

BETWEEN: Public Prosecutor

AND: Meshyr Kapalu
Defendant

Date: 14 December 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms J. Tete for the Public Prosecutor
Mrs K. Karu for the Defendant

Sentence

A. Introduction

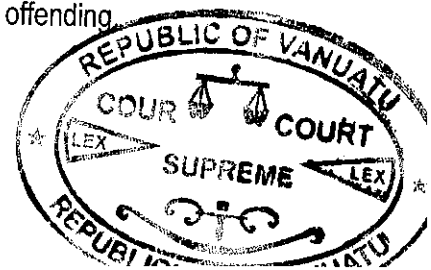
1. Meshyr Kapalu pleaded guilty to a charge of attempted sexual intercourse without consent.

B. Facts

2. On 2 May 2021, the complainant VH, then aged 29 years, went out drinking for the evening with friends. At around 2am the next morning, VH was escorted home by 2 young boys who knew her. She was then in a state of undress and severely affected by the consumption of alcohol. One of the boys then left, leaving Meshyr Kapalu on the doorstep of VH's home. VH by then had gone inside and gone to bed.
3. Shortly thereafter, VH felt someone lying on top of her. She opened her eyes and found that it was Meshyr Kapalu attempting to have sexual intercourse with her. VH scolded Meshyr and told him to get off her but he did not. Then VH's brother heard the commotion, broke down a Masonite wall to get into his sister's bedroom and went to assist VH. While he was doing that, Meshyr ran away.

C. Sentence Start Point

4. The sentence start point is to be assessed by having regard to the maximum penalty available for the offending and factoring in the aggravating and mitigating aspects of the offending.
5. The maximum for this offence is life imprisonment.



6. There are no mitigating aspects to the offending. There are however aggravating factors which include:
- The taking advantage of a vulnerable female who was obviously affected by the consumption of alcohol;
 - entering VH's home at night without permission;
 - the lack of protection used, exposing VH to sexually transmitted disease and possible pregnancy; and;
 - the persistence of the offending – after being scolded and told to stop.

7. The sentence start point I adopt is 4 years imprisonment.

D. Mitigation


8. Meshyr Kapalu pleaded guilty at the earliest available opportunity. That indicates remorse and acceptance of his wrong-doing, and it has spared VH the ordeal of having to give evidence. For the prompt guilty plea I reduce the sentence start point by one-third.
9. Meshyr is 16 years old, single and still at school at the time of the offending. He has now dropped out of school, and is employed. He has no previous convictions.
10. For Meshyr's personal circumstances the sentence start point is further reduced by 18 months, taking into account his youth, lack of previous convictions and remorse as indicated by his plea and his participation in the custom reconciliation ceremony.

E. End Sentence

11. The end sentence I impose is 14 months imprisonment.
12. In certain circumstances the Court can suspend all or part of the sentence. Exceptionally, considering that this is serious sexual offending. I am prepared to suspend the sentence due to Meshyr's youth and obvious immaturity, coupled with his excellent prospects of rehabilitation. Accordingly, the 14 months sentence is suspended for 2 years.
13. Meshyr Kapalu needs to stay offence-free for 2 years to ensure he does not serve any imprisonment for this matter.
14. He is also to serve 12 months of Supervision, coupled with completing 100 hours of Community Work.
15. Meshyr Kapalu has 14 days to appeal the sentence.

Dated at Port Vila this 14th day of December 2021

BY THE COURT


Justice G.A. Andrée Wiltens

