

PUBLIC PROSECUTOR

v

YAN KROFET

Date: 4 September 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr G. Simeon
Defendant – Mr J. Garae

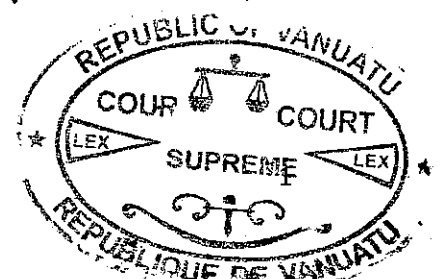
SENTENCE

A. Introduction

1. The defendant Yan Krofet pleaded guilty to three charges of unlawful sexual intercourse contrary to subs. 97(1) of the *Penal Code* [CAP. 135] (Charges 2, 3 and 5), one charge of unlawful sexual intercourse contrary to subs. 97(2) (Charge 7) and three charges of act of indecency with a young person contrary to s. 98A (Charges 1, 4 and 6).

B. Facts

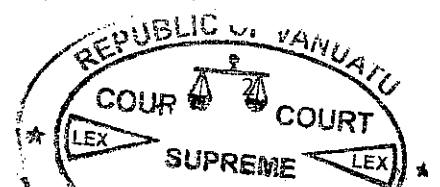
2. Mr Krofet is 22 years old and lives at Lakatoro area on Malekula island. From 2019 to 2021, he committed acts of indecency and performed anal sex many times on the boy complainant RH who was 10 years old.
3. RH was only in class 1 in 2019 and under 13 years old when Mr Krofet showed him pornographic videos and then showed his penis to RH. Mr Krofet held RH's head tightly and forced him to suck his (Mr Krofet's) penis (Charge 4).
4. In 2020, when RH was in class 2 and under 13 years old, Mr Krofet had anal sex with RH many times by inserting his (Mr Krofet's) penis into RH's anus which was painful for RH. On one occasion, Mr Krofet tricked RH and while they were in the bush, he carried out anal sex on RH (Charge 5).



5. In 2021, when RH was in class 3 and under 13 years old, Mr Krofet went with RH into the bush and forced RH to suck his penis until he ejaculated into RH's mouth (Charge 6).
6. In 2022, when RH was in class 4 and under 15 years old, Mr Krofet had anal sex with RH many times by inserting his (Mr Krofet's) penis into RH's anus (Charge 7). RH was too frightened to report Mr Krofet as his friends told him that Mr Krofet practised witchcraft.
7. In 2021, at Lakatoro area on Malekula, Mr Krofet showed pornographic videos to 10-year old boy complainant NN. After that, he asked NN to suck his penis until he ejaculated into NN's mouth. Many times, he asked NN to follow him into the bush then would make NN suck his penis and ejaculate into NN's mouth (Charge 1). He told NN not to tell anyone.
8. In 2021, Mr Krofet committed acts of indecency on 8-year old boy complainant NM many times. Mr Krofet would get NM to follow him into the bush then make NM suck his penis and he would ejaculate in NM's mouth. Further, he forced NM to have anal sex with him and inserted his penis into NM's anus which was very painful for NM. He had anal sex with NM many times. NM would see Mr Krofet ejaculate after having anal sex with him (Charge 2).
9. In 2021, Mr Krofet went to the 11-year old boy complainant EC and forced him to have sex with him many times. He asked EC to follow him into the bush so they could watch a movie. He showed EC pornographic videos then forced EC to suck his penis and ejaculated into EC's mouth. He forced his penis into EC's anus which was painful for EC (Charge 3).
10. Mr Krofet admitted his offending to the Police.

C. Sentence Start Point

11. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features and the maximum sentences set by Parliament.
12. The maximum sentences provided are:
 - a. Unlawful sexual intercourse with child under the age of 13 years – life imprisonment (subs. 97(1), *Penal Code*);
 - b. Unlawful sexual intercourse with child under the age of 15 years but of or over the age of 13 years – 15 years imprisonment (subs. 97(2), *Penal Code*);
 - c. Act of indecency with young person under 15 years old – 10 years imprisonment (s. 98A, *Penal Code*).
13. There are no mitigating aspects to the offending however, it is aggravated by the following:



- a. There were four separate victims;
 - b. Breach of trust;
 - c. The 8-12 year age differential;
 - d. Pre-meditation and planning on the part of the defendant;
 - e. The repeated nature of the offending over a two-year period;
 - f. Skin-on-skin contact;
 - g. The physical and mental effect on the victims including the harm suffered in the pain felt when the defendant penetrated their anus with his penis and ejaculated inside their mouth;
 - h. The defendant exposed the victims to the risk of sexually transmitted infection; and
 - i. The defendant told one victim not to tell anyone.
14. The Court was referred to *Public Prosecutor v Andy* [2011] VUCA 14. Since that decision, the penalty for the offence in subs. 97(1) of the *Penal Code* has increased to life imprisonment and in subs. 97(2) to 15 years imprisonment.

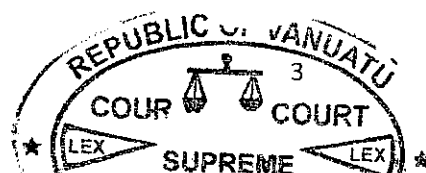
15. Taking these matters into account, I adopt a global sentence start point of 15 years imprisonment.

D. Mitigation

16. I reduce the sentence start point by 33% for Mr Krofet's early guilty pleas which has saved time and saved the need for the complainants to give evidence.
17. Mr Krofet is 22 years old. He is single. He did not attend school. He is a gardener. His only source of income is carrying containers of fuel from the town to the Tower site at Lakatoro area. He has no previous convictions although in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence. No attempt has been made to participate in a custom reconciliation ceremony.
18. I further reduce the sentence start point by 7% for Mr Krofet's personal factors.
19. Mr Krofet served 62 days in pre-sentence custody. A further 62 days is deducted from the sentence start point.

E. End Sentence

20. The sentencing principles applicable in this case are holding Mr Krofet accountable for his conduct, to denounce the criminal conduct and emphasize public disapproval



of such offending against young children, to protect the community, and to deter him and others from acting in this manner in the future.

21. Taking all of those matters into account, the following end sentences are imposed concurrently:

- i) Unlawful sexual intercourse with child under the age of 13 years (Charges 2, 3 and 5) 8 years 10 months imprisonment;
- ii) Unlawful sexual intercourse with child under the age of 15 years but of or over the age of 13 years (Charge 7) 7 years imprisonment; and
- iii) Act of indecency with young person under 15 years old (Charges 1, 4 and 6) 5 years imprisonment.

22. The end sentences will not be suspended as there are no exceptional circumstances warranting suspension. An immediate custodial sentence must be imposed for this serious sexual offending: *Public Prosecutor v Gideon* [2002] VUCA 7.

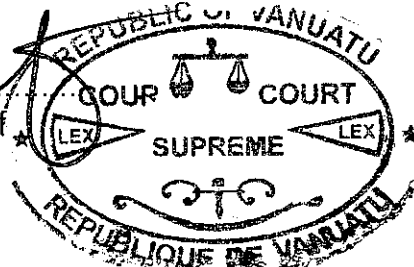
23. These sentences of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Krofet earlier elects to begin serving his sentences: s. 50 of the *Penal Code*. The Manager of the Mauria Correctional Centre is to inform the Court if Mr Krofet has failed to present himself by 4pm on 18 September 2023 to begin serving his sentences.

24. Mr Krofet has 14 days to appeal the sentence.

25. All details leading to the identification of RH, NN, NM and EC are permanently suppressed.

DATED at Port Vila this 4th day of September 2023
BY THE COURT

VM Trief
Justice Viran Molisa Trief

The seal of the Supreme Court of Vanuatu is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT" and "COURT" are on either side of the scale, with "SUPREME" below it. The word "LEX" is written on two banners extending from the sides of the scale.