

PUBLIC PROSECUTOR

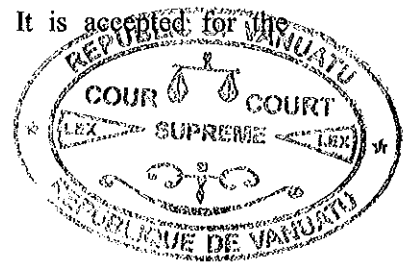
V

GREGOIRE TITEN

Hearing: 11 October 2012 at Lakatoro
Before: Justice Robert Spear
Appearances: Simcha Blessing for the Prosecution
Eric Molbaleh and Roger Tevi for the Defence

SENTENCE

1. The accused was to stand trial at Lakatoro this week on an indictment charging him with sexual intercourse without consent and, as an alternative, Incest. The accused was arraigned and pleaded not guilty to count 1 (sexual intercourse without consent) and guilty to the alternative count 2 (Incest).
2. Mr Blessing for the prosecution then indicated that the prosecution accepted that a conviction for incest would be sufficient to address the criminality of the defendant's actions. Accordingly, no evidence was offered or to be offered on count 1 and Mr Blessing sought a *nolle prosequi* to be entered. That, of course, occurred, the defendant was discharged on count 1 and convicted on count 2.
3. I now have a pre-sentence report and I have also received submissions from both Mr Blessing and Mr Molbaleh in respect of what the sentence should be.
4. The facts of the case are that when the defendant was 17 years of age, he went from his village in Malekula to stay with his older sister and her husband at their home in Santo. This was back in 2005. On several occasions over 2005 and 2006, while his brother in law was at work, the defendant had sexual intercourse with his sister. It is accepted for the

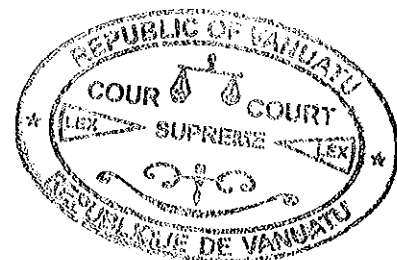


defence that the sexual activity was, on each occasion, the defendant's idea and that he insisted upon having sex with his sister.

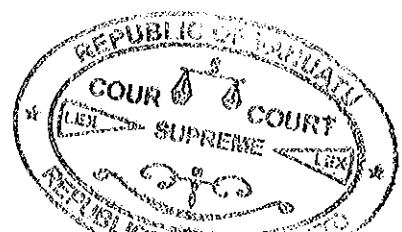
5. Clearly, because no evidence was offered on the charge of sexual violation without consent, this case cannot be aggravated by any suggestion that the sister resisted the defendant's advances. Sentencing must proceed on the basis (as mentioned) that this illegal sexual activity took place entirely on the defendant's insistence.
6. Incest is a most insidious crime. It attracts a sentence of up to 10 years imprisonment. It is well understood throughout all communities that it is wrong for members of the same family to have sexual intercourse with each other. By pleading guilty to this charge the defendant acknowledges that he knew it was wrong to have sexual intercourse with his sister.
7. The crime of incest can have a number of consequences. There are a number of very good reasons why members of the same family should not have sexual intercourse. One reason is simply that there is a greater risk of birth defects if the woman becomes pregnant. Another is that it tends to destroy the family as the relationships become confused or fractured.
8. While the defendant was 17 years of age at the time and that he may not have been thinking that clearly, he knew that what he was doing was wrong and that is exemplified by the fact that the sexual intercourse took place secretly while the husband was at work.
9. Mr Blessing submits that there are a number of aggravating features to this offending. First, it occurred over a period of close to 2 years and it was repetitive having occurred on a number of occasions. Second, it was while he was a guest in his sister's home and so there was a level of trust that was breached by him. I mention now that, while I accept that submission, it is not at the same level as (for example) a father abusing the trust by having sexual intercourse with his daughter. Mr Blessing reminded the Court that the sexual intercourse is accepted to have been the defendant's idea and that he initiated sexual intercourse on each occasion.



10. As to an appropriate sentence, Mr Blessing submitted that a starting point of between 4 and 5 years was appropriate and that only a 25% deduction should be made to reflect a late plea of guilty.
11. For the defence, Mr Molbaleh emphasized that the defendant was at the time of the offending a first offender and only 17 years of age. Furthermore, he is remorseful for what has happened and has undertaken a custom reconciliation ceremony within the family as supervised by a chief. Unfortunately, the view of the victim is not known. However, given that there has been a reconciliation ceremony which required the defendant to provide a pig, Vt 5,000 and local foods, it would appear that there has been some healing in the disturbed relationships within the wider family.
12. Mr Molbaleh informs the Court that the defendant has learned a solitary lesson indeed and, at his young age (24 years of age now), he wishes to move on with his life. Mr Molbaleh accepts that a sentence of 2 to 3 years imprisonment is appropriate for this offending but seeks to have that suspended given the amount of time the defendant had already spent in custody.
13. The police investigation into this complaint, which appears to have been lodged in early 2011, resulted in the defendant being arrested in June 2011. I am not sure why there was such a delay between the time that the offending occurred and the time that the complainant lodged her complaint with the police.
14. Be that as it may, the defendant was in custody from a time in June that is not entirely known at this stage but for current purposes it will be treated as 1 June 2011. He was in custody on remand through to 18 July 2011 when he was due to appear for the first time in Supreme Court at Santo. For reasons addressed in a report from Correctional Services dated 8 September 2011, Correctional Services released him from custody on 18 July 2011. The release was unfortunate and it required a warrant of arrest to be issued. He was re-apprehended on 7 March 2012. He has been in custody since 7 March 2012.



15. If the period during 2011 is taken in to account (48 days if 1 June 2011 is adopted as the starting point) then the defendant has effectively been in custody since a nominal date of 19 January 2012; that is, almost 9 months.
16. Mr Blessing informs the Court that the accused indeed escaped from custody yesterday and that he was apprehended last night in his home village. I have indicated to Mr Blessing that that is not a matter that can be taken into account in relation to the assessment of his sentence for the crime of incest. If, however, the police or the prosecution charge him with escaping from lawful custody then the Court will deal with that in due course.
17. In my view, for a person to initiates sexual intercourse within his family (outside of a parent child relationship) which is repeated on several occasions over a lengthy period, an appropriate starting point (in this case an offending end point) is 4 years imprisonment.
18. I accept that the defendant is remorseful for his actions and, of course, that is reflected in both the assessment of the probation officer and the acknowledgment that a custom reconciliation ceremony has been undertaken. I must also recognise the defendant's age being only 17 years of age at that time. It is well understood that young men often have a difficulty making good judgments.
19. For his remorse and for the custom reconciliation ceremony that has been undertaken I make deduction of 12 months against the sentence that would otherwise have been imposed. For his age at the time of the offending I deduct a further 12 months. That leaves me with a sentence of 24 months imprisonment.
20. The defendant pleaded guilty just before trial and that has saved the complainant having to undertake the ordeal of the trial. The defendant is entitled to a 25% deduction and that results in a sentence of 18 months imprisonment.
21. When I consider the fact that he has been in custody for almost 9 months and his age and the unfortunate circumstances that have surrounded this case



(particularly his release last year which was not his fault), I am driven to reflect that in the sentence that was imposed here by sentencing him to time served but also requiring him to undertake 150 hours community work.

22. It is important to acknowledge that if the defendant had been on bail throughout the course of this prosecution, he would have been sentenced today to a sentence of 1 year 6 months imprisonment and I would not have been disposed to have suspended it. This sentence simply reflects the time that he has already spent in custody.

23. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

