

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 20/2014 SC/CRML**

PUBLIC PROSECUTOR

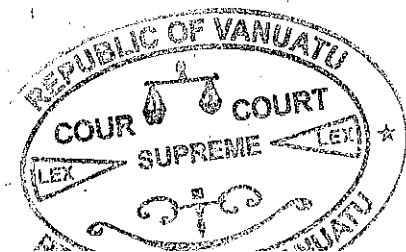
V

TEMI VIRAE

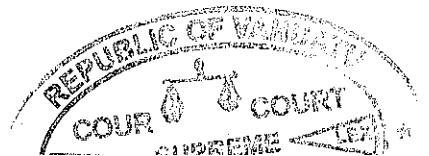
Date of Pleas: 19th August 2020
Date of Sentence: 21st August 2020
Before: Justice Oliver.A.Saksak
In Attendance: Mr Lenry Young for the Public Prosecutor
Mr Rollanson Willie for Defendant

SENTENCE

1. The defendant Virae Temi is for sentence today. He pleaded guilty to three charges of unlawful sexual intercourse with a child under the age of 15 years but over the age of 13 years old on 19th August 2020.
2. The charges were laid under section 97 (2) of the Penal Code Act [CAP.135] (the Act). It carries the maximum penalty of 15 years imprisonment.
3. The victim was 14 years old between June and October 2019 when the offendings took place. MP attends Malatoi Secondary School in Big Bay, Santo. The offendings took place 3 times in different places on different dates. The first was in June 2019 when the defendant had sex with the victim inside his thatch-roof house. He made her lie down and he had full penile penetration of her.
4. The second offending took place in August 2019 inside the same house. This was during school holidays. And the third time was in the bush by the defendant's house where the defendant had full penile intercourse with the victim. After these incidents the defendant warned the victim not to tell her parents about them. The defendant is 28 years old.



5. There was no force or violence used. There was no threat or weapons used to threaten the victim with. There was no resistance or gesture indicating she was not agreeing to all the defendant was doing to her but these did not provide the defendant with any excuse for him taking advantage of her.
6. There was serious breach of trust. There was loss of dignity. The actions were unlawful and repetitive. There was a degree of planning. There was a great age disparity. There was unprotected sex putting the young victim to risk of under aged pregnancy and of sexually transmitted disease. There is absolute lack of remorse. No custom reconciliation has been performed due to lack of acceptance by the victim's parents but the defendant has shown willingness to perform one.
7. The classic case of **PP v Gideon** [2002] VUCA 7 sets out the clear guidelines for these types of offending. Applying those principles the only appropriate penalty the Court will impose on the defendant is a custodial sentence. The defendant's case is more serious than **PP v Ure** [2017] VUCA 22 and **PP v Tula** [2018] VUSC 104. Those cases involved only 1 count each. This case involves 3 charges.
8. Taking all the aggravating features and mitigating factors together with the defendant's culpability in committing the unlawful acts on three separate occasions, I set the starting sentence as follows;-
 - (a) For unlawful sexual intercourse in Count 1- 5 years imprisonment concurrent.
 - (b) For unlawful sexual intercourse in Count 2- 5 years imprisonment concurrent.
 - (c) For unlawful sexual intercourse in Count 3- 5 years imprisonment concurrent.The total concurrent sentence is 5 years imprisonment.
9. In mitigation I consider his early guilty plea and allow the full 33% (1/3) reduction. That brings the sentence down to 3 years and 4 months. For his willingness to perform reconciliation ceremony, his clean past criminal



record and other personal factors I reduce his sentence further by 6 months. The balance remaining is 2 years and 10 months less 1 week he already spent in custody from 3rd July 2020 to 8th July 2020, the balance is 2 years 9 months and 3 weeks.

10. The defendant is accordingly convicted and sentenced to an end sentence of 2 years, 9 months and 3 weeks.
11. This sentence is effective as of the date of this sentence.
12. Upon application by Prosecution the victim's name is suppressed. Her initials only as MP are used.
13. You have a right of appeal against this sentence within 14 days if you are not happy with it.

DATED at Luganville this 21st day of August, 2020.

BY THE COURT

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Oliver.A.Saks

Judge

