

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

Criminal
Case No. 20/343 SC/CRML

PUBLIC PROSECUTOR

v

AMOS PETER

Date: 17 July 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mr H. Vira

SENTENCE

A. Introduction

1. Mr Peter pleaded guilty to one representative charge each of incest, attempted incest and threats to kill. He pleaded guilty to the charges of incest and attempted incest on 3 March 2020. On re-arraignment on 27 May 2020, Mr Peter pleaded guilty to the charge of threats to kill. The maximum sentence provided by the *Penal Code* for incest at the time of the offending was 10 years imprisonment, and for threats to kill 15 years imprisonment.
2. I convict Mr Peter on his pleas and the summary of facts.

B. Facts

3. The complainant Ms J is Mr Peter's eldest biological daughter. She was about 10 years old when the offending began.
4. In November 2011, Ms J's mother (Mr Peter's wife) went overseas. That night, Mr Peter went to Ms J's bed, held her, blocked her mouth and started by touching her breast and eventually penetrating her vagina with his finger. She was helpless and could not resist as she was threatened by Mr Peter. This continued throughout the week that Ms J's mother was overseas. On the mother's return, Mr Peter continued to have sexual intercourse with Ms J up to April 2016 by penetrating her vagina with his finger. He did so both at night and during the day. During the day, he sent Ms J's siblings out of the house

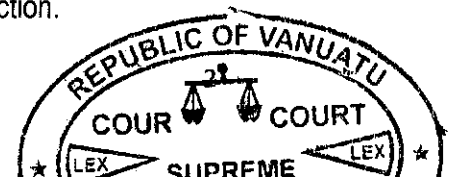


then conducted his offending by penetrating his finger into her vagina. When Ms J refused to comply, Mr Peter would get angry.

5. As a result of the offending from November 2011 to April 2016, Ms J had to cease her formal education. According to Ms J, on one occasion she told her mother about Mr Peter's behaviour. Her mother's response was not to tell anyone about it.
6. Mr Peter's offending continued until 2016 when Ms J, sick of her father's behaviour, ran away from home and found refuge at her uncle and aunty's house at Mele Village. She eventually found the courage to tell her aunty about the offending, and it was reported to the Police.
7. Ms J cannot recall the exact date but she did recall that one night after Mr Peter's offending began, he attempted to penetrate Ms J's vagina with his penis. He did not succeed in doing so because her vagina was too small. Mr Peter told the Police that he had twice attempted this.
8. During the offending from November 2011 to April 2016, while penetrating Ms J's vagina with his finger, Mr Peter threatened Ms J when he said the following words, "yu no mas talem aot long wan man spos no bae mi kilim yu yu ded" ("You must not tell anyone or I will kill you"). Ms J was afraid and did not tell anyone until March 2019 when she finally had the courage to tell her aunty about Mr Peter's offending.

C. Sentence Start Point

9. The aggravating factors of the offending are:
 - There has been a serious breach of trust. Ms J is Mr Peter's own biological daughter. He has a responsibility and duty to care for and protect her. Instead he used her for his own sexual gratification. Moreover, he did so within the family home where more than anywhere else, Ms J was entitled to feel and to be safe and secure. Ms J has lost her innocence and her trust has been severely violated.
 - The large age gap between Mr Peter and Ms J – he was 26 years old and she was about 10 years old when the offending began. He was a mature man who knowingly and intentionally abused his daughter over a period of 5 years.
 - The age of the victim – Ms J was just 10 years old when the offending began.
 - The harm suffered by the victim – Ms J felt pain when Mr Peter penetrated her vagina with his fingers and attempted to with his penis. She has now lost her family to the point that she no longer regards Mr Peter as her biological father. Ms J has had to flee from her family home for her own safety.
 - The degree of violation – the offending began with Mr Peter penetrating Ms J's vagina with his finger. After this, he attempted to penetrate her vagina with his penis. He also then used more than one finger to penetrate her vagina.
 - Mr Peter exposed Ms J to the risk of sexually transmitted infection.



- It was planned – Mr Peter took the opportunity of Ms J's mother being away to begin his sexual abuse of Ms J. On occasions, Mr Peter sent Ms J's siblings out of the house and then conducted his offending against her.
- The offending was repeated and occurred over a long period of time from November 2011 to April 2016.
- Mr Peter's threats were effective in intimidating and silencing Ms J for 5 years from speaking out about the offending. She felt frightened and powerless to resist until she ran away from home in 2016, and to tell anyone about the offending until March 2019.

10. There are no mitigating factors related to the offending.

11. I consider that the factors set out above and in the circumstances where Ms J had been continuously sexually violated by her biological father from the age of 10 until she turned 15 require a global sentence start point of 8 years 6 months imprisonment.

D. Personal Factors

12. Mr Peter is 37 years old. He is married and has six children including Ms J. They (no longer including Ms J) reside at Teouma area, South East Efate. Mr Peter did not attend school. He earns his living through wood carving. The pre-sentence report writer reports that Mr Peter does not have any support from his community – as seen in Mr Peter's excuses that his chief and Pastor have all travelled overseas and cannot speak with the report writer.

13. Mr Peter is a first time offender. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.

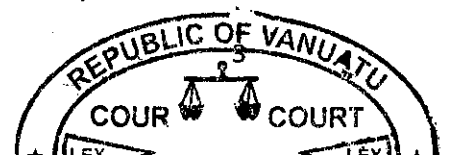
14. In the circumstances, Mr Peter's personal factors do not warrant any deduction from the sentence start point.

E. Deduction for Guilty Plea

15. Mr Peter pleaded guilty to two charges at the first opportunity. On re-arraignment two months later, he pleaded guilty to the remaining charge.

16. The pre-sentence report writer reported that Mr Peter stated that he has forgiven his daughter for what he has done and that this is a clear indication of Mr Peter's lack of remorse for his offending. I would add that this also shows Mr Peter's lack of understanding of the trauma that he has caused to Ms J and of her perspective as the victim of his offending.

17. Mr Peter has not performed any reconciliation ceremony in relation to his offending. Ms J has refused to accept any custom reconciliation. She stated to the pre-sentence report writer that she no longer regards Mr Peter as her biological father as she will have to bear what she has experienced in his hands for the rest of her life. She is very concerned for the safety of her two younger sisters, that they not be subjected to abuse by Mr Peter like



she was. Ms J also outlined the traumatic effects of Mr Peter's offending on her and her concern for her younger sisters' safety in her Victim Impact Statement.

18. Given that Mr Peter did not plead to all the charges at the first opportunity, and his lack of remorse, Mr Peter is entitled to a 15% deduction.

F. End Sentence

19. The sentencing principles applicable in this case are holding Mr Peter accountable for his criminal conduct, protecting the community including his own family and children, to denounce the criminal conduct, and to deter him and others from acting in this manner in future.
20. Taking all of those matters into account, the end sentence that must be imposed is 7 years 3 months imprisonment. I impose that on the three charges concurrently.

G. Suspension

21. There is no question that an immediate custodial sentence must be imposed. A condign sentence is imposed to express society's abhorrence for sexual offending against children. A child is not an instrument for anyone's sexual gratification. Anyone who chooses to engage in such criminal conduct does so in the likelihood that if convicted, they must serve time in a correctional centre.

H. Result

22. Mr Peter is sentenced to 7 years 3 months imprisonment on the three charges concurrently.
23. The sentences are back-dated to run from 13 September 2019.
24. Mr Peter has 14 days to appeal this sentence if he disagrees with it.
25. The name and details leading to the identification of Ms J are permanently suppressed.

**DATED at Port Vila this 17th day of July 2020
BY THE COURT**

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Viran Molisa Trief
Judge

