

BETWEEN: Public Prosecutor

AND: Rockliff Ling
Defendant

Before: Justice Aru

In Attendance: Mr. K. Massing for the Public Prosecutor
Mr. J. Garae for the Defendant

SENTENCE

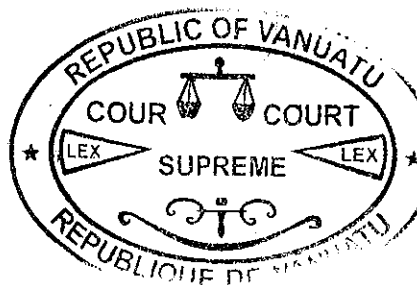
1. **ROCKLIFF LING** you appear today for sentencing in this matter. You were charged with one count of an act of indecency with a young person contrary to s 98A of the Penal Code [CAP 135]. Section 98A provides as follows:-

“ACT OF INDECENCY WITH A YOUNG PERSON

98A. A person must not commit an act of indecency upon, or in the presence of another under the age of 15.

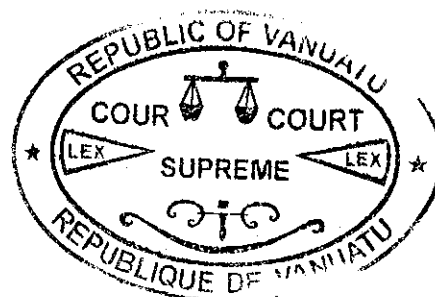
Penalty: Imprisonment for 10 years

2. On 2 July 2018 when you were arraigned, you entered a not guilty plea to the charge. The matter was then adjourned for trial on the next TORBA circuit. On 24 October 2018 before the trial begun, the Prosecutor amended the particulars to the charge with leave. Mr Garae then informed the court that you intended to retake your plea on the amended charge. You were then re arraigned and entered a guilty plea.
3. The facts as contained in the prosecution brief of facts are that the victim was under the age of 15 at the time of the offending. The offence was committed sometime in July 2016 on the island of Toga, TORBA Province. It happened during the night when the defendant entered a house belonging to the victim's father. The victim was inside the house asleep. The defendant then proceeded to touch the victim's vagina with her clothes on.
4. After touching the victim, the victim's mother entered the house and saw the defendant. He then left the house and went outside. The victim's mother then told her husband of what she saw inside the house. The matter was then reported to the Police around 22



July. Following his arrest, the defendant was cautioned and interviewed and admitted to the offending.

5. Committing an act of indecency with a young person is a serious offence as the maximum penalty is 10 years imprisonment. The Prosecution has referred me to a number of cases. First is the guideline judgment of **Public Prosecutor v Gideon (2002) VUCA 7** where the Court of Appeal has set out the underlying principle that “...*men who take advantage sexually of young people forfeit the right to remain in the community*”.
6. Furthermore, I am reminded of what the Court said in **Boesaleana v Public Prosecutor (2011) VUCA 33** that my role as a Judge is to “...*look in a general and realistic way at the entire offending assessing all relevant aggravating and mitigating factors and then reach a sentence which in its totality reflects the culpability ...*”. The final case referred to me by the prosecution is **Public Prosecutor v Maleb (2015) VUSC 91**. The defendant in that case was charged with the lesser offence of indecency without consent which is punishable by a maximum of 7 years imprisonment. The victim was touched with her clothes on and there was some force involved but the end sentence was suspended.
7. Mr Garae on the other hand referred me to **Public Prosecutor v Livae (2014) VUSC 126** to submit that these types of offences can be committed with varying degrees of seriousness. In **Livae**, the offence was an act of indecency without consent. It was submitted that the current case only involves touching of the vagina over clothing and it was not repeated and there was no force involved.
8. I was also referred to **Public Prosecutor v Mahit (2012) VUSC 231** which involves indecency with a young person. The offence occurred in a moving vehicle after the defendant stopped to pick the victim then started touching her as they were driving. The victim in fear managed to free herself and jumped from the vehicle injuring herself. The defendant received a suspended sentence with an order for community work and compensation.
9. In your police statement you admitted the offending to the Police but say you did what you did because every time you passed the victim on the road, she spoke to you referring to your private part which made you feel bad. That is not an excuse or justification to enter her house at night and touch her private part. The law is very clear that anyone who commits an act of indecency on a person who is under 15 years commits an offence.
10. The offending is aggravated by the fact that there was some planning as the offending occurred at night when the victim was asleep and there is an age disparity. At the time of the offending, you were 26 and the victim was 14 years old. I adopt a starting point of 3 years imprisonment.



11. Counsel on your behalf submits that you come from a family of 10 and you are the fifth child. Some of your siblings have married and moved on in life whilst you and another brother live with your parents and look after them as they are not well. Your Father has been diagnosed and treated for asthma and high blood pressure and your mother has been treated for diabetes. You are the sole bread winner and earn your living by gardening and cutting copra. You are also an Anglican and you have a good relationship with your community except the victim's family.
12. Counsel submits the following factors as mitigation in your favour:
- Your guilty plea;
 - You are a first time offender and cooperated with the Police during their investigation;
 - You apologised and are remorseful for your actions; and
 - You spent 1month and 10 days in custody.
13. For your guilty plea, it was entered at a later stage just before the trial begun therefore you are not entitled to the full one third discount. A deduction of 6 months is however allowed for the late guilty plea reducing the sentence to 2 years and 6 months imprisonment. As a first time offender and for your cooperation with the Police in their investigation a further deduction of 1 year is made further reducing the sentence to 1 year and 6 months imprisonment. No custom reconciliation has been undertaken as yet but counsel submits that you are ready to perform one to the victim and her family. I would urge to do so as soon as possible. Counsel also submits that you had apologised to the victim in the presence of one of her friends. I deduct 3 months for that and a further 3 months for the time spent in custody leaving an end sentence of 1 year imprisonment.
14. For now, I am suspending the sentence for a period of 2 years from today. Should you reoffend during this period you will serve the full term of imprisonment in custody. In addition you are to do 100 hours community work.
15. You have 14 days to appeal the decision if you are not happy with it.

DATED at Loh this 26 day of October, 2018

BY THE COURT

.....
D. Aru
Judge

