

PUBLIC PROSECUTOR - v - JOSHUA YOYO JAPHET

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Mr Tristan Karae for the Public Prosecutor
Mr Henzler Vira of Public Solicitor's office for the Defendant*

SENTENCE

Mr Joshua Yoyo Japhet was charged with one count of Indecency with a young person, contrary to Section 98A of the Penal Code Act [CAP.135]. On 9 December 2009, you pleaded guilty to that offence and you are accordingly convicted of it.

The brief show that on 29 February 2008 in the afternoon, the girl complainant return home by bus at Emau Community settlement opposite to Institute of National Technology of Vanuatu (I.N.T.V.) school and she was 12 years of age. The girl complainant said she put her school handbag inside her house. She came outside to play. She walked past you. You called her to go and watch TV in your house. The complainant went to your house and stood at the door. She saw you took out his penis from your trousers and show your penis to her.

The girl complainant went and called one Rona August to see what you were doing. You ran away.

Later in the afternoon of the same day, the complainant told her mother of what you did to her. The defence counsel and yourself agree with the above brief facts.

The probation report shows that you are 24 years of age. You are a Ni-Vanuatu citizen and originate from Moru Vilalge, Emao Island. You reside with your elder sister. You help out your sister with home duties such as cooking, dishwashing,



laundry and maintaining the yard. You participate in the community activities. You are a class 6 school leaver. You have skills in construction and gardening. Your aim is to build and manage a kava bar of your own in future. You were employed with a local construction company in 1999 and you are now unemployed. You get financial assistance from your elder sister. You seem to be in good health without mental or physical problems. You stated you consume alcohol daily while you consume kava occasionally. You also said you smoke cigarettes and cannabis but you now quit smoking cannabis early this year 2009.

You are a first time offender. You are appearing on the charge of Act of Indecency.

The main factors that contributed to the offence were the consumption of cannabis, your immaturity and your inability to deal with your sexual feeling in an appropriate way. You are willing to perform a custom reconciliation ceremony.

The offence of Act of Indecency with a young person, contrary to Section 98A of the Penal Code Act is a serious offence which is reflected in the maximum penalty imposed by Parliament of 10 years imprisonment. The circumstances of the case show that the offending is at the lower part of the scale of this offending.

You are sentenced to 2 years imprisonment and suspended for 24 months. In addition, you are ordered to perform 80 hours community work and 12 months supervision under Section 58G of the Penal Code (Amendment) Act [CAP.135].

You have 14 days to appeal this sentence if you are not happy with it.

DATED at Port-Vila this 23rd day of December 2009

BY THE COURT

**Vincent LUNABEK
Chief Justice**

