

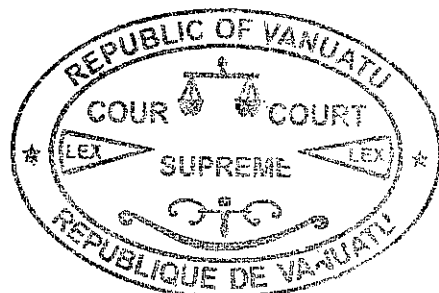
BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: JOHN STAR
Defendant

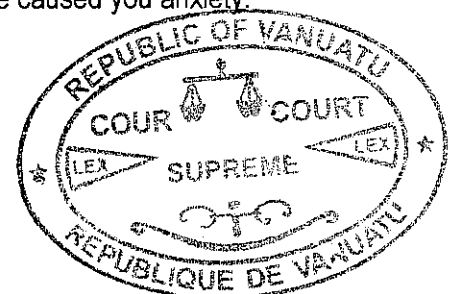
Date of Sentencing: *23rd day of May, 2024*
Before: *Justice W. K. Hastings*
Counsel: *Mr. C. Shem for the Public Prosecutor*
Ms. B. Taleo for the Defendant- via zoom in Santo
Defendant- via zoom in Gaua

SENTENCE

1. Mr Star, a conviction has been entered. You appear for sentence having pleaded guilty to one charge committing an act of indecency with a young person contrary to s. 98A of the Penal Code Act [Cap. 135]. The maximum penalty for this offence is 10 years' imprisonment.
2. Although a same-day pre-sentence report was requested from Probation when you pleaded, I have not yet received it. Your sentencing will continue without it.
3. At the time of this offending in 2022, you were 75 years old. The victim was 8 years old. She is your granddaughter.
4. The amended summary of facts states that you sought permission from the victim's mother to take the victim into the bush to gather and eat nangai nuts. The victim's cousin followed you into the bush. Whilst there, you asked the victim to follow you to a more isolated location away from her cousin. You touched her buttock over her clothing. There was no skin-to-skin contact.
5. The victim said she was afraid of your actions and ran home. She told her mother about the incident. Her mother checked the victim's body and found nothing out of the ordinary. A nurse examined the victim 2 days later and found everything to be normal.
6. The sentence I impose must denounce your conduct and hold you accountable for the harm you have caused.
7. I turn now to establish the starting point for your sentence.



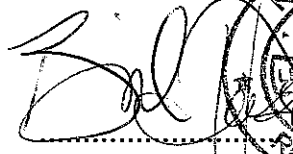
8. The prosecutor has directed me to *Tangiat v Public Prosecutor* [2014] VUCA 15. In that case, the Court of Appeal considered that a starting point of 9 to 12 months' imprisonment was the appropriate starting point for offending that involved touching the victim's breast on the outside of her clothing. On that basis, the prosecutor submits a starting point of between 9 and 12 months imprisonment is appropriate in this case.
9. Defence counsel referred me to *Public Prosecutor v Lal* [2023] VJSC 263. The offending in that case involved an older relative touching the 14 year old victim's buttocks over her clothing. The sentencing judge set a starting point of 1 year imprisonment and reached an end sentence of 80 hours community work and supervision. On that basis, defence counsel submits a starting point of 12 months imprisonment is appropriate in this case.
10. I identify the following aggravating factors of your offending:
- a. There was a significant breach of trust. You are the victim's grandfather. She was entitled to trust you to care and look after her.
 - b. There is a significant age difference of 67 years between you and the victim. At the time of the offending, you were 75; she was 8.
 - c. There seems to have been an element of planning involved. You took her into the bush under the pretext of gathering nangai nuts, and then separated her from her cousin by taking her to a more isolated location to commit the act of indecency.
 - d. You caused her emotional and psychological harm. She said she was afraid of you, and ran home to tell her mother. She was obviously upset at the time. What you did may well continue to affect her.
11. Your offending is at the low end of the scale for offending of this type. There was no skin-to-skin contact. You touched her buttock over her clothing. Taking the aggravating factors I have identified into account, a starting point of 12 months' imprisonment is appropriate.
12. I turn now to consider personal factors.
13. First, you pleaded guilty as soon as the charge was amended. You are entitled to a discount of one-third for your guilty plea. Second, you are a first-time offender. You have lived for 75 years without acquiring any convictions. Third, you have spent 8 days in custody between the time of your arrest on 3 April 2023 and your release on bail on 11 April 2023. Fourth, you have demonstrated your remorse by participating in a custom reconciliation ceremony with the victim and her family. You gave them VT 15,000 and a pig with tusks. Finally, there has been considerable delay in the investigation and prosecution of this matter. Until this week, you were facing the much more serious charge of unlawful sexual intercourse. The delay, the nature of the unamended charge and the length of time you spent on bail on that more serious charge would have caused you anxiety.



14. You are given credit for these matters. From a starting point of 12 months' imprisonment, I deduct 33%, or 4 months for your guilty plea, 8% or 1 month for your previous clean record, 8% or 1 month for your remorse and participation in a custom reconciliation ceremony, 8% or 1 month for the disruption to your life caused by the delay in the investigation and prosecution of this matter, and 2 weeks for the time you have spent in custody. That brings me to an end point of 4 months and 2 weeks imprisonment.
15. I now consider whether or not your sentence should be suspended. You are now 76 years old and suffer from asthma and mobility issues caused by swelling in your legs. You and your wife depend on your 6 children for care and support. These facts certainly rule out community work. In view of the circumstances of your offending, the nature of your crime, your age, and your previous good character, I order, under s 57 of the Penal Code Act, that your sentence be suspended for 6 months. If you commit any further offence within those 6 months, the Court must order that the suspended sentence take effect unless it is of the opinion that it would be unjust to do so. If you do not commit any further offence within those 6 months, your sentence will be deemed to have expired.

DATED at Port Vila this 23rd day of May, 2024.

BY THE COURT


Justice W. K. Hastings

