

BETWEEN: Public Prosecutor

AND: Viti Freddy
Defendant

Date: 28 February 2019
By: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mr J. Garae for the Defendant

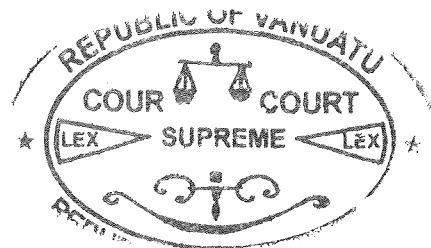
SENTENCE

A. Introduction

1. Mr Viti had pleaded guilty to unlawful sexual intercourse without consent. The maximum sentence for that offence is a term of life imprisonment.

B. Facts

2. Mr Viti entered the complainant's bedroom while she was asleep. He took off her clothes and digitally penetrated her vagina with his right index finger, causing an injury which bled. Afterwards, Mr Viti instructed the young girl to lie about what had caused the injury – if anyone asked she was to say she had fallen on some wood. At the time, Mr Viti's wife was not at home – she had gone for medical treatment that morning. When she later returned and discovered the bleeding, she asked the young child what had



caused her bleeding, and she was told the lie Mr Viti had instructed the girl to say – she did not believe that story and took the young child to be medically examined and treated.

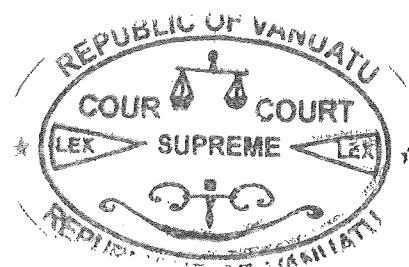
3. The young girl was under 5 years old at the time; Mr Viti was 42 years old. The girl had been living in the same house as part of the family, although not closely related.

C. Aggravating/Mitigating Factors to the Offending

4. There are several aggravating factors to the offending:
 - The age differential between Mr Viti and the young girl, and the enormous difference between them in terms of authority;
 - There was a breach of trust. The young girl was treated as part of the family and the offending took place in what she regarded as her home;
 - There was an element of planning involved. Mr Viti waited until he was able to take his opportunity due to his wife being away from home;
 - The offending caused an actual injury to a very young child;
 - Mr Viti instructed the young child to lie, so as to conceal his offending – and the girl did exactly as he instructed.
5. There are no mitigating factors to the offending.
6. The start point that I adopt as appropriate for this criminal offending and Mr Viti's culpability, bearing in mind that was digital penetration as opposed to other forms of unlawful sexual intercourse, is 6 years imprisonment.

D. Personal Factors

7. Mr Viti admitted the offending immediately to the police and co-operated with them.
8. Mr Viti has no previous convictions. He is a married man with 4 sons and a daughter. He is said to get on well with his family and his immediate community. He has not taken part in a custom ceremony.
9. Mr Viti's personal factors enable me to reduce the start point for sentence by only 3 months imprisonment. It is at that relatively low level, as there is ample authority setting out that a defendant's personal good previous record has only a limited bearing on sentencing for sexual offending.



E. Plea

10. Mr Viti pleaded guilty at an early stage. The maximum discount available for a prompt plea, recognizing the remorse, the saving of Court time and cost, and the very important aspect of a young child not having to testify about such matters, is one-third of the sentence. I am prepared to give that maximum discount, despite the comments in the PSR, which have been negated by Mr Garae's useful submissions on the point.

F. Sentence

11. The end sentence I impose on Mr Viti is one of 3 years 10 months imprisonment.

G. Suspension

12. In limited circumstances I have a discretion to suspend all or part of the sentence. Given that this is serious sexual offending, the authorities make it plain that would be inappropriate in Mr Viti's case. Accordingly, suspension is not available.


H. Conclusion

13. Mr Viti is to serve 3 years 10 months imprisonment. Given that Mr Viti has been remanded in custody since his arrest, the sentence is to commence from 3 September 2018.

14. Mr Viti has 14 days in which to appeal this sentence if he does agree with it.

DATED at Luganville this 28th day of February 2019

BY THE COURT


Justice G.A. Andrée Wiltens

