

PUBLIC PROSECUTOR

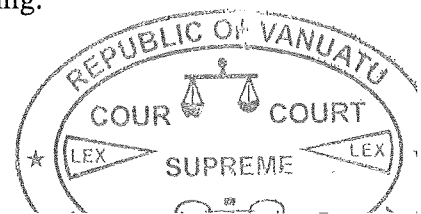
V

MAXWELL GARAE

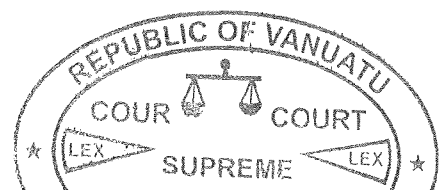
Date of Plea: 17th June 2019 at 9:00 AM
Date of Sentence: 20th day of June, 2019 at 1:30 PM
Before: Chief Justice Vincent Lunabek
Counsel: Mr Ken Massing for the Public Prosecutor
Mr Junior Garae for the Defendant

SENTENCE

1. Mr Maxwell Garae, you appear for sentence today on one count of acts of indecency without consent, contrary to section 98(a) of the Penal Code.
2. On 17th June you pleaded guilty to that count.
3. The brief facts is provided by the prosecution.
4. The complainant in this case is your step daughter. She made a complainant in this matter against you. You all live in the house during the commission of this offence. Your step daughter attended Santo East Secondary School at the time of the alleged offending. She is 15 years of age as she was born on 13 February 2004.
5. This offence is a representative type of these offences occurring in the year 2018 and 2019. The complainant could not recall the exact dates and times in the year 2018.
6. But she could recall what had happened to her in March 2019. She stated in her police statement that it occurred a lot of times in the year 2018. The offences took place at night times when everyone was sleeping.



7. On these occasions, you would enter her room with her little brothers and sisters. You would then remove her clothes half way so that she would be half naked. When she would be awake, she would see you ran back into your room. At times you would remove her blanket and remove her clothes so that she would be half naked.
8. Your step daughter told members of the church she attended about what had happened to her. She told them that she could see you did the acts and then ran back into your room.
9. You were later arrested by the Police where you denied the allegations made against you.
10. However, on 17th June 2019, you entered guilty plea on Count 1 and not guilty on Count 2. The prosecution entered a nolle prosequi in respect to Count 2. You were acquitted of the offence in count 2. You are sentenced today on Count 1 only.
11. The maximum penalty for this offence of acts of indecency without consent, contrary to section 98(a) is of 7 years imprisonment. It is a serious offence as reflected by the maximum penalty imposed by law.
12. I read the pre-sentence report filed to assist me in your sentencing. I also read the prosecution submissions with the case authorities filed in support. I finally read the Defence submissions and case authorities to the same effect.
13. The prosecution refers to the following case guideline judgments:-
 - Public Prosecutor v. Boita [2002] VUCA 38.
 - Public Prosecutor v. Gideon [2002] VUCA 7.
14. The prosecution also refers to the case authorities on the specific nature offence of acts of indecency without consent, among others, is the case of Public Prosecutor v. Fred Maltape: Criminal Case 3560 of 2017. However, the prosecution observes that this case is more serious than the Maltape case and would be reflected in this Court consideration of the starting and end sentencing.

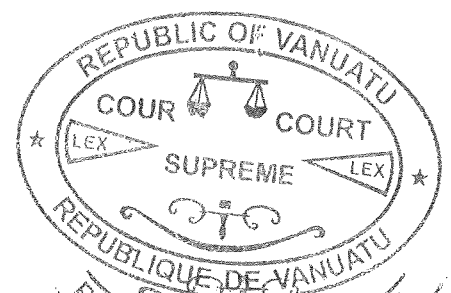


15. In this case, the prosecution says the following factors are present here-being-
- a. Breach of trust – step-father and step daughter relationship.
 - b. Age differences
 - c. Offending repetitive (more than one time occurred).
 - d. Offending occurring in a place where the victim should be safe and care for under his care and protection.
 - e. Some degree of planning offending took place at night when everyone was sleeping.

16. The prosecution submitted that a starting point of range between 3 to 4 years imprisonment will be appropriate with appropriate deductions for the guilty plea and mitigating factors resulting in an end sentence of 2 to 3 years imprisonment. Should the Court consider otherwise, a suspended imprisonment sentence coupled with a community sentence of range between 150 to 200 hours will also be appropriate?

17. Your lawyer submitted to the like effect. He assisted me with your personal circumstances so that the Court can take them into account:

- You are a 44 year old man and lives in a de facto relationship with your partner. You have 2 children and 2 adopted children, one of whom is the victim (step daughter). You are all residing at Suranda Area in Santo Island.
- Your level of education is a class 6 leaver at Vuigalato Primary School due to financial constraints.
- Despite your limited education, you have driving and sawmill skills.
- You are the sole bread earner in the family and are employed at the Suranda Plantation as a driver and sawmill operator. You work to sustain your families' livelihood and most importantly pay for your children's school fees and needs.



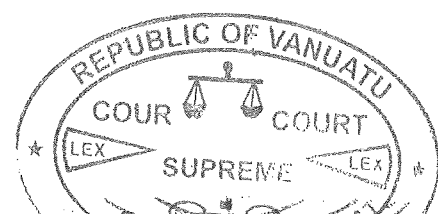
- You have good relationship with your partner, your parents, chiefs, and other community leaders.
- You are a member of the Anglican Church but are attending Apostolic Life Ministries regularly.
- Health life, you say you are physically fit.
- Your ambition is to purchase a new land at Banban Area for gardening purposes and to build a new house for your family.

18. Your lawyer says the following factors are mitigating factors in your favour:-

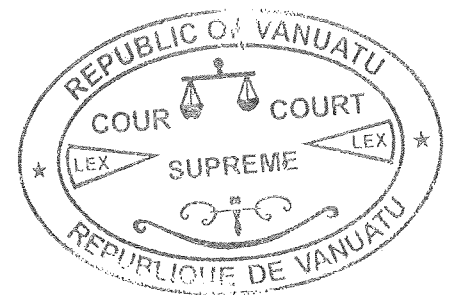
1. You immediately admitted the offending and cooperated well with the Police.
2. You pleaded guilty at the first opportunity given to you by the Court.
3. You are a first time offender. You have no prior convictions.
4. You realise your mistakes; you are very remorseful and regret your actions. You promise not to commit such acts anymore.
5. You were remanded since the 21st March 2019 to 4 April 2019 at the Correctional Centre in Luganville, Santo. You have already spent a period of 15 days at the Correctional Centre in Luganville, Santo.
6. You are planning to perform a custom reconciliation with the victim and the family.

19. Your lawyer refers the Court to various Court Case authorities specific to the nature of the offence like in this case, among others, the case of Public Prosecutor v. Maltape [2018] VUSC 20 as it is similar to the present case except for the removal of the victim's clothes while she was sleeping.

20. Your lawyer submitted that a starting point sentence for this case should be of 18 months imprisonment, a 1/3 reduction for your early guilty plea. Some deductions be made to reflect your other mitigating factors ended up with an end sentence of 6 to 8 months imprisonment and to be suspended for a period of 2 years couple with a supervision sentence under specific conditions to undertake sexual offending Module, Victim Awareness Module and other rehabilitative Programs offered by the Probation Service.

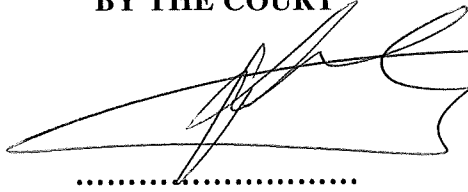


21. In considering your sentencing in the present case, I consider the nature and seriousness of the offending. I consider the aggravating factors as provided by the prosecution in their submissions, I also and in particular consider the specific facts of this present case, on my assessment, I think an appropriate starting point sentence is of 2 years and 6 months which is a total of 30 months imprisonment.
22. I consider you are entitled to 1/3 reduction as submitted by your lawyer which reduced your sentence of 30 months to 20 months imprisonment.
23. I give a further allowance of 6 months to reflect your other mitigating factors as contained in your lawyer submissions.
24. Your sentence is reduced further to 14 months imprisonment. I now consider whether it is appropriate to exercise the discretion to suspend your imprisonment sentence of 14 months.
25. Based on section 57 of the Penal Code Act, I do this by viewing the circumstances of this case (offending involving father and daughter (steps), I particularly consider the nature of the crime and I consider your character as an offender. I do not have much information on you.
26. However, I note that you realise your mistakes, you are very remorseful, and regret your actions. You promise not to commit such acts anymore. I decide to give you the chance by suspending your imprisonment sentence of 14 months imprisonment for a period of 2 years. (I explain to you orally the effect of the suspension of your imprisonment term).
27. In addition I think a supervision order will suit your situation under specific conditions that you undertake sexual offending Modules, Victim Awareness Modules and other rehabilitation Programs offered by the Probation Service.
28. Mr Garae, that is my sentence, if you are unsatisfied with it you have the right to lodge an appeal against it within 14 days from the date of this sentence.



DATED at Luganville this 20th day of June, 2019.

BY THE COURT



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Vincent Lunabek

Chief Justice

