

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

ARU RODRICK

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for Public Prosecutor
Ms J. Tari for Defendant

SENTENCE

1. Aru Roderick you admitted to attempting to commit acts of indecency with a young girl of 6 years old. This charge was laid against you under sections 28 and 98 A of the Penal Code Act Cap 135 (the Act). This offence carries a maximum penalty of 10 years imprisonment.
2. The second charge against you was laid under section 10 of the Family Protection Act No. 28 of 2008. You pleaded guilty to this charge as well. This offence carries a maximum penalty of 5 years imprisonment.
3. Pursuant to your guilty pleas, the Court entered convictions against you on 9th September 2011.



4. The Court has not had the benefit of any pre-sentence report as ordered on 9th September 2011. The Court relies only on the fact given by the Prosecutions in their sentencing submissions filed on 10th October 2011.

5. The aggravating features of your offending are –
 - (a) Your victim is only 6 years old.
 - (b) There is great disparity between your age of 23 years and hers being 6 years.
 - (c) There was a breach of trust.
 - (d) There was risk of the safety of the victim when the offending occurred in your room when the door was locked.

6. Due to these aggravating features, it is clear from the case authorities of PP v. Alick Kelep [2009] VUSC 111 and PP v. Gideon [2002] VUCA 7 that your actions must be condemned in the strongest terms so that it acts as a deterrence both to you and to others. And to achieve those purposes the only appropriate punishments the Court will impose will be custodial sentences.

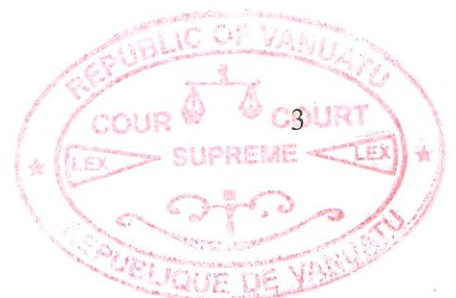
7. From the facts your actions went beyond a mere attempt. When you removed your penis from your trousers in front of your victim, the act of indecency had commenced. But even if it was



merely an attempt, section 28 (4) of the Act is clear that "the commission of an attempted offence shall constitute an offence punishable in the same manner as the offence concerned."

8. Both the Prosecutions and defence counsel have submitted that your sentence should be suspended. However, those submissions are rejected. Your offending warrants a straight forward custodial sentence.
9. The lead offences are Attempt and Act of Indecency contrary to sections 28 and 98 A of the Act. The Court will sentence you only in respect to this charge. There was no need for a separate charge under the Family Protection Act. There will be no separate sentence for that charge.
10. For the lead offences, you are sentenced to 4 years imprisonment as the starting point. There will be no uplift. I consider the following factors as relevant in mitigation:-
 - (a) That you are a first-time offender.
 - (b) You pleaded guilty at the earliest opportunity.
 - (c) Your admissions to the police.

I do not accept that you have shown any remorse at all for your action.



I consider that 16 months should be deducted from the total of 4 years imprisonment. This represents a 1/3 reduction. You will therefore serve the balance of 2 years and 8 months imprisonment at the Correctional Centre in Luganville.

11. Your sentence commenced on 6th December 2011 when you were re-apprehended after you had escaped from lawful custody.
12. That is the sentence of the Court. You have a right to appeal within 14 days if you so choose.

DATED at Luganville this 12th day of December 2011.

BY THE COURT


OLIVER A. SAKSAK

Judge

