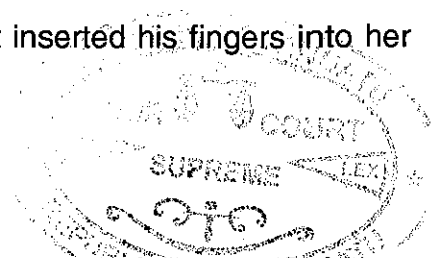


PUBLIC PROSECUTOR VS JACK TAIWIA

Counsel: Mr. T. Karae for Public Prosecutor
Ms K. Bakeo for the Defendant

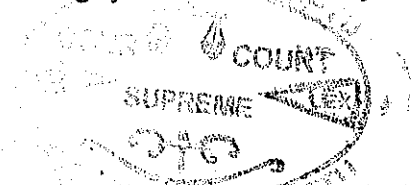
SENTENCE

1. The Defendant Jack Taiwia was charged with 4 counts of sexual intercourse without consent contrary to s 90 & 91 of the Penal Code [CAP 135]. On 17 March the Defendant pleaded guilty to count 1 and entered not guilty pleas to counts 2, 3 and 4. A trial was then listed for 16 August 2017. At the relevant time the defendant was represented by Mr Botleng. On the date of trial, Mr Botleng had by then filed a notice of ceasing to act and Ms Bakeo appeared as counsel on record for the defendant. She informed the Court that the defendant wanted to retake his plea in relation to counts 2, 3 and 4. He was then re-arraigned and entered guilty pleas to all three counts.
2. The offending involves penile and digital penetration of the complainant's vagina. The complainant refers to the Defendant as her step father. She alleged that the Defendant had sexual intercourse with her when they were living at Bladiniere Estates. The first incident occurred around 14 or 15 January 2017. The Defendant told the complainant to lie down on a bed and he then removed her clothes. The defendant then inserted his fingers into the complainant's vagina before inserting his penis. He then had sexual intercourse with her until he ejaculated. She felt pain but the Defendant told her not to tell anyone.
3. The second incident occurred sometime also in January 2017. The complainant could not recall the exact date. She was in the laundry and the Defendant grabbed her and removed her clothes before telling her to bend over. The Complainant refused but the Defendant inserted his fingers into her



vagina before inserting his penis and had sexual intercourse with her. She felt pain and reported the matter to the house girl .On 22 January 2017, she reported the incident to her adopted mother.

4. The Defendant was subsequently arrested. On 23 January 2017 he was cautioned and interviewed. He admitted to using his fingers on the 15 January 2017 but denied that there was any penile penetration. On the second occasion he admitted to inserting his penis but was not sure whether it entered the Complainant's vagina or anus.
5. Mr Jack Taiwia, sexual intercourse without consent or "rape" is a very serious offence as the maximum penalty is life imprisonment. It makes no difference whether fingers were used as opposed to penile penetration. Sexual intercourse is defined to include penetration of the vagina by any part of the body of another person (s 89A (a)). Raping a 14 year old who looks up to you as the step father is not only humiliating but totally disgraceful and deserves to be condemned in the strongest of terms. Your offending is aggravated by the following factors:-
 - (1) The offending was repeated on more than one occasion;
 - (2) There is an age disparity of 18 years;
 - (3) There is a breach of trust; and
 - (4) The Complainant will be affected for the rest of her life.
6. Considering what the Court of Appeal has said in **Public Prosecutor v Scott and Tula** [2002] VUCA 29 and **Public Prosecutor v Andy** [2011] VUCA 14, your offending calls for an immediate custodial sentence. The starting point of your sentence is 8 years imprisonment on each count to be served concurrently. From that starting point I allow an uplift of 2 years making a total of 10 years imprisonment.
7. You are 32 years old and you were married to the legal guardian of the Complainant although a divorce is still pending. Your pre-sentence report shows that you completed primary school at Ifira then completed year 7 to 10 at the Lycee LAB. You undertook some community service course with the NEXT Vanuatu and moved on to be an outstanding youth leader in your

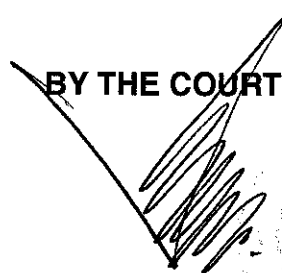


community and a faithful member of the Baha'i Faith. Your family speaks highly of you. Counsel submits on your behalf that you are a first time offender with no previous criminal history and you cooperated with the Police in their investigations. It was further submitted that you entered guilty pleas to all four counts and I should deduct the full one third discount given that you did not understand the legal advice given by previous counsel. I accept that.

8. As a first time offender and for your cooperation with the Police I deduct one year reducing your sentence to 9 years imprisonment. For your early guilty plea, your sentence is further reduced by one third to an end sentence of 6 years imprisonment. Your sentence is effective from 23 January 2017 when you were remanded into custody.
9. If you are not happy with the decision you have 14 days to appeal.

DATED at Port Vila, this 3rd day of November 2017.

BY THE COURT



D.ARU
Judge.

