

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

**Criminal Case No. 25/2343 SC/CRML**

**Between: PUBLIC PROSECUTOR**  
Santo

**The State**

**And: Derick Boe**  
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*

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**SENTENCE**

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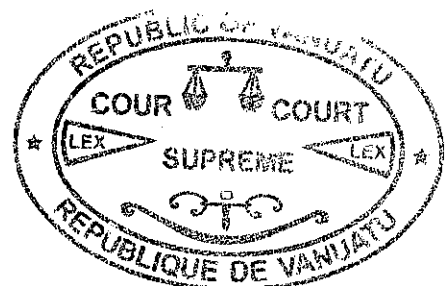
**Introduction**

1. Mr Derick Boe, you appear for sentence after pleading guilty to the following charges:
  - a. Sexual intercourse without consent, contrary to Section 90 and 91 of the Penal Code Act [CAP 135]; and
  - b. Act of indecency, contrary to Section 98(a) of the Penal Code Act [CAP 135].
2. The maximum penalties for these offences are:
  - a. Life imprisonment, and
  - b. 10 years imprisonment.

**Facts**

3. You are married to the older sister of the victim, JH ("the victim"). One night, in April this year, you went into the victim's room and forced her to perform oral sex with you. She refused, so you forced her to lie on the bed, and told her to remove her clothes. She, again, refused so you removed her clothes and had sex with her. She was terrified and hid her face during the ordeal. After the incident you told her not to tell your wife.
4. A few days later you did a similar act again. You were cooking in the kitchen and when the victim's brothers left her bedroom, you took the opportunity to go into her bedroom. The victim was inside alone. You went in and pushed your hand into her shirt and touched her breasts and told her not to scream. When you heard her brothers returning you quickly went out and stood at the doorway of the room. One of the victim's brothers saw you and asked what you were doing. You told him that you were just standing on the veranda. Her brothers got suspicious and reported this to their father, and when he questioned the victim, she revealed what happened.

**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*<sup>1</sup>. They applied *Moses v. R*<sup>2</sup>.

### Step 1: Starting point

8. The starting point reflects the aggravating and mitigating factors of the offending. It also takes into account the maximum penalties for the offence.
9. There are 2 charges against the defendant. The most serious offending is sexual intercourse without consent, and less serious is the act of indecency. In *Boesaleana v. PP*<sup>3</sup>, the Court of Appeal stated that when a court has to sentence a convicted person who faces many counts and more than one victim, "it is often beneficial to decide what is the most serious offending and to impose a lead sentence on that which properly takes account of all aggravating factors and then to impose concurrent sentences in respect of other offending as that is appropriate." After considering the 2 charges, I will set a starting point on global basis to reflect the totality of the offending.
10. The aggravating factors of the offending are:
  - a. There was a breach of trust as the defendant is the brother-in-law of the victim - he is married to the victim's older sister.
  - b. The offending took place in the family home where the victim is entitled to feel safe – both incidents happened in the victim's bedroom at home.
  - c. There was some degree of planning – when the defendant was in the kitchen and when he saw the victim's brothers leave the bedroom, he used that as an opportunity to carry out the act of indecency.
  - d. The victim is now psychologically affected – she has returned to the island to be far away from where the incident occurred so as not to be reminded.
  - e. There is a loss of dignity of the victim – she has had to return to the island.
11. There are no mitigating factors of the offending.
12. The prosecutor submits that the appropriate starting point for sexual intercourse without consent is 6-8 years imprisonment. In *PP v. Scott*<sup>4</sup>, two men used physical force on the victim. The starting point adopted was 8 years imprisonment. In the current case, the defendant used some force when he attempted to get the victim to perform oral sex on him, and when he forced her to remove her clothes, in the first incident. There is only one defendant, so the sentence must be less. In *PP v. Peter*<sup>5</sup>, the defendant was charged with sexual intercourse without consent. He was related to the victim, and a starting point of 7 years imprisonment was adopted. The current case is similar to *Peter*.
13. Defence counsel submitted a starting point of 6 years imprisonment. In *PP v. Malalo*<sup>6</sup>, the defendant was charged with sexual intercourse without consent. The defendant is the complainant's uncle and her guardian.

<sup>1</sup> [2020] VUCA 40.

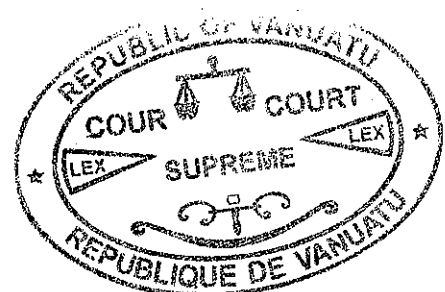
<sup>2</sup> [2020] NZCA 296.

<sup>3</sup> [2011] VUCA 33, at paragraph [9].

<sup>4</sup> [2002] VUCA 29.

<sup>5</sup> [2025] VUSC 97.

<sup>6</sup> [2023] VUSC 134.



After drinking with his friends, the defendant returned home and saw that the complainant was alone at home. He removed her clothes, told her to lie down and had sex with her. A starting point of 6 years imprisonment was adopted by the court. In the current case, the defendant was not drunk nor was he a parent/guardian to the victim.

14. For the first count, I adopt a starting point of 7 years imprisonment, as in *Peter*.
15. For the second count of act of indecency, both counsels referred to the case of *PP v. Tari*<sup>7</sup>. In that case, the defendant was charged with two counts of act of indecency, through clothing. The defendant was the victim's brother-in-law. The court adopted a starting point of 2 years. This is similar to the current case, except that the act was done directly on the victim's body. The sentence must be higher. Taking this into consideration, I adopt a starting point of 3 years for the second count.
16. In considering *Boesaleana*, the lead sentence in the current case is 7 years imprisonment for sexual intercourse without consent. The second sentence of 3 years is to be served concurrently with the lead sentence.

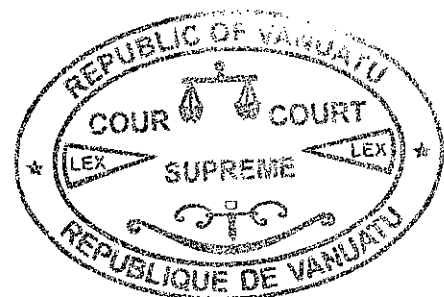
## Step 2: Guilty plea and personal factors

17. You pleaded guilty in court. You also admitted to the allegations against you, under caution. In *PP v Samue*<sup>8</sup>, the Court of Appeal stated that there is no law in Vanuatu that provides for  $\frac{1}{3}$  allowance for guilty pleas. This is a discretion for the court after weighing all competing sentencing principles. In so doing, you are entitled to 25% discount for your guilty plea. Your guilty plea has saved your sister-in-law the trauma of re-living a terrible experience. The sentence is reduced by 24 months' imprisonment, bringing the sentence to 5 years.
18. The pre-sentence report gives some background on your character and personal history. They are taken into account in the mitigating factors:
  - a. You are a first time offender with no prior convictions,
  - b. You are a kava farmer and make your living through this,
  - c. You cooperated with the police,
  - d. You are remorseful and are sorry for your actions, and
  - e. You performed a custom reconciliation where you gave VT36,000 to the victim's family, which they accepted. After considering the case of *Edgel v. PP*<sup>9</sup>, I do not consider this to carry enough weight to make a separate deduction. The victim is too closely related to you, and it will take many years for her to recover.
19. You stated that you have some kind of health condition, however, there was no medical certificate to show this. But even if there was a medical certificate, this would not carry weight as you did not consider this health condition when carrying out those acts. You even justified your actions by saying that the victim consented and it was only after the victim's brothers reported the second incident that the matter was revealed. If the victim had agreed she would not have reported the first incident when no one was around. She even stated that she did not want to see your face in that first incident. Your justification does not mitigate the offence.
20. For these mitigating factors, I give a reduction of 3 months. A further reduction is made for the time spent in remand. That is, 23 days which equates to an effective sentence of 46 days (1 month 16 days).

<sup>7</sup> [2025] VUSC 86.

<sup>8</sup> [2019] VUCA 76.

<sup>9</sup> [2011] VUCA 37.



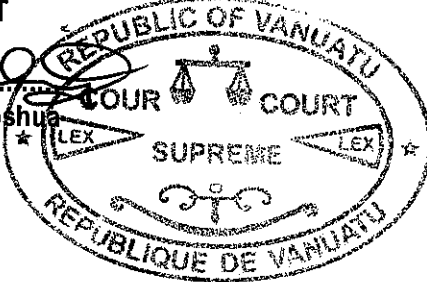
**End Sentence**

21. Mr Derick Boe, you are sentenced to 4 years 8 months 16 days imprisonment.
22. Suspension of the sentence is a discretion of the court, under Section 57 of the Penal Code Act (CAP 135). I must consider the circumstances, the particular nature of the offending, and your character. I do not find anything exceptional about the circumstances or your character. In *PP v. Gideon*<sup>10</sup> the Court of Appeal stated that, it will only be in the most extreme cases that suspension could ever be contemplated in a case of sexual abuse. It further stated that 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. Five reasons for immediate custodial sentence are given in *PP v. Scott*<sup>11</sup>:
  - a. To mark the gravity of the offence,
  - b. To emphasize public disapproval, and
  - c. To serve as a warning to others,
  - d. To punish the offender, and
  - e. To protect women.
23. For these reasons, I decline to suspend your sentence.
24. I impose an immediate sentence of 4 years 8 months 16 days imprisonment. The sentence is to be backdated to 27 August 2025.
25. You have 14 days to appeal against the sentence.
26. I make a permanent order suppressing the names and identifying details of the victim.

**Dated at Luganville, Santo on this 19<sup>th</sup> September 2025**

**BY THE COURT**

*Justice B. Kahas Joshua*  
Justice B. Kahas Joshua



<sup>10</sup> [2002] VUCA 7.

<sup>11</sup> [2002] VUCA 29.