IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU
(Criminal Appellate Jurisdiction)

Criminal Appeal
Case No. 25/2125 COA/CRMA
[2025] VUCA 36

BETWEEN: **PUBLIC PROSECUTOR**
Appellant

AND: **JOHN IATIKRAU**
Respondent

Date of Hearing:	***11th August 2025***
Coram:	***Hon. Chief Justice V. Lunabek*** ***Hon. Justice M. O'Regan*** ***Hon. Justice A Besanko*** ***Hon. Justice D. Aru*** ***Hon. Justice V M Trief*** ***Hon. Justice E Goldsbrough*** ***Hon. Justice M A MacKenzie***
Counsel:	***Tasso M. for the Appellant*** ***Rantes H. for the Respondent***
Date of Judgment:	***14th August 2025***

JUDGMENT OF THE COURT

1. The Respondent to this appeal, John Iatikrau, was sentenced to a term of imprisonment following his conviction in the Supreme Court for one offence of having sexual intercourse without consent. He was convicted on his own plea. That plea was entered after an earlier not guilty plea, but a few days before the scheduled trial of the matter, which had been set down.

2. This appeal, brought by the Public Prosecutor under s. 200 (4) of the Criminal Procedure Code (CPC), is founded upon a submission that the trial judge made an error of law in his sentencing. There are two grounds set out in the memorandum of appeal which are that the trial judge erred in law by applying a starting point of four years as it was too low given the nature and circumstances of the offence of sexual intercourse without consent and that the trial judge erred in law when he placed too much weight to the mitigating factors which amount to a very low end sentence of 19 months and 18 days imprisonment.

3. The notice of appeal was outside of the time limit of 14 days (s201 (1) CPC), thus requiring the Public Prosecutor to seek an extension of time. The sentence was imposed on 1 July 2025. The

notice and memorandum of appeal were both filed on 22 July 2025, making it just one week late. The delay was attributable to the delivery of the sentence taking place on Tanna Island when the responsible officer was based on Efate. Counsel for the Respondent took no objection to the application and we therefore granted leave for the appeal to be filed as it was.

BACKGROUND FACTS

4. The facts of the offence for which the Respondent was sentenced are set out in the sentencing judgment. In brief, the offence occurred after the Respondent, together with another male friend and the female victim, attended a function at which alcohol was consumed. After taking the victim into the bushes, the Respondent asked the victim to have sexual intercourse with him, but she refused. Following her refusal, the respondent removed the victim's clothes and, ultimately, after various other sexual activities, had penetrative vaginal sex with her against her will. In the sentencing judgment, the trial judge describes the victim as powerless against her assailant. He rightly pointed out that the offence carries a maximum penalty of life imprisonment (s 91 Penal Code [Cap135]).

PROCEEDINGS IN THE SUPREME COURT

5. The trial judge also refers to submissions on sentence from both the prosecution and defence counsel. He notes, correctly, that the prosecution submits a starting point for the sentence to fall within the range of 5 to 7 years of imprisonment and that the defence submits a starting point within the range of 5 to 6 years of imprisonment.

6. In his sentencing process, the trial judge set a starting point for the offence at four years. In determining a starting point, the trial judge was following the sentencing procedure adopted by this Court in *Philip v PP*[1] as first set out in *PP v Andy*[2]. He did not explain in his reasons why he chose to depart from the ranges submitted by counsel, nor did he invite counsel to address him on such a departure.

7. The submissions from counsel on sentence set out the various authorities providing guidelines for offences of having sexual intercourse without consent. Those authorities included *PP v Scott*[3] approving the remarks of the then Acting Chief Justice made in *PP v August*[4] . In *August*, the Supreme Court said:-

> *The offence of rape is always a serious crime. Other than in wholly exceptional circumstance, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasize public*

[1] [2020 VUCA 40
[2] [2011] VUCA 14
[3] [2002] VUCA 29
[4] [2000] VUSC 73

disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last by no means least, to protect women. The length of the sentence will depend on the circumstances. That is a trite observation, but these in cases of rape vary widely from case to case.

For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive the starting point should be eight years.

At the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate. Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to woman for an indefinite time, a life sentence will not be appropriate.

The offence of rape should in any event be treated as aggravated by any of the following factors:

(1) Violence is used over and above the force necessary to commit rape;

(2) A weapon is used to frighten or wound the victim;

(3) The rape is repeated;

(4) The rape has been carefully planned;

(5) The defendant has previous for rape or other serious offences of a violent or sexual kind;

(6) The victim is subject to further sexual indignities or perversions;

(7) The victim is either very old or young;

(8) The effect upon the victim, whether physical or mental, is of special seriousness.

Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.

DISCUSSION

8. Having been referred to the guideline authority endorsed by the Court for the offence of having sexual intercourse without consent, the sentencing judge departed from that guideline starting point of five years

without offering counsel the opportunity to address him on such a departure or explaining that departure in his sentencing remarks.

9. Counsel for the Respondent to this appeal rightly acknowledges that it would indeed be difficult to argue with the submission that the minimum starting point to be applied in this case must be five years imprisonment. It may well be that the appropriate starting point, were this a first instance decision, would be higher than that.

10. We referred earlier to *PP v Andy* for the valuable guidance set out. *Andy* is also helpful, given that it concerns an appeal brought by the prosecution when it says:-

> *The Public Prosecutor has a right of appeal to this court against the sentence imposed by the Supreme Court under section 200(4) of the Criminal Procedure Code [CAP 136]. This court may intervene on a prosecutor's appeal if the sentence is manifestly inadequate. This may arise if the judge has acted on the wrong principle or has clearly overlooked, misstated or misunderstood a salient feature of the evidence. It may arise if the sentence is so clearly wrong that it could not have been imposed without there being a miscarriage in the exercise of the discretion; for example, see R v Gideon [2002] VUCA 7 which followed Skinner v The King (1913) 16 CLR 336, 340.*

11. We commend that approach to an appeal brought by the prosecution. It is no more than a restatement of the approach adopted by the Court in *Naio v PP*[5] where this Court said:-

> *The power of an Appellate Court in an appeal such as this is well settled. The position had been clearly stated in Skinner -v- The King [1913] HCA 32; (1913) 16 CLR 336, at p.340 where the High Court of Australia said :*
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> > *"... a Court of Criminal Appeal is not prone to interfere with the Judge's exercise of his discretion in apportioning the sentence is manifestly excessive or manifestly inadequate. If the sentence is not merely arguably insufficient or excessive, but obviously so because, for instance, the Judge has acted on a wrong principle, or has clearly overlooked, or undervalued or overestimated, or misunderstood, some salient features of the evidence, the Court of Criminal Appeal will review the sentence; but short of such reasons, I think it will not."*
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> *We respectfully adopt those principles as we are clearly of the view that those principles are apt to the circumstances of Vanuatu and should be applied in this jurisdiction.*

12. Counsel for the Appellant during this appeal sought to submit that an appropriate starting point for this offence should be eight years' imprisonment. That submission cannot be accepted as it is beyond any submission that was made in the Court below. A prosecution appeal against sentence is not a vehicle to allow the prosecution to suggest a higher sentence than was suggested in the trial court.

[5] [1998[VUCA 1

13. Other than the starting point, no complaint is made on this appeal about the various reductions applied to the sentence leading to the end sentence, save the percentage reduction to the sentence applied in acknowledgement of the guilty plea. That percentage discount is expressed as "the full one third" following *PP v Gideon*[6]. That case is authority for the provision of a sentencing discount where a guilty plea has been entered at the earliest opportunity. We note that this was not the case here. A Not Guilty plea was entered in December 2024, and the matter was adjourned to a trial date in July 2025. The guilty plea was eventually entered a few days before the scheduled trial when the provincial tour began. Thus, witnesses had been warned and had anticipated having to attend court and give evidence right up until that time. We consider that an appropriate reduction in those circumstances is 10%.

14. Following the established sentencing practice of this jurisdiction, we set a starting point for the sentence at 5 years 'imprisonment. To arrive at that starting point, and because this is a prosecution appeal, we adopt the minimum starting point as submitted by counsel at the sentencing hearing. That may not be the starting point that would have been selected had this matter been before this Court in different circumstances, and so may not be regarded in future as a guideline sentence. We apply a 10% reduction for the guilty plea from that starting point, acknowledging its value. This will have the effect of reducing the sentence from 60 months to 54 months.

15. We accept that there were further appropriate discounts applied to the starting point, reflecting the personal mitigation (10 months) and the delay in bringing the prosecution (5 months) about which no issue is raised on this appeal. The Respondent is also entitled to credit for the time that he has spent in custody pending trial and sentence, which we are told is one month and twelve days.

DECISION

16. An enlargement of time within which to file this appeal is allowed.

17. The appeal against sentence is allowed, and the sentence imposed in the court below is quashed, and the Respondent is resentenced by this Court.

18. For the offence of having sexual intercourse without consent, John Iatikrau is sentenced to a term of imprisonment of 37 months and 18 days, effective from 1 July 2025, being the date on which he was received into custody for this offence.

DATED at Port Vila, this 14th day of August, 2025

BY THE COURT

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Hon. Chief Justice Vincent Lunabek

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

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