

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

Criminal
Case No. 24/1276 SC/CRML

PUBLIC PROSECUTOR

v

BELDEN JOE

Date of Plea: 12th March 2025
Before: Justice Josaia Naigulevu
Counsels: Acting Public Prosecutor – Mr. Christopher Shem
Defence Counsel - Mr. Willie Jack Kapalu

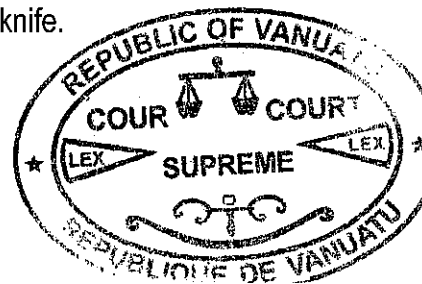
SENTENCE

Introduction

1. Mr. Belden Joe, you appear for sentence having entered pleas of guilty and agreed to the summary of facts presented by the prosecution in relation to the charges of unlawful sexual intercourse contrary to section 97(2) of the Penal Code and domestic Violence contrary to section 4 (1) (g) (e) of the Family Protection Act.
2. You were duly convicted on your pleas.

Facts

3. Mr. Joe, you were 35 years old at the time of the offending. The complainant was 14 and was a year 8 student who lived with her family at Launapkemei village on Tanna Island.
4. On the 23rd March 2024, at about 9am in the morning, the complainant went to forage for the pig. As she was doing so, you approached her and abducted her. At another location, you undressed the complainant and forced her to lie down. After she did, you forced your penis into her vagina and had sexual intercourse with her. She cried out when in pain, but you threatened to cut her with a knife if she did not stop. After you finished, you told the complainant that you would give her VT1000, and not to tell his wife Meriam. If she did, you told her that you would 'assault' her with a knife.



Sentencing Guidelines

5. The sentence that is imposed is guided by several principles which includes the proposition that you must be held accountable for your offending, and that you must take responsibility for your actions. Additionally, your conduct is one that society denounces, and that similar future acts must be deterred.
6. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.

Starting Point

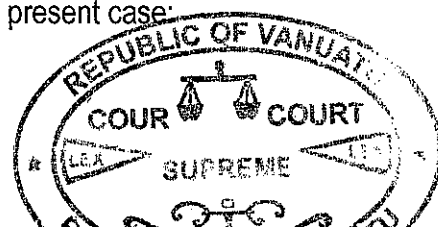
7. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
8. The maximum penalty for the offence of possession of unlawful sexual intercourse is 15 years imprisonment, and for the offence of domestic violence a term of 5 years imprisonment and or a fine of VT100,000 or both.
9. I have considered the authorities referred to me by your counsel and the prosecuting counsel. Your counsel draws the Court's attention to the judgment of the Court of Appeal in *Do v Public Prosecutor* [2024] VUCA 2 in which the Court adopted a starting point of 3 years and 6 months for the offence of unlawful sexual intercourse contrary to section 97 (2) of the Penal Code after considering again the relevant aggravating features. The prosecuting counsel referred to two cases as comparable authorities: *Public Prosecutor v Tuame* [2023] VUSC 44 and *Public Prosecutor v Virae* [2020] VUSC 194. In both those cases, the Courts adopted a starting point of 5 years.
10. Taking into account the relevant aggravating factors and the maximum penalty, I adopt starting point of 4 years in relation to the offence of unlawful sexual intercourse.
11. In relation to the offence of domestic violence, I adopt a starting point of 18 months.

Guilty Plea

12. You pleaded guilty to this Court at the earliest opportunity. As a result, you are entitled to a discount of 14 months. This period is deducted from the starting point.
13. Your guilty plea is an indication also of your remorse and contrition: *PP v Gideon* [2002] VUCA 7.

Aggravating Factors

14. The following circumstances constitute the aggravating factors in the present case:



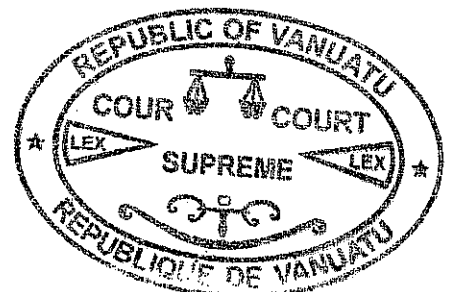
- a) The relatively young age of the complainant and the age disparity between you and her. You are 35 and she was 14;
- b) The degree of force applied by you to take the complainant to another location where you committed the offence;
- c) The threat of Violence during the course of committing the offence and after the offending;
- d) The absence of any protection, exposing the complainant to pregnancy and venereal disease;
- e) A certain degree of planning was involved;
- f) Breach of trust occasioned by your familial relationship;
- g) The emotional impact of the traumatic experience on the young complainant.

Mitigating and Personal Factors

- 15. Belden Joe, you are 35 years old, are married and have four children. You attended school until you reached year seven. You practice subsistence farming and sometimes carry out community work and support your chief in nakamal ceremonies.
- 16. You are a first-time offender, as you have no previous conviction. The Court takes these into account.
- 17. In your interview with the Probation officer, you told him that you were remorseful. The Court notes that a Kastom ceremony was performed on your behalf, and the gifts were accepted by the complainant and her chief.
- 18. These factors reduce your sentence by a further 6 months.
- 19. Your counsel informs the Court that you had spent one month and 24 days in custody prior to your release on bail. That period is deducted from the balance of your sentence.

End Sentence

- 20. You were convicted of two offences, of which the offence of unlawful sexual intercourse is the lead offence. The sentences in respect of each of these offences will be served concurrently.
- 21. I have taken into account all the matters referred to earlier and impose an end sentence of 2 years, 2 months and 4 days.



Suspension of Sentence

22. Your counsel made submissions for the suspension of your sentence. I have taken into account these submissions but am guided by the provisions of sections 57 of the Penal Code, as well statements made by the Court of Appeal regarding the suspension of sentence of imprisonment in cases of sexual abuse.
23. In the case Public Prosecutor v Scott [2002] VUCA 29, the Court of Appeal said that the suspension of a term of imprisonment in sexual abuse cases cannot be contemplated save in the most exceptional cases. This is not an exceptional case.
24. In the case Public Prosecutor v Gideon [2002] VUCA7, the Court of Appeal said:

"Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable...men who take advantage sexually of young people forfeit the right to remain in the community."

They added:

"...there is an overwhelming need for the Court on behalf of the community to condemn in the strongest term any who abuse young people in our community. Children must be protected."

25. In the light of the foregoing statements, and taking into account the circumstances and the nature of the offending, I decline to suspend your sentence. You will serve the sentence of 2 years, 2 months and 4 days in prison.
26. You have 14 days to appeal this sentence.

DATED at Port Vila this 16th day of April 2010
BY THE COURT

Hon. Josaia Naisurevu
Justice

