

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

Criminal Case No. 157 of 2012

PUBLIC PROSECUTOR

-v-

JACKSON MATHEW

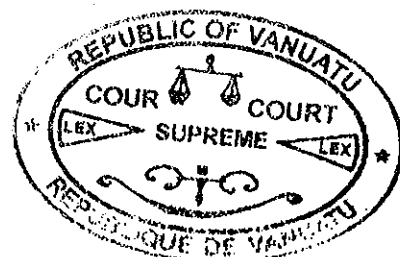
Hearing: *17 June, 2013*

Before: *Justice Robert Spear*

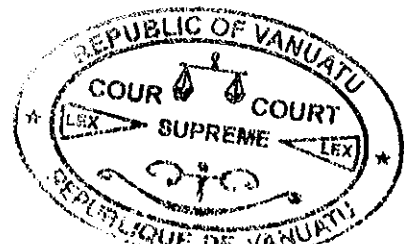
Counsel: *Tabisa Harrison for the Prosecution*
Pauline Kaluatman for the Defence

SENTENCE

1. Jackson Mathew you are for sentence having pleaded guilty to one charge of committing an act of indecency with a young person. This is a serious offence carrying a maximum penalty of ten years imprisonment.
2. There is no dispute as to the circumstances surrounding the offending. They are set out in the prosecution sentencing submissions and effectively confirmed in the sentencing submissions presented by your counsel.
3. You are 43 years of age. The complainant is a young girl of 9 years of age and your stepdaughter. You have been living with the complainant's mother for a number of years and the complainant has come to look upon you as her father.

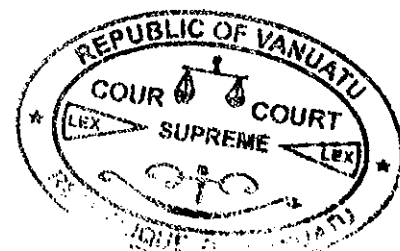


4. On this particular day, the complainant had returned from school, she had spent time outside playing with her friends, and she came in to the home to find that her mother was absent. She sat in the living room watching television. You were at home, you came out of your bedroom, you came over to the complainant, and without any other indication as to your intentions, you shifted her underpants to one side, and you put your fingers on her genital area and started fondle her. Clearly, you did so for your personal sexual gratification.
5. This was an assault on this young girl that was indecent and it had an immediate and a dramatic effect on her. She immediately became distressed and was still distressed when her mother and her brother came home.
6. As is often the case with offending such as this, the young complainant was concerned that if she told her mother what had happened her mother would not believe her because of the relationship that you had with her mother. However, she did explain this to her brother later on and he fortunately then alerted the complainant's mother to what had happened.
7. The original charge sheet included charges for sexual intercourse without consent as well as this act of indecency. You pleaded not guilty to those charges. You had earlier admitted to the police that you only touched her around her genital area. The prosecutor accepted the plea to the indecent act charge and offered no evidence on the other charges.
8. The prosecutor has explained that he did not consider that the complainant would be caable of giving any evidence at all if she was required to come to Court. That is not an uncommon situation and simply reflects the reality of the circumstances that prevailed. You need to consider yourself very fortunate that you are still not facing those serious charges. However, I want to tell you that you are to be sentenced today solely on the basis that has been agreed and that relates to one act of indecency involving you touching this young girl around her genital area. That is still serious offending although



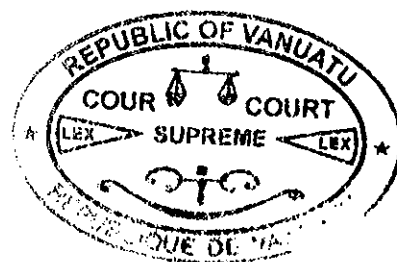
not nearly as serious as would be the case if you had been convicted of sexual intercourse without consent.

9. What makes this offending serious.
10. First of all, it is sexual offending against a young and vulnerable nine year old girl.
11. The young girl concerned is still extremely distressed and that is perfectly understandable. She would have mixed emotions. Not only will she have difficulty understanding exactly what is happened to her, and why, but of course she will also harbour feelings of guilt that she is responsible for the break-up of the family because you, of course, are now removed from the family unit.
12. A further and significant aggravating feature is the age difference with you at forty three and the complainant at nine.
13. Furthermore, and perhaps more significantly, there was a shocking abuse of trust because you are in the position as her stepfather and you should have been someone that she was able to look to and trust for her safety and protection.
14. I have received sentencing submissions from both the prosecution and the defence. I have also had the benefit of a pre-sentence report.
15. I note that you are from the island of Ambae but you reside in Port Vila in the Prima Area. The probation officer notes that you are supposedly a leading elder for the Seventh Day Adventist Church in Ambae and that you are committed to the Community and to your chief. It never fails to surprises me that so-called upstanding and leading members of the community lower themselves when the opportunity presents them to offend in such ways as this - cowardly acts indeed.
16. You have a family of your own as well as the family that has come with your relationship with the complainant's Mother. Four of the children are at school. You

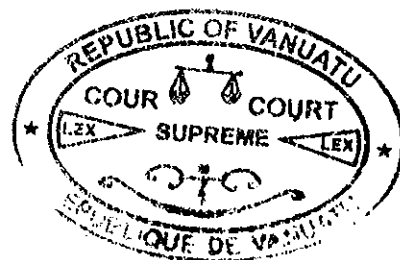


work as a private construction worker here in Port Vila which enables you to be able to pay the school fees. The fact that you are no longer working of course means that the childrens' school fees are not being paid and that is a tragedy but one that you have brought on the family.

17. I am informed by the probation officer that you are considered a first time offender and that while you have not yet performed a custom reconciliation ceremony, negotiations are currently underway for a major custom reconciliation between your chiefs and the chiefs of the victim and her uncles.
18. On custom reconciliation, it is important to understand how that should factor in the sentencing equation. A nine year old girl is not going to be particular concerned as to whether there is formal custom reconciliation ceremony or not. That would be all quite beyond her comprehension. It may bring about some peace between the families and it can only be hoped that it will. All I can accept is that the preparedness of your community to undergo a custom reconciliation can be considered as supportive of the sincerity of your expressions of remorse.
19. I note that you entered a plea of guilty but only after the indictment was amended to include an alternative charge of committing an indecent act. For the purposes of this sentencing consideration, I give you the maximum permitted credit for your early guilty plea.
20. The sentencing submissions that have been presented by counsel differ widely in the eventual outcome that they submit is appropriate. The prosecution submits that an immediate term of imprisonment is appropriate because this is sexual offending by an adult against a young and vulnerable member of the community. On the other hand, Ms Kaluatman refers to a number of cases where this Court has imposed sentences of imprisonment but suspended them.



21. The reality, however, is that all these cases have to be considered on their individual facts. There is no set tariff for cases of this nature except that the starting point should be imprisonment.
22. What I propose to do now is calculate the sentence that should be imposed on you and then consider the issue of suspension.
23. The starting point for this offending must be imprisonment. The Court of Appeal of this country, and the Appeal Courts from other countries, have emphasised time and time again that sexual offending against young girls or boys is so serious as to require a sentence of imprisonment as the first consideration. The maximum sentence here is one of 10 years' imprisonment.
24. For indecent touching of this nature I consider the starting point should be 3 years imprisonment and I lift that by a year to reflect the aggravating features of this offending particularly that this young girl was your stepdaughter and that the offending carried with it a shocking abuse of trust.
25. I allow you 1 year for your remorse, for you apparent previous good character and your preparedness to support custom reconciliation. That brings me to 3 years imprisonment.
26. I allow you a further one third off that for your early guilty plea resulting in a sentence of 2 years imprisonment.
27. The question then is whether that sentence should be suspended. Certainly, as Ms Kaluatman has reminded me, a number of similar cases have resulted in sentences of imprisonment which have been suspended and coupled with supervision. Ms Kaluatman indeed argues that the appropriate sentence should be time served to reflect the fact that you have been in custody now on remand you have been in custody now for just over seven months following your arrest and remand in custody on 22 October 2012.



28. A sentence of imprisonment may be suspended under section 57 of the Penal Code if the Court considers that in view of the circumstances of the case, in particular the nature of the crime and the character of the offender it would not be appropriate to impose an immediate term of imprisonment. I tell you now that I consider that offending of this nature should be met by a sentence of imprisonment that is of immediate effect except in the most extraordinary cases. That is necessary to serve as a warning to the community that sexual offending against the young and vulnerable will be dealt with firmly
29. I am unimpressed by the plea made by the probation officer that the Court could consider imposing a community based sentence because of the need for you to be able to work and provide for your childrens' school fees.
30. So, having particular regard to the nature of this offending, I consider that the sentence should not be suspended.
31. The appropriate sentence in my view is one of 2 years' imprisonment and that is the sentence now imposed on you. The sentence will be deemed to have commenced on 22 October 2012.
32. You have 14 days to appeal this sentence if you do not accept it.

BY THE COURT

