

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

Criminal
Case No. 18/1015 SC/CRML

PUBLIC PROSECUTOR
v
PIERRE CHANEL TEVIRI

Before: Justice Fatiaki

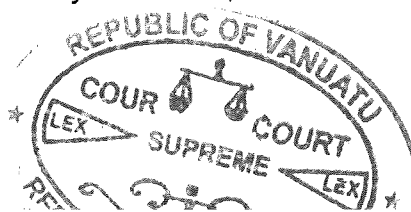
Appearance: K. Massing for the State
E. Molbaleh for the Defendant

Date of Plea: 14 May 2019

Date of Sentence: 20 May 2019

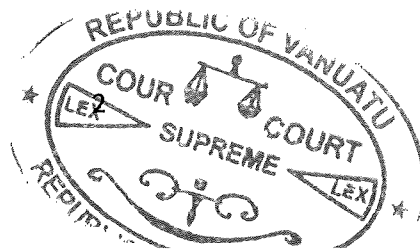
SENTENCE

1. On 14 May 2019 the defendant pleaded guilty ("*yes hemi tru*") to two (2) offences of Act of Indecency contrary to Section 98A of the Penal Code after the charges were slightly amended as follows: the date of the offence in Count 1 was corrected to commence from "2005" instead of "2015" and in Count 2 all references to the complainants' mouth was removed from the particulars of the charge. Both victims were under 15 years of age at the time of the offending.
2. The brief facts admitted by the defendant are that in both incidents the defendant had exposed his naked penis to each of his victims on separate occasions. The first incidents occurred between 2005 and 2008 *ie.* over 11 years ago while the victim who called the defendant "*pupu*", was visiting and staying at the defendant's home during weekends.
3. With regard to Count 1, Section 15 of the Penal Code expressly provides for a time limitation of "5 years" for the commencement of a prosecution after the commission of any offence punishable by imprisonment for "... *not more than 10 years*". The maximum penalty for an offence under Section 98A of the Penal Code is "... *imprisonment for 10 years*" and, therefore the statutory limitation



period of "5 years" applies after the commission of an offence against Section 98A.

4. The effect of the above limitation is that the prosecution of the offence(s) committed by the defendant as charged in Count 1 are all time-barred. Accordingly, the charge and the prosecution of the defendant are prohibited by Section 15 and accordingly the defendant's plea and conviction must be and is hereby quashed as ultra vires and a nullity.
5. The second victim in Count 2 was the defendant's own maternal grand-daughter ("*bubu man blo mi*") who lived with him at Chapuis 2. This most recent incident occurred on 9 February 2019 and does not suffer from the same limitation defect as Count 1 and may therefore proceed.
6. The matter was reported to the police and under caution, the defendant admitted showing his naked penis to his granddaughter without more ("*mi bin soem bol blo mi nomo ... be mi no mekem wan problem long hem*").
7. The offending in this case is aggravated however by the fact that it was repeated and involved the defendant's vulnerable granddaughter who would have trusted him. The incidents also occurred in the home where she was living with the defendant where she should have been able to feel safe and protected. The age difference between the defendant and his granddaughter exceeded 40 years.
8. The maximum sentence for an offence of Act of Indecency With a Young Person contrary to Section 98A is 10 years imprisonment. It is a serious offence involving a young victim under 15 years of age and consent is irrelevant. There can be no doubting that the repeated intentional exposure of a man's naked penis in circumstances where it can be and is seen by a young girl is itself, without more, a grossly indecent act deserving of punishment.
9. Having said that, I accept that the defendant at no time tried to elevate his indecent acts beyond mere exposure of his naked penis, such as, first luring and detaining the victim in a closed room or masturbating his exposed penis or trying

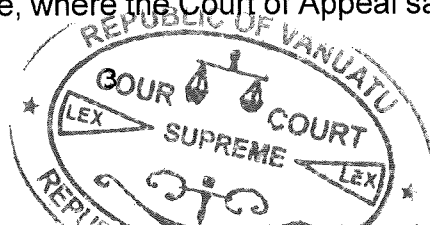


to get the victim to perform any acts with his exposed penis. Nor is there any suggestion that the defendant threatened the victim from reporting the matter.

10. The defendant's personal details and mitigating factors identified in his pre-sentence report are:

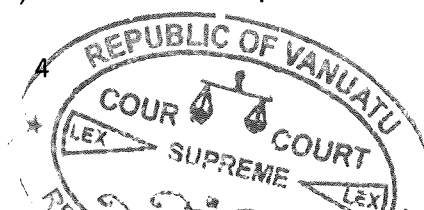
- The defendant is 66 years of age and originally from Vanmelal Village near Melsisi in Central Pentecost;
- The defendant was educated to Class 6 and is a skilled carpenter who assisted in building the local Catholic Church at Chapuis 2 area in Luganville;
- The defendant is married with 8 children, 3 sons and 5 daughters and has grandchildren. He has been separated from his wife since 2011 and has been caring for their children on his own. He supports his family from his earnings doing construction works;
- Once highly regarded, the defendant's relations with his family and wider community has been tarnished by the present case;
- The defendant is being treated for high blood pressure and expressed his sorrow and regret to the probation officer for the "*mistake*" he made in committing the offences with which he is charged;
- The defendant is a first time offender who freely admitted his wrong doing to the police and pleaded guilty at the earliest opportunity thus saving his victims the additional trauma of a trial;
- The defendant spent a month between 26 March and 26 April 2019 remanded at the Luganville Correctional Centre before he was released on bail which required him to live at Lavusvatu area in Luganville some distance away from his usual home at Chapuis 2 area;
- The defendant requested and was allowed in the presence of the probation officer, to perform a custom reconciliation ceremony to the victims and their families who generously accepted the money and prized traditional mats that were offered and have forgiven the defendant. Even before the ceremony, the mother of the second victim who is herself a daughter of the defendant told the probation officer that: "*... despite his offending, she still regards (the defendant) as her father and will forgive him*".

11. Prosecuting counsel in a helpful sentencing submission drew the Court's attention to Public Prosecutor v Gideon [2002] VUCA 7 which was a case of the repeated rape of a 12 year old victim by her aunt's boyfriend causing her severe bleeding and physical damage, where the Court of Appeal said: "*... it will only be*



in the most extreme of cases that suspension will ever be contemplated in a case of sexual abuse ...". That case however, is readily distinguishable from the present case on the facts and the charges. It is much more serious than the present case.

12. Of greater relevance is the case of Public Prosecutor v Reginment [2014] VUSC 118 which concerned a charge under Section 98A and also involved the exposure of the defendant's penis to the same victim on two occasions. Although prosecuting counsel says that Regnigment's case is far less serious than the present case, I disagree.
13. The second act of indecency charged in Regnigment's case involved the defendant pursuing his 13 year old victim and getting her to sit on his lap and masturbate his exposed penis until he ejaculated while he fondled and squeezed the victim's breasts. Additionally, the defendant received a very adverse pre-sentence report which described him as: "... *unremorseful and lacking insight as to the possible long term impact ... on the victim*" and where his risk of re-offending was assessed by the probation officer as: "... *remains high*". These observations figured prominently in this Court's refusal in that case, to suspend the end sentence of 10 months imprisonment. Neither feature is present however, in this case which makes it less serious than the case of Regnigment.
14. Defence counsel for his part relies on the case of Public Prosecutor v Naropacen [2017] VUSC 8 where the defendant indecently touched the breast and vagina of his young victim after grooming her for some time with free school stationary and the Court imposed a suspended prison sentence. Likewise in the cases of: Public Prosecutor v Malachai [2015] VUSC 46 involving a grandfather rubbing his naked penis on his granddaughter until he ejaculated and Public Prosecutor v Kapalu [2019] VUSC 127 where the 46 year old defendant exposed his naked penis twice to his 11 year old victim. In both latter cases suspended prison sentences were also imposed.
15. In the defendant's case given the aggravating circumstances, I adopt a starting sentence of 4 years imprisonment. For mitigating factors I deduct 12 months leaving a mid-sentence of: $(48 - 12) = 36$ months imprisonment which is further



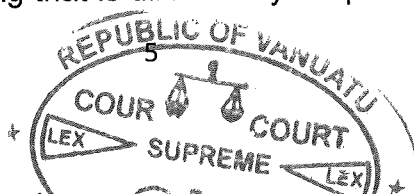
reduced by one third to give an end sentence of: $(36 - 12) = 24$ months imprisonment.

16. I turn next to consider whether or not to suspend the sentence and after considering the provisions of Section 57 of the Penal Code, I am satisfied that the defendant's sentence should be suspended for 3 years for the following reasons:

- The "*circumstances*" of the defendant's offending may be described as opportunistic and did not involve any physical contact or active participation on the part of his hapless victim. The defendant immediately apologised to the granddaughter and her mother and gave them VT2,000 and promised to stop behaving like that and he pleaded with them not to leave their home ("*mi bin talem long tufala se bae mi nomo mekem kaen fasin ia bageken be bai oli no aot long house ...*");
- The "*nature of the crime*" committed by the defendant may be described as being at the lowest end of the scale in that it constituted a momentary exposure of the defendant's naked penis without any other accompanying indecent actions or suggestive words on the defendant's part;
- The "*character of the offender*" is that he has led a blameless life for the past 66 years and has single-handedly raised his 8 children for the past 8 years. He is considered a very helpful and reliable member of the community who was a regular church goer until these incidents came to light. The defendant has always admitted his wrong-doing and has never sought to blame his victims and is genuinely remorseful for his disgraceful behaviour. He has reconciled traditionally with the victims and his family members by the performance of a custom reconciliation ceremony on 18 May 2019 witnessed by the probation officer.

17. Although the defendant will not have to go to prison today, he is warned that if he breaks his promise not to re-offend and commits another offence in the next 3 years then, he can expect to be sent to prison immediately to serve this sentence of 24 months imprisonment before serving any other term that may be imposed for his re-offending. Whether that happens or not in the next 3 years depends entirely on the defendant but if he re-offends then he can expect no more leniency from the Court.

18. The defendant is also sentenced to 12 months Supervision with a special condition that he undergoes spiritual counselling and participates in any program concerning sexual offending that is directed by his probation officer. In addition,



the defendant is ordered to perform 80 hours of Community Work under the supervision of his probation officer.

19. The defendant is advised that he has 14 days to appeal against the sentence if he does not agree with it.

DATED at Luganville, Santo, this 20th day of May, 2019.

BY THE COURT



D. V. FATAKI

Judge

