

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

**Criminal
Case No. 17/483 SC/CRML**

PUBLIC PROSECUTOR VS. JOHN ARU

Before: *Justice Oliver A. Saksak*

Counsel: *Michelline Tasso for Public Prosecutor
Linda Bakokoto for Defendant*

Date of Plea: *6th April 2017*
Date of Sentence: *15th May 2017*

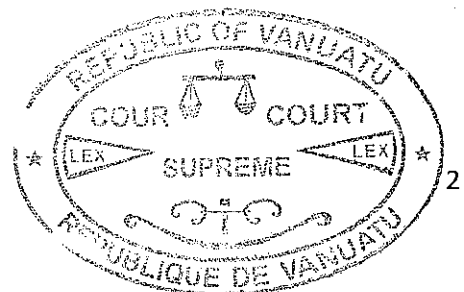
SENTENCE

1. John Aru, on 6th April 2016 you pleaded guilty to one count of Act of Indecency with a Young Person – Section 98 A of the Penal Code Act Cap 135 (the Act).
You are in Court today for Sentence.
2. The maximum penalty for this offence is 10 years imprisonment.
3. Your victim is your very own granddaughter Amanda Sarginson who was only 5 years old at the time of offending. On 8th July 2016 at Agathis Area you called the victim into the bedroom, removed her clothes, opened her legs and licked her vagina with your tongue. Your wife happened to enter into the room at that point and interrupted your actions. You had told the victim not to tell anyone about what you did to her. However, she told her mother about it all and her mother reported to the Police on 12 July 2016. When the Police questioned you about the incident, you admitted to committing the offence.
4. The licking of a vagina is an act that goes beyond a mere act of indecency. By Section 89 A of the Act this act amounts to sexual intercourse. As such if the act is performed on a victim of less than 13 years, it amounts to an offence of unlawful sexual intercourse under



section 97 of the Act. And if it is performed on a victim without consent, it amounts to sexual intercourse without consent under sections 90 and 91 of the Act. You were fortunate the Prosecution did not charge you with these offences which are far more serious because they carry much heavier penalties.

5. Be that as it may, these factors add to the seriousness of your offendings. Another factor that adds seriousness to your offending is the great age disparity between you being 63 years old and your granddaughter of 5 years old. There is an age difference of 58 years old.
6. The law is not in doubt. The classic cases are PP v. Gideon [2002] VUCA and PP v. Scott [2002] VUCA 29 which lay down clear principles that men who take advantage sexually of young people forfeit the right to remain in the community. Further they establish that suspension of sentence cannot be contemplated except in the most extreme or exceptional circumstances.
7. Applying the principles in these cases the only appropriate sentence the Court will impose on you is to be a custodial sentence.
8. Talking all the facts in its totality including the aggravating features, your offending falls on the higher end of the scale. The starting sentence for you shall be 7 years imprisonment. And there will be no uplift.
9. This sentence is to serve the following purposes –
 - (a) To mark the seriousness of your offending;
 - (b) To mark public disapproval of your action;
 - (c) To mark a deterrence for you and other likeminded men;
 - (d) To protect the young, weak and vulnerable in society;
 - (e) To punish you adequately.
10. I accept that you are entitled to deductions for the following mitigating factors:-



(a) For guilty plea at first opportunity – 1/3 is deducted representing 2 years and 4 months leaving the balance of 4 years and 8 months.

(b) For custom reconciliation showing remorse, good cooperation with the Police and being the sole bread-winner for your family, I deduct a period of 12 months leaving the balance of 3 years and 8 months.


I do not accept that you have an unblemished record. You were a Police Officer until 1990 when you were dismissed for misappropriation for which you were convicted and sentenced to imprisonment for 1 year. Although it is totally an unrelated offence, one would expect that you would have learned from that and put greater attention to your wife, children and grandchildren. But you failed in your duty. It is too late now to use them as an excuse to avoid incarceration. There will therefore be no further reduction and no suspension of sentence.

11. John Aru, the Court now convicts you and sentences you to an end sentence of 3 years and 8 months. This sentence is effective as of today.

12. You have a right of appeal against this sentence if you do not agree with it, but you should do so within 14 days from today. But you must begin to serve your sentence today.

DATED at Port Vila this 15th day of May, 2017.

BY THE COURT


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OLIVER A. SAKSAK
Judge

