

PUBLIC PROSECUTOR

V

TULANG KALWATMAN

Defendant

Date of Sentence: 25th May 2022

Before: Justice Dudley Aru

In Attendance: Mr. Christopher Shem for the Public Prosecutor

Mr. Henzler Vira for the Defendant

SENTENCE

Introduction

1. Mr. Tulang Kalwatman pleaded guilty to 1 count of kidnapping and 1 count of attempted unlawful sexual intercourse. He is convicted on his guilty plea and appears for sentence.

The facts

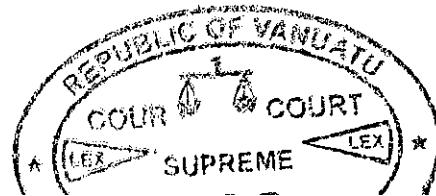
2. There are two complainants.

Count 1

3. The complainant is an 8 year old girl. On Sunday 15 August 2021 she went biking with her family at Pango point area. When they reached Honey Moon beach the defendant came up behind her and took her off her bike. He held her hands and was screaming when the defendant carried her and ran towards the sea. Her family members heard her scream and ran towards them and the defendant left her.

Count 2

4. The complainant is a 12 year boy and resides at Pango area with his parents. On 26 December 2021 at around 830am in the morning he rode his bicycle to the Pango surf site to check out the waves for surfing. While at the beach the defendant approached the complainant and grabbed his hand and told the complainant he wanted to have sex with him. The defendant removed his trousers then lied down on the sand on his back and sat the complainant on his belly and tried removing the complainant's trousers and pushing the



complainant towards his penis. The complainant was also struggling to free himself when a neighbor saw them and intervened. The defendant then left the complainant and ran away.

5. When the matter was reported to the Police, the defendant under caution admitted to both offending.

Sentence start point

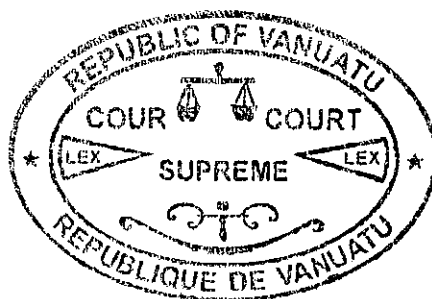
6. The sentence starting point is assessed by considering the maximum sentence available and taking into account any aggravating or mitigating factors of the offending. For kidnapping the maximum sentence available is 10 years imprisonment. For attempted unlawful sexual intercourse, although it's an attempt offending the maximum sentence available is the same as the actual offending which is life imprisonment. There are a number of aggravating factors namely:
 - There was some planning involved
 - There is an age disparity between the defendant and the complainants
 - The complainants feared for their lives
 - The psychological effects will remain with the complainants for sometime.
7. There are no mitigating factors of the offending. Taking attempted unlawful sexual intercourse as the lead offence, I adopt an overall starting point of sentence of 6 years imprisonment.

Mitigation

8. The defendant pleaded guilty to the charges at the first available opportunity as a sign of remorse on his part. I allow a 1/3 deduction for the guilty plea.
9. No Pre-Sentence Report has been filed to date as directed. Defence Counsel submits that the defendant is now 21 years old and is a first time offender with no previous convictions. He was remanded into custody on 28 December 2021 and remains so to date. No custom reconciliation has been performed to date.
10. For personal factors the sentence start point is further reduced by 12 months.

End sentence

11. The end sentence is therefore 3 years imprisonment effective from 28 December 2021 when the defendant was remanded into custody. For kidnapping he is sentenced to 4 months imprisonment to be concurrent.



12. A custodial sentence is warranted as punishment for the offending and to serve as a deterrence to the defendant and the public at large from this type of behavior.

13. The defendant has 14 days to appeal if he disagrees with the decision.

DATED at Port Vila this 25th day of May 2022

BY THE COURT



Dudley Aru
Judge

