

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

Criminal
Case No. 23/1251 SC/CRML

PUBLIC PROSECUTOR

v

DAVID JURIN WELWEL

Date: 5 December 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M.J. Meltebury
Defendant – Mr K.S. Amos

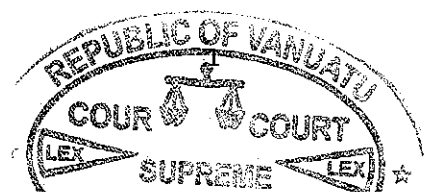
SENTENCE

A. Introduction

1. The accused David Jurin Welwel pleaded guilty to escape from lawful custody (Charge 3). He is convicted on his own plea and the admitted facts.
2. Mr Welwel was convicted after trial of sexual intercourse without consent (Charge 1).

B. Facts

3. On 13 May 2023, in the early morning, Mr Welwel inserted his penis into the complainant Frenda Johnwell's vagina and he did so halfway. Mr Welwel had called to Ms Johnwell on the road, then insisted and forced her to follow him to look for palm leaves even though she said that she could not follow him as it was her Sabbath so she must hurry to get her clothes for church. He held her hands, removed her clothes and inserted his penis halfway into her vagina. After that, Ms Johnwell put her clothes back on then he held her aloft holding her hands and

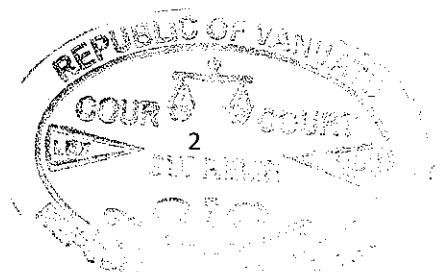


legs and threw her onto the road. He told her not to tell her family what he had done. Mr Welwel is a father of Ms Johnwell's; she did not expect him to offend in such manner against her. He did not ask Ms Johnwell to have sex with him. She did not consent to what Mr Welwel did to her. Mr Welwel could not have believed on reasonable grounds that Ms Johnwell was consenting at the time that the intercourse occurred.

4. After this, Ms Johnwell's went to her house and then to the church. She sat away from her sister Priscilla Susurup and family at church, then said at lunchtime and at night that her stomach was sore, she was gasping for breath and was very frightened until finally she told Ms Susurup what Mr Welwel did to her that morning. The complainant's mother Mrs Johnwell's observation of her daughter's behaviour when she came home that morning and got ready for church confirmed for her that something had happened to her daughter. I inferred from Ms Susurup and Mrs Johnwell's evidence that Ms Johnwell was very frightened and traumatised as a result of what Mr Welwel did to her (Charge 1).
5. On 2 June 2023, at lunchtime, Mr Welwel left the lawful custody of the Police at the Lakatoro Police Station and went to the Lakatoro Market House. He was apprehended and brought back to the Police station (Charge 3).

C. Sentence Start Point

6. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
7. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a) Sexual intercourse without consent (ss 90 and 91) – life imprisonment; and
 - b) Escape from lawful custody (s. 84) – 5 years imprisonment.
8. There are no mitigating factors however the offending is aggravated by:
 - a) Breach of trust;
 - b) There was some planning involved;
 - c) The defendant lured the complainant to a secluded area where the sexual intercourse occurred;
 - d) The force used to effect the rape and after it had occurred;
 - e) Exposing the complainant to the risk of sexually transmitted infection and pregnancy as no contraception was used; and
 - f) The physical and mental effects on the complainant.



9. The factors set out above require a global sentence start point of 8 years imprisonment.

D. Mitigation

10. Mr Welwel is 27 years old, from Tisman Village, South East Malekula. He completed Year 6 and had some secondary schooling. He is in a *de facto* relationship and has two children. His partner is pregnant with their third child. He is a subsistence farmer and earns income from copra.

11. He has no previous convictions although in cases of a sexual nature, that has little value in mitigating a sentence.

12. The complainant's family refused Mr Welwel's offer to perform a custom reconciliation ceremony. He remains willing to perform one if given the chance. He is stated to be remorseful as reported by the pre-sentence report writer.

13. I further reduce the sentence by 6 months for Mr Welwel's personal factors.

14. Mr Welwel served time in custody in the cell at the Lakatoro Police Station from 5 June 2023 to 20 July 2023 totalling 1 month and 2 weeks, effectively 3 months imprisonment. Accordingly, a further 3 months is deducted from the sentence point.

E. End Sentence

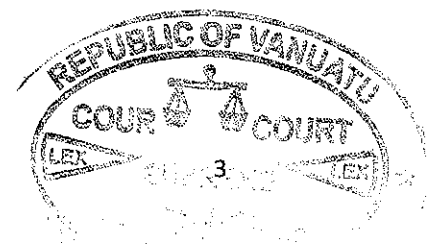
15. Taking all matters into account, the end sentences imposed concurrently are:

a) Sexual intercourse without consent (Charge 1) 7 years 3 months imprisonment; and

b) Escape from lawful custody (Charge 3) 1 month imprisonment.

16. The sentence is imposed to deter Mr Welwel and others from such offending, to denounce such criminal conduct against women and against the values of society, to protect the community, and to hold Mr Welwel accountable for his criminal conduct.

17. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending: *Public Prosecutor v Gideon* [2002] VUCA 7.



18. These sentences of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Welwel earlier elects to begin serving his sentences: s. 50 of the *Penal Code*.
19. The Officer-in-charge of the Lakatoro Police Station is to inform the Court if Mr Welwel has failed to present himself **by 4pm on 19 December 2023** to begin serving his sentences (on the understanding that the Police will be responsible to arrange Mr Welwel's transportation to Santo to serve his sentences of imprisonment at the Muria Correctional Centre in Luganville).
20. Mr Welwel has 14 days to appeal.

**DATED at Port Vila this 5th day of December 2023
BY THE COURT**

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Justice Viran Molisa Trief

