

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

Criminal  
Case No. 20/689 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Denilson Kellen

*Date:* 17<sup>th</sup> September 2020  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Ms L. Lunabek for the Public Prosecutor  
Ms C. Thyna for the Defendants

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**SENTENCE**

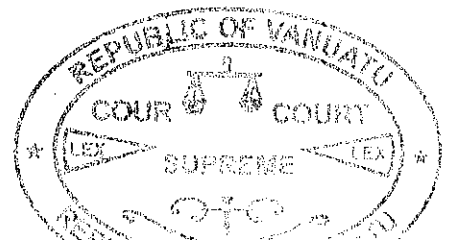
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A. Introduction

1. Mr Denilson Kellen pleaded guilty to a lesser alternative charge of unlawful sexual intercourse with a child under 15 years of age but over 13 years.

B. Facts

2. He disputed the summary of facts. Following a disputed facts hearing, I determined the facts to be as follows.
3. On the evening of Christmas Day 2019 Mr Kellen met up with 13 years old complainant WE. He asked her to go with him, but she had a young child with her in her care. WE agreed to return to Mr Kellen once she had safely returned the child to her home. WE duly did so.
4. They entered a yard near the Black Market at Litzlitz. There, possibly on a mound of copra, Mr Kellen removed WE's clothes and told her to lie down. She did so.
5. He then inserted his penis into her vagina and subsequently also inserted two fingers into her vagina.
6. Mr Kellen told the police initially that he was so drunk he could not recall anything. Subsequently he told them he wanted to only speak in Court.



7. Mr Kellen disputed the penile penetration. He said there were many revellers around and that the couple were going down to the seaside later to have sexual intercourse. WE did not accept that version, maintaining that the earlier penetration of her vagina was penile, and the later penetration digital. I considered it an unlikely accusation for an immature 13 year old girl to imagine. Mr Kellen admitted his first explanation to the police was untrue. He could point to no animosity on WE's part to make up her account. I concluded Mr Kellen's version was simply an attempt to avoid the consequences of his actions and untrue. I found he lacked reliability and veracity – I did not believe him. Accordingly, I concluded WE's version of the events was the basis on which Mr Kellen should be sentenced.

C. Sentence Start Point

8. The sentence start point is to be arrived at firstly considering the maximum sentence; and secondly by factoring in the aggravating and mitigating aspects of the offending.

9. The maximum penalty for Mr Kellen's offending is a term of 15 years imprisonment.

10. There is one mitigating aspect to the offending, namely that it is agreed that no force was used to compel WE to take part. There are however several aggravating factors:

- The lack of protection exposed WE to pregnancy and sexually transmitted diseases;
- Mr Kellen's entitlement attitude – he seems to believe he has the right to demand co-operation;
- The age differential – WE was 13, Mr Kellen was then 21 years old;
- The effect on the young complainant who remains afraid of Mr Kellen;
- The additional depravity of also inserting his fingers into WE's vagina; and
- The breach of trust – Mr Kellen is related to WE as a cousin.

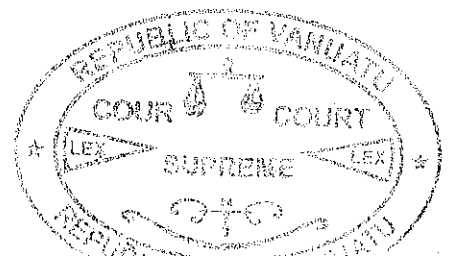
11. The start point I set for the offending is 6 years imprisonment

D. Personal Factors

12. Mr Kellen pleaded guilty on the day of trial. It is accordingly not a prompt plea.

13. Further, Mr Kellen compelled WE to give evidence to explain in some detail to several strangers matters of an intimate nature. She was very obviously upset and embarrassed by the ordeal.

14. The maximum discount for a prompt plea in Vanuatu is a deduction of one third. That is appropriate where the guilty plea is immediately entered – that is not the case here. The one third deduction reflects a saving of Court time and expense; and as well as an acceptance of wrong doing and an indication of remorse. It can also benefit a complainant in that he/she will not need to give evidence and be spared the stress and embarrassment of having to do that. However, by requiring a Disputed Facts Hearing to occur, Mr Kellen did not spare WE the ordeal



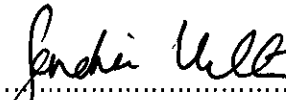
of having to give evidence. By effectively calling her a liar, he did not demonstrate remorse or fully accept his wrong doing.

15. The reduction for Mr Kellen's late plea of guilty is accordingly set at 10%.
16. Mr Kellen is still only 22 years of age with no previous convictions. He continues to live with his parents. He has been well educated – up to university level and has many skills. He mainly assists his father by way of employment and is financially dependent on his parents.
17. He is well supported by his parents and in the community. His village chief speaks well of him.
18. Mr Kellen has participated in two custom reconciliation ceremonies involving the gifting of a pig and root crops to the value of VT70,000; and cash of VT100,000. The gifts have been accepted by WE and her family.
19. The PSR records WE's family has no hard feelings against Mr Kellen, and they considered Mr Kellen had learnt a lot as a result of this matter. They considered it changed him, for the better. They asked the Court to afford Mr Kellen a second chance.
20. For Mr Kellen's personal factors the sentence is further reduced by 12 months. In particular that reflects his comparative youth, the lack of previous convictions, participation in two significant custom reconciliation ceremonies, and the attitude WE's family has adopted.

E. Sentence

21. Mr Kellen is sentenced to 4 years 5 months imprisonment. That reflects the need to deter Mr Kellen and others from acting in a similar fashion in future and need to hold Mr Kellen accountable for his criminal culpability. There is obviously a need to protect the younger members of the community from this type of conduct.
22. It is inappropriate to suspend all or part of the sentence due to the serious nature and the type of offending involved.
23. The Defendant has 14 days to appeal this sentence if he disagrees with it.
24. The details leading to identification of WE we permanently suppressed.

**Dated at Lakatoro this 17<sup>th</sup> day of September 2020  
BY THE COURT**

  
Justice G.A. Andrée Wittens

