

BETWEEN: JAMES SAM KARAPIA
Appellant

AND: PUBLIC PROSECUTOR
Prosecutor

Date of Hearing: 5th August 2024

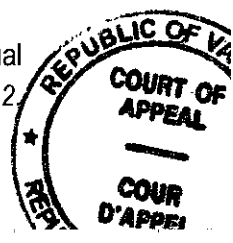
Coram: Hon Chief Justice V. Lunabek
Hon Justice J. Mansfield
Hon Justice R. Young
Hon Justice O. A. Saksak
Hon. Justice D. Aru
Hon Justice V. M. Trief
Hon Justice E. P. Goldsbrough

Counsel: E Molbaleh for the Appellant
M Tasso for the Respondent

Date of Judgment: 16th August 2024

REASONS OF THE COURT

1. Mr Karapia pleaded guilty to one count of sexual intercourse without consent. He was sentenced to 5 years imprisonment. He filed an appeal out of time against his sentence. The appeal was filed on 24 June 2024 and the 14-day appeal period expired on 4 June 2024. The appeal was therefore filed some 20 days late. The Public Prosecutor consented to the extension of time sought, we therefore grant the extension of time for the filing of the appeal.
2. Mr Karapia appeals against his sentence as identified in his amended grounds as follows;
 - I. The sentencing judge's starting sentence of nine years imprisonment was too high;
 - II. The sentencing judge's deductions for a guilty plea (at 33%) and for personal factors (at 12 months) were inadequate;
 - III. The end sentence should have been suspended.
3. At the conclusion of the appeal counsel for the appellant accepted there was no merit in the appeal. We agree. We dismissed the appeal and said we would give reasons, which we now do.
4. The start sentence of nine years imprisonment followed this Courts guidance judgement in sexual offending: *Public Prosecutor v Gideon* [2002] VUCA 7 and *Public Prosecutor v Scott* [2002] VUCA 2.

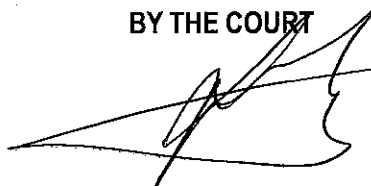


In *Scott* and *Gideon* this court said that where rape is committed by an adult and where the offender had broken into or otherwise gained access to a place where the victim was living, a starting sentence should be at least eight years imprisonment.

5. In this case the facts established the appellant had broken into the victim's home. The victim said that about midnight she had gone inside her house and locked her door. She woke to find the appellant kissing her and he then raped her.
6. The judge concluded that there was a significant degree of planning and so he added a period of one year imprisonment to the starting sentence of eight years imprisonment. Counsel for the appellant accepted he could not maintain a submission that the starting point was too high in view of the Court of Appeal guideline judgement and the facts of this case.
7. As to the deduction for the guilty plea, the appellant submitted that the 33% given was inadequate and that it should have been 35%. A deduction in the start sentence of 33% for the earliest possible plea of guilty has been regularly approved in Vanuatu by the Court of Appeal. There is no basis on which to increase that percentage to 35% in this case. Counsel couldn't identify any reason why we should do so. In any event, the difference between 33% and 35% was so modest it could not be said as a result the final sentence was manifestly excessive.
8. Counsel submitted that the reduction for personal circumstances should have been 15 months rather than the 12 months given. Counsel stressed the appellant had no previous convictions. He had good local references and was remorseful.
9. We consider the allowance of 12 months deduction from the start sentence in view of the appellant's background, was generous. We acknowledge that Mr Karapia was a first offender who had a good community record. As we have noted, those factors were generously reflected in the 12-month deduction from the sentence. The appellant could not identify any error in the trial judge's approach in sentencing on this factor.
10. The appellant did not advance any argument in favour of his appeal ground that the sentence should have been suspended. This was serious offending. The rape of a woman in her own home. In those circumstances suspension was clearly not appropriate.
11. For the reasons given therefore the appeal will be dismissed

Dated at Port Vila, this 16th day of August, 2024

BY THE COURT



Hon Chief Justice Vincent Lunabek

