

BETWEEN: Public Prosecutor

AND: Simon Kaitip
Defendant

Date of Sentence: 23 September 2019
Before: Justice G.A. Andrée Wiltens
Counsel: Ms M. Tasso for the Public Prosecutor
Ms P. Kalwatman for the Defendant

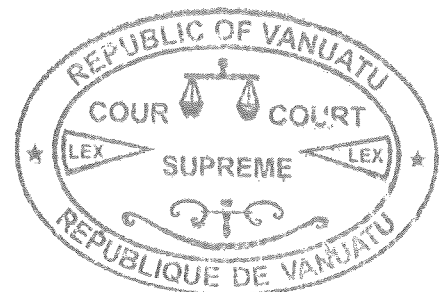
SENTENCE

A. Introduction

1. Mr Kaitip has pleaded guilty to a charge of abduction - the maximum sentence for that offence is a term of 12 years imprisonment. He has also pleaded guilty to a charge of sexual intercourse without consent - the maximum sentence for that offence is life imprisonment. The two charges are closely related.

B. Facts

2. Mr Kaitip and the complainant had previously been in a de facto relationship. He is currently 24 years old; she is 23 and has 2 young children from a subsequent relationship.
3. On 10 January 2019, Mr Kaitip was driving his bus. He picked up the complainant at about 5pm in town – she asked to be taken to Erakor village. He then drove his bus towards Teouma, and against the complainant's wishes, kept her on board. When the complainant had tried to alight from the bus, Mr Kaitip threatened her so she stayed on board. She ended up being the last passenger on board, and at about 5.30pm he then drove her to a wooded and secluded area at Teouma.



4. There Mr Kaitip got off the bus, urinated, and then got into the passenger compartment of the bus with the complainant. He tilted back her seat, removed her clothes and had sexual intercourse with her – she said she was terrified and feared for her safety. She had initially resisted, but was overcome by Mr Kaitip's determination. Mr Kaitip ejaculated on her stomach before returning to the driver's seat and driving to Korman area. There Mr Kaitip gave the complainant VT 150 cash and instructed her to get another bus home.
5. When Mr Kaitip was later confronted by the police, he remained silent.

C. Aggravating Factors of the Offending

6. There are a number of aggravating factors to the offending. Firstly, there is the fact that there are two separate criminal acts involved – the abduction and the sexual intercourse without consent. Mr Kaitip took no precautions, and although the risk of pregnancy was slim, it still existed – and the risk of sexually transmitted disease was extant throughout the sexual congress. The final aggravating factor is the breach of trust aspect of the offending – the complainant must have been terribly concerned at Mr Kaitip's behaviour towards her, which must have been quite different to their previous dealings. She could have no certainty of what Mr Kaitip was capable of at that time.
7. The prosecution submitted there was planning involved in the offending. I discount that possibility – it is far more likely that this was just a chance meeting and that Mr Kaitip was simply opportunistic. I note that the complainant has also ventured the possibility that Mr Kaitip's actions were deliberately planned. However, I must deal with sentencing on the basis of the agreed facts. The complainant's conjecture is not a factor I can or should take into account – I gave this suggestion no weight in the sentencing exercise.

D. Mitigating Factors of the Offending

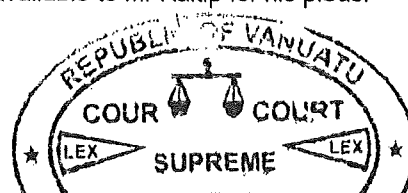
8. There are no mitigating factors relating to the offending.

E. Start Point

9. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 8 years imprisonment, on a totality basis taking both offences into account.

F. Personal Factors

10. Mr Kaitip currently has a partner, and they have two children – one of whom has unfortunately died. He is the sole breadwinner of the family, and he studies as well as drives busses.
11. A custom reconciliation ceremony has been undertaken – to a value of VT 10,000 and some mats; although Mr Kaitip could not be present due his bail conditions. I accept also that he has no previous convictions, and is remorseful.
12. For Mr Kaitip's personal factors I reduce the start point of his sentence by 9 months imprisonment.
13. The final matter of mitigation is Mr Kaitip's pleas. These were promptly entered at the first available opportunity. Accordingly a one-third discount is available to Mr Kaitip for his pleas.



14. Lastly, I take into account that Mr Kaitip has spent some time in custody prior to trial – the date of sentencing will be adjusted to make allowance for that.

G. End Sentence

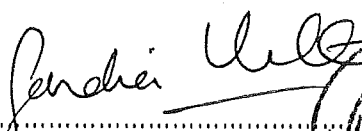
15. Taking all of those matters into account, the end sentence that must be imposed is one of 4 years 10 months imprisonment. I impose that on both charges concurrently, and the sentence is to commence from the date of his incarceration, namely 1 April 2019.

H. Suspension

16. Suspending Mr Kaitip's sentence cannot possibly be countenanced: *PP v Ali August* [2000] VUCA 29; and *PP v Gideon* [2002] VUCA 7 are authorities for that proposition.

17. Mr Kaitip has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 23rd day of September 2019
BY THE COURT


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Justice G.A. Andrée Wiltens

