

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

Criminal
Case No. 24/1632 SC/CRML

PUBLIC PROSECUTOR

v

MAHIT DENSON

Date of Plea: 17 June 2024
Date of Sentence: 24 September 2024
Before: Justice M A MacKenzie
Counsel: Public Prosecutor – Mr L Young
Defendant – Ms A Yeeon (Holding papers for Ms B Taleo)

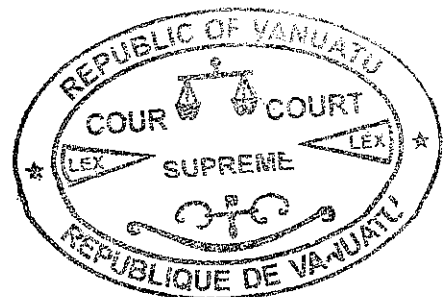
SENTENCE

Introduction

1. Mr Mahit Denson, 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 23 February 2024 at Santo, you followed the victim and her sister back to their house after meeting their mother at the shop where she works. You pushed the victim, into a room and closed the door. You then kissed her on the mouth, inserting your tongue into her mouth. The victim was crying. You stopped and walked outside. The victim immediately told her grandfather that you had kissed her.



3. The victim was aged 7 years, and you were aged 17 years. You and the victim are related. She calls you her uncle. Under caution, you admitted kissing the victim once. In the pre sentence report, you deny aspects of the offending. I place no weight on your denials, as you pleaded guilty and as such, accepted the summary of facts.

Sentencing purposes/principles

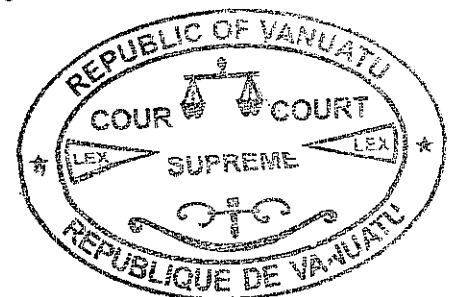
4. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

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 aggravating and mitigating features of the offending 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 related.
 - (b) The victim's vulnerability because of her age and the age disparity. She was 7 years, and you were 17 years. The age differential is 10 years.
 - (c) While opportunistic, the offending was deliberate as you followed the victim home and isolated her in a room.
 - (d) The victim is entitled to feel safe in her home.
 - (e) Impact on the victim.
8. There are no mitigating features of the offending itself.
9. Both counsel submit that a starting point of 3 years imprisonment is appropriate. The cases cited by counsel do not overly assist because factually they are too different from the present case. Acts of indecency can vary widely in terms of degree and seriousness. I have not found a case which is factually similar.



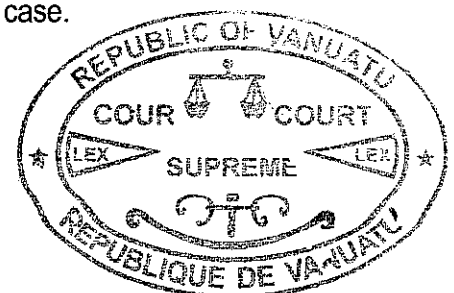
10. Without minimizing the seriousness of this incident, it was a one off and involved a kiss. It did not involve for example, the touching of private parts. It is less serious than for example, *Public Prosecutor v Aru* [2017] VUSC 85 which involved a 14 year old touching the vagina and buttock of a 6 year old girl. The Chief Justice said that an appropriate starting point would be between 2-3 years imprisonment. Then there is *Public Prosecutor v Star* [2024] VUSC 130, which involved buttock touching in the context of a charge of act of indecency. The starting point was 12 months imprisonment. The defendant, aged 75 years, took his 8 year old granddaughter into the bush and touched her buttock over clothing.
11. A starting point of 18 months imprisonment is appropriate taking into account the aggravating factors and the cases I have referred to.

Guilty plea and personal factors

12. While I accept you pleaded guilty at an early opportunity, I agree with Mr Young that the case against you was overwhelming and so you had no option but to plead guilty. The sentence is reduced by 25% for your guilty plea. That equates to a discount of 4.5 months from the starting point.
13. You are now aged 18 years and a first offender. You were 17 at the time of the offending. You are from Paama but are currently living in Santo. You have good support from you family, who describe this as out of character. You are willing to take part in a custom reconciliation ceremony. For these factors, I reduce the sentence by 2.5 months. Specifically, there is no discount for remorse. On a robust evaluation, it is not assessed to be genuine. Perhaps that shows your immaturity.
14. You were remanded in custody between 30 April and 17 May 2024, a period of 18 days. This is an effective sentence of 5 weeks imprisonment. So, I reduce the sentence by a further 5 weeks for this factor.

End Sentence

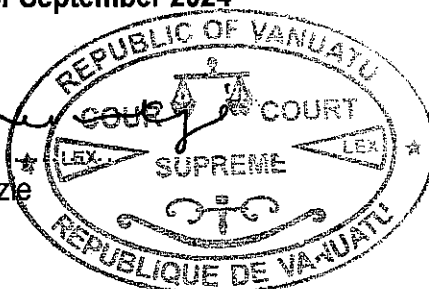
15. The end sentence is 9 months 3 weeks imprisonment.
16. Your counsel asks that the sentence be suspended pursuant to s 57 of the Penal Code. This is opposed by the prosecutor. Under s57, I must take into account the circumstances, the nature of the offending and your character. In *Public Prosecutor 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.



17. There are cases where sexual offending has resulted in a suspended sentence. For example, in *Public Prosecutor v Achary* [2023] VUCA 44, the Court of Appeal upheld the suspended sentence imposed by the primary judge for two charges of acts of indecency.
18. While the offending here is sexual offending, it is not at the most serious end of the spectrum for sexual offending, although it involves a breach of trust, and a vulnerable victim. On the other hand, it was a one-off incident of brief duration. I acknowledge that you are a first offender, that you were 17 at the time, have good family support and are willing to attend a custom reconciliation ceremony. These factors favour suspension.
19. In the sentencing of young offenders, the dual purposes of punishment and deterrence may need to give way to reform and rehabilitation in the interests of society that young offenders be rehabilitated and grow up to become responsible law-abiding members of society: *Heromanley v Public Prosecutor* [2010] VUCA 25 at [17]. There is also a helpful discussion about the relevance of youth to sentencing (including suspension of sentence) in a recent decision of Hastings J, *Namaka v Public Prosecutor* [2024] VUSC 137. I adopt the observations made in that case.
20. I consider that the imposition of an immediate sentence of imprisonment on you with the consequence of exposing you to long term hardened criminals would be counter-productive and inappropriate. Suspension of the sentence will meet all the relevant sentencing purposes as it will hold you accountable and will deter and denounce your conduct. The sentence is to be suspended for 2 years. You are warned that if you are convicted of any offence in the next 2 years, you will be taken into custody and serve this sentence of imprisonment as well as the penalty imposed for the further offending.
21. You are also sentenced to 12 months supervision to assist you in your rehabilitation.
22. You have 14 days to appeal against the sentence.
23. I make a final order suppressing the victim's name and identifying details.

**DATED at Port Vila this 24th day of September 2024
BY THE COURT**

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Justice M A MacKenzie

The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLIQUE DE VANUATU" along the bottom inner edge. In the center, the words "COURT" and "COURT" are written on either side of the emblem, with "SUPREME" below it. Two small triangles containing the word "LEX" are positioned on either side of the central text.