

PUBLIC PROSECUTOR

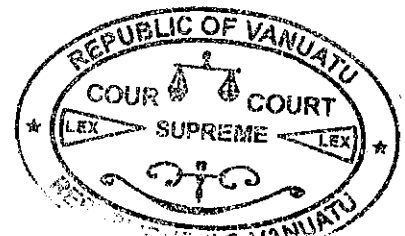
V

SAKI RONSORO

Ruling: Friday 5 February 2016 at 11:15 am at Luganville
Before: Justice SM Harrop
Appearances: Ken Massing for the Public Prosecutor
Jane Tari (PSO) for the Defendant

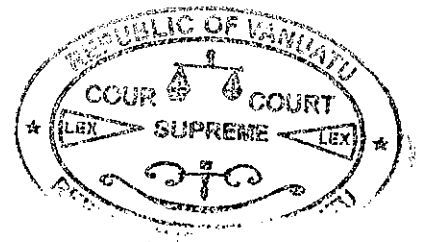
SENTENCE

1. Mr Ronsoro you are here for sentence on one count of act of indecency with a young person against section 98 A of the Penal Code. The maximum penalty is ten years imprisonment.
2. The offence occurred in December 2013 at Tassiriki village in South Santo and involved your making a ten year old girl hold your penis. At that time you were 36.
3. The brief facts provided by the Public Prosecutor which you have acknowledged say that during that month you asked for permission from the complainants or the victim's parents for her and two young boys Tonny and Mickey to go and spend Christmas holidays with you at Tassiriki. On one night in December you asked for these three young people to come down to the beach with you. When you were there you asked each of them how much money they each wanted. The other two young boys Tonny and Mickey said they wanted Vt 1,000 but the victim said nothing. Mickey insisted that she propose an amount of money and so she also said she wanted Vt 1,000.
4. After that you instructed the two young boys to move further down the beach leaving you and the complainant some distance apart from them. You then

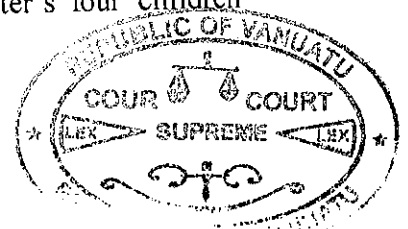


instructed her to hold your penis, you removed it from your trousers and arranged for her hold it with her right hand. I should record here there was earlier an allegation that you then asked her to masturbate your penis "for quite a while" but that allegation has been withdrawn and so I put it entirely to one side. Your contact with victim was disturbed when your wife arrived at the beach and she swore at you because apparently she thought you were with another woman. She did see however you and the victim sitting close together some distance apart from the other two.

5. When you were spoken to about this you denied the allegations.
6. The aggravating features of this offending are obvious, first there is a substantial age difference of 26 years, second the victim is only ten years of age and was clearly at a vulnerable age. It would have been difficult for her to disagree with your insistence that she hold your penis. The next point is that there was clearly some degree of planning and pre-meditation involved and the apparent offer of money to bribery into doing what you wanted.
7. The intention to do this may not have been formed very long before the incident but there is an obvious inference that at least that had been formed when you arranged for the other two to go further down the beach. Obviously this is skin-on-skin touching but I do accept it was brief and as Ms Tari highlights there was no masturbation, let alone ejaculation.
8. I mention now the procedural history of this matter. You pleaded not guilty as long as 18 August 2014 but then you failed to attend Court and a warrant to arrest was issued. You did not voluntarily attend Court subsequently but instead no progress was made with this case until you were arrested on 22 January 2016 and while there is no charge of absconding and your failure to attend Court cannot make the indecency offence more serious than it was, this gives an insight into your character which will be relevant to sentencing generally.

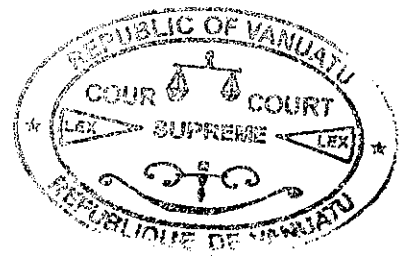


9. I note that you accepted recently when the Public Prosecutor applied for you to be remanded in custody that you had no excuse for absconding and you apologised for your behaviour.
10. As I have noted at the time you pleaded not guilty the charge included the particular that you had had the victim masturbate you for quiet and while and that is now been removed and so what you pleaded guilty to was an amended charge. While there is therefore a basis for saying that you have pleaded guilty at the first opportunity to the charge as it now stands, I am not prepared to give you a full one-third discount for guilty plea in these circumstances and indeed Ms Tari does not suggest that I should.
11. If you through counsel have told the Public Prosecutor in August 2014, or the police when you were interviewed on 5th May 2014, that you had made the victim hold your penis but denied masturbation, then the case would have been resolved long ago. Instead you denied the offence entirely, you told the police that the victim was not telling the truth. So until this week you were denying that anything improper had occurred and you were effectively saying the victim was a liar. The matter was set for trial this week and so the guilty plea has come very late.
12. In those circumstances, you can only receive a much reduced discount for pleading guilty. I am still prepared to give you a 15% discount which may seem generous but I consider there is still considerable virtue in the avoidance of a trial and most importantly in avoiding the victim having to come to Court to give evidence and to relive a distressing and embarrassing incident. It also is a vindication of her complaint; until you pleaded guilty she was being depicted as a liar and you have accepted by your guilty plea that she was telling the truth, at least to the extent of the particulars now contained in the charge.
13. The pre-sentence report which I have read along with counsel's helpful submissions says that you are now 38 and you are married but you do not have children, however you are looking after your sister's four children



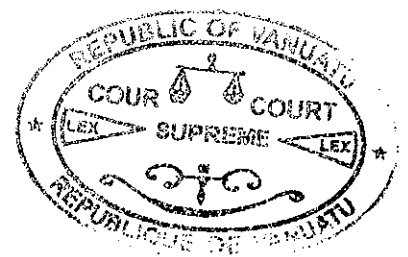
because she is mentally ill and she is not able to look after her children, also you are looking after your 95 year old father who uses crutches to walk as he has lost one of his legs. You have held, I am not sure whether you still do, the title of chief in your nasara and you are also a pastor to the Living Water Ministries. You are a first offender so you were otherwise of good character prior to this incident and it is noted that you were in custody in 2014 from 28 April to 9 June, so that is about six weeks and then again you have been remanded in custody from, well the report says 28 January but I am pretty sure it was the 22nd so that is another two weeks or so. This means in effect that you have been in custody for about two months already, the equivalent of serving a four month sentence..

14. You are said to have minimised your offending when discussing this with the probation officer by saying that the victim did not touch your penis while you were naked but rather put her hands on top of your trousers. Well you have pleaded guilty to a very clear allegation supported by some simply stated brief facts and so I cannot accept what you apparently said as it is inconsistent with your guilty plea. It is disturbing that you seem, having pleaded guilty, still to deny the offence. I note that you have undertaken a custom reconciliation with the victim's grandfather. Items presented were Vt 1,000, a mat and a bundle of taro, which seems to me a rather modest contribution by comparison with other cases.
15. The pre-sentence report recommends imprisonment and both counsel accept that that is the appropriate sentence. The real difference between them is that Mr Massing says there should not be a suspension of that sentence whereas Mr Tari says there should be. I have carefully read the written submissions of both counsel but do not propose to go through everything that they have said.
16. My task is first to assess a starting point of the length of prison sentence taking into account the maximum penalty , similar sentence decisions and all of the circumstances of the offence, including its aggravating factors, and

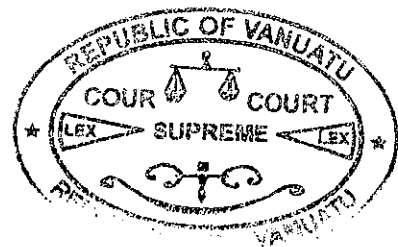


having done that I will then ascertain what deductions there should be having regard to your personal circumstances and your guilty plea.

17. There are many cases of this kind in Vanuatu and I myself have had course to sentence two men, considerably younger than you, in Port Vila last year and I am referring here to the *Kalkau* and *Frosty* cases.
18. Most indecent acts on a young person involve the defendant touching either the breasts or the vagina of the victim. This is different because you made her hold your penis. I regard that as somewhat more serious than a touching by a defendant of the vagina, skin to skin. I think it can be seen as more serious because rather than the victim passively being touched she is forced to do something active, to touch your most private part. Indeed, not merely to touch it, but in this case to hold it her hand. And here there was as I have already said some premeditation and a financial incentive apparently offered.
19. The mental effects of this on a ten-year old girl are likely to be quite significant. Of course it was a brief incident and the effects may not be too serious but experience would suggest it may well result in her having difficulties in the long run forming proper relationships with boys and in the way that she interacts with men generally. There is no doubt that unless there are exceptional circumstances the authorities dictate that a prison sentence is required where adult men use young girls for their sexual gratification in this way. The Court of Appeal in *Gideon* [2002] VUCA 7 made that clear and that has been repeated in many cases since.
20. What then is the appropriate starting point having considered the authorities referred to by counsel and endeavouring to put this case in place along with those other authorities? I have come to the view that a three-year starting point is appropriate. I see this as less serious than the *Kalkau* case which involved licking of vagina but more serious than the case I have dealt with this morning, *Taiaka*, which involved the touching of a vagina, skin to skin.



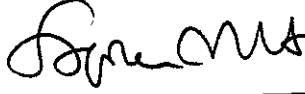
21. I note that the Public Prosecutor suggested 2 to 2 ½ years as the starting point but I do not think that is a sufficient reflection of the gravity taking into account the various aggravating features that I have mentioned.
22. As to mitigating factors, the 15% credit for a guilty plea that I have acknowledged, you should have amounts to six months so that brings it down to 30 months or 2 ½ years.
23. As to other matters I accept the points that have been made on your behalf by Ms Tari in mitigation. She has drawn attention to the custom reconciliation, your taking of some responsibility (although that must be tempered by some of the comments you have made to the probation officer). I am also conscious of your responsibilities for others, your father and the children of your sister. I would reduce the sentence by a further six months to two years to take account of those matters so there is an end sentence of 2 years imprisonment.
24. The question then is whether that sentence should be suspended as Ms Tari submits should occur and Mr Massing submits should not occur. The starting point is that there should be no suspension because this is very serious offending by a mature man on a vulnerable ten-year old girl with some premeditation. It is I think aggravated by the fact that you are a chief in the community who should know better and live by example and you should be protecting young members of the community, not sexually abusing them.
25. I am not satisfied there are sufficient reasons here to suspend the sentence and I decline to do so. I am concerned about the impact on your father and on the four children of your sister but those are matters which cannot in my view justify suspension which is otherwise not appropriate.
26. I do need to give you credit for the time you have spent in custody. As I say it is about two months in total and that is equivalent to a four-month sentence when half parole is taken into account. So I am going to deduct four months off that sentence of two years bringing it down to 20 months. That sentence



will start today. If you wish to appeal against the sentence you have 14 days to do so.

Dated at Luganville this 5th day of February 2016

BY THE COURT



SM HARROP

JUDGE

