

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

Criminal
Case No. 18/2357 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: ABRAHAM PALAS
Defendant

Before: *Justice Oliver A. Saksak*

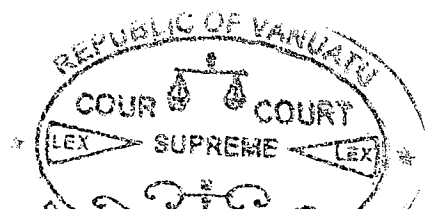
Counsel: *Ken Massing for Public Prosecutor*
Jane Tari Aru for Defendant

Date of Plea: *3rd September 2018*

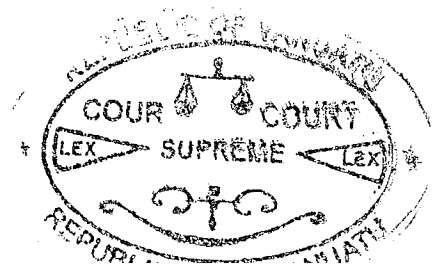
Date of Sentence: *6th September 2018*

SENTENCE

1. Abraham Palas, you are for sentence today for having pleaded guilty to one charge of Act of Indecency Without Consent contrary to section 98(a) of the Penal Code Act [CAP 135].
2. The maximum penalty for this offence is 7 years imprisonment.
3. The victim of your offending is closely related to you as her adoptive father. She is 18 years old and is a student. In July 2017 she accompanied you to plant some coconuts. While having a rest under a Blue Water Tree you took your touch screen mobile phone and showed her some pornographic photographs of men and women having sex. Then you made her go into a small bush and showed her more pictures. Then you asked her to lie down and to remove her panty and skirt. She was frightened because you held a bush knife. She did what you asked for. Then you told her to open her legs and she did. Then you spat on your finger and used it on her vagina. She felt bad about it and cried. Then you both returned to the house. Later in the same month of July she accompanied you again to plant island cabbage in the garden. Then you told her that when she grew up you would be the first to have sex with her. She did not understand the meaning of what you told her but she felt really bad about it.



4. You have not said anything about these allegations to the police. You indicated you would only speak in Court. But you have accepted the charge by pleading guilty. In your Same Day Report you have denied pushing your hands into the victim's vagina. But the victim did not allege you used your hands, she alleged you used your finger to finger her vagina. That is a different thing from what you've said. And you have given a completely different story from hers. And it appears you have shown little or no responsibility at all about your actions. You even tried to put the blame on her by claiming she removed her own clothes. You forgot that she did so at your instruction because she was afraid you had a knife with you at the time.
5. I note also from your Report that you are a justice of the Island Court and assisting the Magistrates Court, Secretary to the Island and Area Council of Chiefs, a Pastor of SDA Church and a community leader.
6. You are 66 years old, a fully mature man. The age difference between you and the victim is some 48 years. You stood in a position of trust and you breached that trust. Those are the aggravating features of your offending.
7. Taking all these into consideration together with the seriousness of your offence your punishment will be custodial sentence, and the starting point is 3 years imprisonment with no uplift. This is to mark –
 - (a) The seriousness of your offending.
 - (b) The public disapproval of your actions.
 - (c) A deterrence for you and other likeminded men.
 - (d) A protection of young girls and the weaker and vulnerable members of the society.
 - (e) Adequate and appropriate punishment.
8. The Courts have said time and time again following the Court of Appeal decision in PP v. Gideon [2002] VUCA 7 that men who take advantage sexually of young girls forfeit the right to remain in the community. Your case is far more serious than the cases of PP v. Maleb [2015] VUSC 91 and Wenu v. PP [2015] VUCA 51 referred to by Mrs Aru.



9. I note your mitigating factors such as –
- (a) Being a first time offender with good clean past record.
 - (b) Your early guilty plea.
 - (c) Your performance of custom reconciliation showing remorse and contrition; and
 - (d) Your pre-custodial period of 1 month 8 days.
10. Your starting sentence of 3 years imprisonment is reduced by 12 months leaving the balance of 2 years imprisonment reduced by a further 1/3 for your early guilty plea. The balance is 1 year 4 months or 16 months. I reduce it further by 1 month and 8 days leaving the final balance at 1 year 3 months and 22 days.
11. You are therefore sentenced to an end sentence of imprisonment of 1 year 3 months and 22 days with immediate effect commencing today.
12. You will be eligible for parole after serving up to half of your sentence.
13. That is the Sentence of the Court. You have a right of appeal against this Sentence if you do not agree with it and you have 14 days to do so, but you must begin to serve your Sentence today.

DATED at Luganville this 6th day of September, 2018.

BY THE COURT

OLIVER A. SAKSAK

Judge

