

PUBLIC PROSECUTOR

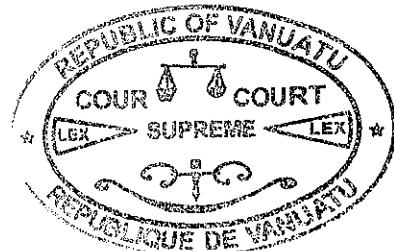
V

TONNY BORONIE

*Hearing:* Friday September 9<sup>th</sup> 2016  
*Before:* Justice JP Geoghegan  
*Appearances:* Ken Massing for the Public Prosecutor  
Jane Tari (PSO) for the Defendants

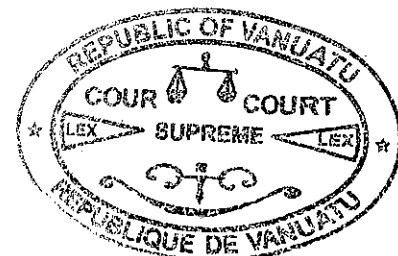
SENTENCE

1. Mr Boronie you appear for sentencing today on one representative count of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [Cap. 135]. The maximum penalty for this offence as you will be aware is a sentence of life imprisonment.
2. The facts surrounding your offending are set out in the statement of facts and also in Mr Massing's helpful submissions and it is important to refer to those facts now. The victim of your offending is your step daughter. The alleged offending occurred when she was 10 years old in 2009 and she was attending class 4. At all material times the victim was under your care and protection and was a member of your family. At all material times she was a vulnerable child entitled to feel that you would keep her safe and you would protect her.
3. The charge is a representative charge which reflects the fact that the victim cannot say precisely what dates the offending occurred upon but the summary of fact tells me that you first offended against her when she was 10 years old and at that time the sexual act committed on her was the sucking of her vagina. That occurred inside your home. You had penile intercourse with

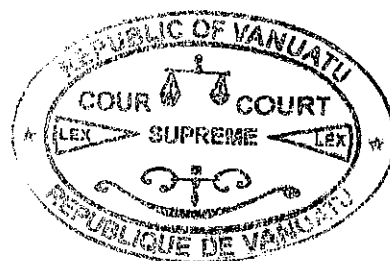


her in the year 2013 when she was in year 8 at school. This occurred again at lunch time, presumably when her mother was not present, and inside your home. You continued to have sex with the victim from 2015 to 2016 without her consent, these occasions occurring inside your home. The last time that you had sex with the victim was in 2016 during the Easter holidays when you took the victim out on a boat and had intercourse with her at that time.

4. I have read that the offending came to light because the victims mother literally witnessed you engaging in some sort of sexual activity with the victim. So in summary, the offending occurred over a six to seven year period between 2009 and 2016 and involved no less than five incidents of offending.
5. I have read your probation report. Your family at that time comprised of your de facto wife, the victim and your adopted daughter aged 4. You are described in the report as self-employed, managing a family business in retailing and fishing. You are also involved in farming and forestry. You are clearly a capable and resourceful person. You are the sole income winner for your family. You are apparently, accordingly to the report, recognised as an outstanding leader in your community and you are described as a good and quiet person by your chief and your mother. The report writer also referred to your involvement in church programs and the fact that you teach youth.
6. I wish to make some comment about that description of you. While your own perception of yourself and the perception of others may be that you are an outstanding leader, outstanding leaders do not rape children. Outstanding leaders do not grossly abuse positions of trust. Outstanding leaders do not offend against and manipulate those who are entitled to feel safe and protected in their care. Outstanding leaders do not callously commit serious sexual offences against a child as a means of getting revenge against another adult, something which was clearly referred to and outlined in the report. Accordingly one might reflect that you are anything but an outstanding leader.

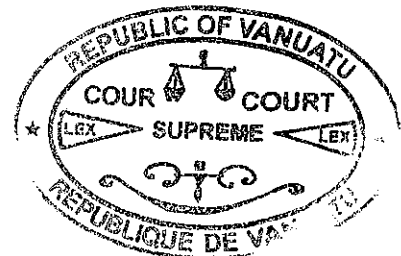


7. Although you are referred to as remorseful there is reference to you shifting blame to the victim for agreeing to the sexual relationship you had developed. At the same time you acknowledge that your actions were revenge against your de facto wife for reasons which are set out in the pre-sentence report and need not be repeated now. I have discussed that issue with Ms Tari today because I wanted to give you an opportunity to respond to that. ~~However, clearly you accept that that reference to revenge is a~~ correct reference. There is accordingly a question mark for me over the degree of your remorse.
8. I acknowledge that the pre-sentence report refers to a custom reconciliation process which took place in August and involved you in providing a dried pig's head with tusks, a live pig and nine dyed red mats to the victim's family. I am told that these had a value of Vt 600,000 which is clearly a significant sum. It is very unfortunate however that the victim and her mother were not involved in the ceremony due to what appears to be some type of miscommunication. While the victim's family appear to have received these goods there is no guarantee that the victim will receive any of it. However I have received clarification from Ms Tari this morning that that is certainly intended. I can only express at this stage the hope and expectation that the victim's family ensure that these items are passed on to her and having heard Ms Tari this morning I have some confidence that they will be. Nevertheless I do not hold you responsible for that and acknowledge your participation in that ceremony and the fact that you properly tendered those gifts and goods as part of that ceremony.
9. Both Mr Massing and Ms Tari have provided me with very helpful submissions which refer to various judgments which set out guidelines for sentencing in this type of offence. I am very grateful to both of them for providing those submissions at such short notice.
10. Mr Massing rightly refers to the guideline judgment of PP v. Scott and reference is also made to the PP v. Ali August where the Chief Justice observed the following:-

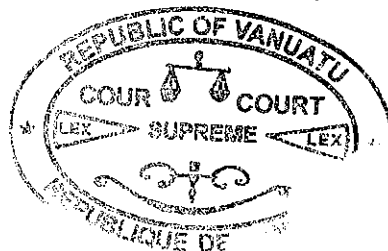


*"The offence of rape is always a most serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence. This was certainly so in the present case. A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly to ~~punish the offender, and last but by no means least to protect women.~~ The length of the sentence will depend on the circumstances. That is a trite observation but these in cases of rape vary widely from one case to another."*

11. In that decision the Chief Justice referred to a number of aggravating factors which often present themselves in rape cases and which need to be taken into account in sentencing where they do present themselves. Those aggravating factors are the following:-
- 1) Where violence is used over and above the force necessary to commit rape.
  - 2) Where a weapon is used to frighten or wound the victim;
  - 3) Where the rape is repeated.
  - 4) Where the rape has been carefully planned.
  - 5) Where the defendant has previous convictions for rape or other serious offences of a violent or sexual kind.
  - 6) Where the victim is subject to further sexual indignities or perversions.
  - 7) Where the victim is either very old or young; and
  - 8) The effect upon the victim whether physical or mental.
12. The Court of Appeal in PP v. Gideon held that it could only be in extreme cases that suspension of a sentence could ever be contemplated and in that decision the Court of Appeal stated that men who take advantage sexually of young people forfeit the right to remain in the community. And indeed in this case both counsel accept that the seriousness of this offending prevents the Court from considering in any way the suspension of your sentence.



13. Mr Massing refers to the following aggravating features of your offending:
- a) That it was a serious breach of trust as you were the victim's stepfather.
  - b) The repetitive nature of the offending.
  - c) The age difference between you and the victim, you being 29 and the victim 10 when the offending started.
  - ~~d) That some of the offending took place in the victim's home a~~  
place where, as I have said, she was entitled to feel secure and safe. In many respects that is a subset of the aggravating feature of breach of trust.
  - e) The young age of the victim.
  - f) The fact that there was a degree of planning involved such as taking the victim out in a fishing boat which ensured the victim's isolation and associated vulnerability.
  - g) The emotional impact of the offending on the victim. There is a limited reference to that impact in the pre-sentence report but this offending is bound to have had a significant impact on her. It is an impact which is likely to continue throughout her life.
14. I need to refer to a couple of matters and one in particular which I regard as a further and serious aggravating feature in my assessment. That is the fact that you have acknowledged that your offending was revenge against the victim's mother. This is a particularly sinister feature of the offending and the fact that you would target the victim sexually to get some revenge for perceived wrong doing by her mother is seriously concerning.
15. A second issue arises from the pre-sentence report itself, which referred to the fact that you were justifying the sexual relationship on the basis that it commenced as an agreement between you and the victim to maintain sex to safeguard her education. I was puzzled by that reference in the pre-sentence report and accordingly I have sought to clarify that through your counsel Ms Tari this morning. After speaking with you she has told me that part of your motivation for the offending was that because the victim was at secondary school you were worried that she would get into a sexual relationship with



boys from the school so you determined that you would have a sexual relationship with her to somehow protect her from that possible threat.

16. I have to say that in considering that sort of reasoning for your offending, I am again seriously concerned. That is the type of justification which it is very difficult to grapple with and understand at any level at all. It is again a ~~matter of serious concern.~~
17. Mr Massing submits a starting point in terms of your sentencing between 8 and 9 years increased from that point to reflect the aggravating features that he has referred to with an end sentence of between six and seven years. All of the purposes of sentencing referred to earlier in the Ali August decision are applicable in your case. The case of the PP v. Hake has been referred to by both Mr Massing and Ms Tari as a comparative case. That involved the starting point after taking into account the aggravating features of the case of nine years and 4 months imprisonment. Both counsel agree that a starting point without taking into account the aggravating features of the offending is one of 8 years imprisonment. I regard this case as a more serious case than Hake, given the fact that the offending occurred over a longer period of time and that the victim in this case was specifically targeted by you for revenge by you against her mother. As I have said that is a seriously aggravating feature.
18. For these reasons I adopt the starting point including the aggravating features which I have already referred to of 11 years imprisonment. I deduct three years six months for the entry of an early guilty plea and your cooperation with the police. I deduct a further eight months to reflect your good character at least up until 2009 and your participation in a reconciliation ceremony. That reduces your sentence to one of six years and ten months. I deduct a further three months to reflect the fact that you have been in custody since July 8<sup>th</sup>, 2016. As I have said it is accepted by your counsel Ms Tari that there can be no question in this case of consideration of suspension of your sentence.

- 19. Accordingly you are sentenced to six years and seven months imprisonment.
- 20. You have 14 days to appeal.

Dated at Luganville this 9<sup>th</sup> day of September 2016

BY THE COURT

