

BETWEEN: Public Prosecutor

AND: "HM"

Defendant

Before: Justice G.A. Andrée Wiltens
Hearing: 25 May 2018
Counsel: Ms L. Lunabek for the Public Prosecutor
Ms L. Bakokoto for the Defendant

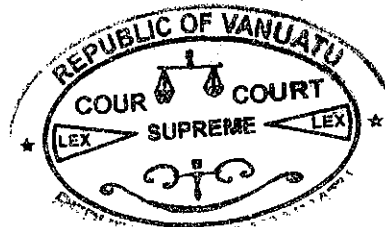
Sentence

A. Introduction

1. Both the defendant and the complainant, due to their ages, have name suppression.
2. HM has pleaded guilty to committing an Act of Indecency with a Young Person, contrary to section 98A of the Penal Code [Cap 135]. The maximum sentence for this offence is a term of 10 years imprisonment.

B. The Facts

3. On an unspecified day in 2015, the date of the offending, HM was 14 years of age; KA was a boy of just 8 years of age.
4. What occurred is that HM called KA into the kitchen, locked the door, lowered his pants and then compelled KA to touch his erect penis. Despite protesting KA did as he was told, and



continued to do so until HM ejaculated. When interviewed by the police, HM admitted the offending.

C. Submissions

5. Both counsel referred the Court to the following precedent authorities dealing with sentencing for this indecent act as follows:

- *PP v Mark* [2013] VUSC 29; and
- *R v Karl* [2010] VUSC 150.

6. These cases deal are not on all fours with HM's offending. The only similarity is that the cases involved young complainants and young defendants – but both cases dealt with young males committing indecencies on very young girls, and in the latter case inflicting injury on the young complainant. The end result in both cases was a sentence of community work.

7. Ms Tasso further referred the Court to *PP v Gideon* [2002] VUCA 7 as authority for the proposition that only in the most extreme cases that suspension should be considered in cases of sexual abuse. However, the facts of that case are quite different and far more serious as that case involved numerous incidents of unlawful sexual intercourse with a young girl aged 12 who was badly injured as a result. I do not consider that authority as relevant to this sentencing exercise.

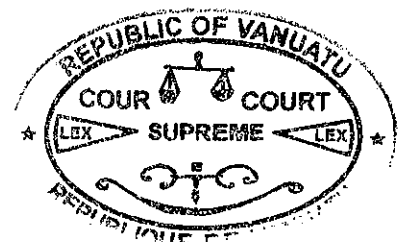
D. Starting Point

8. The prosecution pointed to the following aggravating factors:

- The seriousness of offending, as reflected by the maximum sentence available
- The young age of the complainant
- The element of detention, by locking the kitchen door.

9. I do not consider these points to be aggravating factors such that make the offending more serious.

10. In terms of *PP v Andy* [2011] VUCA 14 sentencing must be approached as a 3-step process. Step 1 involves setting the starting point for the criminal culpability involved in the offending, taking into account both the aggravating and mitigating factors of the offending. Step 2 then takes into account those factors particular to the defendant. Step 3 is to take into at what stage the plea occurred and the available discount applied. Neither counsel addressed that process, but simply submitted that the appropriate end sentence should be a term of community work.



E. Personal Factors

11. Ms Bakokoto made the following points by way of mitigation, which I place into the step 2 of *PP v Andy* assessment:

- HM is only 17 years of age, still a full-time student and residing parents – he was 14 at the time of the offending. As his father is ill, HM assists his mother around the house and with his siblings
- HM has no previous convictions
- HM co-operated fully with police enquiries
- HM is remorseful and has apologised to KA and his family
- There has been some delay before this matter was raised.

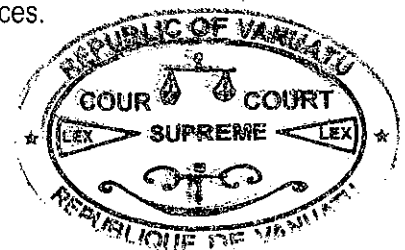
F. Pleas

12. HM pleaded guilty at the first available opportunity. The discount available to him for that is a maximum of one-third of the sentence: see *PP v Andy*.

G. Sentence

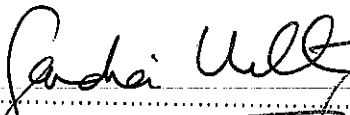
13. The main purposes and sentencing principles in this type of offending are to:

- hold the offender accountable for his conduct and the harm done
- promote a sense of responsibility for the harm done
- provide for reparation
- denounce the conduct
- deter the offender and the public at large from this type of behaviour
- protect the community
- assist in rehabilitation and re-integration
- take into account the gravity of the offending
- take into account the seriousness of the offending in comparison with other offending, and
- consider consistency of sentencing and parity of sentences.



14. Sexual indecencies committed on very young children can have long-lasting effects. That is why the maximum sentence for this type of offending is set at the significant level it is of 10 years imprisonment. In so far as the acts performed in this case, I am satisfied they are at the lower end of culpability. However, the offending involved skin on skin contact, which is aggravating; and KA was but 8 years old when compelled to do something he obviously did not want to do. I therefore set the start point for HM's sentence at 15 months imprisonment
15. HM's personal circumstances dictate significant reductions from that starting point. Firstly, I accept that he has co-operated with the authorities during the investigation. He has shown remorse for his actions and he has no previous convictions. He is still young with very strong prospects of rehabilitation, as evidenced by the fact that there has been no further offending of this type. ~~These factors combine to reduce the start point for sentence to 6 months imprisonment.~~
16. Lastly, HM is entitled to one-third further discount for his prompt plea.
17. The end sentence is therefore set at something less than actual imprisonment.
18. HM is sentenced to 50 hours of Community Work and additionally ordered to undergo 12 months of probation supervision.
19. HM has 14 days to appeal this sentence if he disagrees with it.

Dated at Port Vila this 25th day of May 2018
BY THE COURT


Justice G.A. Andree Wiltens

