

PUBLIC PROSECUTOR v PAIA TANIS

Before: Chief Justice V. Lunabek

Appearances: Mr D Boe for the State
Ms L Bakokoto for the Defendant

Date of Plea: 24 April 2023

Date of Sentence: 4 May 2023

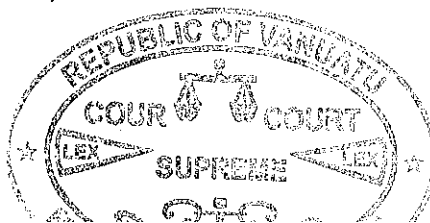
SENTENCE

A. Introduction

1. Paia Tanis, you appear today for sentence after you entered guilty pleas on one count of unlawful sexual intercourse and one count of acts of indecency, contrary to Sections 97(1) and 98A of the Penal Code respectively.

B. Facts

2. You are from Vunavus village, South Santo, and you reside there. You are 21 years old. You were 17 years old at the time of the offending.
3. The complainant is a student at Nasalanvulmo School and she lives at Vunabus area, South Santo. She was 11 years old at the time of the first offending. She was 12 years old attending class 4 at the time of the second offending.
4. You and the complainant are relatives. You are a brother to her.
5. The complainant recalled that you had sexual intercourse with her in the year 2021. The complainant was at home alone one afternoon, no one else was there. She was asleep when she woke up she

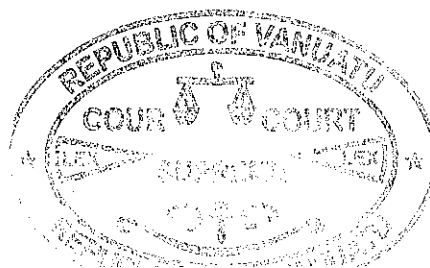


was surprised to see you inside her room with her. In her room, you removed her panty and penetrated her vagina with your penis and had sexual intercourse with her and you ejaculated outside.

6. The complainant recalled that sometimes in 2021 she was at home, she was in the kitchen washing plates. Her parents were at the garden and no one at home.
7. You went in the kitchen when she was washing plates. you pushed your hand into the complainant's shirt and touched her breasts. You also pushed your hand into the complainant's skirt and touched her vagina. You then told the complainant to lie down on a chair and that you would lie on top of her, the complainant began to cry.
8. In the meantime, the complainant's older sister Kaisy and her friend walked into the kitchen. The complainant's sister asked her what happened and the complainant told her what you were doing to her.
9. The medical examination of the complainant was conducted on 8 February 2023 and the findings were that there was evidence of previous penetration of her vagina leading to the sexual intercourse.
10. You were cautioned on 31 December 2022. You admitted the allegations made against you.

C. Sentence Start Point

11. Sexual intercourse with any child under the age of 13 years is prohibited by law under Section 97(1) of the Penal Code. Section 97(1) provides: "*No person shall have sexual intercourse with any child under the age of 13 years. Penalty: Imprisonment for life*".
12. There was no personal circumstances of the offending but the following are the aggravating features of the offending:
 - There is a serious breach of trust. The complainant and you are related, brother and sister;
 - There is a differential age between you and the complainant;
 - The offences occurred inside the home where the complainant (as victim) should feel safe;
 - The sexual intercourse is unprotected with a risk of transmitted diseases and youth pregnancy;



- The effect upon the victim, whether physical or mental.

13. I consider globally the circumstances of this case. I treat the offence of unlawful sexual intercourse with a child under 13 years of age as the lead offence (Count 1).

14. I impose a sentence of 8 years imprisonment for the offence in Count 1. I set 3 years for the offence of act of indecency with a young person in Count 2. They run concurrently to each other. You have a start point sentence of 8 years imprisonment.

D. Mitigating Factors

15. In this case, you are a first-time offender. You do not have previous convictions. You have a clean records. I give you an allowance of 6 months for your unblemished history.

16. You pleaded guilty at the earliest opportunity. You are entitled to a full one third reduction from the start point sentence.

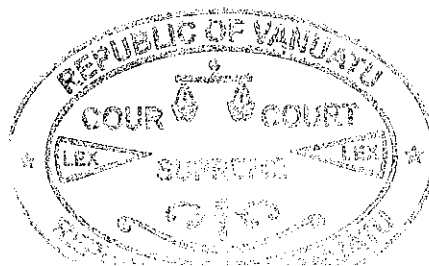
17. You admitted the offence from the start to the police and you apologized for your offending. It is a sign that you admit your wrongdoing and you accept responsibility for your wrong and genuine remorse on your part. I give you another allowance of 8 months for these aspects.

18. I consider further that you are a young offender. As a young man of 17 years of age, you committed these offences. I sense that at that age, pushed by your sexual desire, you are left with immaturity and poor reasoning when you experienced your sexual life at that young age. The judgment of the Court of Appeal in Korthy v PP [2019] VUCA 19 is reflective on this point. I will apply it in your case as I have applied it in Public Prosecutor v Harrison Tuame Criminal Case No. 22/2242 SC/CRML, a case I sentenced a young offender of 18 years on 3 May 2023 here in Luganville, Santo on this same week. I allow another 20% reduction.

E. End Sentence

19. Your end sentence is 3 years and 5 months imprisonment.


20. You were remanded in custody from 13 January 2023 until sentenced today. The pre-custodial period shall be taken into account in effecting the effective start date of your sentence.



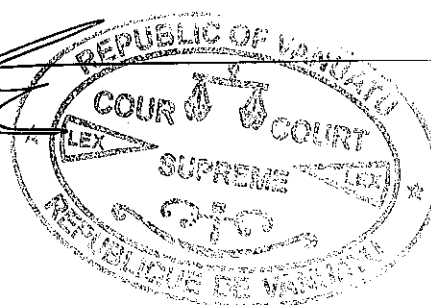
21. Your end sentence of 3 years and 5 months shall be deemed effective from 13 January 2023. The circumstances of the offending do not justify a suspension of this sentence.
22. You have 14 days to appeal this sentence if your are unsatisfied with it. The 14 days starts on the date of this sentence (ie. 04 May 2023).

DATED at Luganville, Santo, this 4th day of May, 2023

BY THE COURT



Chief Justice V. Lunabek



The seal of the Supreme Court of Vanuatu is circular. It features a central emblem with a scale of justice and a book. The text around the emblem includes "REPUBLIC OF VANUATU" at the top, "COUR SUPREME" in the center, and "REPUBLICQUE DE VANUATU" at the bottom. The words "COUR" and "COURT" are also visible on either side of the central emblem, and "LEX" appears twice.