

PUBLIC PROSECUTOR

v

CLARENCE ATO

Date of Plea: 17 June 2024  
Date of Sentence: 1 August 2024  
Before: Justice M A MacKenzie  
Counsel: Mr. L. Young for the Public Prosecutor in Port Vila  
Mr. R. Willie for the Defendant – via video link in Santo  
Defendant on Bail- via video link in Santo

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SENTENCE

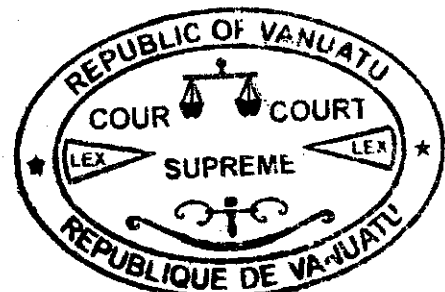
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**Introduction**

1. Mr Ato, you appear for sentence having pleaded guilty to a charge of act of indecency with a young person, contrary to s98A of the Penal Code [CAP 135]. The maximum penalty is 10 years imprisonment.

**The Facts**

2. On 24 March 2024 at Santo the victim was on his way home. You blocked the victim and firmly squeezed his buttock. The victim called out to another relative, who did not answer. You told him not to call out.
3. The victim was aged 12 years and you were aged 26 years. There is a family relationship as you are cousins.



### Sentencing purposes/principles

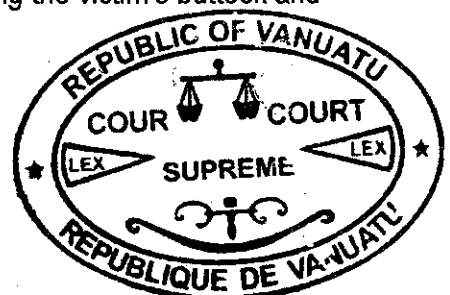
4. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions, and help you to rehabilitate. It must also be generally consistent.

### Approach to sentence

5. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### Starting point

6. The first step is to set a starting point to reflect the features of the offending itself and with reference to the maximum penalty.
7. The aggravating factors here are;
  - (a) There is a breach of trust, as you and the victim are cousins.
  - (b) The victim's vulnerability because of his age and the age disparity. He was 12 years, and you were 26 years. The age differential is 14 years.
  - (c) While opportunistic, the offending was deliberate as you blocked the victim's way.
  - (d) Impact on the victim.
8. There are no mitigating features of the offending itself.
9. The prosecutor submits that a starting point of 3 years imprisonment is appropriate. Your counsel submits that a starting point of 12 months or less is appropriate.
10. I derive assistance from 2 cases; *Public Prosecutor v Star* [2024] VUSC 130 and *Public Prosecutor v Daniel* [2024] VUSC 194. That is because both cases involve buttock touching in the context of a charge of act of indecency.
11. The starting point adopted in *Public Prosecutor v Star* was 12 months imprisonment. The defendant, aged 75 years, took his 8-year-old granddaughter into the bush and touched her buttock over clothing. The starting point adopted in *Public Prosecutor v Daniel* was 2 years imprisonment on a global basis for 2 charges of acts of indecency without consent. One charge related to the defendant touching the victim's buttock and



the other charge related to the touching of the victim's vagina over her clothing. *Daniel*, then, involves more serious offending.

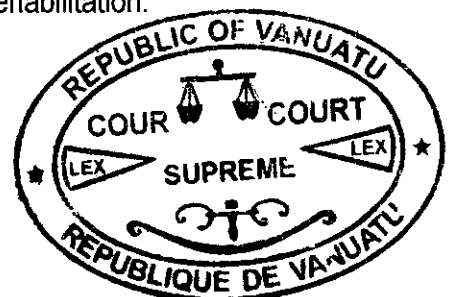
12. A starting point of 12 months imprisonment is appropriate taking into account the aggravating factors and the 2 cases I have referred to, particularly *Public Prosecutor v Star*.

### **Guilty plea and personal factors**

13. You are entitled to a one-third discount for your guilty plea. There was an early guilty plea. That equates to a discount of 4 months from the starting point.
14. You are aged 26 years and a first offender. You are described as a quiet and supportive person. You have good support in the community. You are willing to take part in a custom reconciliation ceremony. The victim's family is open to this. You are remorseful.
15. For these factors, I reduce the sentence by one month, which is approximately 10 percent.
16. You were remanded in custody between 30 April and 13 May 2024, a period of 14 days. This is an effective sentence of one month's imprisonment. This was how the calculation was undertaken recently by Trief J in *Public Prosecutor v Saly* [2024] VUSC 112. So, I reduce the sentence by a further one month.

### **End Sentence**

17. Taking the starting point and the deductions just discussed into account, the end sentence is 6 months imprisonment.
18. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor. Under s57, I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor v Gideon* [2002] VUSC 7, the Court of Appeal said that it will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. I accept that the offending in *Gideon* was far more serious than the present case.
19. There are cases where sexual offending has resulted in a suspended sentence. For example, *Public Prosecutor v Achary* [2023] VUCA 44 and *Public Prosecutor v Daniel*. In *Public Prosecutor v Daniel*, Trief J exercised her discretion to suspend the sentence imposed for 2 charges of act of indecency. While acknowledging that it was sexual offending, Trief J considered that it was at the lower end of the scale, Mr Daniel had family responsibilities, a clean record and good prospects of rehabilitation.



20. While the offending here is not at the most serious end of the spectrum for sexual offending, it nevertheless involved a breach of trust, and a vulnerable victim. I acknowledge that you are a first offender, that you are willing to attend a custom reconciliation ceremony and that the offending is not at the same level of seriousness as the offending in *Gideon*. It was a 'one off' incident of relatively brief duration, over clothing. These factors favour suspension. Suspension of the sentence will meet all the relevant sentencing purposes as it will hold you accountable and will deter and denounce your conduct. Young people need to be protected and not sexually touched.
21. The sentence is to be suspended for 12 months. You are warned that if you are convicted of any offence in the next 12 months, you will be taken into custody and serve this sentence of imprisonment as well as the penalty imposed for the further offending.
22. You are also sentenced to 100 hours community work.
23. You have 14 days to appeal against the sentence.
24. I make a final order suppressing the victim's name and identifying details.

DATED at Port Vila this 1st day of August 2024

BY THE COURT

Justice M A MacKenzie

