

BETWEEN: Public Prosecutor

AND: Abet Massing
Defendant

Date: 12 December 2018
Before: Justice G.A. Andrée Wiltens
In Attendance: Ms L. Lunabek for the Public Prosecutor
Mr A. Bal for the Defendant

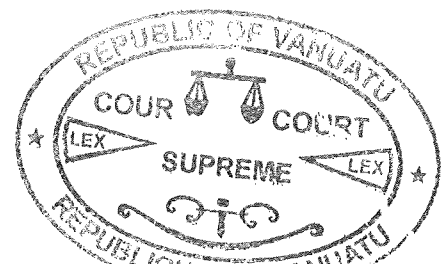
SENTENCE

A. Introduction

1. Mr Massing pleaded guilty to 2 charges of committing an act of indecency with a young person. The maximum sentence for the offence is a term of 10 years imprisonment.

A. Facts

2. The complainant is the 13-year old granddaughter of Mr Massing. He was 59 years old at the relevant time.
3. The first incident occurred in September 2017, when Mr Massing asked the complainant to go with him into the garden. After shoo-ing away one of his grandson's who had also gone along, Mr Massing touched the complainant's breast and instructed her to follow him – she declined. The matter was raised at a family meeting and Mr Massing was warned. That was witnessed by church elders and Mr Massing promised to not repeat his offending. He paid a VT 2,000 fine to the complainant's father.
4. Mr Massing re-offended in June 2018. The complainant was washing dishes in the kitchen, when he entered and exposed his penis to her, asking her to touch it. She refused and promptly told her father who reported the matter to the police. When interviewed, Mr Massing admitted the allegations were correct.



B. Aggravating Factors of the Offending

5. There are a number of aggravating factors to the offending – the repeating of the conduct despite the warnings and promise to not do so, the relationship of grandparent to grandchild, the fact this occurred in the complainant's home where she ought to feel safe and secure from this type of this, and the vast differential in ages and positions within the family precluding the complainant from preventing the offending.

C. Mitigating Factors of the Offending

6. There are no mitigating factors relating to the offending.

D. Start Point

7. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 5 years imprisonment, on a totality basis taking both offences into account.

E. Personal Factors

8. Mr Massing has no previous convictions – for which he is granted a discount of 6 months imprisonment. He also participated in several custom reconciliation ceremonies, involving the complainant; and the PSR indicates that the complainant's family has accepted Mr Massing's remorse and forgiven him. There is a further discount made of 6 months imprisonment to reflect that mitigating factor.

9. The final matter of mitigation is Mr Massing's pleas. For his pleas, I allow 33.3% reduction to the end sentence.

F. End Sentence

10. Taking all of those matters into account, the end sentence that be imposed is one of 2 years 8 months imprisonment. I impose that on both charges concurrently, and the sentence is to commence from the date of his incarceration, namely 25 August 2018.

G. Suspension

11. Section 57(1) of the Penal Code requires the Court to consider whether the end sentence should be imposed immediately or suspended. The Court has jurisdiction to suspend the sentence if immediate incarceration is inappropriate in view of the circumstances, in particular the nature of the crime, and the character of the offender.

12. Suspending Mr Massing's sentence cannot possibly be countenanced: *PP v Ali August* [2000] VUCA 29; and *PP v Gideon* [2002] VUCA 7.

13. Mr Massing has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 12th day of December 2018

BY THE COURT

Gendrei Ulla
Justice G.A. Andrée Wiltens

