

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

JOEL HAKE

Mr Justice Oliver A. Saksak

Mr. P. Wirrick for Public Prosecutor
Miss J. Tari for the Defendant

SENTENCE

1. Joel Hake you admitted to having sexual intercourse without consent on 26th June 2012. The charge was laid under section 91 of the Penal Code Act Cap 135. This offence carries a maximum penalty of life imprisonment.
2. The Charge was a representative charge of a course of conduct which began from December 2009 on the complainant, a girl of 10 years of age and continued until 2011. There were at least five (5) separate occasions when sexual intercourse without consent took place. When the complainant made a formal complaint statement to the police on 25th May 2012, she gave her age at 12 years old.
3. The facts show that –
 - (a) The complainant was born on 24th April 1998 and was at all material times living under the care of the defendant and his wife as a member of their family at a plantation at Egan Area at the outskirts of Luganville. The girl's parents were living on Malekula at the time of offendings. The complainant's mother is the sister of the defendant's wife.



(b) You commenced sexually abusing the complainant sometime in 2009 when she was only 10 years old. This offending started at your home when you laid on top of her and caused your penis to slide around her vaginal area.

(c) During the same month, it occurred during the day and in the gardens when you made the complainant lie down and then you proceeded to lick her vagina with your tongue before inserting your fingers into her vagina causing her pains. You then slid your penis around her vagina.

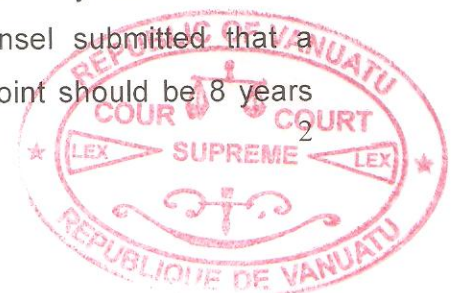
(d) During 2010, on at least two separate occasions in your gardens near the USA River, you commenced by licking her vagina before inserting your fingers into her vagina. Later, you penetrated her vagina with your penis.

(e) During 2011, you had sexual intercourse with the complainant on at least two separate occasions at home when you digitally penetrated her vagina before inserting your penis into her.

(f) Your actions caused the complainant to become pregnant so that on 10th May 2012, she gave birth prematurely to a child who died shortly after birth.

4. You have conceded to the above facts without any challenge or dispute.

5. In considering and assessing appropriate sentence and punishment, the Court is guided by the classic and leading cases of Public Prosecutor v. Scott [2002] VUCA 29, Public Prosecutor v. Ali August, Criminal Case No. 14 of 2000 as endorsed by Public Prosecutor v. Gideon [2002] VUCA 7. These cases are referred by both the Public Prosecutor and Defence Counsel. Both Counsel submitted that a custodial term is warranted, and the starting point should be 8 years

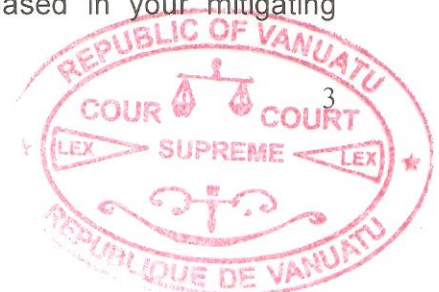


imprisonment with an uplift for aggravating features before allowing reductions for mitigating factors.

6. The Court agrees with Counsel's submissions that according to Scott's a custodial sentence is the appropriate punishment for your offendings and that the starting point is 8 years imprisonment.
7. I accept the following aggravating features were present –
 - (a) Your victim was a very young girl when the offendings started in 2009.
 - (b) The offendings were repeated on five separate occasions at different places for a period of at least two years until 2011.
 - (c) The resulting pregnancy and premature birth gone through by the complainant caused her physical and mental effects which she will live with all her life.
 - (d) A serious breach of trust between you as a mature father and "papa" to her.
 - (e) The degree of violation including oral, digital and penile penetration of the complainant's vagina.

For these aggravating features, there will be an uplift of 16 months on the starting point of 8 years bringing the total to 9 years and 4 months.

8. You are therefore sentenced to 9 years and 4 months for your offendings. The purposes of this high sentence are:-
 - (a) To deter you and others from committing further offences.
 - (b) To protect young girls and weaker members of the society.
 - (c) To mark the gravity of your offendings.
 - (d) To mark public disapproval of your actions.
 - (e) To punish you adequately.
9. I now consider granting some reductions based in your mitigating factors. The following factors are relevant –



- (a) Guilty plea at first given opportunity for which a 1/3 reduction will be given in accordance with Scott's. Your original sentence of 9 years and 4 months is reduced by 3 years down to 6 years and 4 months for this factor.
- (b) Being a first time offender with no previous convictions.
- (c) Cooperate with the police.
- (d) Willingness to perform customary reconciliation.
- (e) Old age (given at 70 years).

For these, I consider that a further reduction of one (1) year (12 months) be granted, leaving the balance at 5 years and 4 months imprisonment.

- 10. You will serve a total of five (5) years and 4 months imprisonment at the Correctional Centre in Luganville. Your sentence commenced on 18th June 2012 when you were first remanded in custody by the Magistrate's Court.
- 11. You will be eligible to apply for parole upon serving at least half of your 5 years and 4 months sentence, depending on your character and attitude towards correction.
- 12. You have a right of appeal within 14 days if you so choose.

DATED at Luganville this 3rd day of August 2012.

BY THE COURT


OLIVER A. SAKSAK
Judge

