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

Criminal Case No.895 of 2017

PUBLIC PROSECUTOR- VS- JOHN PATRICK VIRALONE

Coram: *Mr. Justice Oliver A. Saksak*

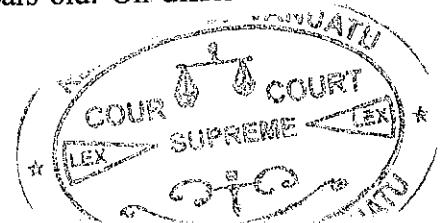
Counsel: *Damien Boe for Public Prosecutor
Junior Garae for Defendant*

Date of Pleas: *18th April 2017*

Date of Sentence: *21st April 2017*

SENTENCE

1. John Patrick Viralone, you are for sentence today for having pleaded guilty on 18th April 2017 to one charge of sexual intercourse with child under care and protection (section 96 (1)) Penal Code Act, (CAP.135) (Count 2) and to two counts of acts of indecency with a young person (section 98A) (Counts 3 and 4). The charge of sexual intercourse without consent (sections 90-91) was withdrawn and nolle prosequi was entered on 18th April 2017. The order issued on that date records that position.
2. The offence of sexual intercourse with a child under care and protection carries a maximum of 10 years imprisonment and the offence of act of indecency with a young person also carries a maximum of 10 years imprisonment.
3. The facts of your offendings are as set out in the prosecution summary of facts filed on 18th April 2017. You have conceded to those facts. Relevantly they can be summarised better as follows:-
 - a) The victims DB is your step- daughter, one of the five children born out of wedlock to your wife whom you married in church in or about the year 2007. She was born on 29th April 2000. At the time of lodging her complaints to the police on 30th November 2016, she was 16 years old.
 - b) The acts of indecency began between 2007 and 2009 at your house in Apopo Village, West Ambae when the victim was about 7 to 9 years old. On different



dates and times you subjected the victim to sexual abused by forcing her to hold your penis until you ejaculated. At other times you held her breasts and touched her vagina. At those times the victim's mother was not at home but teaching at Vinamangwe Primary School in Nduindui. Those acts of indecency continued through 2010 to 2014.

- c) In 2014 you started having sexual intercourse with DB, at 14 years of age when her mother was teaching at Apanga Primary School on North Pentecost. These offendings took place in your home at Apopo Village. Your victim's mother later went to teach at Nasava Primary School on South Maewo. At those times, the victim felt pain during and after sexual intercourse.
 - d) In 2015 when the victim was a student at the Nafuturiki Secondary School in Year 8 you had sexual intercourse with her several times over the weekend when she went out to stay with you at the village. The offendings happened on Sunday afternoons before the victim returned to school. She felt sad and depressed by it all but would not tell anyone as you had stopped her not to do so. Your offendings continued through 2015 to the last incident occurring on 28th October, 2016 at 10 O'clock in the night.
4. The Principles of sentencing offenders who commit sexual offences of the nature you committed and have admitted to are well settled and established at common law. These have been recognised and adopted in Vanuatu in classic cases of PP.v. Scott [2002] VUCA, PP.v. Gideon [2002] VUCA 7, PP.v. August [2000] VUCA 29, Peter Talivo v PP [1996] VUCA 2, Morris Ben.v. PP [1993] VUCA 3, PP.v. Bae [2003] VUCA 14 and PP.v. Molisingi [2015] VUSC 47.
5. These cases help the Court to impose a sentence that must-
- a) Protect the young, weak, vulnerable and the society as a whole,
 - b) Mark the gravity or seriousness of the offendings,
 - c) Mark public condemnation and disapproval of the actions and conducts of the offender,
 - d) Deter the offender and other like-minded people, and
 - e) Punish the offender adequately



6. Applying those principles to the facts of your offendings, the only appropriate sentence the Court can impose on you is to be a custodial sentence.

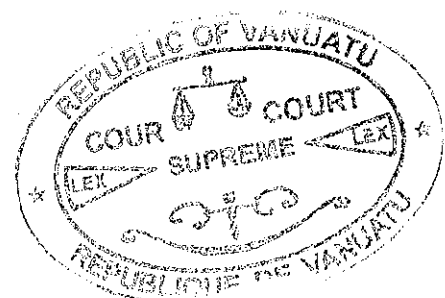
7. The aggravating features of your offendings from the facts were and are-

- a) A serious breach of trust, between a father and step daughter.
- b) A young victim of 7 years when the offendings started and spanning over 9 years to October, 2016.
- c) Offendings were repetitive.
- d) Offendings occurred within the confines of a married home,
- e) Age disparity of about 18 years, the offender being 31 years in 2007 and 36 in 2014,
- f) Unprotected sex with risk of teenage pregnancy and sexually transmitted disease,
- g) Subjection to sexual indignities and pervasions,
- h) Mental and physical impact on the victim, and
- i) A degree of planning was involved.

8. Taking all these together with the facts, your offendings fall within the middle to high range of the scale, warranting the starting point of 6 years imprisonment for the offence of sexual intercourse with child under care and protection in Count 2. There will be no uplift.

9. For the offence of acts of indecency in Count 3 from 2007 to 2009, you are sentenced to a starting point of 6 years imprisonment also. And for the same offence repeated from 2010 to 2014, you are sentenced to 6 years imprisonment but this will run concurrently with the 6 years for the offence in Count 3.

10. Because these offences were separately committed on different dates and over duration of 9 years, the sentences for acts of indecency will be served consecutively with the 6 years imprisonment for the offence in Count 2. That brings the total sentences to 12 years imprisonment.



11. But I shall consider your mitigating facts as submitted in your pre-sentence report and your written submissions as follows-

a) For guilty plea at reasonable opportunity- a 1/3 reduction is allowed reducing your 12 years sentence down to 8 years.

b) For clean past record with no criminal record, good co-operation with the police at investigation, substantial customary reconciliation and medical condition a reduction of 12 months is allowed bringing the balance of 8 years imprisonment to 7 years.

12. John Viralone, the Court therefore sentences you to an end sentence of 7 years imprisonment. There will be no suspension of sentence. But taking into account your pre-custodial period, your sentence of 7 years is backdated to 31st January 2017 when you were first remanded in custody.

13. That is the sentence of the Court. You have a right of appeal against this sentence within 14 days if you disagree with it.

DATED at Luganville, this 21st day of April 2017

BY THE COURT


OLIVER.A.SAKSAK

Judge

