

PUBLIC PROSECUTOR – VS – TOUSSAINT TIOBANG

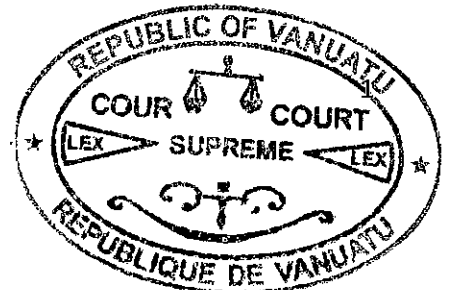
Coram: *Mr. Justice Oliver A. Saksak*

Counsel: *Mr. Ken Massing for the State
Ms Jane Tari for the Defendant*

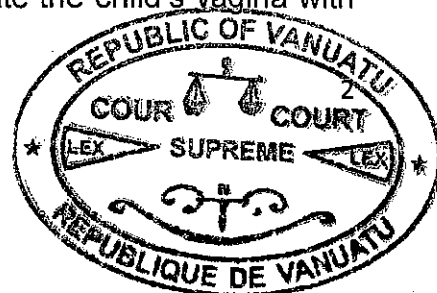
Date: *8th November 2013*

SENTENCE

1. Toussaint John Tiobang you are for sentence today for pleading guilty to one charge of act of indecency with a young person contrary to section 98A of the Penal Code Act Cap. 135 (the Act). This offence carries a maximum penalty of 10 years imprisonment.
2. This offence took place on 4th September 2013 in a plantation at Sesivi area, West Ambrym. The victim is a 5 year old girl. You were only 13 years old at the commission of the offence but you have now turned 14. The victim and her family were shelling out copra. You then enticed her to go with you to pick soursop (carosol) and she followed you. You then asked to have sex and she agreed and removed her clothes. You then proceeded to have sex with her but could not penetrate her because she was too small. You then inserted your little finger into her vagina but that she felt pain and you stopped. You then masturbated yourself and ejaculated. Then you left and returned to your house. Upon returning to the house the family discovered that the victim's clothes were worn inside out. When they went for a bath at the spring they noticed blood stains on her pants and enquired of her what it was. Then she told her family what had happened.



3. You do not dispute all those facts. Your version of the offence is that you pushed your little finger into the little girl's vagina by 1 ½ centimeter. And you admitted that by doing so, you realized that what you did was wrong. The victim calls you as "Daddy".
4. Despite that there was no medical report provided, from the accepted facts of what you did to this 5 year old child, no doubt will have a long impact on her life mentally. She looked to you as her "daddy" and expected to be protected by you. Instead, you beached that trust and took advantage of age and vulnerability to sexually abuse her. There appears to be some degree of planning for all this on your part.
5. This Court has said time and time again that men who take advantage sexually of young girls and abuse them forfeit the right to remain the community. (See Gideon v. Public Prosecutor [2002] VUCA 7).
6. The Court must continue to send out that clear message in order to –
 - (a) Deter offenders and others who might be minded to do the same.
 - (b) Protect the young and vulnerable members of the community in particular girls and women.
 - (c) Mark the seriousness of this offending.
 - (d) Mark public disapproval and condemnation of the offence.
 - (e) Punish the offender adequately and appropriately.
7. Your case is distinguished from the cases of Public Prosecutor v. Albert [2013] VUSC 17 and Public Prosecutor v. Keleb [2009] VUSC 111. It is similar in some respects to the case of Public Prosecutor v. Child L [2011] VUSC 66 except that in that case the defendant was 37 years old and his victim was 14 years old. The other difference was that the defendant merely rubbed his penis on the victim's vagina and ejaculated. Later he had the victim masterbate him until he ejaculated again. In your case you first started by trying to penetrate the child's vagina with



your penis. When she felt pain and you stopped, you inserted your little finger in by 1 ½ centimeter. That may not be seen as deep but it completed the act of sexual intercourse as defined by section 89A (b) of the Act.

8. You were lucky not to have been charged also with unlawful sexual intercourse perhaps by oversight or deliberately, the Court can never know. However, your actions were clearly indecent and that is the offence the Court must punish you for.
9. By comparison, your offending is more serious than the defendant Child L's case. Your offending warrants a custodial sentence to achieve the purposes stated in paragraph 6. The offending warrants a starting point of 4 years imprisonment.

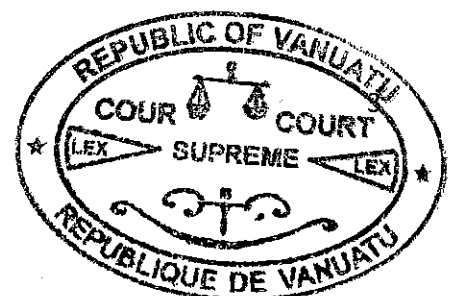
10. I consider reducing your sentence for the following mitigating factors –

- (a) Unblemished record and being a first-time offender.
- (b) Guilty plea at first opportunity.
- (c) Good cooperation with the Police during investigations and interview.
- (d) Willingness to perform custom reconciliation.

I allow 2 years reduction for this as a general reduction.

11. I consider your tender age of 14 years. For this, your Sentence of 2 years will be suspended for a period of 2 years. During this period of suspension, you must not commit this offence or at any other offence for which you would be charged and convicted. If you do, you will go directly to prison to serve out your 2 years suspended Sentence.

12. I have considered the recommendation of the Probation Officer that a sentence of supervision should be imposed. As a very young person, I accept that you need supervision to help you rehabilitate and not re-offend in the future.




13. Accordingly, I order that you be placed under supervision by a Probation Officer for a period of 2 years of your suspended Sentence. You are to –

- (a) Report in person to a Probation Officer as soon as practicable and not later than 72 hours after this sentence.
- (b) Report to a Probation Officer as and when required to do so by the Probation Officer and must notify them of your residential address.
- (c) Not move to a new residential location without the prior written consent of your Probation Officer.
- (d) Take part in a rehabilitative and re-integrative needs assessment and/or programme if and when directed to do so by your Probation Officer.

14. That is the Sentence of the Court. You have a right of appeal against Sentence if you so choose, within 14 days from the date of Sentence.

DATED at Luganville this 8th day of November 2013.

BY THE COURT


OLIVER A. SAKSAK
Jduge

