

PUBLIC PROSECUTOR

V

KAMILO VIRA

Date of Plea: 25th February 2021
Date of Sentence: 26th day of March, 2021 at 8:30 AM

Before: Justice Oliver Saksak

In Attendance: Ms Josephine Tete for Public Prosecutor
Ms Kylie B Karu for Defendant

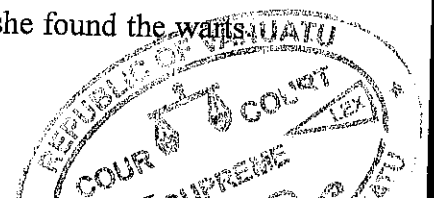
SENTENCE

Introduction

1. The defendant Kamilo Vira pleaded guilty to one charge of attempted sexual intercourse with child under care and protection contrary to sections 28 and 96 (1) (b) of the Penal Code Act [CAP 135]. He is appearing for sentence today.

Facts

2. The victim is a 2 year old child, living under the care and protection of the defendant. On 27th May 2020 the victim's mother and big sister returned home from work and school at around 4:00pm. They noticed there was no babysitter. The victim's elder sister noticed some cotton hanging out from the victim's bottom. They saw blood on the cotton and the mother became suspicious. They saw blood also on the victim's pants. The mother asked the victim what happened and she told her mother the defendant had pinched warts off her body which resulted in the blood flowing. Later that night when the victim's mother examined the victim's body closely, she found the warts.



were still on her body. She also discovered bite marks on her right cheeks, chest and waist. The mother then reported the matter to the Police who investigated. A medical report shows there were lacerations also on the victim's vagina.

3. The Police arrested the defendant and interviewed him about the allegations. He made admissions.
4. The defendant is currently serving a concurrent sentence of 9 years and 6 months imprisonment for 2 charges of intentional assault, 2 charges of threats to kill and 1 charge of sexual intercourse without consent.

Maximum Penalty

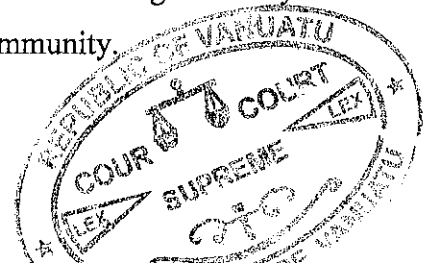
5. The maximum penalty for this offence is 10 years imprisonment. The actions of the defendant were merely an attempted act of sexual intercourse. They involved digital acts as opposed to penile acts. They involved skin to skin contacts.

Aggravating Features

6. The victim was a 2 year child living under the care and protection of the defendant. There was a serious breach of trust. There was a degree of planning involved. The offence took place within the confines of the home where the victim was supposed to be protected. There was a great disparity as to the age of the victim compared to the defendant's age of 32 years.
7. There were no mitigating circumstances for this offending. The defendant clearly took advantage to sexually abuse the victim. But I take into account of the act no force threats or violence were used. And no weapons were involved.

Guideline Principles and Case Law

8. The cases of Talivo v PP [1996] VUCA 2 and PP v Gideon [2002] VUCA 7 clearly establish that all children were entitled to be protected by adults and must be safe in their own home and that men who take advantage sexually to abuse children forfeit their right to remain in the community.



9. This is such a case. It is clearly distinguished from the cases of PP v Naling [2019] VUSC 100 and PP v Heru [2015] VUSC 88 as submitted by defence counsel.

Start Sentence

10. Taking the circumstances of the offending together with the seriousness and the aggravating features I adopt a starting sentence proposed by the Prosecutor. I set the starting sentence at 7 years imprisonment.

Mitigation

11. In mitigation first I consider the defendant's guilty plea. In light of his previous convictions he is not entitled to the full 1/3 reduction. I accept Prosecution's submission that the defendant is only entitled to 20% reduction. That means that 1 year and 4 months are deducted from his start sentence of 7 years leaving the balance of sentence at 5 years and 8 months imprisonment.

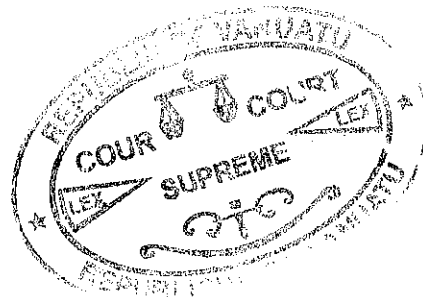
12. There is no remorse at all for his offending as he has not performed any custom reconciliation ceremony.

End Sentence

13. But I have considered the defendant's personal character and history as contained in his pre-sentence report and I am deducting a further 6 months for those other factors. That leaves his end sentence at 5 years and 2 months imprisonment.

Consecutive Sentence

14. As the defendant is currently serving a sentence of 9 years and 6 months imprisonment, I order that the defendant's end sentence be served consecutively to the 9 years and 6 months imprisonment.



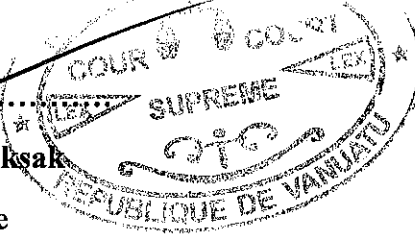
Right of Appeal

15. The defendant has a right of appeal against this sentence within 14 days if he disagrees with it.

DATED at Port Vila this 26th day of March 2021

BY THE COURT


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Oliver Saksak
Judge



The seal is circular with the text "COUR SUPREME" at the top, "REPUBLIQUE DE VANUATU" at the bottom, and a central emblem. The emblem features a traditional Vanuatu design with a central figure and two smaller figures on either side.