

**IN THE SUPREME COURT OF THE
REPUBLIC OF VANUATU – Luganville,
Santo**
(Criminal Jurisdiction)

Criminal Case No. 25/2136 SC/CRML

Between: PUBLIC PROSECUTOR
Santo

The State

And: John Wesley Tapore
Santo

Defendant

Date of Plea: 16 September 2025
Date of Sentence: 19 September 2025
Before: Justice B. Kanas Joshua
Counsels: Ms Josephine Tete, for the State
Ms Barbara Taleo, for the Defendant

SENTENCE

Introduction

1. Mr John Wesley Tapore, you appear for sentence after pleading guilty to one charge of sexual intercourse without consent, contrary to Section 90 and 91 of the Penal Code Act [CAP 135].
2. The maximum penalty for this offence is lifetime imprisonment.

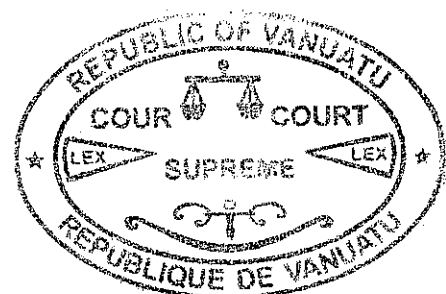
Facts

3. On 23 May 2025, you and your friend were walking on the road when you came across LE ("the victim"). She was drunk. You and your friend know the victim as you both are related to her. You are her cousin. You made arrangements with the victim to drink together and went and drank at the victim's place, before continuing to a little shelter on the beach where you and other boys use to hang out. The victim got very drunk and you took advantage of this by taking her to some bushes nearby where she passed out. You removed her trousers and had sexual intercourse with her. She did not know anything about it.
4. A meeting was called in the village and you admitted, in the meeting, that you had sex with the victim. When cautioned by the police, you made full admissions to the allegations.

Sentencing purposes/principles

5. You must be held responsible for your actions so others who also behave this way can see that this is against the law which has serious consequences. This will help to stop their actions, as it causes social harm.
6. This sentence should help you to rehabilitate, and must be generally consistent.

Approach to sentence



7. The approach in sentencing involves 2 steps, found in *Jimmy Philip v. PP*¹. They applied *Moses v. R*².

Step 1: Starting point

8. The first step is setting a starting point. It must reflect the aggravating and mitigating factors of the offending with reference to the maximum penalties for the offence.
9. The aggravating factors of the offending are:
- There was a breach of trust between the defendant and the victim - he is her cousin, and the victim trusted him that she was safe to drink with.
 - There was some degree of planning – the defendant admitted under caution that he took her to the shelter at the beach with the intention to get her drunk and have sex with her.
 - The victim is now psychologically affected – she is a Year 10 student and the incident will affect her in school and years ahead of her.
 - There is a loss of dignity of the victim – she will live with the humiliation of what had happened to her for many years.
10. There are no mitigating factors of the offending.
11. The prosecutor submits a starting point of 6-8 years imprisonment. *PP v. Scott*³ is the leading case in sexual offence cases. In that case physical force was used by two men when they had sexual intercourse without consent with the victim. A starting sentence of 8 years imprisonment was given. In the current case there is only one defendant and no physical force was used. So the sentence must be less.
12. In *PP v. Karapia*⁴ the court adopted a starting point of 8 years' imprisonment, and an end sentence of 5 years' imprisonment. The defendant, who was 29 years old, took advantage of the victim, who was 17 years old, and had sexual intercourse without consent. In *PP v. Nitain*⁵, the court gave a starting point of 8 years, with an end sentence of 5 months, 4 months' imprisonment. The defendant was the victim's uncle, who took advantage of the victim when she was drunk and asleep. She was 17 years old. In both cases, the defendants were much older than the victims, unlike in the current case where the defendant is 17 and the victim is 18. The sentence should be less than 8 years, in the current case.
13. Defence counsel submits a starting point of 5 years imprisonment. Reference to *Scott* was also made, where the Court of Appeal stated that five years is a good starting point. In *PP v. Tulili*⁶, the court gave a starting point of 5 years. The defendant was 19 and the victim 16. The defendant is the victim's uncle. The case of *Tulili* is similar to the current case, where both parties are in their teens. However, in *Tulili*, the defendant used physical force on the victim to have sex. In the current case, no physical force, as the victim was unconscious when the defendant had his way with her. The victim would be in a more vulnerable state so the sentence should be slightly higher than in *Tulili*.
14. In *Nampo v. PP*⁷, the court emphasized the importance of having a consistency in the courts' decisions. Given the aggravating factors referred to, and considering *Tulili*, I adopt a starting point of 5 ½ years imprisonment

¹ [2020] VUCA 40.

² [2020] NZCA 296.

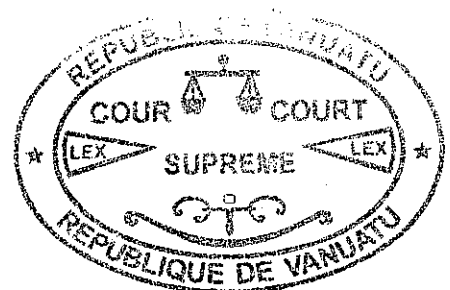
³ [2002] VUCA 29.

⁴ [2024] VUSC 79.

⁵ [2021] VUSC 332.

⁶ [2024] VUSC 201.

⁷ [2018] VUCA 43.



Step 2: Guilty plea and personal factors

15. You pleaded guilty in court. You also admitted to the allegations against you in your caution statement. In *PP v Samuel*⁸, the Court of Appeal stated that there is no law in Vanuatu that provides for 1/3 allowance for guilty pleas. This is a discretion for the court after weighing all competing sentencing principles. After weighing all competing sentencing principles, you are entitled to 25% discount for your guilty plea. Your guilty plea has saved the victim from re-living the shame and humiliation of this terrible experience. The sentence is reduced by 1 year 4 months 15 days imprisonment.
16. Your pre-sentence report gives some background on your character and personal history. The mitigating factors take into consideration your PSR. However, of particular interest is that although you understand that you broke the law, you still blame the victim for what happened. If you understand that sexual intercourse without consent is against the law, you should not put yourself in situations where you will not be able to control yourself. Blaming the victim does not take away the fact that you still broke the law.
17. The mitigating factors considered are:
 - a. You are 17 years old and still in school,
 - b. You are a first-time offender, with no prior convictions,
 - c. You cooperated with the police and admitted to the allegations under caution,
 - d. You are remorseful and regret your action,
 - e. You have a good relationship with your family and the community, and
 - f. You have been in pre-trial custody since 1 July 2025.
18. For these mitigating factors, I reduce the sentence by 6 months. A further reduction is also given for the time spent in remand. That is, 80 days which equates to an effective sentence of 160 days or 5 months 10 days.
19. Another mitigating factor is the custom reconciliation that was carried out while you were in custody. The food items and money totaling over VT 100,000 was given to the victim's family. In *Edgel v. PP*⁹ it states that the court can consider a separate reduction of the sentence after the custom reconciliation, depending on the circumstances. The value of items and money given totaled a big amount, which the defendant's family truly showed that not only is the defendant remorseful, but that their family relationship was highly valued, where they want it repaired. Taking this into account, I make a separate deduction of 6 months.

End Sentence

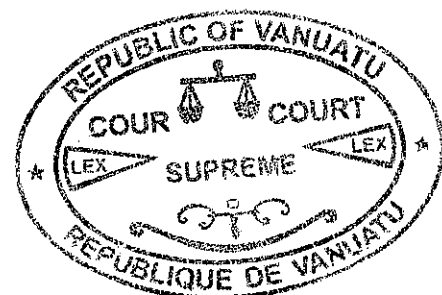
20. Mr John Wesley Tapore, you are sentenced to 2 years 8 months 25 days imprisonment.
21. To suspend the sentence, under s.57 of the Penal Code Act, I must consider the circumstances, the nature of the offending and your character. The circumstances are that you are a student. The nature of the offending is very serious. Your character shows the level of maturity you are in life and the decisions that are made at your age. In *PP v. Gideon*¹⁰, the Court of Appeal stated in that case, that only the most extreme cases can suspension be contemplated in cases of sexual abuse. The weak and vulnerable cannot be taken advantage of by men, to obtain their sexual gratification. If men cannot learn to control themselves in that aspect of life, then they must accept that their rights to remain in the community will be forfeited. Reasons for immediate custodial sentence were stated in *PP v. Scott*¹¹, as follows:
 - a. To mark the gravity of the offence,

⁸ [2019] VUCA 76.

⁹ [2011] VUCA 37.

¹⁰ [2002] VUCA 7.

¹¹ [2002] VUCA 29.

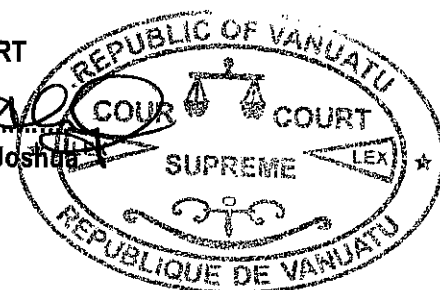


- b. To emphasize public disapproval,
 - c. To serve as a warning to others,
 - d. To punish the offender, and
 - e. To protect women.
22. If your sentence is not suspended, you will spend time in custody among hardened criminals. However, if your sentence is suspended, it will not mark the gravity of the offence. In *Heromanley v. PP*¹², the Court of Appeal stated that the sentencing judge erred in suspending the sentence but allowed the sentence to stand “because of the additional hardship and disappointment it recognizes that a young offender, who has thought he or she has avoided custody, will suffer if now ordered to serve time in custody.” For this reason, Section 57 cannot be applied.
23. The defence submission suggests that the sentence be suspended in part, pursuant to Section 58. This can be applied to sentences below 3 years imprisonment. In *Boesaleana v. PP*¹³, the Court of Appeal states that “the court must not become lost in formulae...but rather looks in a general and realistic way at the entire offending, assessing all relevant aggravating and mitigating factors, and then reaches a sentence which...reflects the culpability which has been established.” You are a first time offender who committed a very serious offence. You are young and still in school. In weighing all this, a partial suspension will serve as a warning to others, punish you and protect women.
24. I am suspending your sentence in part. You must serve 1 year 7 months 10 days of the sentence immediately, backdating it to 1 July 2025. The remaining sentence of 1 year 1 month 15 days will be suspended for 12 months.
25. I further order that,
- a. You must attend any appropriate program offered by the Correctional Centre that will help you with your rehabilitation; and
 - b. The Correctional Centre must make appropriate arrangements with your school so you can complete your education whilst serving your sentence.
26. You have 14 days to appeal against the sentence.
27. I make a permanent order suppressing the names and identifying details of the victim.

Dated at Luganville, Santo on this 19th September 2025

BY THE COURT

B. Kahas Joshua
Justice B. Kahas Joshua



¹² [2010] VUCA 25.

¹³ [2011] VUCA 33, at paragraph [6].