

PUBLIC PROSECUTOR

v

**JOHNSON KALO TITUS
PETER COUPA ALSO KNOWN AS COOPER SIMON**

Date: 26 October 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Ms F. Kaisakau

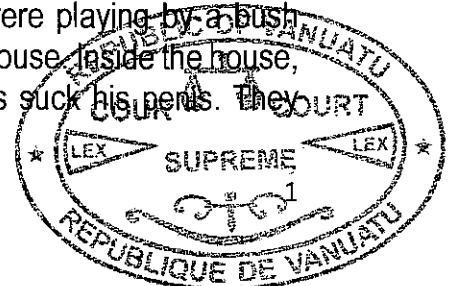
SENTENCE

A. Introduction

1. The Defendant Johnson Kalo Titus pleaded guilty to act of indecency with a young person contrary to s. 98A of the *Penal Code* [CAP. 135] (Charges 1 and 2) and unlawful sexual intercourse contrary to subs. 97(1) of the *Penal Code* (Charge 3).
2. The Defendant Peter Coupa also known as Cooper Simon pleaded guilty to unlawful sexual intercourse contrary to subs. 97(1) of the *Penal Code* (Charge 4).
3. The Defendants are convicted on their own pleas and the admitted facts.

B. Facts

4. At the time of the offending the Defendants were 15 years old.
5. In 2015, at Ohlen Mataso area in Port Vila, Mr Titus came up to 7-year old girl complainant NK and 8-year old girl complainant RN who were playing by a bush kitchen, grabbed them by their hands and pulled them into a house. Inside the house, he removed his pants and demanded that the complainants suck his penis. They

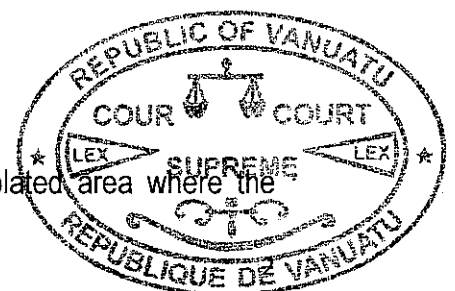


refused. They were terrified to see Mr Titus' penis and described it as black. They escaped by jumping through the window (Charge 1).

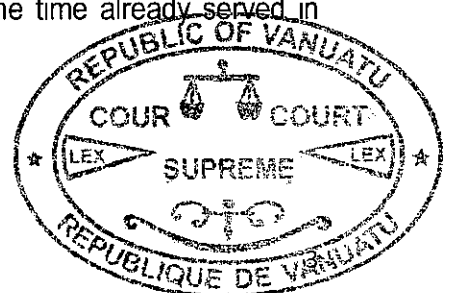
6. Later in 2015, NK was playing hide-and-seek with other children in the evening. She hid behind an old fridge lying outside and did not see Mr Titus come up behind her. He held her, blocked her mouth, reached into her underwear and touching her vagina. She was terrified, pushed him and ran to her friends. She stopped playing with them as she was scared that he might come back (Charge 2).
7. In 2016, RN was alone at home at night as her parents were still at work. She came outside to throw away the rubbish after she had eaten and Mr Titus was already there. He grabbed her, blocked her mouth and dragged her to an isolated area and penetrated her vagina with his finger (Charge 3).
8. At another time in 2016, Mr Simon who was one of Mr Titus' friends, saw NK and RN as they walked past his house. He ran after them, grabbed RN and pulled her into his bathroom which was situated outside and some distance away in an isolated area. He undressed himself and pushed his penis into her mouth. She spat it out but he kept pushing it into his mouth. This went on for a while until she managed to escape from him (Charge 4).
9. On 6 June 2016, the chief of the area called the Defendants and complainants to a meeting. The Defendants admitted their offending then and also to the Police.

C. Sentence Start Point

10. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
11. The maximum sentences prescribed in the *Penal Code* [CAP. 135] are:
 - a. Unlawful sexual intercourse with child under the age of 13 years – life imprisonment (subs. 97(1)); and
 - b. Indecency with a young person (under the age of 15) – 10 years imprisonment (s. 98A).
12. There are no mitigating aspects to the offending however, it is aggravated by the following:
 - a. There being 2 complainants;
 - b. Premeditation and planning;
 - c. 8-year age differential;
 - d. The defendants removed the complainants to an isolated area where the sexual intercourse took place;



- e. The offending being partly committed at night time;
 - f. The repeat nature of the offending; and
 - g. Breach of trust.
13. Taking these matters into account, I adopt a global sentence start point of 5 years imprisonment.
- D. Mitigation – Johnson Kalo Titus
14. Mr Titus' pleas were entered at the earliest possible opportunity which has saved time and saved the need for the complainants to give evidence. One third is deducted from the sentence start point for the early guilty pleas.
15. Mr Titus is 23 years old, from Mataso island and when in Vila, lives at Ohlen Mataso area. He is a Year 9 leaver. He had 3 months' training with the Shefa Health Department and has worked with them for the past 3 years, on a voluntary basis and since 2022, as a trainee nurse at the Mataso island aid post. His goal is to attend further study and become a nurse. The aid post has been closed since his arrest and then remand from 30 May 2023 to 5 July 2023 totalling 37 days, effectively 2 and a half months imprisonment.
16. He has no prior convictions. He has not committed any other offending and complied with his bail conditions which shows his strong prospects of rehabilitation.
17. Mr Titus is stated to be remorseful, including as reported by the pre-sentence report writer. He has performed two custom reconciliation ceremonies with the complainants, in 2016 and March 2023. Both involved mats and cash and in the second ceremony, calico as well, which were accepted.
18. The Court was provided with written references in support of Mr Titus from his family and community. He is a church youth leader as well as head of the Mataso Youth Sports Council.
19. The delay which has elapsed since Mr Titus' offending to his sentencing today is unreasonable: *Williams v Public Prosecutor* [2015] VUCA 29.
20. I further reduce the sentence start point by another 40% for Mr Titus' personal factors and the unreasonable delay which has occurred.
21. Finally, a further 2 and a half months is deducted for the time already served in custody prior to sentencing.

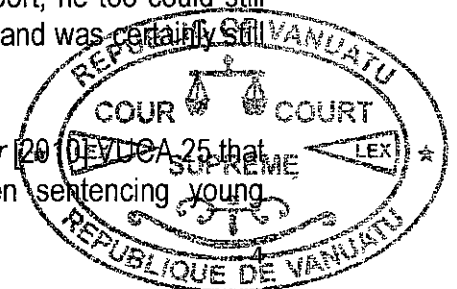


E. Mitigation – Peter Coupa aka Cooper Simon

22. Mr Simon's plea was entered at the earliest possible opportunity which has saved time and saved the need for the complainants to give evidence. I deduct one third deducted from the sentence start point for the early guilty plea.
23. Mr Simon is 23 years old, from Mataso island and lives with his parents at Ohlen Mataso area. He is a year 6 leaver. His goal is to travel overseas for seasonal work. He has no prior convictions. He has not committed any other offending and complied with his bail conditions which shows his strong prospects of rehabilitation.
24. Mr Simon is stated to be remorseful, including as reported by the pre-sentence report writer. He has performed two custom reconciliation ceremonies with the complainants, in 2016 and March 2023. Both involved mats and cash and in the second ceremony, calico as well, which were accepted.
25. The Court was provided with written references in support of Mr Simon from his family and community.
26. The delay which has elapsed since Mr Simon's offending to his sentencing today is unreasonable: *Williams v Public Prosecutor* [2015] VUCA 29.
27. I further reduce the sentence start point by another 40% for Mr Simon's personal factors and the unreasonable delay which has occurred.
28. Mr Simon was arrested and then remanded in custody from 16 May 2023 to 5 July 2023 totalling 51 days, an effective sentence of imprisonment of nearly 3 and a half months. Accordingly, a further 3 and a half months is deducted for the time already served in custody prior to sentencing.

F. End Sentence – both Defendants

29. The end sentence I would have imposed is 13 and a half months imprisonment for Mr Titus and 12 and a half months imprisonment for Mr Simon.
30. However, subs. 54(1) of the *Penal Code* provides that a person under 16 years of age is not to be sentenced to imprisonment unless no other method of punishment is appropriate. Both Defendants are now 23 years old (their dates of birth are set out in the pre-sentence reports), but I shall treat them as young offenders as they committed the offending when they were 15 years old (Mr Titus was 15 years old but from Mr Simon's date of birth set out in his pre-sentence report, he too could still have been 15 years old in 2016 when the offending occurred and was certainly still 15 years old when the chief called the meeting in June 2016).
31. The Court of Appeal stated in *Herromanley v Public Prosecutor* [2010] VUCA 25 that the need for reform and rehabilitation is paramount when sentencing young



offenders. I consider that imposing a sentence of imprisonment on the Defendants with the inevitable consequence of exposing them to long-term hardened criminals would be counter-productive and inappropriate. Given their clean record, the family and community support that they have and in Mr Titus' case, his service to the community and fledgling career in the health services, their prospects of rehabilitation are better served by keeping them out of imprisonment and this is practicable and consistent with the safety of the community.

32. Taking all of those matters into account, the end sentence imposed concurrently for Mr Titus (Charges 1-3) is as follows:
 - i) 250 hours of community work; and
 - ii) 12 months supervision including attendance at the rehabilitation programs organised by the Department of Correctional Services.
33. Taking all matters into account, the end sentence imposed for Mr Simon (Charge 4) is as follows:
 - i) 150 hours of community work; and
 - ii) 12 months supervision including attendance at the rehabilitation programs organised by the Department of Correctional Services.
34. I trust that the Defendants have learnt from their experiences resulting from the offending and will continue on the path that they have since the offending to not commit any other criminal offending and to be responsible, upstanding and law-abiding citizens of Vanuatu.
35. The Defendants have 14 days to appeal.
36. All details leading to the identification of NK and RN are permanently suppressed.

DATED at Port Vila this 26th day of October 2023
BY THE COURT


Justice Viran Molisa Trief

