

PUBLIC PROSECUTOR

v

JERRY JONATHAN

Date: 25 February 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Taiki
Defendant – Mr R. Willie

SENTENCE

A. Introduction

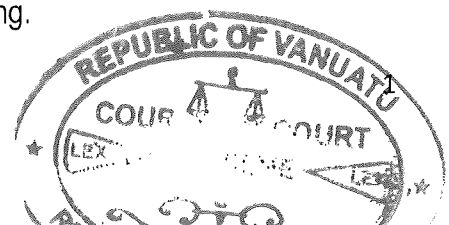
1. Mr Jonathan pleaded guilty to representative charges of incest (Charge 2) and domestic violence (Charge 3).

B. Facts

2. The complainant FJ is Mr Jonathan's adopted daughter. She was 14-15 years old when the offending occurred. The offending occurred at Telvet village on the island of Mota Lava.
3. Prior to the offending, Mr Jonathan showed FJ a pornographic video. She told him that she couldn't watch it as it was for big people. She was afraid and left.
4. In 2021, Mr Jonathan's wife went to Santo for a week. During that time, Mr Jonathan came to FJ's room each night, forced her to remove her clothes, opened her legs and penetrated her vagina with his finger (Charge 2).
5. In 2021, Mr Jonathan became angry that FJ had not yet gone to bed. He slapped her and kicked her in the ribs. Mr Jonathan's wife stopped the assault. Another time, Mr Jonathan struck FJ twice in the back with a piece of wood (Charge 3).

C. Sentence Start Point

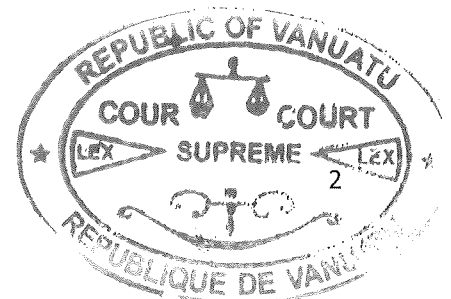
6. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.



7. The maximum sentences provided are:
- a. Incest – 15 years imprisonment: subs. 95(2), *Penal Code* [CAP. 135]; and
 - b. Domestic violence – 5 years imprisonment or VT100,000 fine or both: *Family Protection Act* No. 28 of 2008.
8. There are no mitigating aspects to this offending.
9. The aggravating factors of the offending include:
- Serious breach of trust;
 - The 25-year age differential;
 - The offending occurred within the complainant's home where she was entitled to be safe and secure;
 - The offending was repeated;
 - The offending was planned, occurring when Mr Jonathan's wife was away from home and at night when the complainant was in her room;
 - The impact on the complainant;
 - The unprovoked attacks on the complainant; and
 - The use of a weapon in the attacks on the complainant.
10. The factors set out above require a global sentence start point of 7 years imprisonment.
11. I note that *PP v Tu* [2016] VUSC 20, *PP v Kensen* [2015] VUSC 44, *PP v Simeon* [2015] VUSC 17 and *PP v Bae* [2003] VUCA 14 cited by Mr Willie were all decided before the maximum sentence for incest was increased to 15 years imprisonment (by the *Penal Code (Amendment) Act* No. 15 of 2016).

D. Personal Factors

12. I reduce the sentence start point by 33% for Mr Jonathan's early guilty plea.
13. Mr Jonathan is 44 years old. He is married and has three children.
14. He has no previous convictions. However, in cases of sexual nature, a person's previous good character has little relevance in mitigating a sentence.
15. Mr Jonathan is stated to be remorseful however that is at odds with his telling the pre-sentence writer that he blames the victim for his offending.



16. Mr Jonathan performed a custom reconciliation ceremony involving a pig, one head of kava and VT15,000 cash. However, FJ was not part of the ceremony and did not one or other of the items.

17. I further reduce the sentence start point by 1 month for Mr Jonathan's personal factors.

E. End Sentence

18. The end sentences imposed concurrently are:

~~a. Incest (Charge 2) – 4 years 7 months imprisonment; and~~

b. Domestic violence (Charge 3) – 18 months imprisonment.

19. The sentences are back-dated to run from 6 November 2021 to take into account the 3 months 19 days already served in custody (3 November 2021 to 22 February 2022).

20. The sentence is imposed to deter Mr Jonathan and others from such offending, to protect the community, to denounce such criminal conduct against young girls and against the values of society, and to hold Mr Jonathan accountable for his criminal conduct.

21. There will be no suspension of sentence: *Gideon v Public Prosecutor* [2002] VUCA 7.

22. All details leading to identification of FJ are permanently suppressed.

23. Mr Jonathan has 14 days to appeal the sentence.

DATED at Luganville, Santo this 25th day of February 2022

BY THE COURT

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Justice Viran Molisa Trief

