

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

Criminal
Case No. 20/2774 SC/CRML

PUBLIC PROSECUTOR

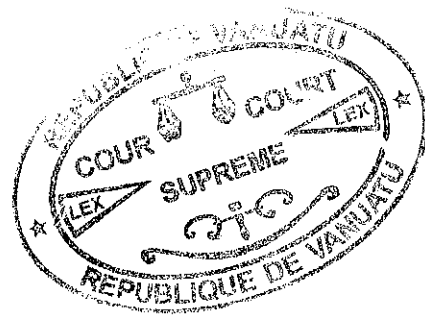
V

JOHN KAMISAK

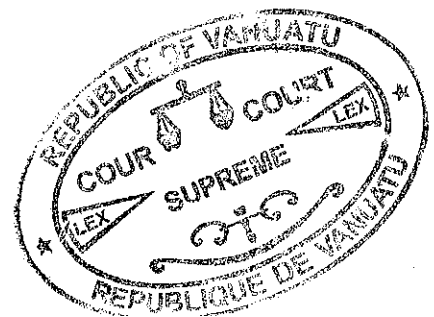
Date of Sentence: *5th day of February, 2021 at 9:00 AM*
Before: *Justice Oliver Saksak*
In Attendance: *Mr Tristan Karae for Public Prosecutor*
Mrs Kylie B Karu for Defendant

SENTENCE

1. The defendant pleaded guilty to one count of unlawful sexual intercourse contrary to section 97 (1) of the Penal Code Act CAP.135.
2. This is a serious offending as the maximum penalty has been increased by Parliament to life imprisonment.
3. The facts are simple. On 2nd September 2020 the defendant had penile penetration of the anus of a 7 year old girl. This occurred at Epau Village, North Efate. The young victim was sleeping in the kitchen. The defendant approached her, removed his pants, lubricated his penis with his saliva and inserted it into the girl's anus. He ejaculated and wiped off his semen with a blanket. He then got dressed and left. He warned the victim not to tell anyone about what he did to her.
4. The victim however lodged a police complaint on the same date the Police apprehended the defendant and interviewed him on 10th September 2020. He made admission to the police.



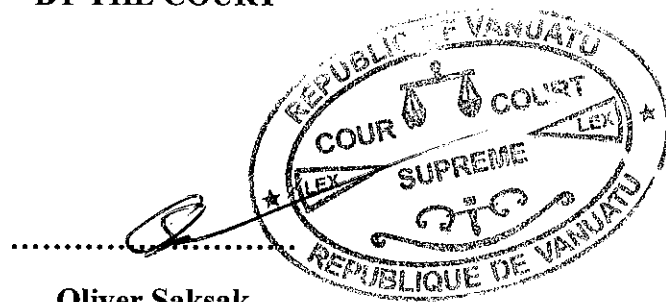
5. A medical report was obtained on 7th September 2022 showing the victim has a history of sexual molestation of a minor unremarkable genital examination.
6. There are simply no mitigating circumstances for the defendant's offending. He simply took advantage to sexually abuse a very young victim.
7. Courts have a very clear duty to protect children. This principle was clearly established by the Court of Appeal in PP v Gideon [2002] VUCA 7.
8. Applying that principle, the appropriate sentence for this defendant shall be a custodial sentence. This is to serve also as a deterrence, to mark the gravity of the defendant's offending, to mark public disapproval of his action and to punish him adequately.
9. I take into consideration the aggravating features such as age disparity (20 years difference), the very young age of the victim, the penetration of the anus amounting to an act of pervasion and the threat not to tell about what happened.
10. Taking all those factors together with the seriousness of the offence, I set the starting sentence for the defendant at 8 years imprisonment.
11. I now consider his mitigating factors to reduce his start sentence. The Court is not assisted with any pre-sentence report although the Court did order a report on 1st December 2020.
12. The first mitigating factor is his guilty plea at first opportunity on 1st December 2020. He did admit to the police in September 2020 during interview. In doing so he accepted responsibility and saved valuable time, costs and otherwise the ordeal the young victim had to go through at trial.



13. In my view the defendant is entitled to a 1/3 reduction for his guilty plea. His start sentence is therefore reduced by 2 years and 8 months.
14. He is 27 years of age and single. His mother is deceased. He left school from class 7. He had no regular employment and income. He has no previous criminal record. I allow a further reduction of 4 months for these factors.
15. That leaves his end sentence to be 5 years imprisonment.
16. John Kamisak is now convicted and sentenced to an end sentence of 5 years imprisonment.
17. There shall be no suspension of sentence.
18. This sentence is backdated to 4th November 2020 when the defendant was first remanded in custody.
19. There is a right of appeal against this sentence within 14 days if the defendant does not agree with it.

DATED at Port Vila this 5th day of February, 2021.

BY THE COURT



Oliver Saksak

Judge