

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

Criminal
Case No. 22/2153 SC/CRML

BETWEEN: Public Prosecutor

AND: Billy Macdonald Toa
Accused

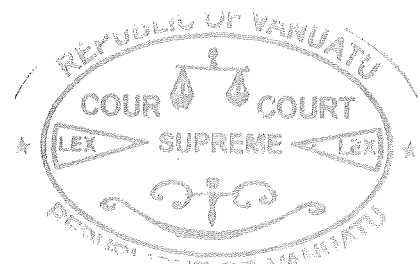
Date of Sentence: 22nd September 2022

Before: Justice EP Goldsbrough

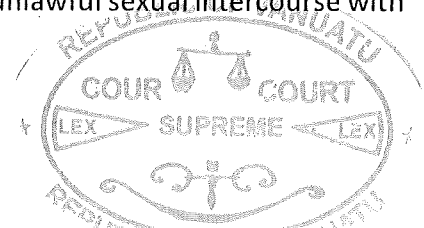
Appearances: Boe, D for Public Prosecutor
Willie, R for the Accused

SENTENCE

1. Billy Macdonald Toa is 46 years of age, a married man with three children of his own. He has now pleaded guilty to having sexual intercourse without consent with a girl under his care on multiple occasions between February and March 2021. That girl was under fifteen years of age. If it was not penile penetration, he would insert his finger into her vagina. Either way, his victim tried not to be abused and cried throughout. He knew what he was doing was wrong as shown by giving his victim money.
2. As a father himself, it is difficult to understand how he thought entitled to abuse a young girl in this way, over and over and over again. It seems that he regarded his need for sexual gratification above all else. No thought for anyone else, just himself and against nature as a father.



3. When this offending came to light, earlier offending was discovered against a second girl under his care. That offending comprised inappropriate touching of breasts and fingering of the vagina in 2020.
4. Rape attracts a life sentence. Sex with a child under protection attracts a maximum penalty of ten years, as the offence of committing acts of indecency.
5. Those maximum penalties are taken into account when assessing what starting point should apply in this case. Factors which make the offending more serious are also taken into account. In this case, the relationship as a father figure makes matters worse, as that involves a breach of trust between the father figure and the girls. Offending repeatedly and just when it suited him at home is also something which makes this offending so much worse. Forcing himself against the will of this child is part of rape but doing so repeatedly is something that makes this offending equally so much worse.
6. For these offences of rape, a starting point of fifteen years is set. Offences of sexual intercourse with a child under care and protection five years and committing an act of indecency three years.
7. There is very little to be said in mitigation. The offender has pleaded guilty. He has not been in trouble before.
8. Given that, the sentence should reflect a discount for his guilty plea, bringing down the starting point from fifteen years to ten years. There is little else that can be said in his favour save that a customary reconciliation has taken place.
9. He is described in the pre-sentence report as a community leader and church leader in the Anglican church. It is surely against the teaching of the Anglican church to take a woman without her consent, more so a child and even more so a child under your protection. What steps are being taken within the Anglican Church to address this type of offending? Is it regarded as acceptable amongst church leaders?
10. For the two offences of rape the defendant will serve sentence of ten years imprisonment to run concurrently. For the offence of unlawful sexual intercourse with



a child under protection no separate penalty is imposed, as the same child victim is involved as in the rape charges but for the two offences of committing acts of indecency sentences of imprisonment of three years are imposed again to run concurrently. The sentence is deemed to have commenced when the offender was taken into custody for these offences, 15 July 2022.

11. There is a right of appeal against this sentence which must be exercised within 14 days from today should it be so desired.

Dated at Luganville this 22nd September 2022

BY THE COURT

EP Gold

Justice EP Goldsbrough

