

PUBLIC PROSECUTOR v SETHY VUI

Before: *Chief Justice V. Lunabek*

Appearances: *Mr D Boe for the State*
Ms L Bakokoto for the Defendant

Date of Plea: *24 April 2023*

Date of Sentence: *5 May 2023*

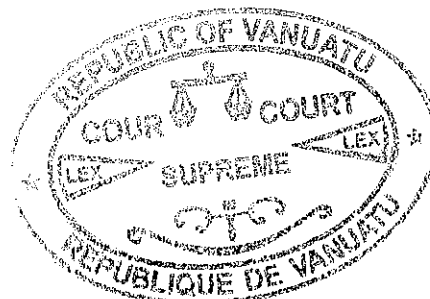
SENTENCE

A. Introduction

1. Sethy Vui, you appear today for sentence.
2. On 24 April 2023, you entered a guilty plea in respect to one count of unlawful sexual intercourse, contrary to Section 97(2) of the Penal Code.

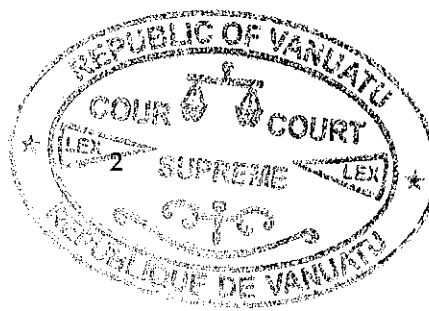
B. Facts

3. The complainant is a girl of 15 years old at the time of the offending.
4. She is from Ambae island part Malekula. Her date of birth is 13 July 2009. She was a student at Saint Thérèse Secondary School, and she was in year 8 in 2022. She resided at Solomon Hills area in Luganville with her relatives.
5. On 31st December 2022 around 2pm in the afternoon, the complainant was accompanied by her friend one Natalie. They both went together to work at the Damming store in Luganville. The complainant sold ice-cream outside the store and Natalie worked inside the shop as part of her holiday job.



6. You walked by with one of your friends and you purchased some ice-cream from the complainant. You asked the complainant to give you her phone number and she gave you her cell phone number.
7. The complainant finished work at 5pm and while she was waiting for Natalie, her cell phone rang and she answered the call. It was you who phoned her.
8. You told her to go and met you at one Essay shop. The complainant told you that she was waiting for Natalie and that she was unable to meet you. However, you insisted for her to go and see you and that she should return back for Natalie.
9. The complainant went to see you at Essay Shop. When she arrived, she saw you and your friend there. You then asked her to follow you and your friend to Ratha. The complainant said no she will not come but you insisted and stopped a taxi. You asked the complainant to following you and your friend.
10. The complainant then got into the taxi with you and your friend. The taxi driver drove to the end of the tar-sealed road. There, you all got off the taxi. You then took a transport truck vehicle which drove you all off to Ratha.
11. You took the complainant to your home and left her inside your room. You went to see your friend. You also introduced the complainant to your families.
12. The complainant stayed with your family until the 1st of January 2023.
13. On the 1st of January 2023 you were drunk and you asked the complainant to go inside your room. She went inside the room and you asked the complainant to remove her clothes. She did and you removed your clothes. You had sexual intercourse with the complainant. You were drunk at the time of the sexual intercourse.
14. The complainant's families looked for the complainant and phoned her phone number and she told her family that she was at Ratha with you and that you had taken her there. One of the complainant's uncle Joe Johnny drove to Ratha and got the complainant back. She went to Police station and reported the incident.
15. You participated in a recorded interview with the police. You were cautioned and you admitted you had sexual intercourse with the complainant and that it was consensual.

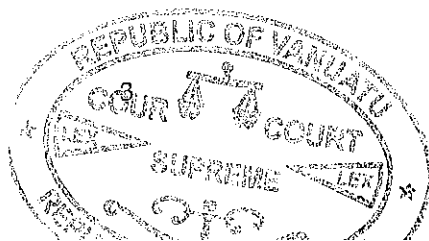
C. **Start Point Sentence**



16. Unlawful sexual intercourse with a child under Section 97(2) carries a maximum penalty of 15 years imprisonment.
17. There was no mitigating factors to the offending but the following aggravating factors exist in the case:
- There is a degree of planning involved;
 - There were force used and above to commit sexual intercourse with a child of or under 15 years of age;
 - The sexual intercourse between the defendant and the complainant was unprotected;
 - The effect upon the victim, whether physical or mental;
 - The age difference between you and the complainant;
 - The complainant was taken away from her family and school at Luganville, Santo to Ratha, another location on Santo island;
18. I adopt a start point sentence of 5 years imprisonment based on Shing v PP [2021] VUCA 21; PP v Ure [2017] VUCA 22 and PP v Sandy [2022] VUSC 24.

D. Mitigating Features

19. Mr Vui, you are a first time offender. You do not have previous convictions. You are 25 years old from Morou Village, South East Ambrym. Your highest level of education is Year 10. You could not continue your studies because of your sick mother. You had later on attended short courses in Technical School. You were employed at various jobs in Luganville. Between January to November 2022, you were employed by Togvanu Company Construction. You acquired the skills in construction and farmer. You also planted kava and sell kava to sustain you and your family. You have good relationship with your family. You were relocated to Nanuku village, West Malo. You participated in the community activities in your village. I gave you an allowance of 6 months to be reduced from your start point sentence.
20. You pleaded guilty at the earliest opportunity. I give you a full one third discount of your start point sentence. Your sentence is further reduced to 36 months.
21. The pre-sentence report shows that you have performed custom reconciliation with the victim complainant and her relatives on 27 April 2023. The report of the reconciliation and relevant photographs are attached to the pre-sentence report filed by the probation officer. I will allow 8 months to reflect this. Your sentence is further reduced to 28 months.



E. End Sentence

22. Your end sentence is 2 years and 4 months imprisonment.
23. The pre-sentence report shows that you were remanded in custody on 3 January 2023 to 20 February 2023 and you were released on bail. You have spent 49 days pre-custodial period. That pre-custodial period will also be taken into account in your favour.
24. I consider whether or not I can suspend your imprisonment sentence of 2 years 4 months imprisonment.
25. I assess the nature and circumstances of your offending. I assess your circumstances as an adult offender of 25 years of age. I bear in mind that a girl of 15 years of age was the complainant in this case. I refuse to suspend your imprisonment term. You must serve that imprisonment term of sentence of 2 years 4 months. The prosecutor reminded me of the judgment of the Court of Appeal in *Public Prosecutor v Gideon* [2002] VUCA which stated:

"There is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuses young people in the community ... It is totally wrong for adults to take advantage of their immaturity. It will be in the most extreme of cases that suspension could ever be contemplated in the case of sexual abuse. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community".

26. Your sentence of 2 years 4 months imprisonment is backdated and deemed effective from 3 January 2023.
27. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days starts today.

DATED at Luganville, Santo, this 5th day of May, 2023

BY THE COURT

Chief Justice V. Lunabek

