

PUBLIC PROSECUTOR

v

MICHELLE DANIEL

Date: 19 July 2024  
Before: Justice V.M. Trief  
Counsel: Public Prosecutor – Mr S. Blessing  
Defendant – Ms J. Tari

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**SENTENCE**

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A. Introduction

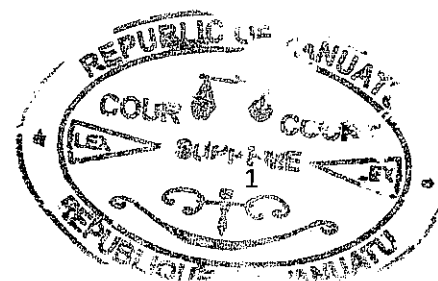
1. The Defendant Mr Michelle Daniel was convicted after trial of two charges of act of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135] (Charges 2 and 3).

B. Facts

2. The following facts were admitted by way of Formal Admissions filed pursuant to s. 84 of the *Criminal Procedure Code* [CAP. 136] ('CPC') [Exhibit P1]:

**Personal details of the complainant**

- a) The complainant is KH (name suppressed).
- b) She is between 16 and 17 years old.



- c) Her mother is ST (name suppressed).
- d) She and her mother are from Australia.
- e) She currently resides with her mother in Queensland, Australia.

#### **Personal Details of the Complainant's Family**

- f) ST currently resides in Queensland, Australia.
- g) She is 44 years old.
- h) Her father is KT (name suppressed).
- i) KT is the grandfather of the complainant.
- j) In 2022, KT's place of residence was at Bellevue Estates, Port Vila, Efate. He has a swimming pool at his residence.
- k) KT is the Managing Director and owner of a farm business on Efate island.

#### **Personal Details of Defendant**

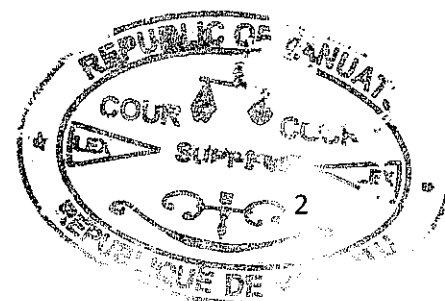
- l) The Defendant is Mr Michelle Daniel.
- m) He is 31 years old.
- n) He is from Toak, South East Ambrym.
- o) From 1 January 2022 to 23 December 2022, Mr Daniel was employed by KT.

#### **The Farm business Employees**

- p) In 2022, Mr Junior Bell was an employee of the farm business.
- q) In 2022, Ms Jennifer Charlie was an employee of farm business.

#### **Events of 23 December 2022**

- r) The complainant came to Vanuatu with her mother for the Christmas holidays.
- s) They arrived in Vanuatu on 13 December 2022 and left on 26 December 2022.
- t) In the evening of 23 December 2022, KT hosted a party at his Bellevue residence.
- u) KT invited his employees to the party, including Mr Junior Bell, Ms Jennifer Charlie and Mr Daniel.
- v) Mr Bell, Ms Charlie and Mr Daniel arrived at KT's house while the complainant and KT were in town shopping.



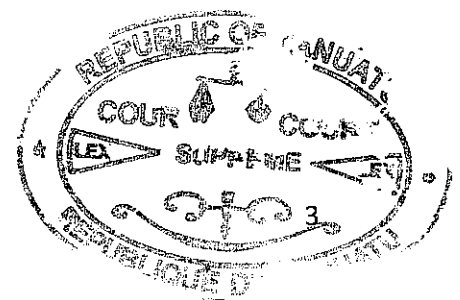
- w) Sometime after the party started, Mr Daniel and other persons who were there started drinking alcohol.
- x) Sometime after the party started, Mr Daniel, Mr Bell, ST and the complainant were in the swimming pool and socializing.
- y) The complainant was wearing a white t-shirt with a logo on the front of it and black swimming shorts which were made from polyester and elastane.
- z) During that time, Ms Charlie took a photo of the defendant, Mr Bell, ST and the complainant in the swimming pool.
- aa) ST left the pool and went into the house.
- bb) Mr Bell also left the pool and went to the toilet.
- cc) Mr Daniel and the complainant remained in the pool near each other.
- dd) The complainant left the pool. She went to see her mother ST in the house.
- ee) The complainant became upset and was crying to her mother.
- ff) ST approached Mr Daniel.

**Defendant's arrest and interview**

- gg) Mr Daniel was arrested on 23 March 2023 and interviewed under caution on the same day.

3. I made the following findings of fact after trial:

- a) On 23 December 2022, at Bellevue area, Mr Daniel pushed his hand under the complainant KH's right buttock and squeezed her right buttock cheek through her clothing, then moved his hand lower down and touched her vagina through her clothing using two of his fingers. Touching the underside of the complainant's right buttock and then squeezing her right buttock cheek through her clothing was an indecent act that Mr Daniel deliberately committed on the complainant's person. She did not consent to these acts by Mr Daniel. She was a 16-year-old child that he had just met for the first time therefore Mr Daniel could not have had a reasonable belief at the time of the offending that the complainant consented to his indecent act on her person (Charge 3).
- b) Mr Daniel's act of touching the complainant's vagina through her clothing using two of his fingers was an indecent act that he deliberately committed on her person. She did not consent to this act by Mr Daniel. As she was a child who he had just met for the first time, Mr Daniel could not have had a reasonable belief at the time that she consented to his act (Charge 2).



C. Sentence Start Point

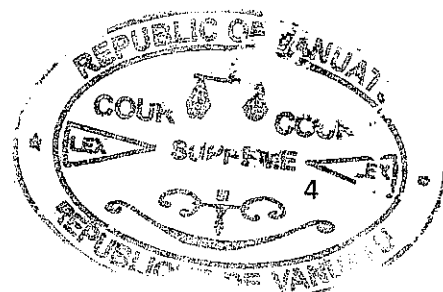
4. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
5. The maximum sentence prescribed in the *Penal Code* [CAP. 135] for the offence of act of indecency without consent is 7 years imprisonment (para. 98(a)).
6. There are no mitigating aspects to the offending however, it is aggravated by the following:
  - a) Breach of trust;
  - b) 15-year age differential;
  - c) The offending occurred at home where the complainant should have been able to feel safe and secure; and
  - d) The physical and profound psychological and emotional impacts on the complainant.
7. Taking these matters into account, I adopt a global sentence starting point of 2 years imprisonment.

D. Mitigation

8. Mr Daniel is 32 years old. He is from Toak, South East Ambrym and resides at Teouma area on Efate. He and his *de facto* partner have a one and a half-year-old child. He makes his living from his market garden.
9. He has no prior convictions.
10. I deduct 2 months from the sentence start point for Mr Daniel's personal factors.
11. I deduct a further one and a half months from the sentence start point to take into account the 3 weeks served in custody (23 March 2023 to 14 April 2023).

E. End Sentences

12. Taking all matters into account, the end sentences imposed concurrently for act of indecency without consent are 1 year 8 months 2 weeks imprisonment (Charges 2 and 3).



13. The sentences are imposed to denounce such criminal conduct against young girls and against the values of society, to hold Mr Daniel accountable for his criminal conduct, and to deter Mr Daniel and others from such offending.
14. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment "... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender."
15. This was offending of a sexual nature which counts against suspension of the sentences however it was at the lower end of the scale being a "one-off" momentary touch of the vagina over clothing. Mr Daniel's family responsibilities, his prior clean record and prospects for rehabilitation favour suspension of the sentences. I consider therefore that it is not appropriate to make Mr Daniel suffer immediate imprisonment. Accordingly, the sentences are suspended for 18 months on the condition that Mr Daniel commits no further offence within that period. Mr Daniel is warned that if he is convicted of any offence in the next 18 months, that he will be taken into custody and serve his sentences of imprisonment imposed today as well as the penalty imposed for the further offending.
16. In addition, Mr Daniel is to complete 60 hours of community work.
17. Mr Daniel has 14 days to appeal against the sentence.
18. As previously ordered, all details leading to the identification of the complainant KH and/or her family members ST and KT are permanently suppressed.

**DATED at Port Vila this 19<sup>th</sup> day of July 2024  
BY THE COURT**

*VMT*

Justice Viran Molisa Tria

