

**PUBLIC PROSECUTOR**

**v**

**ANTHONY DAVID**

**Date of Pleas:** 22 April 2024  
**Coram:** Hon. Chief Justice V. Lunabek  
**Counsel:** Mr K. Massing for the State  
Ms B. Taleo for the Defendant  
**Date of Sentence:** 23 May 2024

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**SENTENCE**

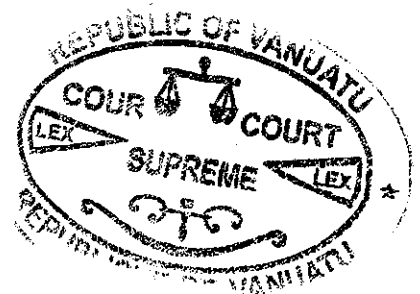
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**I. Introduction**

1. Mr Anthony David ("*Mr David*"), you appear for sentence today having being pleaded guilty to two counts of unlawful sexual intercourse and one count of acts of indecency with a young person, contrary to Sections 97(2) and 98A of the Penal Code [CAP. 135] ("*the Act*"), respectfully.

**II. Facts**

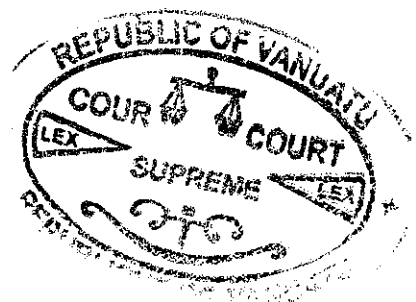
2. A formal complaint was made against you, Mr David, for the offences of unlawful sexual intercourse and act of indecency with a young person.
3. The victim was under the age of 15 years old at the time of the alleged offending and she attended Natawa Centre School. Her date of birth is 18 February 2009.
4. You were 19 years old at the time of the alleged offending.



5. The offending took place sometimes on the 15<sup>th</sup> of September 2023 at night time. It occurred inside the girls' dormitory at Natawa Centre School. At that time, the girls were sleeping. You came drunk and called one of the complainant's friend to open the door. You entered the dormitory and then slept with her. You inserted your finger into her vagina and penetrated her vagina with your finger. You also went further to touch her two breasts. She said that she struggled, but could not resist you. You then left after you did those acts to her.
6. You came the next day again in the early morning hours. It was a Saturday morning the 16<sup>th</sup> of September 2023. On that date, you called Larisha, a friend of the complainant. She opened the door and you came inside the dormitory. You then went and slept with her. You then inserted your finger into her vagina and penetrated her vagina with your finger. She called out and her friends arrived and you left. She told the police that she felt pain in her body as a result of what you had done to her.
7. The matter was reported to the police where you were arrested. You were cautioned, interviewed and you admitted the allegations and that you had a relationship with her.

### III. Sentence Start Point

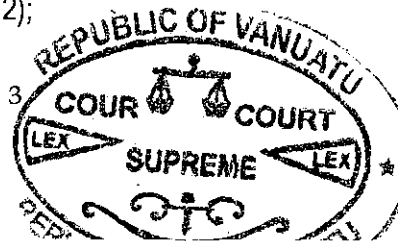
8. The offence of unlawful sexual intercourse with any child under the age of 15 years but over the age of 13 years, carries a maximum sentence of 15 years imprisonment.
9. The offence of act of indecency with a young person upon, or in the presence of another person under the age of 15, carries a maximum sentence of 10 years imprisonment.
10. Here, there is more than one offence. I deal with the offence of unlawful sexual intercourse as the leading offence for the purpose of sentencing. The maximum sentence available is 15 years imprisonment overall.
11. There is no mitigating factor to the offending, but the following aggravating factors exist:
  - (a) The offending occurred within the boundaries where the victim went to school as a boarding student where she was entitled to feel safe and secure;
  - (b) The offences were repeated on 2 occasions contemporaneous with each other;
  - (c) There is an age differential of 5 years;



- (d) There is a negative effect upon the victim including the strong fear and fright it caused her; and
  - (e) There was some degree of planning of the offending;
  - (f) You were drunk at the time of offending (at least on the first offending).
12. I take into consideration all the above, I sentence you to 6 years imprisonment as your sentence start point on the leading offence of unlawful sexual intercourse on both counts concurrently. I sentence you to 3 years imprisonment for the offence of act of indecency with a young person.

#### IV. Mitigation and End Sentence

13. Mr David, you were 18 years old at the time of offending in September 2023. You will be 19 years old on 14 October 2024. You come from Shark Bay in East Santo. You are a single young man. You completed your junior secondary school level at Santo East Senior Secondary School in Luganville, and you had completed Year 10.
14. You are a first-time offender with no previous criminal history. You live with your father, who is a single parent, and two of your younger siblings.
15. You are remorseful and show contrition. You cooperated well with the police and made admissions in your cautioned interview. You promised not to commit the same offence again or any offence.
16. I give you a credit reduction of 4 months to reflect on your mitigating factors.
17. I give you a further credit reduction of 33% for your early guilty pleas given to the Court at the earliest opportunity.
18. I give another credit reduction of 3 months to reflect on your young age (18 years old at the time of offending) and immaturity.
19. Your end sentence is:
- (a) 43 months i.e., 3 years and 7 months imprisonment for each of the two offences of unlawful sexual intercourse (counts 1 and 3) concurrently;
  - (b) 19 months i.e., 1 year and 7 months imprisonment for the offence of act of indecency with a young person (count 2);



- (c) The sentences shall be served concurrently which means you have an end sentence of 3 years and 7 months imprisonment.
20. Mr David, you were arrested and remanded on 21<sup>st</sup> September 2023. You were released on bail on 6<sup>th</sup> October 2023. You have spent a total of 2 weeks i.e. 14 days in pre-custodial period before you were released on bail. The 14 days, you have already spent shall be deducted from your sentence.
21. Your sentence is now 3 years 6 months and 16 days imprisonment.
22. I consider the nature and circumstances of the offending. I consider your character as an offender. I decline to suspend this term of imprisonment sentence. In this case, the imprisonment term is necessary on the authority of Public Prosecutor v Gideon [2002] VUCA 7.
23. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts on the date of this sentence.

**DATED at Port Vila, this 23<sup>rd</sup> day of May, 2024.**

**BY THE COURT**

**Hon. Chief Justice Vincent LUNABEK**

