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

CRIMINAL CASE No.29 OF 2012

PUBLIC PROSECUTOR - v - WILLIE ARUEL

Coram: V. Lunabek CJ

Counsel: Mr Gregory Takau for the Public Prosecutor
Mr Andrew Bal for the Defendant

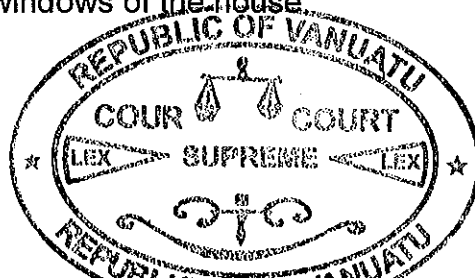
SENTENCE

Willie Aruel, you are sentenced today for one count of unlawful sexual intercourse, contrary to section 97(1) of the Penal Code Act [CAP.135].

On 10th May 2012, you entered a guilty plea to that one count of unlawful sexual intercourse. You were born on 1 January 1997 and so you are currently 14 of age. You come from a mixed parentage of Pentecost and Tongoa. Your father comes from Pentecost Island and your mother originated from Tongoa Island. Your mother remarried when your biological father died. You live with your recomposed parents at Seaside area, Port-Vila. You come before the Court because you have committed a serious offence over a young girl of 8 years of age on 18th March 2012. The brief summary of the facts leading up to your offending are as provided by the prosecution.

Before you entered your guilty plea on 10 May 2012, you and your lawyer accepted the facts as summarised by the prosecution brief of facts. You have taken your pleas on these facts. They are set out below:

On Sunday 18th March 2012 at night, a girl of 8 years (the victim) was sleeping in her mother's room at the Seaside Tongoa in Port-Vila when you unlawfully entered into the room through one of the windows of the house.



[Handwritten signature]

The sexual activity performed by you on the victim was well planned by you as you entered the room the victim was in by the window.

At that time, the victim was still awake and was surprised on seeing you insider the room. She then advised you to go outside. She informed you that her mother would not accept for the young boys to come inside her room.

You however did not adhere to the instruction of the victim. You went ahead to open the cupboard and look into the purse of the victim's mother without saying any words.

At that time the victim wore a white T-shirt, a brown skirt and a white panty bearing the pictures of the dollies on it.

You then came to the victim, took out her panty, ordered the victim not to make any noise and not to shout otherwise you will assault her. At that time, the victim was sleeping on her stomach. The victim tried to call out but you took the pillow, covers her mouth and pushes her head down the mattress. You then penetrated the anus of the victim. Your sperm runs onto the panty of the victim and both sides of her back part. At that time, you did not remove all your clothes. You did wear a jean trousers that was very old. During the sex, the victim felt pain on her anus.

When the victim went to the toilet, she felt great pain on her anus when she relieved herself from the stool.

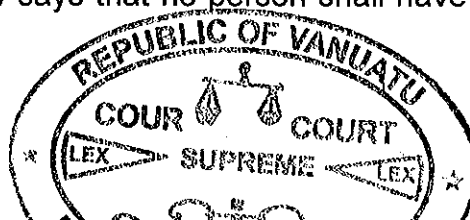
That is the first time the victim had sex with a man.

You regarded the victim as your niece. You used to come at all times to the victim's house to watch TV and eat with them.

Some of the family members witnessed the sexual episode and they went straight away to alert the victim's mother. When the victim's mother came and upon her inquiry from the victim about the matter, the victim immediately disclosed the incident to her mother and the later quickly took the victim to the hospital for medical examination.

The medical examination discloses that there are bruises on the anus and was also very painful when touched.

The facts of your offending show that you have broken the law on 18th March 2012 at night by entering into a house and by having sexual intercourse with a very young girl of 8 years of age. The law says that no person shall have sexual



intercourse with a girl under the age of 13 years. The girl that you forced yourself upon her on 18th March 2012 was a child of 8 years of age.

As a child she is vulnerable that is why the law protects her like any other girls or boys of her age. The Court condemns in the strongest terms your behaviour. It is intolerable and unacceptable behaviour. You have broken the law and you must be dealt with accordingly.

When the Court considers you sentencing, the Court peruses and considers the pre-sentence report filed by the Probation Office, submissions of the public prosecution and submissions by your lawyer on your behalf. Your sentencing was adjourned on occasions as the Court requested a victim impact assessment to be provided on a young person who has recently experienced trauma as a result of your offending. The report was filed on 28 June 2012.

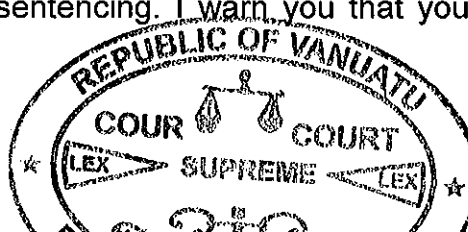
The circumstance of this type of case warrants an imprisonment sentence of 2-3 years.

When I consider your sentencing, I bear in mind that you are 14 years of age. Section 54 of the Penal Code Act provides:

"54(1) A person under the age of 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate.

(2) If a person under the age of 16 years is sentenced to imprisonment the court must give its reason for doing so."

In the present case, I consider the submissions from the prosecution and your lawyer, the probation reports and the victim report, your age (14 years), your guilty plea, the fact you are a first time offender, your apology to the victim girl and her mother and family, and to the Court for your wrongdoing. You also told the Court that that is the first and last time you offended and you will not do the same wrong again. You have asked for your sentence to be adjourned to allow you to perform custom compensation ceremony to the victim girl and her family. You have performed custom compensation ceremony to the victim and her family. The Court takes all that into account in your sentencing. I warn you that you better



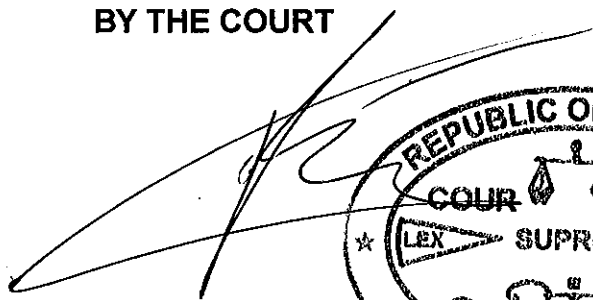
take this opportunity as a chance for you to stop offending and that you use it to rehabilitate and become a law abiding citizen. The next time you commit the same offence or any sexual offending, you will be sent directly to prison.

In the present case, you are sentenced to 50 hours community work and 6 months probation under the general conditions and you will undertake gudfala road program under the conditions to be set by the Probation Officer.

You have 14 days to appeal if you are not satisfied with your sentence.

DATED at Port-Vila this 7th day of August 2012

BY THE COURT



Vincent LUNABEK
Chief Justice

