

PUBLIC PROSECUTOR

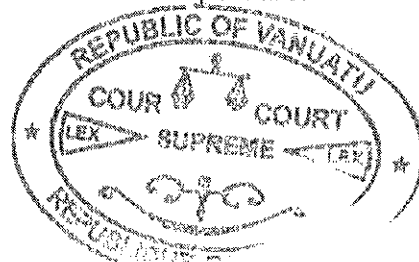
VS.

MANMAN JOHN AUGUSTINE

Counsel: Mr. K. Massing for the Prosecution
Ms. J. Tari for the Defendant

SENTENCE

1. **MANMAN JOHN AUGUSTINE** you appear today for sentencing in this matter. You were charged with three counts of sexual intercourse with a child under care and protection contrary to section 96 1) a) of the Penal Code [CAP 135]. On 5 July 2016 you entered guilty pleas to all the charges and you were convicted accordingly.
2. The facts as set out in the Prosecution brief of facts are not disputed. The incidents occurred on the island of Vanua Lava sometime in 2015 and in April 2016. At the time of the offending you were 44 years old and the complainant was 18. In 2015, the incident involved you sucking the complainant's vagina leading to insertion and penetration of the complainant's vagina with your fingers.
3. Similarly on 20 April 2016 you entered the complainant's room at night and removed her clothes. Before sucking her vagina you penetrated her with your fingers. The complainant recognized you by your voice as there was no light. When the matter was reported to the Police you were arrested and cautioned. You then admitted committing the offence.
4. Your personal details which I gather from your Pre-sentence report are:-



- You are 44 years old from Vanua Lava and you are married with two children;
- You are a gardener and sole breadwinner of your family; and
- You earn income by selling food crops and kava;
- You are an active member of your community and support church activities as well.

5. In sentencing you today I have taken into account the submissions of the Public Prosecutor and Counsel on your behalf and also the Pre-sentence report filed by your probation officer. This is a serious offence and is punishable with a maximum penalty of 10 years imprisonment. Section 96 1) a) of the Penal Code states:-

"96. (1) A person must not have or attempt to have sexual intercourse with any child, not being the person's spouse, who is under the age of 18 years and who :

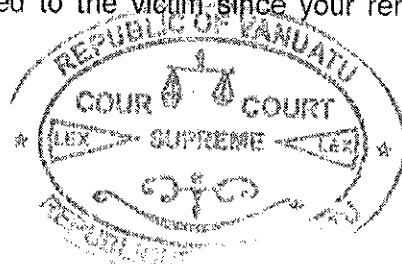
a) being the person's step child or foster child, is at the time of the intercourse or attempted intercourse living with the person as a member of the person's family;

*.....
Penalty: Imprisonment for 10 years."*

6. In **Talivo v Public Prosecutor** [1996] VUCA 2 which is a case involving sexual intercourse with a child under care or protection the Court of Appeal stated that :

"All children are entitled to be protected by adults. Children must be safe in their own homes. When men who have the care of children abuse that trust we agree with the Chief Justice that they forfeit the right to remain within the community..."

7. Your offending is aggravated by the fact that there is a breach of trust, the offending was repeated, there is an age disparity and the offending occurred in the home where the complainant should be safe and taken care of. Taking these factors into account I adopt an overall starting point of 5 years imprisonment.
8. Counsel on your behalf submits that I also take into account your early guilty plea and the fact that you are a first time offender and you cooperated with the Police. No custom reconciliation has been performed to the victim since your remand

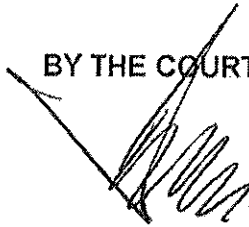


into custody on 19 May 2016. For your early guilty plea you are entitled to a one third discount of your sentence which is reduced and rounded off to 3 years and 3 months imprisonment. I make a further deduction of 3 months for the other mitigating factors further reducing your sentence to an end sentence of 3 years imprisonment effective from 19 May 2016 when you were remanded into custody.

9. You have 14 days to appeal your sentence if you are not happy with it.

DATED at Luganville this 8 day of July 2016.

BY THE COURT



D. ARU
Judge.

