

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

Criminal Case No. 52 of 2014

**PUBLIC PROSECUTOR**  
**V.**  
**MARK ENOCK REINIGMENT**

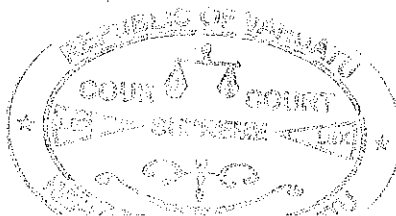
**Coram:** *D. V. Fatiaki*

**Counsel:** *Mr. Ken Massing for the State*  
*Mr. Junior Garae for the Defendant*

**Date:** *18<sup>th</sup> August 2014*

**SENTENCE**

1. The defendant was convicted on 5 August 2014 on his guilty pleas to two (2) counts of Act of Indecency With A Young Person contrary to **Section 98A** of the **Penal Code Act** [CAP. 135] involving the same 13 year old victim. The defendant was originally charged with additional counts of Sexual Intercourse Without Consent (Count 1) and Act of Indecency With A Young Person (Count 4) also involving the same victim. These latter counts were subsequently nollied by the prosecutor and the defendant was discharged in accordance with **Section 29** of the **Criminal Procedure Code** [CAP. 136].
2. The brief summary of facts are that between the months of September and November 2013 at the Peleru area in Santo, the defendant in broad daylight accosted the victim outside his employer's compound at Nambahuk Peleru, where he indecently exposed his naked penis to her. On a second occasion the defendant followed the victim who was on her way to clean the Neil Thomas Ministry ("*NTM*") church compound. The defendant called the victim and made her sit on his lap and masturbate his exposed penis until he ejaculated. He also reached under the victim's top and fondled and squeezed her breasts.
3. The defendant admitted the facts outlined by the prosecutor which included several other similar incidents involving the same victim.
4. Upon his conviction and at the request of defence counsel, the court ordered a pre-sentence report on the defendant as well as written sentencing submissions from counsels.



5. I have been much assisted by the pre-sentence report prepared by Correctional Services from which I extract the following personal details:

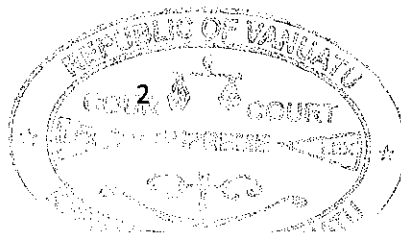
- **The defendant left school at form 3 level;**
- **The defendant is 52 years of age originally from Mat Village in South East Ambrym but now living with relatives in Luganville;**
- **The defendant has been a widower since 1984 and has raised four grown up children who reside in Port Vila;**
- **He was a former member of the VMF and is a deacon in the NTM church at Peleru area;**
- **The defendant is considered a useful and helpful member of his community and extended family and maintains good relations;**
- **The defendant is a first offender and was remanded in custody from 4<sup>th</sup> April until he was bailed by the Court on 30 May 2014;**

6. During his interview for the pre-sentence report the defendant is recorded as admitting to having indecent sexual thoughts "*every time he saw the victim*". Uncontrolled sexual urges was a "*major contributing factor*" for the offending and the defendant was assessed as unremorseful and lacking insight as to the possible long term impact of his offending on the victim. The defendant's so-called risk of reoffending "*... remain high*". Finally the report recommended: "*Imprisonment*" as the appropriate sentence.

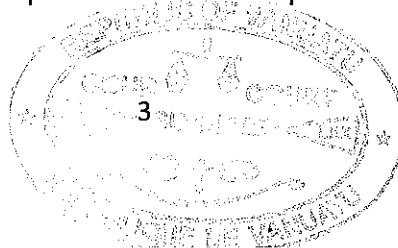
7. Despite the adverse observations and bleak prognosis, defence counsel submits that the defendant "*has good prospects of rehabilitation*". Counsel also highlighted the defendant's hitherto unblemished record; his ready cooperation with police enquiries; his early admission of wrong-doing in Court; and his "*good work history*" and leadership role within the NTM church as strong mitigating factors. I also accept that the victim was not physically harmed or injured by the offending.

8. By way of contrast, prosecuting counsel points to the following significant aggravating factors:

- **The offending was repeated several times over a 3 month period;**
- **The large age disparity between the defendant (51 years) and the victim (13 years) at the time of the offending; and**



- **The offending involved “a trust relationship” (accepted in defence counsel’s submissions) between an elder official (“deacon”) of the NTM church and a young church member.**
9. Finally defence counsel in examining the sentences in three (3) Supreme Court decisions, submits that: *“the comparative cases suggest that a fully suspended sentence would have been available to (the defendant) for this offence. He has already serve a months imprisonment ... he should be sentence to a period of suspended sentence”*.
  10. I confess that reference to earlier sentencing decisions is of marginal assistance as the circumstances of no two cases are ever identical. Having said that, the decisions referred to, are uniformly consistent in strongly condemning any sexual offending between older mature men and young immature girls. Equally, all sentences are custodial.
  11. The offence of Act of Indecency With A Young Person contrary to Section 98A of the Penal Code carries a maximum penalty of *“imprisonment for 10 years”*. It is more serious than an offence of Act of Indecency Without Consent [s.98(a)] – 7 years imprisonment; and Unlawful Sexual Intercourse with a child between 13 and 15 years of age [**s. 97(2)**] which carries a maximum penalty of 5 years imprisonment. It is the equivalent of an offence of Incest [s. 95] or of Sexual Intercourse With A Child Under Care or Protection [s. 96] but it is not as serious as Aggravated Sexual Intercourse With a Child contrary to Section 97A where the maximum penalty is life imprisonment.
  12. There can be no doubting the seriousness of an offence of: Act of Indecency With a Young Person especially where the behaviour is persistent and *“predatory”* and where the defendant, a sexually mature man, has clearly taken advantage of his seniority and status within the community and the church to pursue his young hapless victim for his selfish sexual gratification.
  13. As a starting sentence I adopt a figure of 2 years imprisonment which is raised by a year for aggravating factors. From that 3 years sentence I deduct a year for the defendant’s guilty pleas which has saved the victim from the further ordeal of a contested trial and a further 12 months for mitigating factors making an end sentence of 12 months imprisonment.
  14. I turn next to consider whether or not to suspend the end sentence and, after considering the *“circumstances of the offence”* and the *“character of the defendant”* and especially the observations in the pre-sentence report, I do not consider that this is an appropriate case for suspension.



15. Accordingly Mark Enock Reinigment you are sentenced to 12 months imprisonment less the 2 months already spent in custody pending trial, making a total effective sentence of 10 months imprisonment.
16. You have 14 days to appeal against this sentence if you do not agree with it.

**DATED at Luganville, Santo, this 18<sup>th</sup> day of August, 2014.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

