

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

Criminal
Case No. 19/2815 SC/CRML

BETWEEN: Public Prosecutor

AND: Abby Jimmy
Defendant

Date of Sentence: 22 January 2020
Before: Justice G.A. Andrée Wiltens
Counsel: Ms J. Tete for the Public Prosecutor
Ms K. Karu for the Defendant

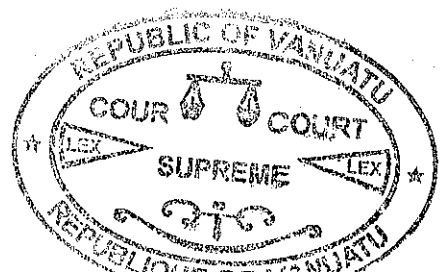
SENTENCE

A. Introduction

1. Mr Jimmy has pleaded guilty and accepted the summary of facts relating to:
 - (i) Charge 1 - sexual intercourse without consent - the maximum sentence for that offence is life imprisonment; and
 - (ii) Charges 2 and 3 - acts of indecency with a young person – the maximum sentence for this offence is 10 years imprisonment.

B. Facts

2. Mr Jimmy is related to the first complainant, SB, as her grandfather. At the time of the offending in 2015, SB was 8 years old; Mr Jimmy was then 51 years old. SB was then residing with Mr Jimmy to facilitate her school attendance.
3. Prior to the offending, Mr Jimmy twice showed SB pornography.



4. In relation to the first offence, Mr Jimmy showed SB more pornography prior to and during the occasion of his attempting to push his erect penis into her anus without her consent. He was called away prior to completing the act.
5. At a later date also in 2015, Mr Jimmy touched SB's bottom and fingered her vagina. During this incident, he undressed himself and caused SB to touch his erect penis. He asked SB to hold his penis and see him ejaculate.
6. In September 2019, Mr Jimmy offended against the second complainant, GS, who was then aged 12 years – Mr Jimmy was then 55 years of age. GS and Mr Jimmy were at Mr Jimmy's home due to other members of the family being at Church. Mr Jimmy availed himself of the opportunity to point at his exposed penis when GS looked his way. Mr Jimmy offended in this manner on more than one occasion.
7. When Mr Jimmy was later confronted by the police, he made full admissions.

C. Aggravating Factors of the Offending

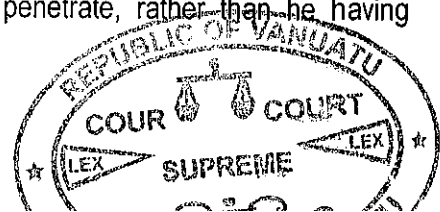
8. There are a number of aggravating factors to the offending.
 - Firstly, there is the fact that there are two complainants involved.
 - Secondly, there was a breach of trust aspect of the offending – Mr Jimmy is SB's grandfather.
 - Thirdly there was a significant age differential between Mr Jimmy and the two complainants, resulting in a power imbalance such that the young complainants would have been unable to resist his conduct.
 - Fourthly, the offending was repeated in the sense that Mr Jimmy offended in a sexualised manner against 2 young girls on the 3 occasions represented by the charges, and on other occasions not charged but nevertheless accepted.
 - Fifthly, the young complainants, due to their ages, were vulnerable – especially as the offending occurred in the home, where they were entitled to feel safe and protected.
 - Lastly, there have been significant continuing effects of the offending on the young complainants, as evidenced in their Victim Impact statements.

D. Mitigating Factors of the Offending

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

E. Start Point

10. The start point for this offending, as required to be identified by *PP v Andy* [2011] 14, is set at 8 years imprisonment, taking both offences relating to SB (Charges 1 and 2) into account. I will sentence Mr Jimmy on the basis that he attempted to penetrate, rather than he having



penetrated – the victim impact statement indicates that is the position, and the witness brief first obtained from SB also refers that. There must be an uplift for the subsequent offending against GS, which is of a similar nature. I set that uplift at a further 2 years imprisonment.

11. Looking at the offending in total, I set the global start point for Mr Jimmy's offending at 8 years imprisonment.

F. Personal Factors

12. Mr Jimmy currently is married with 3 adult children. He is the sole breadwinner of the family. Mr Jimmy co-operated with the police at the time of his apprehension and claims to now be remorseful. Mr Jimmy has no previous convictions.
13. However, I note that no custom reconciliation ceremony has been undertaken.
14. For Mr Jimmy's personal factors I reduce the start point of his sentence by 6 months imprisonment.
15. The final matter of mitigation is Mr Jimmy's pleas. These were promptly entered at the first available opportunity. Accordingly a one-third discount is available to Mr Jimmy for his pleas.
16. Lastly, I take into account that Mr Jimmy has spent time in custody prior to sentence – the date of sentencing will be adjusted to make allowance for that.

G. End Sentence

17. Taking all of those matters into account, the end sentence that must be imposed is one of 5 years imprisonment. I impose that on the first charge. In respect of each of charges 2 and 3, I impose final sentences of 1 year 9 months imprisonment.
18. All the sentences are to run concurrently, and the sentence is to commence from the date of Mr Jimmy's incarceration, namely 16 September 2019.

H. Suspension

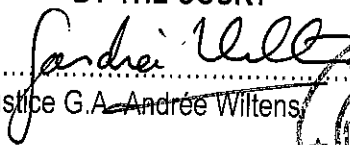
19. Suspending Mr Jimmy's sentence cannot possibly be countenanced: *PP v Ali August* [2000] VUCA 29; and *PP v Gideon* [2002] VUCA 7 are authorities for that proposition.

I. Other

20. Mr Jimmy has 14 days to appeal this sentence if he disagrees with it.
21. The names and details leading to the identification of SB and GS are permanently suppressed.

Dated at Port Vila this 22nd day of January 2020

BY THE COURT


Justice G.A. Andree Wiltens

