

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

Criminal
Case No. 20/963 SC/CRML

BETWEEN: Public Prosecutor

AND: Clifford Palmer
Defendant

Date: 28 April 2021
By: Justice G.A. Andrée Wiltens
Counsel: Mr P. Sarai for Public Prosecutor
Ms K. Karu for the Defendant

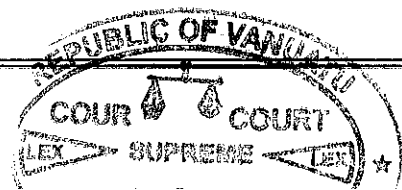
Sentence

A. Introduction

1. Mr Palmer pleaded guilty to four counts of act of indecency with a young person. He did so after two prosecution witnesses had given their evidence and been cross-examined. He then accepted as true and correct the summary of facts. He was convicted accordingly.

B. Facts

2. There are two young complainants in this case, ES who was 9 years old at the time of the offending, and RJ who was ten years old at the time. The offending occurred in January 2020 in the compound where the complainants and Mr Palmer resided as close neighbours. The complainants called Mr Palmer "Uncle Cliff".
3. The complainants were each subjected to Mr Palmer exposing his penis to them on separate occasions while the complainants were playing nearby and had their attentions drawn to what Mr Palmer was doing. On another occasion he was looking directly at ES while masturbating, having called out to her. On another occasion, while exposing himself to RJ, he called out to her by name and said "Hemia e tuff eh?" referring to his penis.



4. The complainants duly reported the matter within a short while.

C. Sentence Start Point

5. The sentence start is to be assessed by having regard to the maximum sentence available for offending of this type and factoring in the aggravating and mitigating aspects of the offending.

6. The maximum sentence for act of indecency with a young person is 10 years imprisonment.

7. There are no mitigating aspects to the offending. However there are a number of aggravating factors which include the following:

- There is the fact that there are two young complainants involved;
- There is an element of breach of trust – Mr Palmer resides in the same small community as the two complainants and they regard him as an uncle;
- There was a significant age differential between Mr Palmer then aged 30 and the two complainants then aged 9 and 10;
- The offending was repeated in the sense that Mr Palmer offended in a sexualised manner against 2 young girls on the 4 separate occasions; and
- The young complainants, due to their ages, were vulnerable – especially as the offending occurred in the close vicinity of their homes, where they were entitled to feel safe and protected.

8. Looking at the offending in total, I set the global start point for Mr Palmer's offending at 2 years 6 months imprisonment. I do so primarily on the basis that there was no skin-on-skin or indeed any bodily contact.

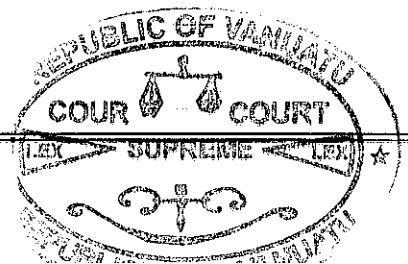
D. Mitigation

9. Mr Palmer pleaded guilty to the charges, but not at the first available opportunity. In the end, he accepted his wrong-doing and saved some Court time and expense. More importantly, he spared ES the ordeal of having to testify and be cross-examined. For his prompt pleas, I reduce Mr Palmer's sentence start point by 20%.

10. Mr Palmer currently is 30 years old, married with a daughter (or, according to the PSR, single). He is competent in maintenance and plumbing. He is said to have good relations with the community and resides with an Uncle.

11. Mr Palmer has no previous convictions and claims to be remorseful. I do not accept his claimed remorse. He belittled the matter to the PSR writer, suggesting that there was only one incident and that he was unaware the complainants were aware of what he was doing. The summary of facts, and the evidence of RJ, make it plain that he was gaining sexual satisfaction by involving the young complainants in his acts.

12. I note that no custom reconciliation ceremony has been undertaken.



13. For Mr Palmer's personal factors I reduce the start point of his sentence by 3 months imprisonment.

E. End Sentence

14. Taking all of those matters into account, the end sentence that must be imposed is one of 21 months imprisonment. I impose that on all four charges concurrently.

15. Mr Palmer has spent some in custody prior to trial. Accordingly, the sentence is to commence from 1 December 2020 to preserve his parole rights.

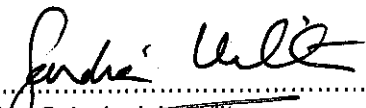
16. Suspending Mr Palmer's sentence cannot possibly be countenanced: *PP v Ali August* [2000] VUCA 29; and *PP v Gideon* [2002] VUCA 7 are authorities for that proposition.

F. Other

17. Mr Palmer has 14 days to appeal this sentence if he disagrees with it.

18. The names and details leading to the identification of ES and RJ are permanently suppressed.

Dated at Port Vila this 28th day of April 2021
BY THE COURT


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Justice G.A. Andree Wiltens

