

PUBLIC PROSECUTOR

- v -

NIGEL CHARLES

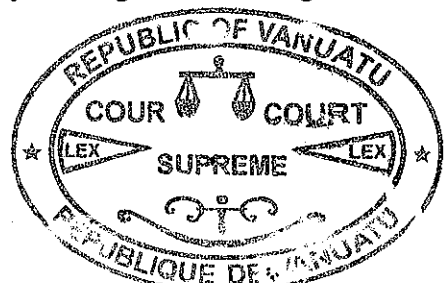
Coram: Chief Justice Lunabek

Counsel: Mr. Philip Toaliu for Public Prosecutor
Mr. Lorenzo Moli for the Defendant

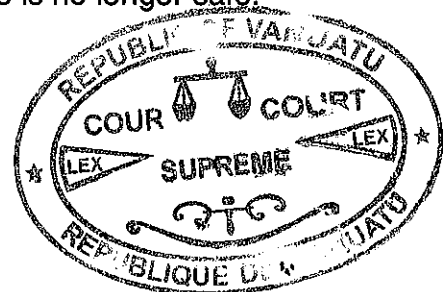
Date of Sentence: 3rd August 2018

SENTENCE

1. This is the sentence of Nigel Charles. On 3 July 2018, you entered guilty pleas on one count of aggravating sexual intercourse without consent contrary to section 89 (a) and 97 A (2) (d) (Count 1) and one count of indecency with a young person, contrary to section 98 A of the Penal Code Act [CAP 135].
2. The brief facts of this case is agreed and accepted by you before you entered your guilty pleas on each of them. The summary of the facts is this –
3. The complainant is Ms. Angela Magi. She is your step daughter and lives with her mother and you at nambatri area in Port Vila. She was 12 years old at that time of offence. She goes to school at Pango Centre School and is in class 5.
4. You, Nigel Charles, you are from Vanua Lava on Banks Island and are the complainant's stepfather. You are 35 years old and are employed at the Ah Pow Bakery in Port Vila.
5. On 12th of April 2018, the complainant lodged an official complaint at the Port Vila Police Station that, you, as her stepfather, were sexually assaulting her in that you were touching her genitals and inserting your fingers into her genitals.



6. The offence started on the 25th December 2017. The family was celebrating Christmas and you and your partner (complainant's mother) were drinking alcohol and got drunk. You then advised the children to go to bed.
7. The complainant went into her room and was lying down to sleep. You then came into the room and put your hands into her pants and was touching her vagina. She was lying with her face facing down. You then put your finger into her vagina. She then pushed your hand away from her.
8. After this, you continued to do this to her on your day offs. This is when the complainant's mother went to work and you are at home with the complainant in the afternoon after she comes home from school.
9. Every night on your day offs, you would go into the complainant's room when she was asleep and indecently touched her vagina and fondled her breasts. When she tried to call or scream for help, you would block her mouth with your hands.
10. On 10th April 2018, the complainant was sleeping when you entered her room and put your hands into her underwear and were touching her vagina. You were caught by the complainant's aunty and everything came to light.
11. The offence of aggravated sexual intercourse with a child attracts a maximum penalty of life imprisonment. And acts of indecency with a young person carried a maximum penalty of 10 years imprisonment. They are serious offences as reflected by the respective maximum penalties imposed by law.
12. In this case, the circumstances of the offending are aggravated by the following factors:-
 - (a) The repeated acts of indecency and the repeated insertion of fingers into the victim's vagina.
 - (b) There was a breach of trust. You are the stepfather of the girl victim. She lost trust in you. Her home is no longer safe.

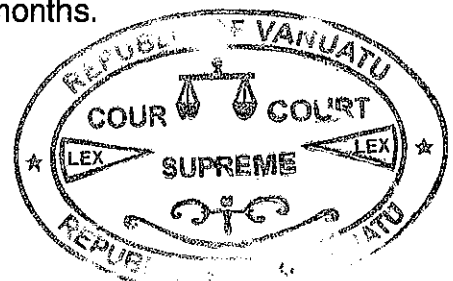


(c) The offences happened within the confine of the family home at Nambatri Area, Port Vila. The victim will need protection within the domestic home environment and set up considerations.

(d) The offence was prolonged over a certain period of time.

(e) The difference in age of the victim and you. The girl victim was 12 years of age while you were 35 years. There is a 23 years difference between them.

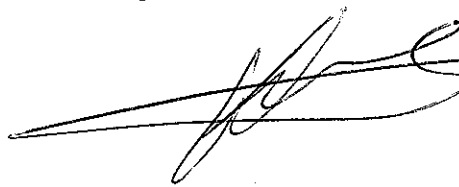
13. In this case, I assess the nature and the circumstances of the offending inclusive of the above aggravating factors, a starting sentence of 10 years imprisonment is appropriate when involving children under the age of 13 and the defendant, like you in this case, was in a position of trust in relation to the child. I agree with the prosecution submission to this effect. Sexual offences against a child is more serious than the same offence perpetrated against an adult and attracts a higher starting point (see **PP v-v Ali August [2000] VUSC 73; PP –v- Gideon [2002] VUCA 7; PP –v- Bae [2003] VUCA 14** which are on the similar type of approach like the Solomon Islands case of **Regina –v- Pana [2013] JBHC 88** and the case of **Milberry [2002] EWCA CRM 2891 (9 December 2002), 31** referred to by the Prosecution in their submissions).
14. In mitigation, you are 34 years of age. You live in de facto relationship with your partner with five (5) children and all live together. You plead guilty at the first opportunity given to you. You have no previous convictions and you are a first time offender. You express remorse for your offending. You cooperated with the police. You were in pre-sentence custody since 13 April 2018.
15. On the balancing exercise, I give you an allowance of 24 months to reflect most of your mitigating factors apart from your early guilty pleas. Your sentence is reduced to 8 years.
16. You are entitled to 1/3 as you admitted your guilt and pleaded guilty at the earliest opportunity given to you. Your sentence is further reduced to 2 years and 6 months. Your end sentence is 5 years and 4 months.



17. A sentence of 3 years is imposed for the offence under s. 98 A of the Penal Code Act (Count 2).
18. These two (2) sentences shall be served concurrently which means with a total term of 5 years and 4 months imprisonment.
19. You have already served time in custody since 13th April 2018 before you are sentenced today. This is to be taken in your favour as well.
20. Your term of imprisonment sentence is 5 years and 4 months.
21. The next question is whether the circumstances of this case justify that it be suspended. I answer in the negative (no).
22. You are ordered to serve a term of 5 years and 4 months imprisonment which are deemed to start on 13th April 2018.
23. You have 14 days to appeal this sentence if you are unsatisfied with it.

Dated at Port Vila, this 3rd August 2018.

By the Court



Vincent Lunabek
Chief Justice

