

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

Criminal
Case No. 23/3018 SC/CRML

PUBLIC PROSECUTOR

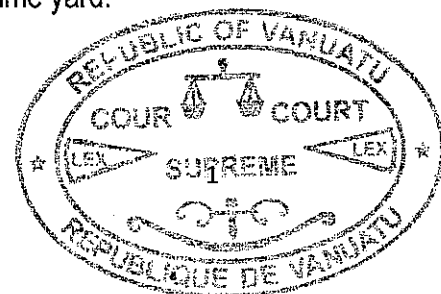
v

DAVID JOHNSON

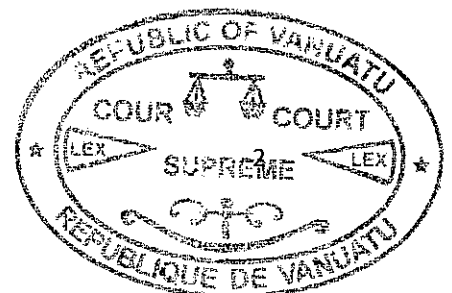
Date: 26 March 2025
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms S. Langon
Defendant – Mrs K. Karu

SENTENCE

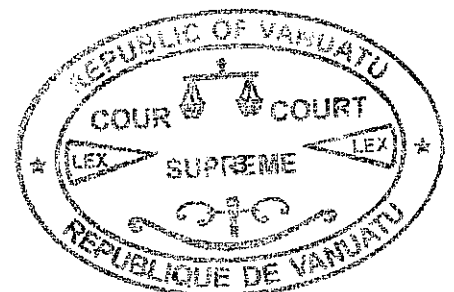
1. Mr David Johnson, you appear for sentence today having pleaded guilty and accepted the summary of facts in relation to incest with a child under the age of 16 years contrary to subss 95(8) and (9) of the *Penal Code* [CAP. 135] (Count 3), indecency with a young person contrary to s. 98A of the *Penal Code* (Count 2) and indecency without consent contrary to para. 98(a) of the *Penal Code* (Count 5). You are convicted on your own pleas and the admitted facts.
2. The maximum sentences prescribed in the *Penal Code* [CAP. 135] for these offences are as follows:
 - a. Incest – life imprisonment (subss 95(8) and (9));
 - b. Indecency with a young person – 10 years imprisonment (s. 98A); and
 - c. Indecency without consent – 7 years imprisonment (para. 98(a)).
3. The complainant IJ is your biological child. She is 17 years old. You and IJ's mother separated when IJ was small. IJ lives with her maternal grandparents at the Nambatri area in Port Vila. You rent a house next door to them within the same yard.



4. In 2022, IJ was 14 years old and was a Year 8 student at Freshwater School in Port Vila. One afternoon in November 2022, you asked IJ to do your laundry. IJ came over to your house and you told her to go inside your house and look for one of your trousers before she started the laundry. She went into your house and while she was looking for your trousers, you approached her from behind. When IJ turned around, she saw that you had your trousers pulled down to your knees and your penis was exposed. You told IJ to suck on your penis. When IJ heard you say that, she told you that you looked like you were going stupid and then she rushed outside of your house and left (Count 2).
5. In June 2023, IJ was 15 years old. In the morning of 12 June 2023, IJ went over to your house to iron her uniform shirt. Her step mother Becky was getting ready for work and she showed IJ where the iron was. IJ began to iron her shirt, her step mother left the house for work and you were asleep. You woke up, grabbed IJ's mouth with your right hand and pushed your left hand into IJ's panty. IJ was having her menstrual period but she felt your fingers penetrating her vagina. She tried to kick and move out but you were too strong. When you removed your hand from inside IJ's panty, she saw that 3 of your fingers were covered in blood. You wiped your hand with a blue and white cloth that had pictures of flowers on it (Count 3).
6. In August 2023, IJ was 15 years old. On 2 August 2023, IJ was inside your house and you told her to suck your penis. She refused and ran out of your house (Count 5).
7. IJ has become afraid of you because of your actions towards her. She feels pain and has trouble urinating.
8. On 4 August 2023, IJ could no longer keep quiet about what you did to her and reported you to family members.
9. On 18 October 2023, you were arrested. You were cautioned and elected to remain silent.
10. The sentence start point is assessed having regard to the maximum sentences available, and the mitigating and aggravating factors of the offending.
11. There are no mitigating factors to this offending.
12. The aggravating factors of the offending include:
 - Serious breach of trust;
 - The age differential between the defendant and the complainant of 20 years;



- You have responsibility and duty to care for and protect the complainant but instead used her for your own sexual gratification;
 - The offending occurred within your house where the complainant was entitled to be safe and secure;
 - The offending was planned, occurring when other family members were out;
 - The repeated nature of the offending;
 - The loss of innocence for the complainant; and
 - The effects on the complainant and harm suffered.
13. The factors set out above require a global sentence start point of 8 years imprisonment.
14. You initially pleaded not guilty to all 5 charges against you. This matter was twice set down for trial. On the second occasion (13 months later), you asked to be re-arraigned. Then you pleaded guilty to 3 charges and not guilty to the other 2. The Prosecution entered *nolle prosequi* as to the two latter charges and you are being sentenced today on the 3 charges you pleaded guilty to. Accordingly, 11 percent (10 and a half months) is deducted from the sentence start point for your guilty pleas.
15. You are 36 years old and have previously worked for the Port Vila Municipal Council. You have also participated in the seasonal employment scheme although you have not done so since the offending. You are presently unemployed. You are a Year 11 leaver. You and your *de facto* partner at the time had 1J together then separated. Two years later you and your new *de facto* partner had a son together. You remain together. You have no previous convictions. You wish to apologise to the complainant and your families for your wrongdoing, although I note that it is nearly 2 years since the offending and you have not yet apologised. Two and a half months are deducted from the sentence start point for your personal factors.
16. You served time in custody from 18 October 2023 to 5 December 2023, an effective imprisonment term of 3 and a half months therefore a further 3 and a half months is deducted from the sentence start point.
17. The end sentences imposed concurrently are as follows:
- a. Incest with a child under the age of 16 years (Count 3) – 6 years 7 and a half months imprisonment;
 - b. Indecency with a young person (Count 2) – 2 years 6 months imprisonment; and



- c. Act of indecency without consent (Count 5) – 1 year 6 months imprisonment.
18. The sentencing principles applicable in this case are holding you accountable for your criminal conduct, protecting the community including your own family and children, to denounce the criminal conduct, and to deter you and others from acting in this manner in future.
19. There will be no suspension of sentence for this serious sexual offending against your biological child: *Gideon v Public Prosecutor* [2002] VUCA 7.
20. As you have previously served time in custody, s. 50 of the *Penal Code* does not apply. Accordingly, you are to begin serving your sentences of imprisonment immediately.
21. All details leading to the identification of IJ are permanently suppressed.
22. You have 14 days to appeal the sentence.

**DATED at Port Vila this 26th day of March 2025
BY THE COURT**


.....

Justice Viran Molisa Trief

