

BETWEEN: The Public Prosecutor

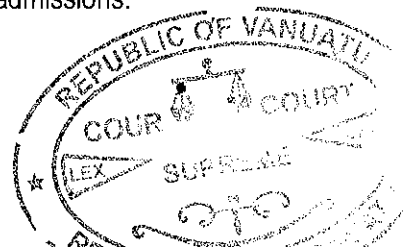
AND: Donald Joseph

Defendant

Date of Plea: 21st July 2020
Date of Sentence: 16th October 2020
Before: Justice Oliver Saksak
In Attendance: Mr Tristan Karae for Public Prosecutor
Mrs Pauline Malites for the Defendant

SENTENCE

1. Joseph Donald Maseh pleaded guilty to one charge of unlawful sexual intercourse (section 97 (2) PCA) and to one charge of act of indecency with a young person (section 98A- PCA [CAP 135].
2. He is accordingly convicted on both charges.
3. The first offending of act of indecency occurred sometimes in 2018 when the complainant was only 12 years old. The defendant touched the complainant's vagina and exposed his penis to her. He was discovered by his wife doing this. He then apologised and said he would not do it again.
4. However on 4th May 2020 the defendant made the complainant follow him to the garden against her will. There he removed her clothes and threatened her not to call out. He told her to lie down on the grass and he penetrated her vagina with his penis. This happened after she had returned from school. The complainant returned home crying and her mother had an argument with the defendant as a result of this offending. The defendant was therefore arrested by Police on 6th May 2020 and interviewed on 7th May 2020. He made admissions.



5. There are absolutely no mitigating circumstances for these offendings.

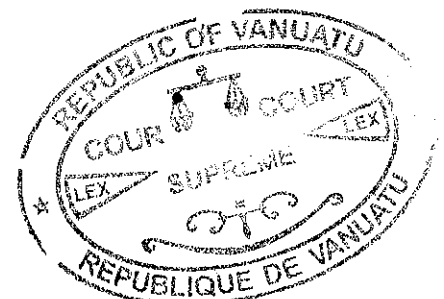
6. But the aggravating features are-
 - (a) There was a serious breach of trust
 - (b) The great disparity of ages (12 and 45)
 - (c) Repetition of actions.
 - (d) Threats of physical harm.
 - (e) Offending within the confines of the home.
 - (f) Unprotected sex.
 - (g) Feeling of guilt and shame, loss of dignity.

7. The defendant simply took advantage and sexually abused his biological daughter. It is well established by PP v Gideon [2002] VUCA 7 that men who take advantage sexually of young girls forfeit the right to remain in the community.

8. Taking all the aggravating features together with the seriousness of the offendings, I set the starting sentences of the defendant as follows:-
 - (a) For unlawful sexual intercourse, 7 years imprisonment, and
 - (b) For act of indecency with a young person- 3 years imprisonment, concurrent with the sentence of 7 years for the unlawful sexual intercourse charge.His total concurrent sentence is 7 years imprisonment.

9. In mitigation I note the difficulty expressed by the Probation Service in providing a Pre-Sentence Report due to the defendant not being available. I note the factors submitted by Mrs Malites in the defence submissions.

10. For his personal factors, he is 47 years old and is married and his wife is sickly and highly dependant on him. They have a disabled child who is being cared for by the defendant. His village chief and community members speak well of him. Until 2018 they had had a wonderful and happy life together.



11. He pleaded guilty early in July 2020. For this factor he is entitled to the full 1/3 reduction. 2 years and 4 months are deducted, reducing his sentence to 4 years and 8 months imprisonment.
12. He has clean past criminal record. For this and other personal factors, I allow a further reduction of 6 months from his sentence of 4 years 8 months. The balance of his sentence shall be 4 years and 2 months.
13. Finally I note his per-custodial period of 5 months and 14 days from 7 May 2020. I therefore order his end sentence to be backdated to 7 May 2020.
14. The end sentence of 4 years and 2 months shall not be suspended. There are no exceptional circumstances warranting suspension of sentence.
15. There is a right of appeal against this sentence within 14 days if the defendant does not accept it.

**DATED at Port Vila this 16th day of October 2020
BY THE COURT**


OLIVER.A.SAKSAK
Judge

