

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

Criminal
Case No. 20/691 SC/CRML

BETWEEN: Public Prosecutor

AND: Grem Boviar
Defendant

Date: 22 July 2020
By: Justice G.A. Andrée Wiltens
Counsel: Mr D Boe for the Public Prosecutor
Mr R Willie for the Defendant

SENTENCE

A. Introduction

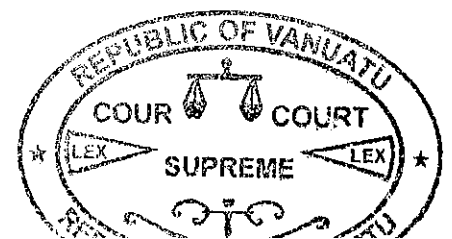
1. Mr Grem pleaded guilty to a charge of sexual intercourse without consent. The maximum penalty for that offending is a term of life imprisonment.

B. Facts

2. On 1 September 2019, Mr Grem and his wife were asleep at home. Mr Grem got out of bed, went outside and fetched a cucumber. When he returned, he made his wife take off her clothes by shouting at her and inserted the cucumber into her vagina. This caused heavy bleeding. Mr Grem said he did this to stop his wife regularly touching her private parts which annoyed him.

C. Sentence Start Point

3. The start point is to be arrived at by taking into account the maximum sentence and the criminal culpability of the offending. The aggravating and mitigating aspects of the offence need to be considered.
4. It is aggravating that this offending took place at night in the complainant's own bedroom where she had been sleeping. It is further aggravating that the offending involves a gross breach of trust between husband and wife. There was actual injury caused.



5. Mr Willie has sought to distinguish between penile penetration and digital penetration. I accept that is such a distinction, but I do not accept the use of a cucumber equates to digital penetration.
6. The start point I set for this offending is 5 years imprisonment.

D. Personal Factors

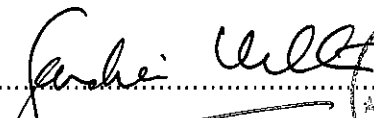
7. Mr Grem pleaded guilty at the first available opportunity. As that has spared the complainant of the need to give evidence and saved Court costs/time, I am prepared to reduce the sentence start point to take the early guilty plea into account by 25%.
8. Mr Grem is now 30. It appears he is now living apart from his wife and 3 children. He is a farmer and has not previously offended in any way. He suffers from Hepatitis B. He participated in a custom reconciliation ceremony.
9. Those factors would ordinarily merit a further 6-8 months reduction of sentence. However, Mr Grem has attempted to minimize and justify his offending. He is also at medium risk of further similar offending. The discount for his personal factors is therefore set at 5 months.

E. End Sentence

10. Mr Grem is sentenced to 3 years and 4 months imprisonment. The sentence is to commence from 28 February 2020 to reflect time already spent in custody.
11. The sentence cannot be suspended due to the seriousness and type at charge involved.
12. Mr Grem has 14 days to appeal the sentence if he is unhappy with it.

DATED at Luganville this 22nd day of July 2020

BY THE COURT


Justice G.A. Andrée Wiltens

