due to her age and her intoxicated state;
  - The repeat nature of the offending, in that the indecent acts were repeated;
  - Skin on skin contact occurred; and
  - The young age of BN, especially when considering Mr Henry's comparative maturity.
15. There are no mitigating features of the offending.
16. The start point I adopt is accordingly set at 3 years imprisonment.



**E. Personal Factors**

- 17. Mr Henry pleaded guilty at the first opportunity. That has spared BN the need to have to give evidence, it evidences an acknowledgement by Mr. Henry of wrong-doing, and it has saved Court time and expense. However the prosecution case is strong.
- 18. The discount allowed for this factor is accordingly set at 25%.
- 19. Mr Henry has no previous convictions.
- 20. He is now 28 years, married with 5 children. He is said to be handy within the community. I note there has been no custom reconciliation ceremony although Mr Henry has indicated a willingness to take part. He is the family's sole income earner.
- 21. This offending took place in 2016 (some 4 years ago). I note that has been no further offending since then. The delay and the fact of no further offending are also mitigatory.
- 22. The discount I allow for Mr Henry's for personal factors is a further reduction from the sentence start point of 9 months.

**F. End Sentence**

- 23. The end sentence is set at 18 months imprisonment.
- 24. The Court has the ability to suspend all or part of any sentence depending on the circumstances of the offending and the offender. In this case I take into account that Mr Henry pleaded guilty at the first available opportunity. Further, that he has no previous or subsequent convictions. Additionally he is a good contributor to his community; and his immediate family require him to provide for them. The fact that there has been an unexplained 4 year delay in the prosecution is a further factor I take into account.
- 25. In the circumstances, I am prepared to suspend Mr Henry's sentence for 2 years. He needs to understand that he must remain offence-free for the next 2 years to avoid having to serve the sentence imposed today.
- 26. Additionally, Mr Henry is to serve 60 hours community service.
- 27. Mr Henry has 14 days to appeal this sentence if he disagrees with it.

**Dated at Port Vila this 26th day of August 2020  
BY THE COURT**

*Gandhi Uell*  
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Justice G.A. Andrée Wiltens

