

CFC 07-2005 ✓

IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU

(Criminal Jurisdiction)

Criminal Case No.07 of 2005

PUBLIC PROSECUTOR

-v-

JACK REUBEN GEORGE
MALIU HARRY
PHILIP ORAKA
SEULE CHARLIE
TONY JONAS
WILLIE DONALD

Coram: Justice Treston

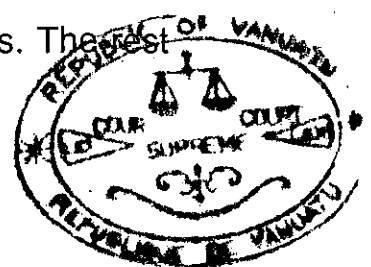
Mr. Tevi for Public Prosecutor
Mr. Kausiama for Defendant

Date of Hearing: 4th March 2004

Date of Sentence: 4th March 2004

NOTES OF ORAL SENTENCE

Each of you face charges of unlawful sexual intercourse. Mr. Seule Charlie and Mr. Tony Jonas. each of you face two charges. The rest



of you face one charge each. The charges all involved the same victim who was 11 years old at the time of the offending. She was born on 24 June 1993.

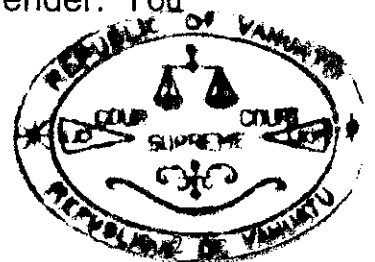
The incidents occurred in two villages on Epi island and the summary sets out the dates and places where the intercourse occurred. The charges are laid under section 97 (1) of the Penal Code Act and the maximum penalty is 14 years imprisonment. Subsection 3 of that section provides that it is no defence to a charge under the section, that the child consented or that the person charged believe that the child was of or over the age in question. There is no doubt that at the time this victim consented to the intercourse but that does not assist any of you. You are all aged between 17 and 20 years and each of you should have known that this behaviour was not only wrong but unlawful.

On your behalf the submission is made that the Court should suspend any sentence of imprisonment.

On a personal basis Mr. George you are 19 years old, single and a first offender. You pleaded guilty at the first opportunity which as the Gideon case (below) says is a sign of remorse and contrition. You apologize to the Court and to the victim for what you had done.

Mr. Maliu Harry, you are 20 years of age, single and a first offender. Again you pleaded guilty and apologize.

Mr. Philip Oraka, you are 17 years of age and first offender. You pleaded guilty and apologize.



At 17 years of age, Mr. Seule Charlie, you also are a first offender and pleaded guilty and apologize. You however, face two charges.

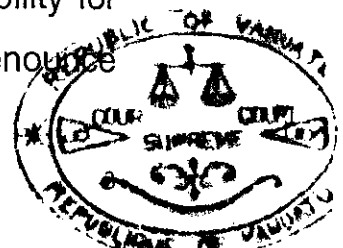
Mr. Tony Jonas, you also face two charges but you are 20 years of age. You pleaded guilty and apologize.

Mr. Willie Donald, at 18 years of age, you are also a first offender who pleaded guilty and apologize.

The Prosecution submitted that the appropriate sentence in this case should be 6 years imprisonment less allowances for your individual pleas of guilty and individual mitigating factors. That is of course bearing in mind the maximum sentence of 14 years imprisonment. I have referred to the case of Public Prosecutor v Kevin Gideon CAC3 of 2001 where the Court of Appeal found that the appropriate sentence should be 4 years imprisonment but because of special factors reduced it to 3. That case set out various factors that the Court should take into account, but the only ones that apply to this case are the age of the victim and your ages and the fact that two of you committed the offence twice.

Your lawyer submits that because of your young age, the fact that you are all first offenders, the fact that it is risky to send person of your age to be in custody with more adult and dangerous prisoners and the fact that you need be rehabilitated rather than punished are matters why I should suspend any sentence of imprisonment. Your lawyer seeks leniency on your behalf.

When I sentence you I must take into account the accountability for harm to the victim and to the community generally. I must denounce

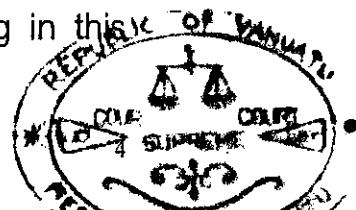


your conduct and deter you and like-minded people from offending in this way. I need to protect the community from this sort of abuse and I must of course in your circumstances impose the list restrictive sentence that is appropriate.

The aggravating features for each of you is the young age of the victim. Mitigating factors are you own relatively young age, the fact that each of you pleaded guilty and of course that has relieved the victim, and particularly a young victim such as this, from having to recite the details before a group of strangers in a Court. I also take into account your apologies and that indicates your remorse and contrition. I also take into account that all of you are first time offenders.

The Gideon case referred to the question of custom settlement under section 119 of the Criminal Procedure Code but that has not been put before me as an issue in this case. More significantly the court had comments to make about this sort of offending. The court said "Whatever may be said about this man personally having learned his lesson, there is an overwhelming need for the Court on behalf the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected. Any suggestion that a 12 year-old has encouraged or initiated sexual intimacy is rejected. If a 12 year old is acting foolishly then they (sic) need protection from adults. It is totally wrong for adults to take advantage of their immaturity."

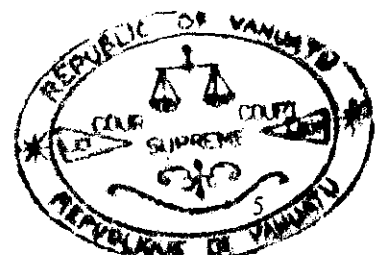
The Court also talked about suspended sentences in these term. "It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this



case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all concerned. Men who take advantage sexually of young people forfeit the right to remain in "the community".

While I bear in mind what the Chief Justice said in the Public Prosecutor v Pakoa CC No.53 of 2003, I am obliged to follow the directive and reasoning of the Court of Appeal. There is nothing, in my view, which makes this a most extreme case to contemplate suspension. I accept that you are all relatively young, I accept that the complainant consented in your cases to the intercourse and took a willing part in what happened but of course that is not a defence and is simply a factor which I can take into account on sentencing. What the court can do to recognize that factor, your young age and your previous good behaviour, rather than suspension is to set the starting point for sentence and the ultimate sentence at a lower level to recognize the particular circumstances as set out in the Gideon case. Those critical factors are the age of the complainant and your age and the fact that two of you committed the offence twice.


In general terms and bearing all that in mind I consider the appropriate starting point for all of you is just over three years imprisonment. I take a third off immediately in general terms for your pleas of guilty. I take into account that each of you has been in custody for three weeks. I must recognise the fact that Mr Seule Charlie and Tony Jonas face two charges each. Bearing all that in mind and taking into account the deductions that I have referred to, I sentence you as follows: -

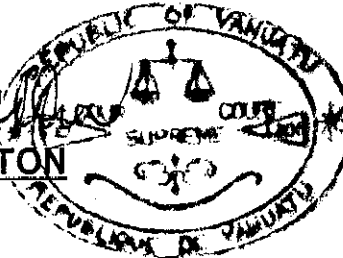


Mr. George, Mr. Harry, Mr. Oraka and Mr. Donald each of you is sentence to imprisonment for 2 years. Mr. Charlie and Mr. Jonas each of you is sentenced to imprisonment for 2 years and 6 months. I am not persuaded by your counsel that the sentences for the reasons I have given should be suspended. Each of you then is sentenced accordingly and have the right if you are unhappy with the decision of appealing within 14 days.

Dated at PORT VILA, this 04th day of March 2005

BY THE COURT


P. I. TRESTON
Judge

The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central emblem with a scale of justice and a crown. The words "REPUBLIC OF VANUATU" are written around the top and bottom inner edges of the seal. The words "SUPREME COURT" are written across the center of the seal.