

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

Criminal  
Case No. 24/2150 SC/RML

**BETWEEN: Public Prosecutor**

**AND: Felix Johnson**  
*Defendant*

**Before:** *Justice Oliver A. Saksak*  
**Counsel:** *Mr Christopher Shem for Public Prosecutor*  
*Mr Henzler Vira for the Defendant*  
**Date of Plea:** *2nd December 2024*  
**Date of Sentence:** *6th December 2024*

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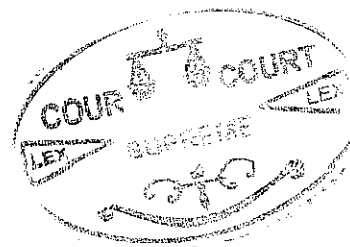
**SENTENCE**

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1. The defendant Felix Johnson was charged separately with one count of Act of Indecency without consent contrary to section 98 (a) of the Penal Code Act [ Cap 135]. He pleaded guilty to the charge on 2<sup>nd</sup> December 2024 and is here for sentence today.
2. The maximum penalty for this offence is 7 years imprisonment.
3. The offence occurred back on 19<sup>th</sup> October 2019. The defendant and the co-defendant John latikrau went to a social night at Loveru School to attend a show called "Disturbance Night", whatever it means. There the defendants met Magaret Nemon, the complainant and they engaged and drank alcohol together. Subsequently sexual encounters were had between John latikrau and Magret, the subject of the rape charge against this defendant in Count 1.
4. After the first encounter John latikrau and Magret returned to the show, bought more drinks and continued to drink. Felix Jonhson then took his chances. He approached Magret and touched her breast and vagina over her clothes. It appeared from the statements that Magret was too drunk. And she said she did not like what the defendant did to her.



5. She therefore lodged a complaint against the defendants on 21<sup>st</sup> October 2019. The Police arrested both defendants and remanded them in custody. Upon interview defendant John latikrau admitted having sex with Magret but said it was all consensual sex. Felix admitted to kissing, and touching the victim's breast and vagina over her clothing that night of 19 October 2019.
6. There were no mitigating circumstances for the offending by the defendant. What occurred that night between the two defendants and the victim made the night indeed a "disturbing night" for all. We all now have to deal with the results of those disturbing events. When married people go beyond their marriage vows and engage in extra marital affairs, it is indeed disturbing because the results can usually end up with broken relationships, broken homes, marriage breakdowns leaving innocent spouses and children as victims of unwarranted actions and behaviours.
7. The defendant here clearly took advantage of Magret being drunk and the fact she already had sex with the co-defendant, that he should have his turn as well. However His actions were limited to kissing the victim on the tongue and touching her breasts and vagina over her clothing, and nothing more. He must be punished only for these.
8. I take note of the case of PP v Henry [2020] VUSC 185 which has some similarities but differs in some facts. But I note the starting sentence in that case to be 3 years imprisonment which I think is a little on the high side. I note also the cases of Tangiat v PP [ 2014] VUCA 15 and PP v Natiang [ 2021] VUSC 116 submitted by Mr Vira.
9. I note also what the Court of Appeal said in PP v Scott [2002] VUCA 29 in which the Court endorsed the principles in Ali and Gideon cases. This Court is bound by those principles.
10. Having said all that, I now convict and sentence the defendant on his own plea to a start sentence of 2 years and 6 months imprisonment for one charge of act of indecency without consent.
11. In mitigation I reduce the sentence by 10 months, leaving the balance of the sentence to be 20 months imprisonment.



12. For being a first time offender and the delay in proceeding with the case and for all his other factors personal to him including the mitigating factors stated in his submissions, I deduct his sentence by another 6 months.
13. His end sentence shall be 14 months or 1 year and 2 months imprisonment.
14. I consider the circumstances and nature of the offending of the defendant including his character and order that the sentence be suspended for a period of 2 years on good behaviour, under section 57 of the Penal Code Act. He must be offence free for those 2 years. If he reoffends and is charged and convicted, he will go to prison for 14 months.
15. In addition, I sentence him to 60 hours of community work to be completed within 12 months from the date of this sentence.
16. He has a right of appeal against this sentence within 14 days.

**DATED at Isangel, Tanna, this 6<sup>th</sup> day of December 2024**

**BY THE COURT**

  
**Hon. OLIVER A SAKSAK**

**Judge**

