

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

Criminal
Case No. 20/1138 SC/CRML

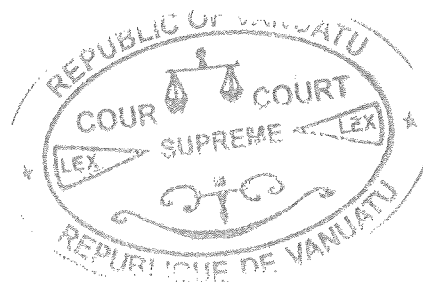
BETWEEN: The Public Prosecutor

AND: Dommy James and Asneth James
Defendants

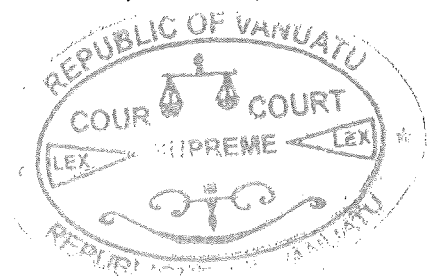
Date of Plea: 12th day of August, 2020 at 9:00 AM
Date of Sentence: 21st August 2020
Before: Justice Oliver Saksak
In Attendance: Mr Damien Boe for Public Prosecutor
Mrs Kylie Bakeo Karu for the Defendants

SENTENCE

1. The defendants Dommy James and Asneth James are for sentence today for having pleaded guilty to three charges on 12th August 2020 on their rearraignment on the Amended Information and Charge dated 12th August 2020.
2. Asneth James pleaded guilty to one charge of complicity to act of indecency contrary to sections 30 and 98 (a) (Count 3) and Dommy James pleaded guilty to 2 charges of act of indecency contrary to section 98 (a) (Count 1) and to sexual intercourse without consent-section 90 and 91 (Count 2) of the Penal Code Act [CAP. 135] (the Act).
3. These are serious sexual offendings. Sexual intercourse without consent carries a maximum penalty of life imprisonment and act of indecency with a young person carries a maximum penalty of 7 years imprisonment.



4. Dommy James is the husband of Asneth James. They are from Avunatari Village, West Malo. The victim Rondalyn Jeumoli was a 16 year old student attending Year 9 at the Santo East Junior Secondary School in Luganville. She is the niece of Dommy and Asneth James. The defendants assist in the payments of the complainant's school fees.
5. The offendings started in September 2018 when the defendant's invited the complainant to their house where she was forced by Dommy James when touching her vagina. Asneth James made the complainant suck her husband's penis while she touched her private part and kissed her vagina. All these happened without her consent.
6. The second offending occurred in December 2019 when Asneth James invited the complainant again to their house and forced her to have sex with her husband while she stood by and watched and took photographs.
7. In considering and assessing the defendant's appropriate sentences the Court will apply the guideline principles in PP v Scott [2002] VUCA 29, PP v Gideon [2002] VUCA 7, PP v Kalsale [2007] VUCA 11, Simeon v PP [2008] VUCA 9, PP v Hinge [2008] VUCA 30 and PP v Koata [2009] VUCA 36.
8. These cases are clear authorities that the only appropriate punishment the Court will impose on the defendants today will be custodial sentences.
9. This is to ensure the purposes of (a) protection of the young and vulnerable, (b) deterrence to the general public and the defendants, (c) public disapproval and condemnation of the defendant's actions and (d) Marking the seriousness of the defendant's offendings.
10. The aggravating features of the offendings were that
 - (a) The actions were planned,
 - (b) More than one person and defendants were involved,
 - (c) There was an age disparity between the defendants and the victim,
 - (d) There was a serious breach of family trust and relationship (of uncle/aunty and niece),



- (e) Unprotected sex putting the victim to risks of teenage pregnancy and venereal diseases.
- (f) Repetitive actions in the presence of another person,
- (g) Photographs were taken of the victim and distributed,
- (h) Offendings occurred within the confines of their home.
- (i) Extra marital affairs, and
- (j) Potential long term effects on the mental and physical aspects of the victim's life.

11. The defendants have not given any reasons or grounds why they saw fit and proper to engage their young niece in their sexual lust and gratifications. But on the other hand there was no force or violence used. There were no threats of serious physical harm or use of weapons involved. There were no resistance.

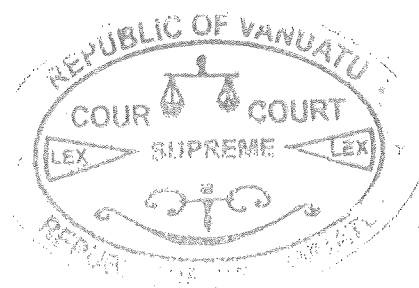
12. For these aggravating features the mitigating factors and the seriousness of their offendings, I set the starting points as follows:-

- (a) For Asneth James- for the charge of complicity to act of indecency, you are convicted and sentenced to a starting sentence of 5 years imprisonment. I reduce this sentence by 1 year 8 months for your early guilty plea and a further 6 months for your mitigating and other personal factors. Your end sentence is 2 years and 2 months imprisonment.

I do not see any exceptional circumstances that warrant the suspension of your sentence I order however that your sentence be backed to 24th December 2019 when you were first taken into custody.

- (b) For Dommy James- for the offence of act of indecency without consent (Count 1) you are convicted and sentenced to a starting sentence of 6 years imprisonment. This sentence is concurrent with the 8 years sentence for the charge in Count 2.


And for the offence of sexual intercourse without consent (Count 2), you are convicted and sentenced to a starting sentence of 8 years imprisonment. For your early guilty pleas I allow the full 33% to reduce your sentence of 8 years by 2 years and 8 months. I deduct a further 6



months for your mitigating and personal factors. Your end sentence is therefore 5 years and 2 months imprisonment.

- (c) You have no exceptional circumstances to warrant the suspension of your sentence. But I order your sentence of 5 years 2 months to be backdated to 24th December 2019 when you were first remanded into custody.
- (d) Both of you are currently on bail which ends today. That means your sentences are effective today.
- (e) Both you have a right of appeal against these sentences within 14 days if you do not agree with them.

**DATED at Luganville this 21st day of August 2020
BY THE COURT**


OLIVER.A.SAKSAK
Judge

