

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

Criminal Case No. 1768 of 2016

PUBLIC PROSECUTOR

-v-

SAMUEL NAROPACEN

Coram: *V. Lunabek- CJ*

Counsels: *Mr Tristan Karae for Public Prosecutor
Ms Pauline Kalwatman for the Defendant*

*Date of Submissions: 9 February 2017
Date of Sentence: 10 February 2017*

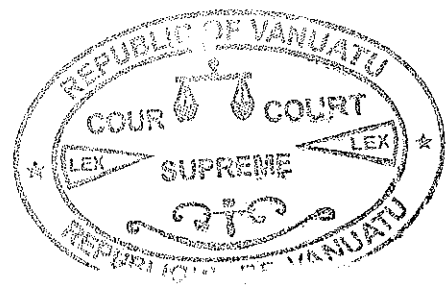
SENTENCE

Samuel Naropacen, you appear for sentence on 2 Counts of acts of indecency with a young person, contrary to section 98A of the Penal Code Act [Cap.135]. On 8th February 2017, you pleaded guilty to both counts of acts of indecency with a young person. You are convicted accordingly on both counts.

The brief facts are as provided by the prosecution. They are these:-

On or about the 30th of October 2015, the complainant lodged an official complaint against you, Samuel Naropacen.

You are a business man on the island of Aneityum at the village of Port Patrick. The complainant is a 12 year old girl attending class 5 at Port Patrick primary school. Accordingly sometime in 2015 you begin giving



free school stationary, a watch, hand bag and food to the complainant. The complainant became good friend with you and used to go to your shop to see you.

Sometime in 2015, the complainant forgot the exact date, you abused and took advantage of her. The first incident, you would block the complainant on the road to school and pushed your hand into her skirt and panty and would rub her vagina with your figure. Later the second incident occurred when you held the complainant's breast when she was heading to school.

You were arrested, cautioned and interviewed on 16th of November 2015 and made admissions to the allegations made against you.

Section 98A of the Penal Code Act [Cap.135] is the relevant law. It states:

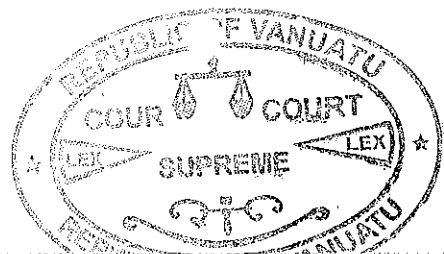
"Act of Indecency with a young person

A person must not commit an act of indecency upon, or in the presence of another person under the age of 15.

Penalty: Imprisonment for 10 years"

Acts of indecency with a young person is a very serious offence as reflected in the maximum penalty imposed by law.

The prosecution referred in their submissions to following Courts guideline judgments: Public Prosecutor –v- Scott and Tula [2002] VUCA 29 where the Court of Appeal outlined a sentencing guideline for sexual offences and sexual abuse cases; Public Prosecutor –v- Gideon [2002] VUCA 7 where the Court of Appeal provided further guidance for adult person who abused children for sexual gratification and the case of Public Prosecutor –v- Boita

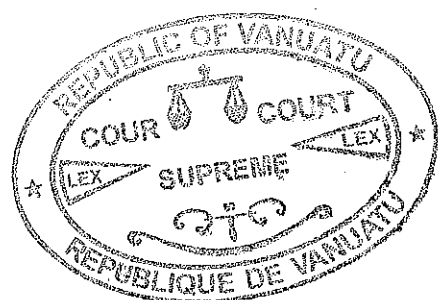


[2002] VUCA 38, where a school teacher had sexually abused 5 different school girls between the ages of 8-11 over a period of 1 year. The acts of indecency involved digital and oral violations over the girls. The Court of Appeal set a starting point in this type of case given the circumstance of the case to 7-8 years as appropriate, with an end sentence of 4 years and 6 months imprisonment.

The prosecution also referred to following Supreme Court cases on the point applying the guideline judgments: Public Prosecutor –v- Kamisak [1997] VUSC 12; Public Prosecutor –v- Jule Wayanne [2006] VUSC 33; Public Prosecutor –v- Jackson Mathew [2013] VUSC 79.

The prosecution submitted that in considering the culpability of the offending the following aggravating factors should be taken into account:

- The age disparity between the complainant and you, Samuel Naropacen, i.e. the complainant is young and vulnerable.
- Abuse of trust. You were supposed an elderly and respected person to the complainant. Rather you took advantage and abused that trust by indecently abusing her.
- Repetition of offending
- You provide for the complainant's needs and wants only in the exchange that the complainant satisfy your sexual gratification.



The prosecution submitted that your offending warrants an imprisonment sentence as provided by the courts authorities in this type of cases to protect the children in the community.

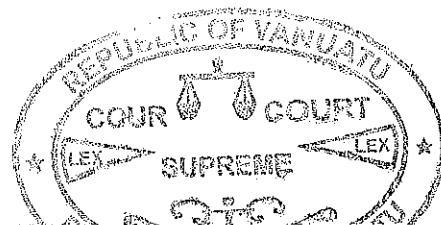
The prosecution then submitted that a starting point of 3-4 years is appropriate given the circumstance of the case and the aggravating factors. The prosecution finally submitted that after appropriate deductions for mitigating factors the court should impose an end sentence of between 2-3 years imprisonment.

Your lawyer submitted on your behalf that you accept the summary of facts provided by the prosecution of the offence. You are 57 years old. You live with your wife at Port Patrick village in Aneityum, Tafea Province. You are self – employed, you are a member of Seventh Day Adventist and you are a well respected figure in your community.

Through your lawyer you said you were a total fooled you were simply tempted by the complainant. You could not resist yourself and the harm is done. You said although you knew it was immoral, you were not too sure whether it is contrary to law. Today I tell you it is contrary to law.

You are deeply remorseful of your offending. You are an old man. You love your wife, children and grand-children. You were an elder of your church. You assist your community in different ways. You are a prominent business man in your community. You make lots of donations to your community and school.

On your health, you have arthritis specially on your back. You suffered pain during rainy or cold weather. You are deaf on the left side ear since 1978. Your wife has high blood pressure. Yu are a class 6 school leaver.

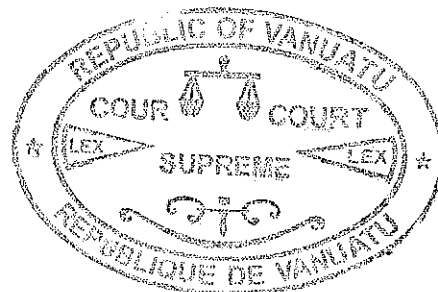


You have a good work history in your village and community. You have a cattle project and you employ a few of the village. You plant and sell kumala to locals. Your future plan is to expand on your kumala project, continue building houses and expand your shop business.

Your lawyer submitted, in mitigation, that the Court should give you credit for your early guilty plea at the first opportunity given to you by the authorities.

You had performed two separate customary reconciliation ceremonies to the complainant and her parents. The first customary reconciliation ceremony was performed to the parents of the complainant. The items given are 1 bundle taro, 1 island basket, 1 mat, 1 basin and 2 plates. The second customary reconciliation was in December 2016 when you and your wife performed the customary reconciliation ceremony to the complainant and her parents in the presence of both families. The items given are: 1 cow, 25 mats, 15 baskets and 5 bundles of taro. You are a first time offender and your lawyer raised the delay in the prosecution of your case and you spent your own money to attend court.

Your lawyer provides a comparative sentencing cases on the offence of acts of indecency with a young person to assist the court in your sentencing. They are:- PP –v- Banga [2013] VUSC 37; PP –v- Albert [2013] VUSC 117; PP –v- Mahit [2012] VUSC 231; PP –v- Kelep [2009] VUSC 11; PP –v- Samuel [2009] VUSC 84; PP –v- Kalsal [2007] VUSC 48; PP –v- Robert [2006] VUSC 65; PP –v- Avock [2004] VUSC 140; PP –v- Arnhabat [2003] VUSC 115; PP –v- James [1999] VUSC 48.



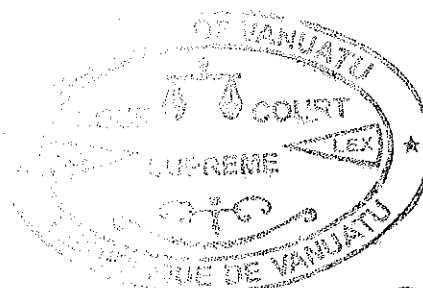
Your lawyer relevantly submitted that acts of indecency are very serious and the starting point should reflect whether the offence is at the lower or higher end of the scale.

Your lawyer accepted on your behalf that the Court should impose a term of imprisonment but suspended it.

The pre-sentence report provides and confirmed the positive information and role you played in your community through the statement of the assistant chief, James Samuel, of your community.

When I sentence you today, I consider the seriousness of your offending. In the present case, the circumstance of your offending is aggravated by the following factors:

- The age disparity between the complainant and you. You are 57 years old and the complainant was 12 years of age at the time of offending. She is now 14 years of age. There is an age differential of 43 years between you and the complainant. The complainant is young and vulnerable.
- There is a level of breach of trust. You are an elderly and respected person to the complainant. She looked upon you as an elder of SDA church in her community, as an elderly person that she can trust and for protection. You abused the trust by taking advantage of her and abused her.
- The offending is repeated.



- You provide for the complainant's needs and wants only in the exchange that the complainant satisfies your sexual gratification.

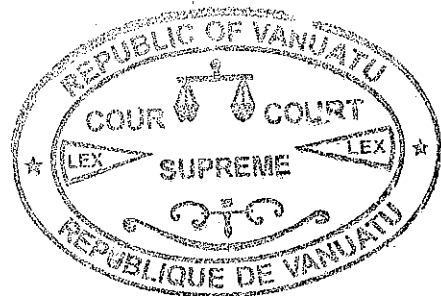
In such circumstance, I sentence you to 4 years imprisonment. I now consider your mitigation. I reduce your sentence of 4 years by 1/3 to reflect your early guilty plea. Your sentence is reduced to 32 months, i.e., 2 years and 8 months. I reduce your sentence further for the customary reconciliations. I allow 6 months to reflect those. I further allow 1 month deduction for the delay in prosecuting your case and again 1 month for being genuinely remorseful for your offending.

Your end sentence is 2 years on both counts to be served concurrently. I ask myself if I should suspend your imprisonment sentence of 2 years. I bear in mind of the statements made by the Court of Appeal in sexual offence cases and particularly about the protection of the children in PP –v- Scott and Tula and PP –v- Gideon [2002] when the court of appeal stated:

“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 will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse.

Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable.”

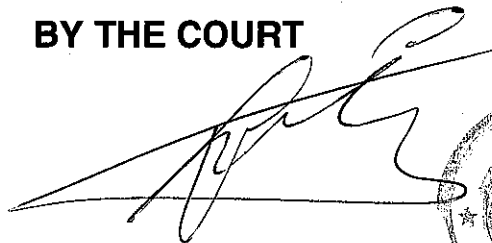


I decide to suspend your imprisonment sentence. I suspend it for a period of 2 years. I order that you shall serve 200 hours of community work and 6 months probation.

You have 14 days to appeal this sentence if you are unsatisfied satisfy with it. The 14 days starts today.

DATED at Isangel, Tanna, this 10th day of February, 2017

BY THE COURT



**V. LUNABEK
Chief Justice**

