

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)

Criminal

Case No. 19/2194 SC/CRML

PUBLIC PROSECUTOR

v

DERICKSON MALA

Date: 7 May 2021
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr P. Toaliu
Defendant – Mrs K.B. Karu

SENTENCE

A. Introduction

1. Mr Mala pleaded guilty to one charge of incest (Count 2 in the Amended Information filed on 1 October 2019). I convict Mr Mala on his plea and the summary of facts.

B. Facts

2. On 29 July 2019, at night, Mr Mala entered his biological daughter MM's bedroom and forced her to remove her clothes. MM was afraid of him and complied when he told her to remove her clothes. Then he had sex with her until he ejaculated onto the mattress. MM was 14 years old.
3. A report was laid with the Police. Mr Mala was arrested and admitted the offending.

C. Sentence Start Point

4. The sentence start point is assessed by having regard to the maximum sentence for the offending and factoring in the aggravating and mitigating aspects of the offending.
5. The maximum sentence for incest with a person under the age of 16 years is life imprisonment.



6. There are no mitigating factors of the offending. The aggravating factors are:

- There has been a gross breach of trust. MM is Mr Mala's biological daughter. He has a responsibility and duty to care for and protect her.
- The offending occurred within the family home where more than anywhere else, MM was entitled to feel and to be safe and secure.
- The 26-year age gap between Mr Mala and MM.
- The harm suffered by the victim – she was fearful of Mr Mala and has been affected psychologically.
- MM did not consent to the sexual intercourse.
- Mr Mala exposed MM to the risk of sexually transmitted infection and pregnancy.
- There was a degree of planning.

7. The maximum penalties for this offending and the factors above require a sentence start point of 8 years 6 months imprisonment.

D. Deduction for Guilty Plea

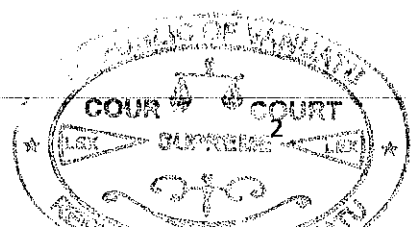
The Prosecution case was strong. Mr Mala had little option but to plead guilty. A 20% per cent deduction is warranted for Mr Mala's early guilty plea.

E. Personal Factors

8. Mr Mala was 40 years old when he committed the offending. He has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.

9. In September 2019, Mr Mala performed a reconciliation ceremony involving 5 white mats and VT5,000 to MM, 1 mat and VT2,000 to his wife Rose and 1 mat and VT1,000 to the Chief who facilitated the ceremony. Mrs Karu submitted that Mr Mala knows that he had made a big mistake in his life and accepts the consequences. Mr Mala's personal factors warrant 1 month deduction from the sentence start point.

10. I reject Mrs Karu's submission that a deduction be made for delay of 1 year 9 months. The offending was reported to the Police in July 2019. This matter commenced in September 2019. Mr Mala was committed to trial in this Court within the same month. On 1 October 2019, Mr Mala pleaded guilty to the Count 2 charge. The matter was listed for trial on another charge, on which the Prosecution entered *nolle prosequi* in March 2021. I then made directions for Mr Mala's sentencing on Count 2. I do not agree that there has been any delay in Mr Mala being *tried*, in the terms of art. 5(2)(a) of the Constitution. He has not been tried as he pleaded guilty to the charge.



F. End Sentence

11. The sentencing principles applicable in this case are holding Mr Mala accountable for his criminal conduct, to denounce the criminal conduct, to deter him and others from acting in this manner, and to protect the community including his own children.
12. Taking all of those matters into account, the end sentence imposed is 6 years 8 months imprisonment.
13. An immediate custodial sentence must be imposed. It will not be suspended.

G. Result

14. Mr Mala is sentenced to 6 years 8 months imprisonment.
15. The sentence is to commence on 1 April 2021 due to Mr Mala's time in custody from 30 July 2019-4 September 2019.
16. Mr Mala has 14 days to appeal this sentence if he disagrees with it.
17. The name and details leading to the identification of MM are permanently suppressed.

**DATED at Port Vila this 7th day of May 2021
BY THE COURT**

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Viran Molisa Trier
Judge

