

PUBLIC PROSECUTOR

v

TOM EZEKIEL

Date: 2 November 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms B. Ngwele
Defendant – Mrs C.T. Gesa

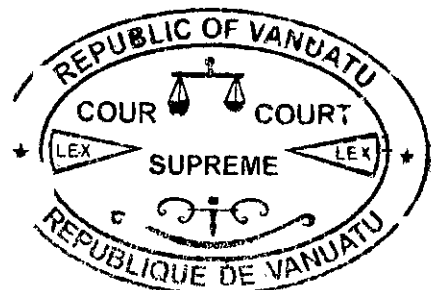
SENTENCE

A. Introduction

1. Mr Ezekiel pleaded guilty to act of indecency without consent (Count 1) and sexual intercourse without consent (Count 2). He was convicted on his own plea and the admitted facts.

B. Facts

1. Mr Ezekiel was the boyfriend of the complainant GM's grandmother. GM is 20 years old and is a person living with a disability (intellectual impairment).
2. On 8 June 2021, Mr Ezekiel called GM out of her grandmother's house at Wan Smolbag area to follow him to his house at Mele. At the Mele golf course, Mr Ezekiel told GM that he wanted her to lie down and then he would lie down on top of her. While Mr Ezekiel was saying this, he began touching GM's breasts and vagina through her clothes (Count 1). He removed GM's clothes, told her to lie on top of a table there and had sexual intercourse with her. She was crying when he penetrated her vagina but he held her tight and kissed her lips while he was having sexual intercourse with her (Count 2).
3. Afterwards, Mr Ezekiel told GM not to tell her grandmother what he had done. He told GM to go with him to his house which is where her grandmother, very worried, found her the next day. GM was in tears and immediately told her what Mr Ezekiel did to her.
4. Mr Ezekiel told the Police he was too drunk to remember what happened.

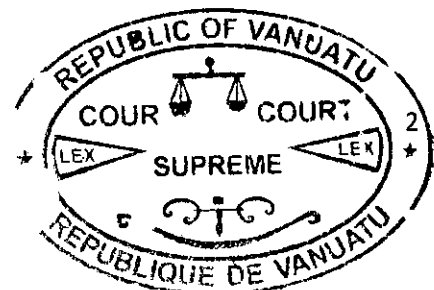


C. Sentence Start Point

5. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
6. The maximum sentences provided are:
 - a. Sexual intercourse without consent – life imprisonment; and
 - b. Act of indecency without consent – 7 years imprisonment.
7. There are no mitigating aspects to the offending. However, the offending is aggravated by the following:
 - a. Breach of trust;
 - b. 32-year age differential;
 - c. The complainant is a person with a disability therefore was particularly vulnerable;
 - d. The offending occurred at night;
 - e. Planning and premeditation;
 - f. Exposing the complainant to the risk of sexually transmitted infection and pregnancy; and
 - g. Telling the complainant not to tell anyone about the offending.
8. I adopt a sentence start point of 9 years imprisonment taking all the offending into account on a global basis.

D. Mitigation

9. Mr Ezekiel pleaded guilty at the first opportunity. He has spared GM the need to give evidence against him. For these factors, I reduce the sentence start point by 33%.
10. Mr Ezekiel is 56 years old. He is separated from his wife and has 2 children. He was employed by Vodafone and otherwise makes a living from gardening and farming.
11. He has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
12. Mr Ezekiel has performed a custom reconciliation ceremony involving a pig, mats, calico, kava, local foods such as manioc and banana, and VT10,000 which was accepted by the complainant's family. It is not mitigating that Mr Ezekiel was drunk as he chose to take alcohol.
13. For Mr Ezekiel's personal factors, I further reduce the sentence start point by 6 months.



E. End Sentence

14. The end sentences imposed concurrently are:

- a. Sexual intercourse without consent (Count 2) – 5 years 6 months imprisonment; and
- b. Act of indecency without consent (Count 1) – 12 months imprisonment.

15. The sentences are back-dated to commence as from 30 September 2021 to take into account the 1 month 2 days already served in custody.

16. There will be no suspension of sentence: *Gideon v Public Prosecutor* [2002] VUCA 7.

17. All details leading to identification of GM are permanently suppressed.

18. Mr Ezekiel has 14 days to appeal.

**DATED at Port Vila this 2nd day of November 2021
BY THE COURT**

VM Trief
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Justice Viran Molisa Trief

