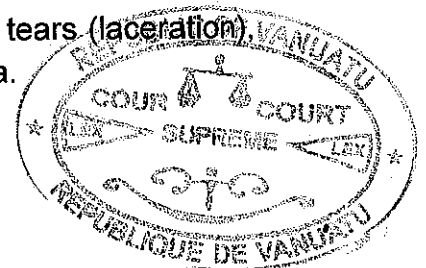


PUBLIC PROSECUTOR
V.
LENNY ROBSON

Coram: Justice D. V. Fatiaki
Counsel: Mr. K. Massing for the State
Ms. J. Tari for the defendant
Date of Sentence: 12 September 2014

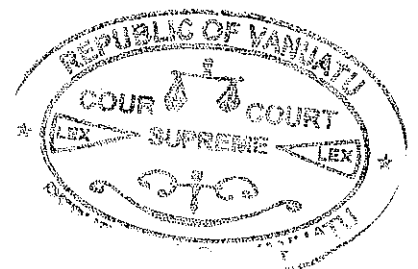
SENTENCE

1. This is the second case of Act of Indecency With a Young Person that this court is called upon to deal with in this week-long circuit and which it is hoped will not be repeated in future circuits.
2. In this case the defendant Lenny Robson was charged with a single count of Act of Indecency With a Young Person contrary to Section 98A of the Penal Code. The defendant pleaded guilty and upon admitting the facts outlined by the prosecutor with two immaterial amendments, the defendant was convicted.
3. The incident occurred on 10 May 2014 at Sqa village on the island of Mota when the defendant accosted his niece at her house and performed an indecent act on her namely, rubbing his naked penis between her legs until he ejaculated. The complainant's mother returned from washing clothes to find the defendant hurriedly exiting their house leaving his t-shirt inside. The complainant was questioned and she immediately related what the defendant had done to her.
4. The matter was reported to police and under caution, the defendant frankly admitted committing the offence. He also expressed during his police statement: "(he's) ... sorry tumas long small girl mo mummy blong hem from fasin we mi bin mekem".
5. A medical examination of the victim 3 days later revealed no tears (laceration), bruising, bleeding, or other signs of trauma to the vaginal area.



6. Upon the defendant's conviction defence counsel sought a pre-sentence report and the same was ordered together with sentencing submissions from counsels. I am grateful for the assistance provided to the Court with the limited time and resources available.
7. From the pre-sentence report I extract the following personal details of the defendant:
- He is 39 years of age and a villager of Sqa village in Mota Island;
 - He comes from a large family and completed years one to six at school;
 - He is married with two young children and supports his family as a subsistence farmer and from cutting copra;
 - He is an active member of the Anglican church;
 - He is considered a loner who doesn't cooperate well with community tasks;
 - He is willing to perform a custom ceremony to the victim's family if they agree to it; and
 - He is a first offender and although the defendant was granted bail he was required to live in Sola, Vanualava away from his wife and family on Mota island.
8. The probation officer also records that the defendant: "... shows remorse and regrets his actions" but ultimately recommends a sentence of imprisonment.
9. Prosecuting counsel in his sentencing submissions accepts that there is no fixed tariff for this type of offending "*but the starting point are all imprisonment sentence (custodial) then either suspended or custodial*". Counsel identified the aggravating features in the case as:
- The age disparity between the defendant's 39 years and the niece's age just under 8 years;
 - The breach of trust between an adult uncle and his young immature niece; and
 - The fact that the incident occurred in the complainant's own home where she should be safe.

Given the aggravating features, the prosecutor seeks an immediate custodial sentence with a starting point between 3 – 4 years.



10. Defence counsel whilst accepting the general sentencing principle for sexual assaults on young and vulnerable children, nevertheless, submits that the circumstances of each case must be considered. In this regard counsel submits that the present case: *"involved a brief, singular and non-penetrative assault ... where the victim's vagina was not touched in any way, the defendant only rubbed his penis on the victim's legs"*.
11. In mitigation counsel highlights the defendant's early guilty plea and full cooperation with police enquiries; the fact that this is the defendant's first offence and his willingness to perform a custom reconciliation to the victim's family.
12. Even accepting defence counsel's description of the incident and the strong likelihood that the complainant would have little appreciation or understanding of what was being done to her, this was a disgraceful opportunistic crime forced on an unsuspecting child in her home by an adult relative who instead of protecting her, used her to satisfy his uncontrolled sexual desires.
13. With the assistance of counsel's submissions, I turn to consider sentence, and I begin with the offence which the defendant has been convicted of, namely, Section 98A of the Penal Code which carries a maximum penalty of 10 years imprisonment. Such a penalty is some indication of the seriousness of the offence.
14. Furthermore when this offence and penalty is compared with the not dissimilar offence under Section 98 which is age-neutral and carries a lesser maximum of 7 years imprisonment, it is clear that the age of the victim is an important factor in the sentencing process, such that, the younger the victim the more serious the offending.
15. Quite incongruously and inconsistently however, is the penalty for the more serious offence under Section 97(2) of the Penal Code of Unlawful Sexual Intercourse With a Child aged between 15 and 13 years which carries a maximum penalty of *"imprisonment for 5 years"* only.
16. Be that as it may in the leading case of PP v. Gideon [2002] VUCA 7 the Court of Appeal said:

"... there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected ... It is totally wrong for adults to take advantage of their immaturity"

and later:

"Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable ... Men who take advantage sexually of young people forfeit the right to remain in the community"



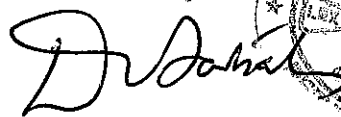
17. The Court of Appeal also highlighted in Peter Talivo v. PP [1996] VUCA 2 that:

“Children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust ... they forfeit the right to remain within the community”.

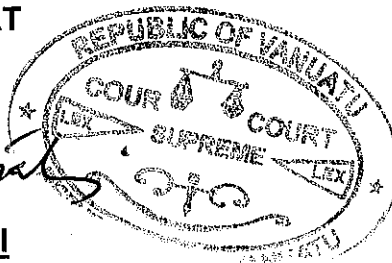
18. Consistent with the views of the Court of Appeal only a custodial sentence is appropriate in this case. I take as a starting point a sentence of 2 years imprisonment which is increased to 3 years to reflect the aggravating features in the case. From the 3 years I deduct one (1) year for the defendant's early guilty plea which has saved his niece the additional trauma of having to testify about the incident and I deduct a further 12 months for mitigating factors making a total end sentence of 12 months imprisonment.
19. I have considered whether this sentence should be suspended but after careful deliberation I decline to do so. Whatever may be said for the defendant, the over-riding sentencing consideration for offences that involve the abuse and exploitation of young immature children by sexually mature male relatives are, denunciation, punishment and deterrence. The defendant is accordingly sentenced to 12 months imprisonment with immediate effect.
20. In conclusion this sentence is entirely consistent with the firm views expressed by paramount Chief James Edward of Mota Island and the probation officer who prepared the defendant's pre-sentence report.
21. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Sola, Banks, this 12th day of September 2014.

BY THE COURT



D. V. FATIAKI
Judge.



**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**



Criminal Case No. 56 of 2014

**WARRANT OF COMMITMENT UPON A CONVICTION
WHERE THE PUNISHMENT IS IMPRISONMENT**

(Section 189)

TO: Director of Correctional Services, Luganville, Santo, in the Republic of Vanuatu

AND TO: Correctional Officer, Sola, Banks Islands

WHEREAS *Lenny ROBSON of Mota Island, Banks* was convicted of the offence of *Act of Indecency With a Young Person* contrary to Section 98A of the Penal Code Act [CAP. 135];

AND WHEREAS Lenny ROBSON was sentenced to be imprisoned for 12 months with immediate effect on the said count;

YOU ARE HEREBY COMMANDED to keep safely the said *Lenny ROBSON* in custody for the period 12 months.

DATED at Sola, Banks, this 12th day of September, 2014

BY THE COURT

Handwritten signature of D. V. Fatiaki in black ink.

**D. V. FATIAKI
Jugé.**

