

PUBLIC PROSECUTOR

v

ALBERT VUTI

Date of Sentence: 26 February 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mr J. Garae

SENTENCE

A. Introduction

1. Mr Vuti pleaded guilty and accepted the summary of facts in relation to the charge of incest. The maximum sentence available for this offence is 10 years' imprisonment (the law in 2016 when the offending occurred).
2. The Prosecution entered *nolle prosequi* on the charge of sexual intercourse without consent and he was accordingly discharged in respect of that charge.

B. Facts

3. Mr Vuti is the father of Ms M, the complainant.
4. Mr M had sexual intercourse with Ms M on two different occasions. This occurred in their home. Ms M is a person with disability, described as being both deaf and dumb. Mr Vuti was 53 years old and Ms M 25 years old.

C. Offending Starting Point

5. It is necessary to consider the culpability of the offending. A number of aggravating factors stand out, as follows.
6. The complainant is Mr Vuti's daughter. His offending against her constituted a gross breach of trust. The offending occurred in the home, where Ms M was entitled to feel safe and protected. It occurred twice. Ms M is vulnerable as she is not able to speak or hear. This coupled with the age differential of Mr Vuti being twice his daughter's age results in a power imbalance such that Ms M would have been wholly unable to resist his conduct. Mr Vuti took advantage of a vulnerable person under his care and who did not have any ability to resist him. The sex was unprotected, thereby exposing Ms M to sexually transmitted diseases and unwanted pregnancy.
7. There is no question that offences of sexual abuse warrant an immediate custodial sentence.

8. When I regard the maximum sentence of 10 years' imprisonment and the cases counsel referred me to of *Public Prosecutor v Simeon* [2015] VUSC 17, *Public Prosecutor v Tu* [2016] VUSC 20, *Public Prosecutor v Kensen* [2015] VUSC 44 and *Public Prosecutor v John* [2017] VUSC 103, I consider that the aggravating factors set out above require a starting point of 5 years' imprisonment.

D. Personal Factors

9. Mr Vuti is married with two children, a son and his daughter Ms M. He is a subsistence farmer, selling root crops and vegetables at both Saratamata and Lolowai markets. He holds a position as a secretary of the council of chiefs at Lovusi Village. Mr Vuti said he is undertaking diabetes treatment at Lolowai Hospital.

10. There are no aggravating factors personal to Mr Vuti.

11. In terms of mitigating factors, Mr Vuti is entitled to call upon the fact that he has no prior convictions. He is said to have realised his wrong and is very remorseful and regrets his actions. He has performed a custom reconciliation with Ms M by giving a white custom mat worth VT1,000 and a pig worth VT10,000. Since Mr Vuti's release on bail in April 2017, he has faithfully signed at the Police station every Friday up to the present. During the Manaro volcanic eruption, he signed at the Maewo police station every week. On his return to Ambae, he has continued to sign at the Saratamata Police Station to the present.

12. Those factors warrant a deduction of six months from the start point.

E. Deduction for Guilty Plea

13. The guilty plea was entered at the first opportunity. He is therefore entitled to the maximum discount available for a prompt plea of one third.

14. I also take into account that Mr Vuti has already spent time in custody prior to sentence – 84 days or around 3 months in the period 31 January 2017 to 24 April 2017 at the Correctional Centre in Luganville, Santo.

G. Sentence

15. Taking all of those matters into account, the end sentence that must be imposed is one of 2 years 9 months imprisonment.

H. Suspended Sentence

16. It is well settled that it will only be in the most extreme cases that a suspended sentence will ever be contemplated in a case of sexual abuse. It is inappropriate to suspend Mr Vuti's sentence. I decline to exercise my discretion.

17. Mr Vuti has 14 days to appeal this sentence if he so chooses.

**DATED at Saratamata, Ambae this 26th day of February 2020
BY THE COURT**


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V.M. Trief
Judge

