

BETWEEN: PUBLIC PROSECUTOR
Appellant

AND: ISMAEL SIEL
Respondent

Date of Hearing: 3 November 2025

Coram: *Hon. Justice Oliver A. Saksak*
Hon. Justice Ronald Young
Hon. Justice Richard White
Hon. Justice Dudley Aru
Hon. Justice Viran M. Trief
Hon. Justice Edwin P. Goldsbrough
Hon. Justice Maree Mackenzie

Counsel: *Betina N. Tamau for the Appellant*
Pauline K. Malites for the Respondent

Date of Judgment: 14 November 2025

JUDGMENT OF THE COURT

Introduction

1. The Prosecution seeks an extension of time in which to appeal against the sentence imposed on the respondent of 18 months imprisonment, suspended for two years, on the ground that the sentencing judge erred in suspending the sentence.

Factual Circumstances

2. The victim is a male of 14 years old. On the evening of 15 February 2025, the victim walked along the beach at the surfside area, Pango. At the gate to the Surfside Bungalows, he met the respondent, a security officer. A short conversation took place between them. Subsequently the respondent invited the victim into the property where they sat down and had some more conversation. The respondent then leaned towards the victim and kissed him on the mouth. The victim reciprocated. The respondent then asked the victim to follow him through the back gate of the property. It was there the defendant stopped beside the wall and asked to kiss the victim again. In the process the respondent asked the victim to hold his penis and he did.

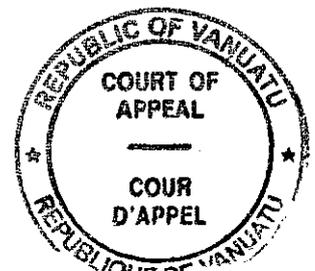


3. The respondent then told the victim to kneel down and perform oral sex on his penis. The victim complied and the respondent ejaculated. He then led the victim back to the gate and made him leave the property.
4. The respondent was charged with unlawful sexual intercourse under section 97(2) and with an act of indecency with a young person under section 98A of the Penal Code Act [CAP. 135] (the Act).
5. On 3rd June 2025 the respondent pleaded guilty to both charges.

The Sentence

6. On 13 August 2025 in the Supreme Court the defendant was sentenced to an end sentence of 18 months imprisonment. The Judge suspended the sentence for a period of 2 years under section 57 of the Act.
7. The sentencing Judge adopted the two-step approach in the New Zealand Case of Moses v R [2020] NZCA 296 applied by this Court in the case of Jimmy Philip v Public Prosecutor [2020] VUCA 40.
8. The Judge made reference to the aggravating and mitigating factors of the offending and the maximum penalty of the offences and after fixing starting points of 3 years and 12 months for the two offences, ordered that these be concurrent so that the starting sentence was a concurrent sentence of 3 years imprisonment.
9. The Judge then allowed for a guilty plea a discount of 25%, thereby reducing the sentence down to 27 months with a further reduction of 3 months for mitigating factors, bringing the sentence down to 24 months. Finally, the Judge deducted a further 6 months to reflect the 3 months period the defendant had spent in custody on remand. This resulted in the end sentence of 18 months imprisonment.
10. The Judge then used her discretion under section 57 of the Act to suspend the sentence for a period of 2 years saying:

"You are in your forties and you have a family. This is the first time you have offended the law and while you were in remand you performed custom reconciliation with the victim's family to show your remorse. You say you have a medical condition that has resulted in numbness on one side of your body. Your pre-sentence report shows you have a good character and have been a good member in the community, which explains why the Chief and Pastor are shocked because they did not expect you to do such an act. This act is a one off incident only. For this I am using my discretion in section 57 of the Penal Code Act Cap. 135, to suspend this sentence for 2 years. In that time, you must not re-offend. If you do, you will be arrested and this sentence will be activated."



11. In order to assist with the respondent's rehabilitation, the Judge imposed an additional sentence of 80 hours of community work.

The Appeal

12. The Public Prosecutor filed a Notice of Appeal on 10th September 2025, some 4 days after the appeal period of 14 days had lapsed on 27 August 2025.
13. An application seeking extension of time in which to appeal was filed on 16 September 2025 on the sole ground that it would be in the interest of justice for the appeal to be heard.
14. The application for the extension is supported by the sworn statement of Mrs Tamau, the State Prosecutor. She deposed that the written reasons of the Judge were not provided at the time sentence was imposed, that she had been on leave from 18th to 29th August 2025, that she had been in Court at Lakatoro from 1st to 5th September 2025 and that it had only been upon her return to the office on 9th September 2025 that she saw the written sentence which had been provided by the Judge during her absence.

Application for Leave to Adduce Fresh Evidence

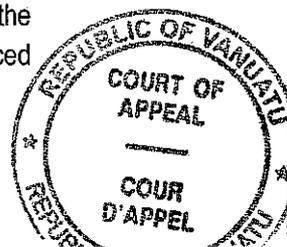
15. The respondent filed an application for leave to adduce fresh evidence on the appeal.

Discussion

16. At the hearing we heard Mrs Malites briefly in relation to the application for leave to adduce fresh evidence. It is the Court's view that leave to adduce new evidence not be granted. The proposed evidence is of relatively limited significance and it was in any event evidence which could, with reasonable diligence, have been obtained by the time the sentencing submissions were made.
17. In relation to the application for an extension of time, section 201 of the Criminal Procedure Code Act [Cap 136] provides for a mandatory appeal period of 14 days:

"(1) Every appeal shall be brought by notice in writing which shall be lodged with the Registrar of the Court which the appeal is made (hereinafter called " the appeal Court") within 14 days after the date of the order or sentence appealed against."

18. Mrs Tamau submitted that, in the light of the Gideon principle suspension in the present case had been inappropriate. She submitted that the sentence should be quashed and the respondent resentenced. She submitted that the 80 hours of community work already completed by the respondent could be taken into account in the resentencing of the respondent. She submitted that the period of extension sought was relatively short, that she had provided an explanation for the appeal being out of time and the sentencing judge had not adverted to, let alone applied, the guiding principle in PP v Scott [2002] VUCA 29 and PP v Gideon [2002] VUCA 7 and reinforced

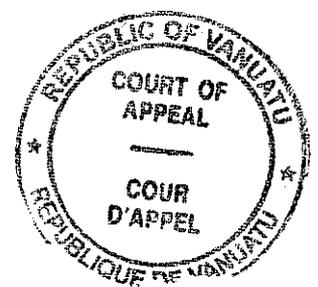


recently by this Court in PP v Tulili [2024] VUCA 54 and PP v Lop [2024] VUCA 43, concerning the inappropriateness of suspending sentences imposed for serious sexual offences.

19. The Court does not regard the reasons for lateness provided by Mrs Tamau in her evidence by sworn statement as adequate to allow an extension of time. While the Court appreciates Mrs Tamau's personal difficulties, the plain fact of the matter is that the Public Prosecutor's Office should have systems in place to allow compliance with times when prosecutors are absent from the office on duty or on leave. Defendants should not be prejudiced because the Office does not have such systems.
20. Be that as it may, there is another balancing factor to be taken into account. And that is the fact that the respondent has already served his community work sentence of 80 hours which was part of his sentence. He had done so by the time the appellant filed his notice of appeal on 22nd September 2025. Having done so, the question is whether it is in the interest of justice that the respondent should now face the prospect that his suspended sentence might be quashed and he has to suffer the prejudice, disappointment and hardship he thought he had avoided.
21. The Court of Appeal has expressed the views in the cases of PP v Andy [2011] VUCA 14, in PP v Tulili [2024] VUCA 54 at [45] and [46] and in PP v Garae [2025] VUCA 37 at [28] that in cases in which errors by sentencing judges are identified, it can be appropriate nevertheless to allow the sentence to stand because of the particular hardship or detriment defendants will suffer if belatedly required to serve a sentence of imprisonment which they thought they had avoided. The present appears to be a case of that kind, especially given that the appellant had completed the 80 hours of community service order as part of the suspension of sentence. It means that even if the extension of time was granted and the appeal heard, this Court may not set aside the order for suspension.
22. For these reasons, we do not consider that the interests of justice favour an extension of time to appeal in this case. We refuse the application.
23. Before leaving the matter, the Court re-emphasizes the principles in PP v Gideon [2000] VUCA 7 and PP v Scott [2002] VUCA 29 to the effect that:

" It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

24. These principles apply to all cases of serious sexual abuse, irrespective of age and gender of the victims.

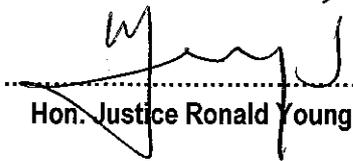


The Result

25. The application for an extension of time in which to appeal by the Prosecution is refused and dismissed.

DATED at Port Vila this 14th day of November, 2025.

BY THE COURT


Hon. Justice Ronald Young

