

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

Criminal
Case No. 23/755 SC/CRML

PUBLIC PROSECUTOR

v

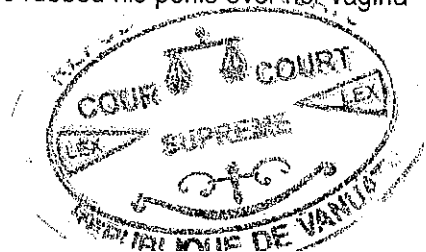
ROSEBOYD MARK

Defendant

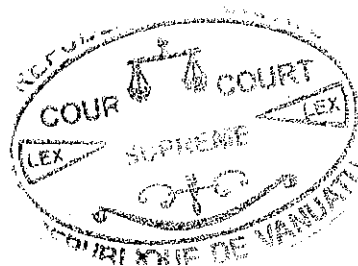
Coram: Justice Oliver A. Saksak
Counsel: Micheline Tasso for Public Prosecutor
Linda Bakokoto for the Defendant
Date of Plea: 6 June 2023
Date of Sentence: 4 July 2023

SENTENCE

1. Roseboyd Mark pleaded guilty to 4 counts of acts of indecency with a young person. He is for Sentence today.
2. Act of Indecency with a young person is a very serious offence. Under Section 98 A of the Penal Code Act [CAP 135] this offence carries a maximum of 10 years imprisonment.
3. The defendant's victim was under the age of 15 years. On 4 different occasions between January and December 2022 at Teouma Bridge River the defendant would come over to the victim's grandfather's house during lunch hours when her grandfather was having a nap and sexually abused her. The defendant is a neighbour living next door to them.
4. On the first occasion it happened was a lunch hour. The grandfather was resting. The defendant approached his victim and pulled her into some banana trees. He cut banana leaves and placed them on the ground and made the victim sleep on top of them. He then undressed her and removed his own clothes and laying on top of her, he rubbed his penis over her vagina until he ejaculated onto the leaves. Then he left her.



5. The second time was also at lunch time. The victim went to a bush toilet and the defendant followed her there. When the victim came out of the toilet the defendant met her and told her he would do the same thing again to her. He then cut banana leaves and placed them on the ground, made her lie down and he rubbed his penis on her vagina until he heard the grandfather calling and he stopped.
6. The third time occurred also at lunch time. The defendant took the victim into a room, closed the door, laid on top of the victim rubbing his penis against her vagina until he ejaculated.
7. The fourth occasion was in February 2023 when grandfather was resting the defendant went and called the victim to follow him to the river. She followed him and he did the same thing to her. It was at this time the grandfather looked for the victim and asked from neighbours if they had seen her. Some children told grandfather they had seen the victim with the defendant. When they returned home around 4 pm the victim was wet and the grandfather scolded the defendant for taking the victim out without his knowledge. They questioned the defendant about the incidents and subsequently formal complaints were made to the police.
8. On his arrest by the police the defendant made admissions freely. The victim was born on 23 April 2014. That made her about 8 to 9 years old at the times of the offendings.
9. There were hardly any mitigating circumstances warranting the commission of these offences.
10. The aggravating features of these offences were that –
 - There was a great disparity between the ages of the defendant who was 50 years old and the victim being only 8 years old, some 42 years difference.
 - The victim was exposed to serious risk of physical damage and/or venereal diseases and risk of pregnancy underaged.
 - There was a degree of planning involved.
 - The offendings took place within the confines of the home on one occasion.
 - There was a breach of trust, the defendant being the next-door neighbour, taking advantage of the old grandfather's age and rest periods.
 - The offendings were repeated over a period of more than a year.
 - The defendant took advantage of the victim's age.
11. The relevant case authority to be applied is the case of PP v Gideon [2002] VUCA 7. The actions of the defendant in this case must be condemned in the strongest terms. It was totally wrong for the defendant to take advantage of the victim immaturity. The defendant must learn that he cannot and should not have obtained sexual gratification at the expense of his victim who was too young and vulnerable. The Courts must protect those types of victims by imposing no other options other than a sentence of imprisonment.



12. Taking the seriousness of these offendings, together with the seven aggravating features, I adopt the starting sentence of 7 years imprisonment on each count to be served concurrently.
13. In mitigation I take into account first his guilty plea and allow the full reduction. His start sentence is reduced by 2 years and 4 months, leaving the balance at 4 years and 8 months.
14. I deduct 3 months in which he was remanded in custody leaving the balance at 4 years and 5 months.
15. For family and customary reconciliation, showing remorse, unblemished record and other personal factors, I allow a final reduction of 8 months. His end sentence shall be 3 years and 4 months imprisonment as a concurrent sentence.
16. Roseboyd Mark, you are convicted and sentenced to an end sentence of 3 years and 4 months imprisonment. This sentence shall not be suspended.
17. You will begin to serve your sentence after 14 days from today by presenting yourself to Correctional Services by 4:00pm on 18 July 2023. You may appeal against this sentence within 14 days if you so choose.

DATED at Port Vila this 4th day of July 2023.

BY THE COURT


OLIVER. A SAKSAK

Judge

