

(Criminal Appellate Jurisdiction)

**BETWEEN: THE PUBLIC PROSECUTOR**

Appellant

**AND: JOHN RICHARD**

Respondent

Mr Justice Oliver A. Saksak

Mr P. Werrick for the Public Prosecutor – Appellant  
Miss J. Tari for the Respondent

Date of Hearing: 3<sup>rd</sup> August 2012  
Date of Judgment: 10<sup>th</sup> August 2012

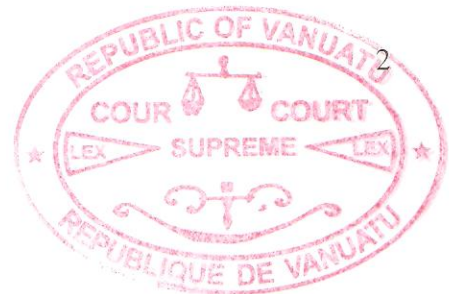
## JUDGMENT

1. This is a judgment as to sentence of the Respondent, a young boy of 15 years old. This judgment is issued pursuant to the Court's powers and jurisdiction under Section 30 of the Judicial Services And Courts Act.
2. I accept defence Counsel's submission that in view of the young age of the offender, a supervision order would be appropriate. The Pre-Sentence Report recommends this option and points the Court to section 54(1) and (2) of the Penal Code Act Cap 135 (the Act).
3. Counsel for the State submits a suspended sentence based on the cases of Public Prosecutor v. Keleb [2009] VUSC 111 and Public Prosecutor v. Motoutorua: Criminal Case No. 58 of 2012. Counsel also submits in the alternative that some other non-custodial sentence



should be considered. I accept these cases are more serious in nature than the Respondent's case.

4. I accept that there are no notable aggravating features present in the respondent's case apart from the age of the victim given at 65 years old. She was in the morning of 12<sup>th</sup> April 2012 doing her shopping and minding her own business when the Respondent touched her vaginal area. It was a one-touch and nothing further. The victim shouted to get the attention of the public so that the Respondent ran off and was apprehended by police.
5. Defence Counsel submitted three other case authorities namely Abednigo v. Public Prosecutor [1990] VUCA 2, Public Prosecutor v. Child L [2011] VUSC 66: Criminal Case No. 1 of 2011 and Public Prosecutor v. Avock [2003] VUSC 124: Criminal Case No. 6 of 2004. Abednigo and Avock cases are much more serious cases than the Respondent's case. Child L's case comes close to the Respondent's case and the Court is guided and assisted by it to favour a supervision sentence, but excluding the community service punishment.
6. I accept the following mitigating factors as relevant:-
  - (a) The respondent being a first-time offender with no previous conviction.
  - (b) He pleaded guilty in the Court below at the earliest opportunity.
  - (c) He cooperated well with the police.
  - (d) He is a young offender of 15 years old.
  - (e) He comes from a home where parents have been divorced, thus lacking proper parental care, guidance and custody.



These mitigating factors far outweigh any aggravating features of the Respondent's offending. For those reasons, the Court will impose a punishment that not only act as a denunciation of the Respondents' behaviour but one that will also be a deterrent to himself and to other young offenders like him. Further, the Court must do its best to promote in the Respondent a sense of responsibility and to afford him the opportunity to rehabilitate.

7. Under those circumstances, I now sentence you John Richard to a sentence of Supervision under Section 58 F of the Act, for a period of 16 months. A separate Order will be issued specifying the conditions that you must follow. You need to understand that you must follow those conditions strictly. If you fail, the Probation Service has a duty to report those failures to the Court and you may find yourself being committed to prison.
8. That is the Sentence of the Court.

DATED at Luganville this 10<sup>th</sup> day of August 2012.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

