

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

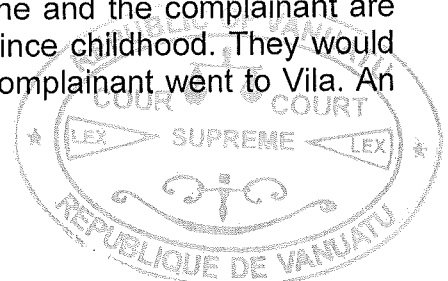
Criminal
Case No. 18/1466 SC/CRML

**PUBLIC PROSECUTOR
v
TOM BIO**

Before: Justice Fatiaki
Appearance: L. Young for the State
H. Rantes for the Defendant
Date of Sentence: 14 June 2019

SENTENCE

1. The defendant was originally charged with two (2) offences – Unlawful Sexual Intercourse with a child under 15 years of age contrary to Section 97(2) of the Penal Code (**Count 1**) and Act of Indecency With A Young Person contrary to Section 98A of the Penal Code (**Count 2**) at his arraignment The defendant pleaded “*not tru*” to Count 1 and “*tru*” to Count 2. The prosecutor then entered a “*nolle prosequi*” in respect of Count 1 and the defendant was discharged in accordance with Section 29 of the Criminal Procedure Code. In respect of Count 2, the defendant was convicted after he admitted rubbing his penis on the complainant’s vagina while they were both naked.
2. At defence counsel’s request a pre-sentence report was ordered which discloses the following personal details and mitigating factors of the defendant:
 - The defendant originates from Loukueria Village, West Tanna. He was born in 1999 and was still 18 years of age at the time of the offence;
 - He was a Year 10 student at Tafea College and lived with his parents and other siblings;
 - He maintains a good relationship with his chief and his parents and is considered a bright young man who is hard working and helpful at home;
 - The defendant told the probation officer that he and the complainant are closely related and have known each other since childhood. They would talk to each other often and even when the complainant went to Vila. An



intimacy began to develop between them which led to their "... **silly sexual act**";

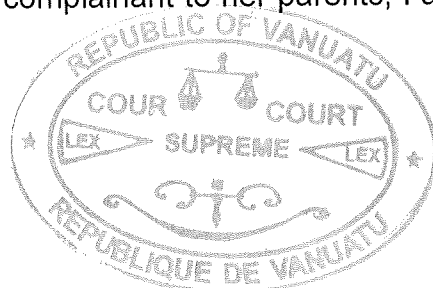
- The defendant expressed his sincere remorse to the probation officer and, with his family, has performed a custom reconciliation ceremony to the complainant and her family in which they accepted gifts of: one (1) pig; a stem of kava; 6 bales of calico; 10 bundles of yam and 30 yams which were presented by the defendant's family and the ceremony ended with kava drinking by all parties;
- According to the bail papers in the court file and in the pre-sentence report, the defendant was remanded in custody to the Correctional Centre in Vila from the date of his arrest on 17 May 2018 until he was granted Supreme Court bail on 24 May 2018 before he made any appearance in the Magistrate's Court; and
- The defendant voluntarily admitted his offending to the police and pleaded guilty at the earliest opportunity. He is a first time offender and was expelled from school as a result of what happened;

3. Prosecuting counsel identifies the following aggravating factors in the offending:

- An age disparity of 5 years between the defendant and the complainant;
- The family (trust) relationship that exists between the defendant and the complainant; and
- The fact that the offending involved direct "*skin on skin*" genital contact.

and counsel submits that an immediate custodial sentence of between 12 months and 24 months imprisonment is appropriate.


4. Defence counsel in highlighting mitigating factors and categorizing the offending as occurring "... *between two young persons*" urges a suspended prison sentence. Counsel also referred to the sentences imposed in the cases of Public Prosecutor v Naropacen [2017] VUSC 8 and Public Prosecutor v Mahit [2012] VUSC 231.
5. In the present case mindful that the maximum sentence for the offence is imprisonment for 10 years and noting that the offence was a solitary incident which involved an intermediary where no physical violence or threats was used and which was immediately reported by the complainant to her parents, I adopt a starting point of 18 months imprisonment.



6. I reduce the start sentence by 6 months for mitigating factors including the custom reconciliation ceremony performed by the defendant and his family and accepted by the complainant's family thus giving a mid-sentence of $(18 - 6) = 12$ months imprisonment which is further discounted by one third in recognition of the defendant's guilty plea and leaving an end sentence of: $(12 - 4) = 8$ months imprisonment which is suspended for 2 years.
7. Although the defendant is fortunate that he will not go to prison today, he is warned that if he is convicted of another offence in the next 2 years, he will be sent to prison to serve this sentence of 8 months imprisonment before any other sentence he may receive for his re-offending. Whether that happens or not is entirely in the defendant's hands but if he does re-offend then he can expect no further leniency from this Court.
8. In addition, the defendant is sentence to 12 months Supervision with a special condition that he stays away from and not make contact with the complainant either directly or indirectly during the period of his supervision and further, that he undertakes and completes a sexual awareness and rehabilitation program that is directed by his probation officer.
9. The defendant has 14 days to appeal if he does not agree with this sentence.

DATED at Isangel, Tanna, this 14th day of June, 2019.

BY THE COURT


D. V. FATIAKI
Judge.

