

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

Criminal
Case No. 24/1214 SC/CRML

PUBLIC PROSECUTOR

v

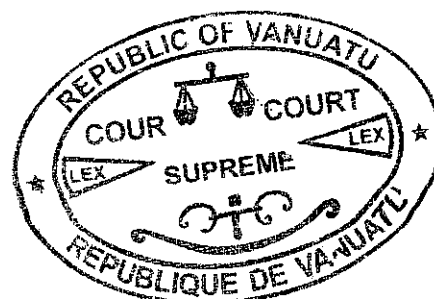
JOHNATHON SITEY AND WESLEY LIGO

Date of Plea: 17 June 2024
Date of Sentence: 16 December 2024
Before: Justice M A MacKenzie
Counsel: Ms J Tete for the Public Prosecutor
Ms B Taleo for the Defendant

SENTENCE

Introduction

1. Mr Johnathon Sitey appears for sentence having pleaded guilty to a charge of sexual intercourse without consent, contrary to section 91 of the Penal Code [CAP 135].
2. The maximum penalty for the offence is life imprisonment.
3. Mr Sitey was to be sentenced at the same time as Mr Ligo. However, despite arrest warrants being issued by the Court, Mr Sitey was not apprehended by Police, and made concerted efforts to avoid being arrested. Sentencing was adjourned more than once for Mr Sitey to be arrested, and both defendants sentenced together.
4. I decided not to delay Mr Ligo's sentence, and on 4 December 2024 he was sentenced to 5 years 1 month imprisonment. The sentence was not suspended.



The Facts

5. On 1 January 2024, the victim FM, was swimming in a river at Pelmol Village, South Santo, along with her two sisters. Mr Sitey and Mr Ligo were there also, but left. The two of them returned at a later point.
6. The victim's sisters were able to get away from the river but FM was not. She tried to run but Mr Sitey and Mr Ligo reached her and dragged her to a nearby tree. She tried to call out but the two men blocked her mouth, preventing her from calling out.
7. Mr Sitey pushed her to the ground, removed her trousers and underwear and spread her legs. After removing his trousers, he inserted his penis into her vagina. The victim tried to call out and run away but could not, as the defendants held onto her tightly. Mr Ligo held onto her neck and told her not to call out, and that he would have sex with her next. Mr Sitey and Mr Ligo escaped when the victim's sisters, Chief Remo and others arrived. This meant that Mr Ligo was unable to carry out his plan to have sex with FM.
8. The victim was impacted by the rape. She suffered pain, did not feel well, cried and had blood coming out of her vagina. She was aged 22 years at the time of the incident and a year 13 student.

Police interview

9. Under caution, Mr Sitey made full admissions to police. He admitted dragging the victim to a tree, pushing her to the ground and having sexual intercourse with her. He confirmed that Mr Ligo held onto her neck. He said he was drink at the time, that he knew FM, as she is related to him.

Sentencing purposes/principles

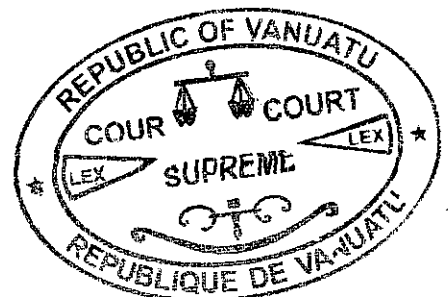
10. The sentence I impose must hold Mr Sitey accountable and must denounce and deter his conduct. The sentence should ensure Mr Sitey take responsibility for his actions and help him to rehabilitate. It must also be generally consistent.

Approach to sentence

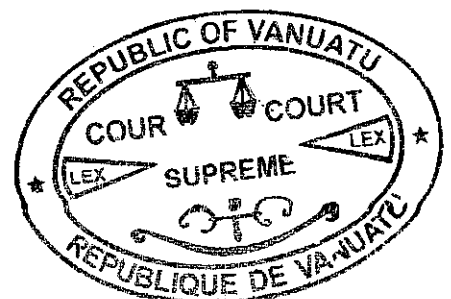
11. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

Starting point

12. The first step is to set a starting point to reflect the aggravating and mitigating features of the offending, and with reference to the maximum penalty for the offence.



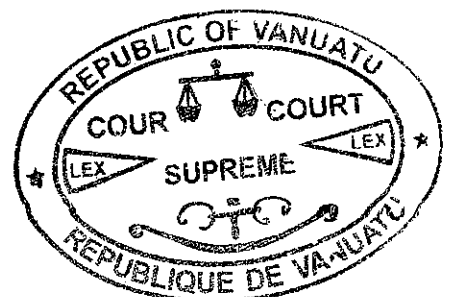
13. The aggravating factors of the offending are:
- a. While taking an opportunity that presented itself, the offending was deliberate and involved some degree of planning, as Mr Sitey and Mr Ligo returned to the river and dragged the victim to a tree.
 - b. There was a breach of trust as Mr Sitey and the victim are related.
 - c. The victim was vulnerable because she was outnumbered given that both Mr Sitey and Mr Ligo took part in the rape. The two men acted together. Mr Ligo's actions enabled Mr Sitey to continue the rape, so that any resistance by the victim was overcome and she could not get away.
 - d. The victim was exposed to the risk of sexually transmitted diseases when Mr Sitey penetrated her vagina with his penis.
 - e. The rape was committed with the use of force by both Mr Sitey and Mr Ligo. They dragged the victim to a tree, blocked her mouth to prevent her from calling out, held her tightly to prevent her from escaping, and Mr Ligo held onto her neck, a vulnerable part of the human body.
 - f. Impact on the victim- this must have been a traumatic experience for the victim, both physically and emotionally. She felt pain, bled and cried. It is likely that the incident will have an enduring emotional impact on the victim.
14. There are no mitigating features of the offending itself. Specifically, the fact that Mr Sitey was drunk is not a mitigating factor. It will not be taken into account.
15. Counsel have both cited cases to assist the Court with setting an appropriate starting point. The prosecutor submits there should be a starting point of 9 years imprisonment for Mr Sitey. The defence submit that the appropriate starting point is 7-10 years imprisonment.
16. Because the offending is rape, *Public Prosecutor v August* [2000] VUSC 73 and *Scott v Public Prosecutor* [2002] VUCA 29 apply. *Scott* is the guideline case for rape. According to *Scott*, where a rape is committed by two or more men acting together, the starting point is 8 years imprisonment. And where any one or more of the aggravating factors identified in *Scott* are present, the starting point should be significantly higher than the figure suggested as the starting point. Here, one of the aggravating factors set out in *Scott* is present- violence over and above the force necessary to commit the rape.



17. Therefore, the starting point in the present case should be higher than 8 years, imprisonment given the additional violence. The two cases which are of most assistance are *Scott* itself and *Public Prosecutor v Tasaruru* [2021] VUSC 321. That is because both involve two defendants in circumstances where one defendant committed the rape and the other aided, as is the case here.
18. In *Scott*, Mr Scott aided Mr Tula to rape the victim. Physical force was used by Mr Scott. As well as being the guideline case for rape, *Scott* has some factual similarities to the present case. In terms of the actual sentence, the Court said that that even giving the defendants a substantial allowance because they eventually pleaded guilty, a sentence of 5 or 6 years would not have been interfered with by the Court. As best as I can assess, that would suggest a starting point in the vicinity of 9 years imprisonment.
19. In *Tasaruru*, the starting point of 12 years imprisonment reflected more serious offending, so the starting point should be less than 12 years.
20. The relevance of *Scott* and *Tasaruru* is that the starting point for the two defendants was the same, irrespective of role. I intend to take that approach. The two men acted together. Both intended to take what they wanted from the victim. Mr Sitey succeeded because of Mr Ligo's assistance in dragging the victim, pushing her to the ground and holding onto her neck. Mr Ligo enabled the rape by Mr Sitey and did not rape FM only because others intervened. I see no reason to distinguish between the two defendants.
21. Given the aggravating factors I have referred to, and in particular with reference to *Scott*, I adopt a starting point of 9 years imprisonment for Mr Sitey.

Guilty plea and personal factors

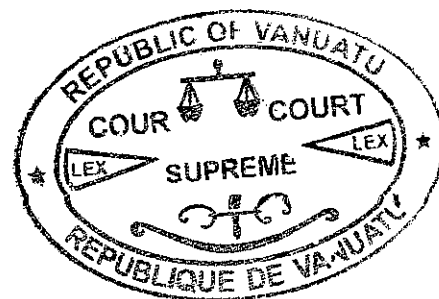
22. I reduce the sentence by 25 percent for the guilty plea. There was an early guilty plea, but the case against Mr Sitey was overwhelming, so there was little option but to plead guilty. That is 27 months.
23. There is not a pre-sentence report available for Mr Sitey. The information relating to his personal circumstances is drawn from the written submissions.
24. Mr Sitey is aged 25 years and is a first offender. He has a wife and two young children. He is also responsible for other family members. Mr Sitey earns a living from farming. He was fully cooperative with police.
25. Ms Taleo submits in her written submissions that Mr Sitey is remorseful, deeply regrets his unlawful actions, and wants to put things right by making amends.



26. As noted, the fact that Mr Sitey was drunk is not a mitigating factor. Given that Mr Sitey is a first offender, cooperated with police at the time of arrest, and has family responsibilities, I reduce the sentence by 6 months, which is approximately 5 percent. I am not prepared to reduce the sentence further to reflect remorse and a wish to make amends. That is because any remorse or offer to make amends is hollow given Mr Sitey's actions in failing to appear for sentence since 23 September 2024 and making a concerted effort to avoid being arrested. He did not face up to the charge and the sentencing process.
27. Mr Sitey was remanded in custody between 4 January 2024-24 May 2024, a period of approximately 5 months. That is an effective sentence of about 10 months imprisonment. The sentence is further reduced by 10 months for that factor.

End Sentence

28. The end sentence is 5 years 5 months imprisonment.
29. The defence submissions do not suggest that the sentence should be suspended pursuant to s 57 of the Penal Code, which in any event, is opposed by the prosecutor.
30. Under s 57, I must take into account the circumstances, the nature of the offending and Mr Sitey's character. In *Public Prosecutor v Gideon* [2002] VUCA 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. That has recently been reaffirmed by the Court of Appeal in *Tulili v Public prosecutor*
31. Mr Sitey is a first offender. He pleaded guilty at the first reasonable opportunity, cooperated with police, and has a family. However, this was serious offending, given the aggravating factors detailed above. The two defendants acted together to enable the rape of a vulnerable victim and used force to do so. The circumstances, both in relation to the offending and Mr Sitey personally, are a long way from being exceptional or extreme so as to warrant suspension of the sentence. Accountability, deterrence and denunciation are important sentencing purposes, given the nature of the offending. A stern response is needed. Exploitive sexual behaviour towards vulnerable young females must be strongly condemned, as recognised by the Court of Appeal in *Public Prosecutor v Gideon* and *Scott*. Suspension of the sentence would send a very wrong message both to Mr Sitey and others. I decline to suspend the sentence in all the circumstances.
32. The sentence is to commence immediately. While Mr Sitey was released on bail, he was finally arrested and taken into custody on 14 December 2024. The sentence start date is therefore backdated to commence on 14 December 2024.



33. Mr Sitey has 14 days to appeal against the sentence.

34. I make a permanent order suppressing the name and identifying details of the victim.

**DATED at Port Vila this 16th day of December 2024
BY THE COURT**

