

IN THE SUPREME COURT OF

THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal

Case No. 20/1088 SC/CRML

PUBLIC PROSECUTOR

v

DAVID NOAH

Date: 2 October 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr T. Karae
Defendant – Mrs K. Karu

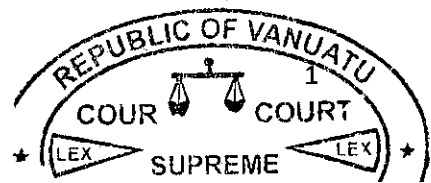
SENTENCE

A. Introduction

1. Mr Noah pleaded guilty to one charge of unlawful sexual intercourse, being sexual intercourse with a child under the age of 15 years but of or over the age of 13 years. The maximum sentence is 15 years imprisonment.

B. Facts

2. The complainant SP was 13 years old at the time of the offending.
3. Mr Noah is the brother of SP's father. SP refers to Mr Noah as 'small daddy'. He had a responsibility to care for and protect SP.
4. On 27 December 2018, SP went to stay with her father Silas Noah at Pango Village as he had just undergone a leg amputation operation.
5. In the early morning of 28 December 2018, SP felt something moving her skirt. She thought it was a centipede crawling onto her. She immediately swung her hand to get it off her and hit someone's hand. Mr Noah immediately spoke to her saying, "Do your skirt properly because your brother is coming into the room to sleep." SP straightened her skirt and underwear, and fell back asleep.



6. Later on and still in the early hours of 28 December 2018, SP was again awoken by what she described as 'stikim wawa' meaning that she felt that something was poking into her vagina. She immediately got up and realised that Mr Noah's hands were still inside her underwear.
7. SP immediately cried out aloud and heard Mr Noah tell SP's father that it was him and that he was just straightening SP's skirt as her brother was going into the room to sleep.
8. SP's aunty Selina Kalokut heard SP cry out. SP told Ms Kalokut what Mr Noah had done to her including that she felt pain ("Mi harem I sor we I sor"). Ms Kalokut gave SP some money to return to her mother's house at Tebakor because of what Mr Noah had done to her.
9. On 27 February 2019, Mr Noah was interviewed by Police. He made no admissions.

C. Sentence Start Point

10. There are no mitigating factors related to the offending. The aggravating factors of the offending are:

- There has been a serious breach of trust.
- The offending occurred within the home where SP's father was residing, and where SP was entitled to feel and to be secure and safe.
- The age differential between SP and Mr Noah – 23 years.
- The degree of violation – the rape was by digital penetration of the vagina.
- The sexual offending was premeditated – Mr Noah's first attempt was unsuccessful leading to a second attempt which resulted in digital penetration.
- The harm suffered by the victim – SP felt pain from the digital penetration by Mr Noah.

11. The above factors require a sentence start point of 30 months imprisonment.

D. Deduction for Guilty Plea

12. At the conclusion of the complainant's evidence, Mrs Karu requested that Mr Noah be re-arraigned. Mr Noah then entered a guilty plea. Given that Mr Noah did not save the complainant the ordeal and trauma of giving evidence, he is entitled to a 12% deduction from the sentence start point (4 months).

E. Personal Factors

13. Mr Noah is 38 years old. He is in a de facto relationship, and has children from a previous relationship. He and his partner reside at Etas on Efate, and look after six children and

two grandchildren. He is unemployed although he makes a living through his skills as a traditional healer and from gardening. He is currently the sole breadwinner.

14. Mr Noah has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.

15. For his personal factors, I deduct a month.

F. End Sentence

16. The sentencing principles applicable in this case are holding Mr Noah accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval of such offending, to protect the community, and to deter him and others from acting in this manner in future.

17. Taking all of those matters into account, the end sentence that must be imposed is 25 months imprisonment.

G. Suspension

18. It is well settled that men who take advantage sexually of young people forfeit the right to remain in the community. Accordingly Mr Noah is required to serve a custodial sentence. I decline to exercise my discretion to suspend the sentence.

19. Mr Noah has 14 days to appeal this sentence if he disagrees with it.

20. The name and details leading to the identification of SP are permanently suppressed.

DATED at Port Vila this 2nd day of October 2020

BY THE COURT

VM Trier
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Viran Molisa Trier
Judge

