IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Appeal
Case No. 24/2487 CoA/CRMA

BETWEEN: PETUEL TASSO
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Date of Hearing:	***4th November 2024***
Coram:	***Hon. Chief Justice Lunabek*** ***Hon. Justice R White*** ***Hon. Justice O Saksak*** ***Hon. Justice D Aru*** ***Hon. Justice V M Trief*** ***Hon. Justice E P Goldsbrough***
Counsel:	***Malites, P for the Appellant*** ***Karae, T for the Respondent***
Date of Decision:	***Friday 15 November 2024***

JUDGMENT OF THE COURT

1. This appeal is against a sentence imposed on 29 July 2024 when Petuel Tasso (the appellant) was sentenced for two offences, one of committing an act of indecency contrary to section 98 (A) of the Penal Code (maximum penalty: imprisonment for 10 years) and one of domestic violence contrary to section 10 of the Family Protection Act (maximum penalty: imprisonment for 5 years or a fine of VT 100,000, or both). The offences were committed against different family members.

2. The offence of committing an act of indecency took place in 2019. The Appellant made his niece, 8 years old at the time, touch his penis over his clothes. At the time, the Appellant was 45 years of age.

3. On 2 June 2023, the Appellant punched his own son about his body. That amounted to an offence of domestic violence under the Family Protection Act.

4. As the offences were different, were committed some four years apart and involved different victims, it was appropriate for separate sentences to be imposed for each. This is essentially what the Judge did by assessing separately the appropriate sentence for each offence before considering concurrency, and thereby reaching a single starting point.

5. In relation to the offence of committing an indecent act, and following the sentencing process approved by this Court in *Philip v Public Prosecutor* [2000] VUCA 40, the judge fixed a starting point of imprisonment for three years and arrived at an end sentence of one year and eight months imprisonment. There is no complaint in this appeal as to that sentence.

6. In relation to the offence of domestic violence and again following the sentencing process approved in *Philip*, the judge fixed a starting point of imprisonment for nine months.

7. So as to give effect to the totality principle, the Judge adopted a combined starting point of imprisonment for three years and three months. Given the nature and timing of the offences, this was probably a merciful approach.

8. From the starting point of three years and three months, the judge deducted 13 months (33.3%) on account of the appellant's early guilty plea, four months (in round terms 10%) for the appellant's personal circumstances, and a further two months on account of the time the appellant had spent in custody before being sentenced. The appellants' personal circumstances included his age of 50, the fact that in 2019 he had been a first offender, had good support in the community and was willing to participate in a custom reconciliation ceremony.

9. The deductions meant that the end sentence was imprisonment for one year and eight months.

10. The sole ground of appeal is that the sentencing judge fell into error in declining to suspend the end sentence.

11. The sentencing judge dealt with the question of suspension beginning at [34] of her sentencing remarks. She began by setting out the provisions of s. 57 of the Penal Code, which required consideration of the circumstances, the nature of the offending, and the defendant's character. The Judge then referred to *Public Prosecutor v Gideon* [2002] VUCA 7. In that case, this Court said: -

> "It will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse."

12. The Judge went on to consider other cases in which an immediate sentence of imprisonment had not resulted. This included the decision of this Court in *Achary v Public Prosecutor* [2023] VUCA 44. The Judge then considered where on the scale of offending this particular offence should fall. She took into account the breach of trust, the vulnerability of the victim, the significant age disparity, and the lack of insight that the Appellant displayed into his offending.

13. In [38] of her remarks, the Judge concluded that suspending the sentence would send the wrong message and said that the offending by the appellant against a vulnerable child needs to be marked.

14. The principal focus of the appellants' counsel on the appeal was on decisions in the Supreme Court in which suspension of a sentence for an act of indecency had been allowed. Counsel also referred to authorities in which the Court had addressed the significance of a lack of remorse by an offender.

15. In *Public Prosecutor v Gideon*, this Court adopted the principles to be applied on an appeal against a discretionary judgment, as set out in *Skinner v the King* (1913) CLR 336 at 340. Those principles are that: -

> '... a Court of Criminal Appeal is not prone to interfere with the Judge's exercise of his discretion in apportioning the sentence [and will not interfere unless it is seen that the sentence] is manifestly excessive or manifestly inadequate. If the sentence is not merely arguably insufficient or excessive, but obviously so because, for instance, the Judge has acted on a wrong principle, or has clearly

> overlooked or undervalued or overestimated, or misunderstood some salient features of the evidence, the Court of Criminal Appeal will review the sentence; but short of such reasons, I think it will not'.

16. Although invited during the appeal hearing to identify an error by the sentencing judge, counsel could not do so. In particular counsel could not identify any error in principle or any feature of the case that had been overlooked, undervalued, overestimated, or misunderstood. Counsel acknowledged that a decision concerning suspension involves an exercise of discretion. We have not ourselves identified any error by the judge. The fact of the matter is that the appellant had been sentenced for two serious offences and the Judge had made a specific finding that he was not genuinely remorseful. The Judge also considered that the appellant had not accepted, beyond his guilty plea, any meaningful responsibility for his actions.

17. Counsel was correct in submitting that s.58 of the Penal Code also requires consideration of partial suspension. Although the Judge did not refer specifically to partial suspension, it is very apparent from the sentencing remarks that she did not consider that appropriate either.

18. As we find no error, this Court will not interfere with the sentencing judge's decision.

19. This Court noted the non-compliance with appeal management directions and the late filing of submissions on the appeal, for which counsel offered apologies. Compliance is required to ensure that the Court is in the position to hear and determine appeals during the period of the appeal session.

20. The appeal against sentence is dismissed.

DATED at Port Vila, this 15th day of November, 2024.

BY THE COURT

Hon. Chief Justice Vincent Lunabek

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU