

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

Criminal
Case No. 25/144 SC/CRML

PUBLIC PROSECUTOR

v

CLIFF IATA KAUNAK

Date of Plea: 10th March 2025
Before: Justice Josaia Naigulevu
Counsels: Acting Public Prosecutor – Mr. Christopher Shem
Public Solicitor – Mr. Regi Melsui

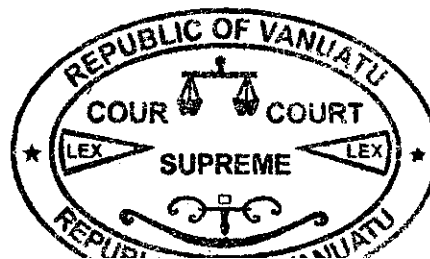
SENTENCE

Introduction

1. Mr. Cliff Iata Kaunak, you appear for sentence after pleading guilty to and accepting the summary of facts relating to a charge of sexual intercourse with a child under the age of 15 years but over 13 contrary to section 97 (2) of the Penal Code.
2. You were duly convicted on that plea.

Facts

3. On the 14th May 2024, at about 2:30pm in the afternoon, you accosted the victim Anna Iapa as she was walking back to her home after visiting another house next to the Boral Gas area in Lenakel. You came from behind, covered her eyes with your hands and warned her that you would assault her if she called out. You then dragged her into a nearby bush removed her clothes, forced her head into the ground before you knelt behind her and inserted your penis into her anus. She felt pain but could not free herself. You continued until you ejaculated.
4. At that time, she was 14 years. She was living with her widowed mother. You were 16 years old.



Sentencing Guidelines

5. There are several principles that guide the sentence to be imposed on you. They include the proposition you must be held accountable for your offending and that you need to take responsibility for your action. Additionally, your action is the kind of conduct that is denounced by society, and that similar future acts by you or others must be deterred. Equally important though is that you must be given an opportunity to rehabilitate and reintegrate.
6. The approach taken in the present case follows the guidance that was given by the Vanuatu Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

Starting Point

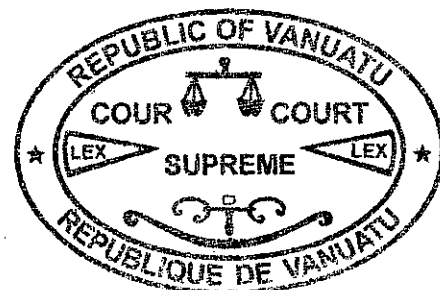
7. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
8. The maximum penalty for the offence of sexual intercourse with a child under the age of 15 years but over the age of 13 years is 15 years imprisonment.
9. Mr. Kaunak, the sentence to be imposed on you must seek to achieve an acceptable balance between the principles of deterrence and accountability on one hand, and rehabilitation and reform on the other, particularly in relation to the seriousness of the offence and your age. Your present age has removed you from the protection ordinarily available to offenders under the age of sixteen years
10. The prosecuting counsel has helpfully referred me to a number of important decisions which have expressed firm views about cases involving sexual assaults against young girls.
11. In *Public Prosecutor v Scott* [2002] VUCA 29 the Court of Appeal said:

"The time has long come when all men must know and understand that women have the right to control what they do with their bodies and what sexual activity they involve themselves in"

In the cases *Public Prosecutor v Gideon* [2002] VUCA 7, their Lordships said:

"Men must learn that they cannot obtain sexual gratification at the expense of the weak and 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.”

12. These principles apply equally to young offenders although rehabilitation and reintegration may however become the important purposes in those cases. In the case *Public Prosecutor v Tulili* [2024] VUCA, the Court of Appeal said:

“The principles stated in Gideon and Scott are not only sentencing principles. In the case of young offenders, reform and rehabilitation are important considerations, and in some circumstances, can outweigh factors which would otherwise apply in sentencing of more mature offenders. This was recognised in Heromanley v Public Prosecutor [2010] VUCA 25 in which this Court said at [17] that ‘in sentencing young offenders...the dual purposes of punishment and deterrence may need to give way to reform and rehabilitation...the Court referred to the legislative purpose in relation to the sentencing of youth offenders evident in (35, 37, 54 and 58H of the Penal Code)’”

The Court added:

“However, as will be seen, the Gideon and Scott principles concerning suspension remain applicable even when the offenders are young.”

13. Whilst there have been recent permutations, the principles stated in *Gideon* and *Scott* continue to provide guidance in the sentencing of offenders convicted of sexual abuse. The Court of Appeal said in *Scott*:

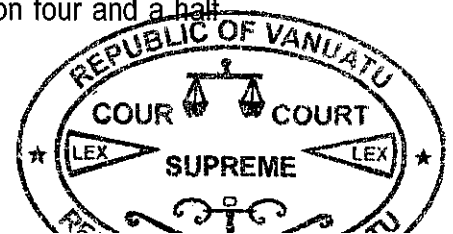
“There can be no room for any deviations from these fundamental and essential principles. The rights of women must be recognised, maintained and upheld.”

The Court added:

“...it will only be in the most exceptional of cases that suspension could ever be contemplated in a case of sexual abuse.”

14. Your counsel draws the Court's attention to the provisions of Article 37 of the United Nation Convention on the Rights of the Children. Whilst this provision should be regarded seriously, in the light of Vanuatu's ratification of the Convention and enactment of sections 54 and 37 of the Penal Code, the Convention is equally concerned about the protection of children from sexual abuse. This concern is reflected in the provisions of Article 34 of the Convention.

15. I have carefully considered the statutory maximum penalty of the offence, as well as the aggravating and mitigating factors and adopt a starting point on four and a half years.



Guilty Plea

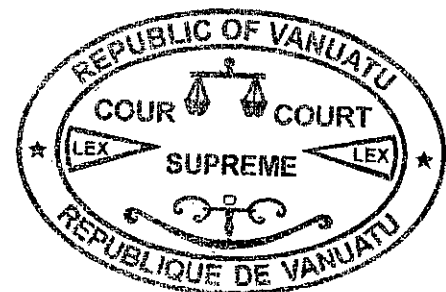
16. Mr. Kaunak, you have pleaded guilty at the earliest opportunity. Your plea has prevented the need for the victim to have to give evidence in Court and to relive the traumatic event again. As the result you are entitled to a one third discount. This accounts for sixteen months a period to be deducted from the starting point of 4 and 1/2 years.
17. Your early guilty plea is an indication of your remorse and contrition: *PP v Gideon [2002] VUCA 7*.

Aggravating Factors

18. The Court of Appeal in the case of *Public Prosecutor v Scott [2002] VUCA 29* provided a helpful list of aggravating factors applicable in rape cases, but relevant also in other cases of sexual assault. In the present case the aggravating factors were:
 - a) The relatively young age of the victim;
 - b) The breach of trust occasioned by the 'close' family relationship between the victim and yourself;
 - c) The potential effect upon the victim's mental wellbeing;
 - d) The potential indignity of anal penetration perpetrated upon the young victim;
 - e) The lack of protection used by you, thereby exposing the victim to sexually transmitted disease.
 - f) The threat of violence and the force used to abduct her, albeit for a short distance.

Mitigating and Personal Factors

19. The pre-sentence report filed by correctional services describes you as a person of 16 years, you are single, live under the care of your parents and are employed by your father at his kava bar. You attended school until class 6.
20. Your counsel draws to the Court's attention how you are a first-time offender. The absence of a previous conviction is taken into account.
21. These factors reduce your sentence by a further 6 months.

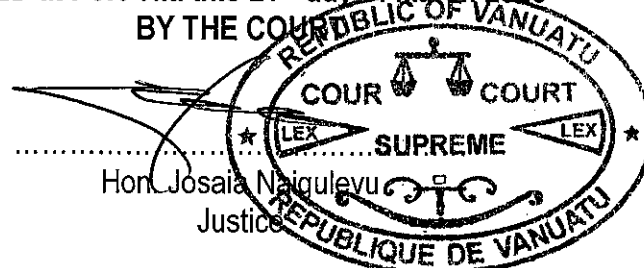


End Sentence

22. I have taken into account all these matters and impose an end sentence of 2 years 6 months (30 months).
23. To consider the manner in which your sentence will be imposed, I have taken into account the submissions made by both counsels. I have also considered the provision of section 57 of the Penal Code regarding the suspension of sentences of imprisonment. This Court is guided by the statement made by the Court of Appeal in Scott that suspension of a term of imprisonment in sexual abuse cases cannot be contemplated save in the most exceptional cases: [2002] VUCA 29. The Gideon and Scott principles regarding the suspension of terms of imprisonment apply equally to mature individuals as well as young offenders: *Public Prosecutor v Tulili* [2024] VUCA 54.
24. The Court recognises the need to achieve a balance between the important principles of deterrence on one hand, and reform and rehabilitation on the other. This Court is of the opinion that the appropriate approach would be to invoke section 58 of the Penal Code, to suspend the end sentence of 30 months in part
25. In doing so, this Court is guided by the decisions of the Court of Appeal in *Tabeva v Public Prosecutor* [2018] VUCA 55 and *Lavi v Public Prosecutor* [2023] VUCA where partial suspension of sentences were also imposed.
26. Accordingly, Mr. Cliff Kaunak you are sentenced to a term of 30 months, 12 months of that period to be served in prison and the balance of 18 months to be suspended for a period of 2 years.
27. You have 14 days to appeal this sentence.

DATED at Port Vila this 21th day of March 2025

BY THE COURT



Hon. Josai Nigulevu
Justice

