

PUBLIC PROSECUTOR v JOSHUA DIN

Before: Chief Justice V. Lunabek

Appearances: Mr D Boe for the State
Ms L Bakokoto for the Defendant

Date of Plea: 24 April 2023

Date of Sentence: 5 May 2023

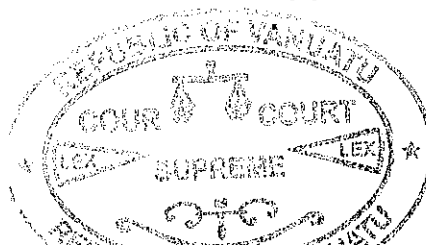
SENTENCE

A. Introduction

1. Joshua Din, you appear today for sentence.
2. On 24 April 2023 you entered guilty pleas on one count of aggravated sexual intercourse with a child, and one count of acts of indecency with a young person, contrary to Sections 97A and 98A of the Penal Code respectively.

B. Facts

3. The complainant in this case is a student at Baldwin Lonsdale Memorial School. She was born on 19 May 2009. Joshua Din, you are the biological father of that complainant.
4. The complainant lived and resided with you in the same house at the time of the offending at Musina village, Vanualava, Sola, Banks.
5. The offending started in May 2022 when the complainant was 12 years old.
6. One evening she was at home her mother, her sister Elizabeth Din, brother Zechariah Din and her father, you Joshua Din.
7. The complainant was asleep in her room when she was awoken by you. You told her to follow you and to look for some crabs.

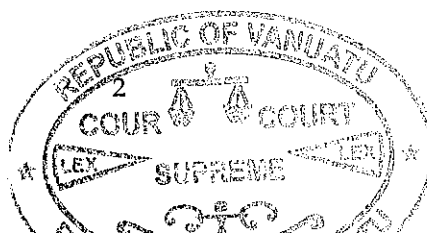


8. The complainant followed you and you both walked to an area called Lesa area. You both went down to the beach and you told the complainant to remove her clothes, when the complainant refused you threatened to stone her. She became afraid, you then removed her clothes and you told her to lay down on the beach and open her legs.
 9. You then licked the complainant's vagina and penetrated the complainant's vagina with your finger. You digitally penetrated her vagina with your finger many times that night.
 10. The complainant was in pain and wanted to call out but you stopped her from making any noise.
 11. When you had finished you told her to put back her clothes and you both went looking for crabs. When you both went back to the house you told the complainant not to tell her mother or else you will whip her.
 12. The complainant recalls that on another occasion you did the same thing to her. You took the complainant down to the beach to look for crabs, you made her lay down on the beach and you penetrated her vagina with your finger.
 13. The complainant recalled that sometimes in May 2022 after the previous sexual intercourse incident you did to her she was at home that evening. Her mother was asleep. The complainant was outside the kitchen with you cooking the food.
 14. You called the complainant, you told her to hold your penis. When she went to see you, you had already removed your trousers and you made her hold your penis.
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15. You told her not to tell anyone or else you will whip her.
 16. The complainant recalled on other occasions you would call her to hold your penis but she ran away.
 17. On another occasion at home and in the kitchen she recalled that you would hold and squeeze her breast.
 18. A medical report on the complainant was conducted on 20 June 2022. The findings were that the complainant has gone through some sexual activities.
 19. You were cautioned on 16 January 2023 and a record of interview was conducted on 24 January 2023. In your record of interview, you admitted to pushing your finger into the complainant's vagina.

C. Sentence Start Point

20. Aggravated sexual intercourse with a child is prohibited by Section 97A. Section 97A provides:

"97A. Aggravated sexual assault with a child



(1) A person must not have sexual intercourse with a child under the age of 15 years in circumstances of aggravation.
Penalty: Imprisonment for life.

(2) In this section, "circumstances of aggravation" means circumstances in which –
(a) ...
(b) ...
(c) ...
(d) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender; or
..."

21. Act of indecency with a young person is sanctioned under Section 98A of the Penal Code. Section 98A provides:

*"A person must not commit an act of indecency upon, or in the presence of another person under the age of 15.
Penalty: imprisonment for 10 years."*

22. You pleaded guilty to two (2) serious offences. Their seriousness is reflected on their respective maximum sentence imposed by law as I set them out above.

23. There is no personal circumstances to the offending but the following aggravating factors exist in this:

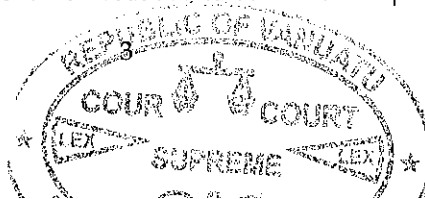
- There is a serious breach of trust as you are the father of the child and you breached the trust;
- Parts of the offences occurred at home where the child should be safe;
- The offences were repeated.

24. I set a start point sentence of 8 years imprisonment in respect to the offence of aggravated sexual intercourse with a child (Count 1) and 3 years for acts of indecency without consent (Count 2). They will run concurrently. Your start point sentence is 8 years imprisonment.

D. Mitigating Features

25. You are 42 years of age. You are a member of the Anglican Church. You attended church regularly and you helped with the church activities. You are in good health condition. You are a first time offender. You do not have previous convictions and you have an unblemished record. I will allow 6 months reduction from your start point sentence to reflect your clean record.

26. You pleaded guilty at the earliest opportunity. You admitted your offending to the police when your offending was discovered and reported. You are entitled to a full one third reduction from your sentence start point. Your sentence is now reduced to 60 months imprisonment (5 years).



27. The pre-sentence report shows that you have performed a custom ceremony with the victim, though, the writing of the report could not contact the complainant and your family back at Vanualava, I accept you have done so. You provided one pig, root crops and two stem of kava. You said the reconciliation consisted of VT7,000. I allow a further 3 months reduction to reflect this custom compensation.

E. End Sentence

28. Your end sentence is 4 years and 9 months imprisonment.

29. I consider the fact that you were first arrested and detained on 9 December 2022 and you were later released on bail on 20 February 2023. You had in total spent 74 days in remand. This period has to be taken into account in your favour.

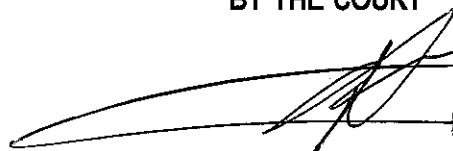
30. The offending and its circumstances do not justify a suspension of the sentence.

31. You are sentenced to 4 years and 9 months imprisonment which is deemed to begin on 9 December 2022 to take into account your 74 days pre-custodial period.

32. You have 14 days to appeal against this sentence if you are unsatisfied with it. The 14 days begin today.

DATED at Luganville, Santo, this 5th day of May, 2023

BY THE COURT



Chief Justice V. Lunabek

