

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

Criminal Case No. 96/ 2012

PUBLIC PROSECUTOR

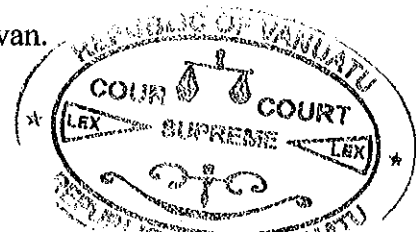
V

JAMES VOCOR

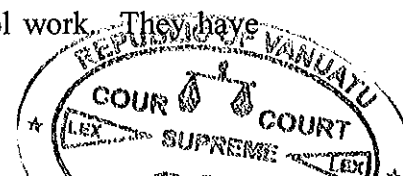
Hearing: 13 March 2013
Before: Justice Robert Spear
In attendance: Tabisa Harrison for the Public Prosecutor
Pauline Kaluatman for the Defence

SENTENCE

1. James Vocor, you are for sentence having pleaded guilty to 1 representative count of having sexual intercourse without consent. That representative count was contained in an amended indictment that was presented on 5 February 2013. Previously, you had pleaded not guilty to various charges in the initial indictment and the matter had indeed reached the date for trial. At the commencement of the hearing that day (5 February 2013), the amended indictment was presented with your consent and you entered a plea of guilty to count 1 which was considered the lead charge. As I mentioned at the hearing on 5 February 2013, you are to receive a full one third credit for your guilty plea because of the significant changes that were made to the indictment.
2. The facts on which this charge are based are disturbing and they reveal offending of a serious nature indeed. In 2012, the parents of this young 12 year old girl went fruit picking in New Zealand. The complainant and her younger sister came to live with your family while their parents were away. You are the girl's uncle through marriage. Her mother's sister is your wife. However, almost immediately after the two young girls came to live with your family, you went to the complainant then aged 12 and told her to come to sleep with you in your caravan. The complainant refused to follow you and a discussion then took place that apparently also involved your wife. The complainant eventually felt that she had no option but to follow you to your caravan.



3. Once in the caravan, you wasted no time removing your own clothing, removing her clothing and then having sexual intercourse with her. The complainant had never had sexual intercourse before and it caused her significant pain and caused her to bleed.
4. You indicated at that time that if she did not continue to comply with your demands for sex, you would turn your attention to her small sister.
5. You then had sexual intercourse with this young girl almost every night for the three months that she stayed with your family and right up to the night before her parents came back from New Zealand.
6. The summary of facts, which you have accepted in its entirety, explains that sexual intercourse not only took place in the conventional sense but that you would also push your penis into her mouth and on occasions you attempted to push it into her anus.
7. There appears to have been another occasion, according to the prosecution summary of facts, where sex took place after the parents return from New Zealand. That is not part of the charge and I do not pay regard to it.
8. This offending occurred when you were 45 years of age and the defendant was initially 12 years. She turned 13 years during the ordeal that was her time with you.
9. You are, as I have mentioned, a married man and you have 3 children.
10. The offending took place repeatedly, almost nightly, over that period of some 3 months that the complainant's parents were away. Accordingly, sex would have occurred upwards of 60, 70, 80 times. You have left a young 13 year old girl damaged for the rest of her life.
11. In her victim impact report, the complainant says that she cannot stop recalling those many occasions that you forced yourself on to her and that this has caused many problems. What she describes as the effects of your offending on her are regrettably consistent with the type of harm that the Courts see time and time again when adults sexually abuse young girls. The victims lose interest in their school work. They have



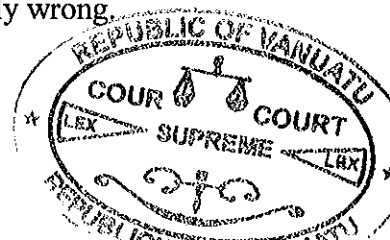
difficulty with their emotions. They have difficulty forming relationships and it affects their ability to develop into a adult and form adult relationships. This is the harm that you have done this young girl and it is significant harm that must be met with a condign sentence.

12. The aggravating features of this offending are obvious. This young girl was between 12 and 13 years at that time and you were 45 years of age. You were her uncle and indeed the young complainant and her sister had been entrusted by their parents into your care and so she was effectively a member of your family at the time this offending took place. There was a shocking breach of trust involved. The offending took place not just once but repeatedly on many occasions almost nightly over a 3 month period. The complainant has been harmed substantially by your offending. The offending occurred against the backdrop threat that if the complainant did not submit to your demands, you would turn your attention to her younger sister.
13. I have a pre-sentence report on you that says by that all other accounts you appear to have been a hard-working and respected member of your community, that you are a reliable and talented individual and that you are a keen member of a particular church. How then do those assessments sit with the shocking offending that you have committed? It simply tells me that you had no regard at all for that young complainant. You had no regard for her as a person and you paid no regard to the harm that your offending would cause her. You treated her as if she was simply an instrument that had been made available to you for your sexual gratification. This provides an insight in to your attitude to the place of young girls in your community.
14. The Probation Officer notes that while you have been in custody, you have spend a lot of time thinking about your offending and that you feel sorry for your wife and your children. Furthermore, that you are ashamed of what you have done and you describe your actions as selfish. Nowhere, however, is there any indication that you have any feeling of empathy for this victim or that you have any concern for the harm that you have done your young niece. Indeed, you go beyond that.
15. You have attempted to shift the blame for this offending on to the complainant. The Probation Officer notes that you told him that it was never your intention to take



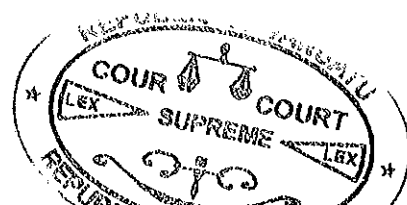
advantage of the complainant and that you simply responded to her requests. Furthermore, you claimed to the Probation Officer that you never forced yourself on the complainant and that "*you have a clear mind about that*". The Probation Officer correctly makes the assessment that this demonstrates that you have absolutely no insight into the cause of your offending.

16. I tell you now that this was and never could have been that young girl's fault. This was offending initiated and pursued by you. A concern I have is that your wife is not standing with you in the dock because she clearly appreciated what was happening and did nothing to stop it. In that respect, she must carry a great deal of responsibility for what you were allowed to get away with. She had the ability and she should have had the moral courage to stand up to you and to prevent or to make this offending stop. Her failure to protect her niece is reprehensible.
17. You offered to undertake a custom reconciliation ceremony or "*klinim fes*" to the victim and her family but they have rejected that. That is indeed their right. The harm you have done that young girl and her family will be with them forever. I can understand their attitude perfectly. Custom reconciliation is certainly appropriate in many cases of criminal offending but it requires a preparedness to forgive and forget and the complainant and her family can certainly not be criticised for being unprepared to put this offending behind them. They have to live with the consequences of your callous actions.
18. This sentence must state in a very clear and emphatic way that this Court will show no leniency at all to adults who sexually abuse the young and vulnerable members of the community. A sentence of imprisonment must be imposed. The sentence must reflect and recognise society's outrage that one of its young members has been abused in such a horrible way by an adult. The sentence must do its best to promote in you a sense of responsibility for what you have done and ensure that you understand that this Court (and accordingly this society) does not approve of your actions and indeed it condemns them in the most emphatic way. The sentence must be such that it will deter others from offending in this way. People must understand that it is not worth the risk to sexually abuse young people besides the obvious point that it is morally wrong.



19. The sentence that I must pass upon you is, of course, going to have a significant effect on your wife for whom who I have little sympathy and also your children. You are responsible for their plight. The deprivation that they will suffer because of your incarceration stems solely from your offending, from your selfishness, and from your desire for sex with a young girl under your care and protection.
20. The authorities that have been identified by legal counsel, within their excellent submissions, focussed particularly upon the starting point to which I need to have regard. Particular reference is made to the leading case of *PP v. Scott*¹.
21. This offending carries with it a maximum sentence of life imprisonment which reflects the seriousness by which Parliament requires it to be treated.
22. If this had been a case where the offending had occurred on only 1 occasion, I would have adopted a starting point of 8 years' imprisonment to reflect in particular, the difference between your age and the age of the complainant, the young age of the complainant at the time, the shocking breach of trust involved and the threats made relating to the younger sister.
23. As this was repeat offending at such a high level, upwards of 60 and 70 times, I lift the starting point to an offending end point of 10 years imprisonment.
24. You have expressed remorse and I am entitled to take that into account if I consider that it is genuine. I am in no doubt that you are remorseful but, as the Probation Officer has identified, that appears to be more your concern for what is ahead of you with a lengthy term of imprisonment and also what is to become of your wife and children. It is not remorse as to your offending which indicates that you know that you have done wrong or that you have any empathy for your victim. I do not allow you any credit for your expression of remorse.
25. Nor do I allow you any credit for the fact that you have indicated a preparedness to participate in a custom reconciliation ceremony. That would have been directed more towards resolving problems within your wider family family. However, your offending

¹ 2002 VUSA 29



has been so serious and the fall out has been so significant that the complainant's family can easily be understood as to why they are not prepared to consider forgiveness or reconciliation at this time, if ever.

26. It appears that you have been a person of good character as reflected by the testimonials that have been given to the Probation Officer. Somewhat reluctantly, I am prepared to recognise your contribution to your local community and allow you 6 months credit against the sentence that would otherwise have been imposed upon you for.
27. As I have earlier indicated, I am prepared to allow you a full one third credit for your guilty plea because of the significant changes that were made to the indictment and the early guilty plea that followed. That saved the State the cost of a trial but more importantly it saved the complainant from having to undergo the ordeal of a trial.
28. That brings me to a calculation of 74 months and I round that down to 72 months as the result of the sentencing evaluation. I consider that a sentence of 6 years imprisonment is appropriate to reflect the seriousness of this offending and all the other factors that I have mentioned.
29. You are accordingly sentenced to 6 years imprisonment which will take effect as from 30 October 2012 to reflect the fact that you have been in custody on remand. You were in custody on remand on 2 separate occasions for a total of 136 days.
30. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

