

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

**Criminal
Case No. 17/3438 SC/CRML**

BETWEEN: **Public Prosecutor**
Appellant

AND: **JIM ANSEN TIFLES**
Accused

Date of Call Over: *Friday 9th March 2018 at 9 am at Luganville*

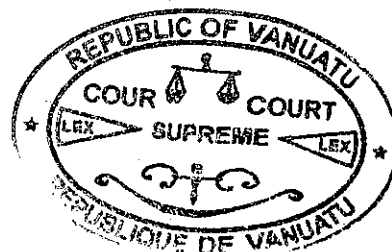
Before: *James Paul Geoghegan*

Appearances: *Damien Boe for the Public Prosecutor*

Jane Tari Aru for the Accused

SENTENCE JUDGMENT

1. Mr Tifles you appear for sentence today in respect of one charge of sexual intercourse with a child under your care and protection contrary to section 96 of the Penal Code Cap. 135. That is an offence which carries a maximum term of imprisonment of 10 years.
2. The summary of facts which provides the basis upon which you have entered your guilty plea tells me that this charge is a representative charge with the allegation essentially being that sexual intercourse took place between yourself and the victim at different times and dates between February and November 2016 at which time the complainant was aged between 14 and 15 years old. The complainant lived with you and went to school nearby.
3. Counsel have clarified for me this morning the exact nature of your relationship. The victim is the daughter of your wife's sister. You wife's sister was living in Vila

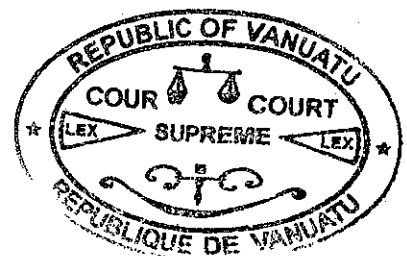


and had sent her daughter, the victim, to live with you so that she could attend school. As a result of your offending the victim became pregnant. The child born as a result is now four months old and I understand is cared for by you and your wife in what must be quite difficult circumstances for your wife and wider family.

4. The victim of your offending is living with her parents.
5. Your offending has effectively created a situation where a baby has had to be removed from his mother and where there may be little relationship between mother and child. That child is another victim of your offending.
6. I have read your pre-sentence report and that tells me that you are a married man with five children. As I have already referred to this offending has obviously had a significant effect upon your marriage and your family. You are described as well thought of in your community and your offending has come as shock to those who know you. You are a member of your Presbyterian church and it was proposed that you would become an elder in the church. I trust that the church is now reconsidering that position.
7. You have not received the benefit of an education but you have a taxi and a small retail shop which sustains your family. You are a first time offender, you have expressed remorse for your offending and you are described as being at low risk of reoffending. You have endeavoured to negotiate a church reconciliation but not surprisingly that was not accepted by your victim or her family.
8. Mr Boe has referred me to the authorities of Peter Taliyo v. PP¹, and PP v. Gideon² both of which emphasize the need for the Court to denounce sexual offending against the weak and the vulnerable. Mr Boe also referred me to the case of PP v.

¹ [1996] VUCA 2

² [2002] VUCA 7



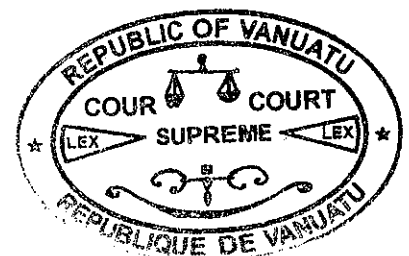
Tabi³ which involved similar circumstances to this case and where the Court imposed an end sentence of 4 years and one month imprisonment. Mr Boe also referred to the PP v. Amos⁴ where the offender faced two charges of sexual intercourse with a child under his care and protection and one of indecency with a young person. In that case a sentence of 4 years was imposed.

9. Mr Boe has referred in his submissions to a number of aggravating features and I intend to speak briefly about those. The aggravating features are referred to as follows:-

- a) That there was a breach of trust. What must be said in respect of that is that all offences of this kind involve a breach of trust. It is the degree of that breach which will have an impact on a starting point but the breach of trust is not in itself an aggravating feature being that it is an inherent part of offending of this kind.
- b) The victim became pregnant. This is certainly an aggravating feature and a seriously aggravating feature.
- c) The victim was under your care and protection. This is actually an essential element of the offence and is not in itself an aggravating factor.
- d) The age disparity. In this case the victim was between 14 and 15 and you are, I believe, aged 38. She was vulnerable by reason of her age and you took advantage of that. Her age is an aggravating feature.
- e) The offending was repetitive. All that can be said in respect of this is that it is simply not known how often this offending occurred but I accept that it was repetitive over a relatively short period of time.
- f) The impact upon the victim. One can assume that your offending will have a life-long impact upon your victim. Not just the offending however will have that impact. The subsequent loss of her child will

³ [2009] VUSC 73

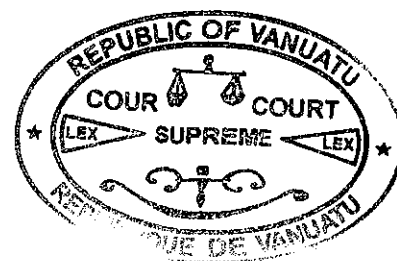
⁴ [2016] VUSC 199



have a significant impact upon her in circumstances which are truly appalling.

10. Mr Boe submits that for these reasons a starting point of six to seven years imprisonment is appropriate with an end sentence of 3 to 4 years.
11. Mrs Tari has made submissions on your behalf as well. She not surprisingly emphasizes the fact that you are a first time offender, that you have cooperated with the police and that you have entered an early guilty plea. She also refers to the decisions in PP v. Tabi and the PP v. Amos as comparable cases.
12. Very responsibly and realistically, Mrs Tari recognizes that imprisonment is the only available outcome today. This offending involved as all such offending does a significant breach of trust. Your victim was entitled to feel safe and protected in your care. However you have taken advantage of that. The fact that the victim became pregnant through your offending is a significantly aggravating factor as I have said. It would appear that this offending was not a one off, however it is not possible to say how often it occurred.
13. The starting point adopted in PP v. Amos was six years, although one would question in that case why charges of rape were not laid against the offender given the facts of that case which clearly indicated that the sexual intercourse was non-consensual. Such a matter would be a seriously aggravating features in determining a starting point. In the case of PP v. Amos, Sey J. referred to the decision of Spear J. in the case of PP v. Epsi⁵ which involved sentencing on two counts of unlawful sexual intercourse with a victim who was the subject of offending from the age of 12 through to 14. In that case a 6 year starting point was adopted which was increased to 7 years to take account of the second count of unlawful sexual intercourse. There of course, the Court was dealing with an offence for the most serious charge which involved a maximum term of 14 years imprisonment.

⁵ [2011] VUSC 287



14. It is important therefore to take account of the maximum terms of imprisonment in respect of the offence for which you are being sentenced and the particular fact scenario in your case.
15. In the circumstances, and having considered the authorities that I have referred to I consider that a starting point of 5 years in this case is appropriate. There are no personal aggravating features which warrant an uplift in that sentence. I deduct from that starting point 1 year and 8 months to take account of your guilty plea which I accept was entered at the earliest opportunity. I deduct a further 6 months to take account of the fact that you are a first time offender, your remorse and your attempts to arrange a re-conciliation ceremony.
16. That leaves an end sentence of 2 years and 10 months imprisonment. No suspension is being sought in this case and no suspension could be contemplated.
17. Accordingly in respect of this offence you are sentenced to 2 years and 10 months imprisonment. Your time spent on remand can be taken into account by the relevant authorities for calculation of your release date.
18. You have 14 days to appeal this sentence.

DATED at Luganville this 9th day of March 2018

BY THE COURT

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James Paul Gouffran
Judge

