

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

Criminal Case No. 75 of 2005.

PUBLIC PROSECUTOR

-v-

ISMAEL JEFFRY

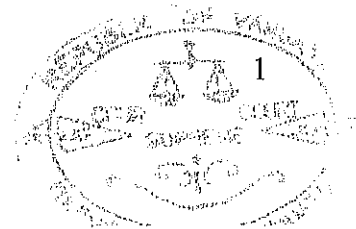
Coram: Justice Treston
Counsel: Mr. Obed for Public Prosecutor
Mr. Bartels for Defendant
Date of Sentence: 15 December 2005

SENTENCE

Mr. Ismael Jeffry, you appear for sentence today on a charge of Indecent Assault. The maximum penalty is 10 years imprisonment.

This happened in November last year when you indecently assaulted the victim who was only aged 9 years. You were at the time 16 years of age and turned 17 years on 24 December last year. You isolated the victim from her friends. She was upset and crying. You took her lower clothing off and made her suck your penis, you then pushed your fingers into her vagina causing her pain. She was so upset and scared of you that she suffered the indignity of going back to school without clothing to escape your unwanted and unlawful attentions.

The prosecutor submitted that the starting point in accordance with some cases which he showed me should be 6 years imprisonment. Your lawyer submitted that the starting point should be somewhere between 2 and 3 ½ years imprisonment. The prosecutor submitted that because of force and threats and the young age of the victim, you should be dealt with within that fashion less, of course, and allowance for a plea of guilty and other mitigating factors.



On your behalf the Public Solicitor emphasizes that you now express sorrow for what you have done. You realized immediately that what you did was wrong. You are only 17 years of age and a first offender. Although you did not know the victim very well, you knew of her for about a year prior to the offence. A custom settlement has taken place in your absence because you were told by the police not to go near the victim. You want to pursue a mechanical engineering career when you can. You stay with one of your five sisters and you are the only boy in the family. It was submitted to me that for someone of your age part of an explanation for your behaviour could have been your experimentation with matters sexual. There is no possibility, should you be imprisoned, of rehabilitation at the moment as the process stands. I am also asked to consider a suspended sentence.

I must have regard and make you accountable for the harm that you have done not only to this very young victim but also to the community generally. In a document given to me expressing the victim's feelings after the incident, she said she felt scared and shamed and didn't even want to go back to her home island of Emae. She is now scared of older boys and even them passing by causes her distress. She missed out in sitting her exam because of the incident. I must make you aware of your responsibilities for this offending and I must denounce your conduct. I must protect not only the victim particularly here but also the community at large, and there is additional need for me to protect such a young victim from this sort of behaviour.

I must balance aggravating and mitigating factors. The aggravating factors include your threats and separation of the victim from her class mates. Also an aggravating factors is the fact that she was only 9 years of age. Although you are relatively young at 17 years of age, there was a disparity between your age and hers. In addition although the whole incident is wrapped up in one indecent assault, there were other parts to the indecent assault. First you made her suffer the indignity of sucking of your penis and second you inserted your finger into her

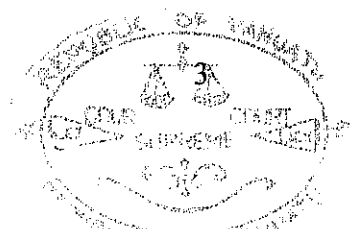


vagina. So this is a serious sexual assault. In some jurisdictions that would be regarded as equivalent to rape. So there are repeated elements to this indecent assault.

By way of mitigation there is your expression of contrition and remorse and the fact that you are a first offender and the fact that there was an endeavour to compensate the victim by custom on your behalf under section 190 of the Criminal Procedure Code [CAP. 136]. You have also pleaded guilty at a very early stage when the charge was crystallized. Further to that a demonstration of your remorse is the saving of the victim from having to give evidence in front of strangers.

I have been asked to consider a suspension of sentence and in considering that under the Suspension of Sentences Act [CAP. 67] I must take into account the circumstances and the nature of the crime and your character. I have already considered those in some respects. The nature of the crime I have said was particularly serious and one of the most serious indecent assaults that one could envisage. So the circumstances are against you, although your character is unimpeached. Having examined the matter I do not consider that a suspension of sentence is appropriate even bearing in mind your age. It is appropriate in my view to make you suffer a penalty and that penalty must be imprisonment. Anything less would be inappropriate and inadequate. And the Court of Appeal has confirmed that in *PP -v- Gideon* Court of Appeal Case No. 3 of 2001 where it said this:-

"It will only be in the most extreme of cases that suspension could even be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people forfeit the right to remain in the community."

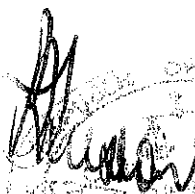


Despite what the Public Solicitor says about you not being a man as you are only on the brink of manhood, you have committed a particularly adult offence and were particularly violent with the victim. I do not consider that as the Court of Appeal said that yours is an extreme case. However I recognize your relative youth and your previous good behaviour in the starting point which I adopt. Had you've been older the starting point would have been greater. I try to balance the aggravating and mitigating factors when I set the sentence. I agree with your counsel that 6 years would be too high for a starting point in accordance with your circumstances. I set the starting point at 4 years imprisonment. I immediately deduct 1/3 for your plea of guilty and I make a further allowance for the custom settlement and other mitigating factors. The sentence that I impose which I consider is appropriate bearing in mind all those factors and the exercise which I have undertaken is 2 ½ years imprisonment. You are sentenced accordingly to that term. There is no need to deduct an allowance for you being in custody because you have been on bail.

In setting that term I am mindful of your youth and the lack of a suitable facility for rehabilitation in the present system at prison but I consider I must adopt a firm approach to an offence such as this.

You have 14 days to appeal this sentence if you are not satisfied with it.

DATED at Port Vila on 30 January 2006


P. I. Treston
Judge.

The signature is written in black ink over a circular official seal. The seal contains the text 'JUDICIAL OFFICER OF VANUATU' around the perimeter and 'P. I. TRESTON' in the center. The signature is a cursive script that overlaps the seal.