

PUBLIC PROSECUTOR

v

**FINGLE DANIEL
MARKA DANIEL
BATICK ISAAC**

Date: 6 December 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mrs P. Malites

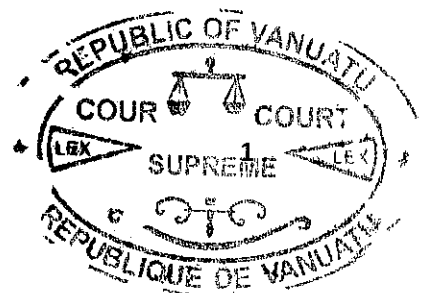
SENTENCE

A. Introduction

1. The Defendants Fingle Daniel and Batick Isaac pleaded guilty to unlawful sexual intercourse with a child under 15 years of age (Charges 1 and 5 respectively). The Defendant Marka Daniel pleaded guilty to act of indecency with a young person (Charge 3). They are convicted on their own pleas and the admitted facts.

B. Facts

2. At the time of the offending, the complainant MJ was 14 years old. She was in primary school.
3. The Defendants and MJ lived in the same yard.
4. On 14 January 2022, Mr Fingle Daniel went to his brother Mr Marka Daniel's room. He saw MJ there. He had sex with her. She told Mr Marka Daniel who was her best friend what had happened. He told her not to tell anyone including her mother (Charge 1).
5. On 15 January 2022, Mr Tabe sent Mr Marka Daniel to tell MJ to follow him to a house that was still under construction. Both she and Mr Marka Daniel went to that house. Mr Tabe and MJ engaged in sexual conduct.



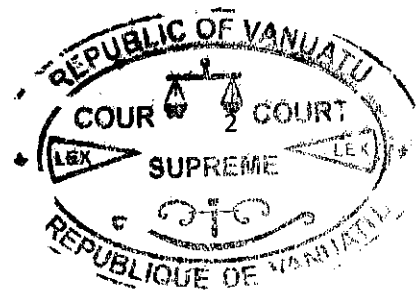
6. After Mr Tabe left, MJ came up to Mr Marka Daniel and they kissed. He asked her for sex. She said yes. She removed her clothes. He placed his penis on her vagina. MJ confirmed that they were good friends. He stopped, they put their clothes back on and left (Charge 3).
7. On 1 February 2022, MJ was alone at home as her grandfather had gone out to drink kava. Mr Isaac entered MJ's bedroom where she was sleeping and removed her clothing. He then penetrated her vagina with his penis. He ejaculated on the bed. He left the room with her crying on her bed (Charge 5). Mr Isaac is the younger brother of MJ's father.
8. The Defendants admitted their offending to the Police.

C. Methodology

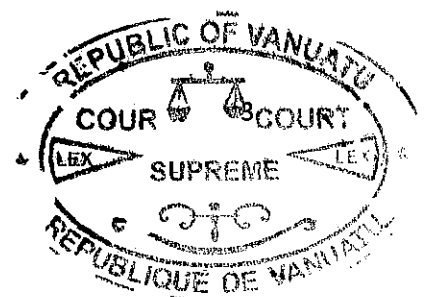
9. The sentence start point is assessed having regard to the offending, its aggravating and any mitigating features, the maximum sentence set by Parliament and guidance provided by earlier cases.
10. Deductions are then made from the sentence start point for the Defendants' early guilty pleas and for their personal factors.

D. Discussion and End Sentence

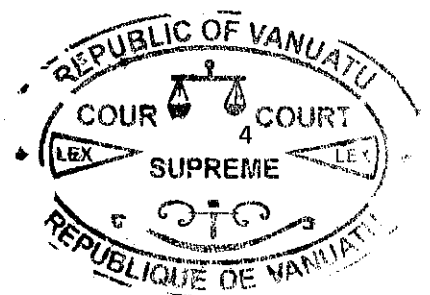
11. Fingle Daniel The maximum sentence for unlawful sexual intercourse with a child under 15 years of age is 15 years imprisonment: subsection 97(2) of the *Penal Code* [CAP. 135].
12. There are no mitigating aspects to this offending. However there are aggravating factors including:
 - The psychological impact on the complainant; and
 - Breach of trust as they were friends.
13. The Prosecution submitted that a sentence starting point of 3 years was appropriate, referring to *Public Prosecutor v Ure* [2017] VUSC 24. The facts in *Ure* are distinguishable as there was admitted repetition of offending in that case.
14. Taking all matters into account, the sentence start point adopted is 2 years 6 months imprisonment.
15. One third is deducted from the sentence start point for Mr Fingle Daniel's early guilty plea.
16. Mr Fingle Daniel is 19 years old. He works at Teouma Valley Farm. He has no previous convictions. A further 6 months is deducted including for Mr Fingle Daniel's youth and immaturity.



17. Mr Fingle Daniel be served time in custody from 22 February 2022 to 8 April 2022 – effectively 3 months imprisonment. Accordingly, a further 3 months is deducted from the sentence start point.
18. The end sentence is 11 months imprisonment. This reflects the need to denounce this criminal conduct against young girls and against the values of society, as a general and specific deterrence and to hold Mr Fingle Daniel accountable for his criminal conduct.
19. Given Mr Fingle Daniel's youth, employment and prospects for rehabilitation, I am prepared to suspend the sentence for 2 years. He is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentence of imprisonment, as well as the penalty imposed for the further offending.
20. In addition, Mr Fingle Daniel is sentenced to 120 hours community work.
21. Marka Daniel The maximum sentence for act of indecency with a young person is 10 years imprisonment: section 98A of the *Penal Code*.
22. There are no mitigating aspects to this offending. However there are aggravating factors including:
 - Skin-to-skin contact;
 - The offending occurred at night-time;
 - Breach of trust as they were best friends; and
 - The planning involved – luring the complainant to the location where the offending occurred.
23. The factors set out above require a sentence start point of 2 years 6 months imprisonment.
24. One third is deducted from the sentence start point for Mr Marka Daniel's early guilty plea.
25. Mr Marka Daniel is 25 years old. He works for the Wan Smolbag Theatre clinic. He has no previous convictions. Three months is deducted from the sentence start point for Mr Marka Daniel's personal factors.
26. Mr Marka Daniel served time in custody from 22 February 2022 to 8 April 2022 – effectively 3 months imprisonment. Accordingly, a further 3 months is deducted from the sentence start point.
27. The end sentence is 1 year 2 months imprisonment. This reflects the need to denounce this criminal conduct against young girls and against the values of society, as a general and specific deterrence and to hold Mr Marka Daniel accountable for his criminal conduct.



28. Given Mr Marka Daniel's good character, employment and prospects for rehabilitation, I am prepared to suspend the sentence for 2 years. He is warned that if he is convicted of any offence in the next 2 years, that he will be taken into custody and serve his sentence of imprisonment as well as the penalty imposed for the further offending.
29. In addition, Mr Marka Daniel is sentenced to 100 hours community work.
30. Batick Isaac The maximum sentence for unlawful sexual intercourse with a child under 15 years of age is 15 years imprisonment: subsection 97(2) of the *Penal Code*.
31. There are no mitigating aspects to this offending. However there are aggravating factors including:
- The physical and psychological impact on the complainant;
 - The offending occurred at night-time; and
 - Serious breach of trust as they are closely related.
32. The Prosecution submitted that a sentence starting point of 3 years was appropriate, referring to *Public Prosecutor v Ure* [2017] VJSC 24. The facts in *Ure* are distinguishable as there was admitted repetition of offending in that case.
33. Taking all matters into account, the sentence start point adopted is 2 years 9 months imprisonment.
34. One third is deducted from the sentence start point for Mr Isaac's early guilty plea.
35. Mr Isaac is 18 years old. He is single and unemployed. He has no previous convictions. A further 6 months is deducted including for Mr Isaac's youth and immaturity.
36. Mr Isaac served time in custody from 22 February 2022 to 8 April 2022 – effectively 3 months imprisonment. Accordingly, a further 3 months is deducted from the sentence start point.
37. The end sentence is 1 year 1 month imprisonment. This reflects the need to denounce this criminal conduct against young girls and against the values of society. The sentence is also imposed as a general and specific deterrence and to hold Mr Isaac accountable for his criminal conduct.
38. Given Mr Isaac's youth and prospects for rehabilitation, the sentence is suspended for 2 years. Mr Isaac is warned that if he is convicted of any offence during that 2-year period that he will be taken into custody and serve his sentence of imprisonment, as well as the penalty imposed for the further offending.
39. In addition, Mr Isaac is sentenced to 150 hours community work.
40. The Defendants have 14 days to appeal against their sentences.



41. The details leading to the identification of MJ are permanently suppressed.

**DATED at Port Vila this 6th day of December 2022
BY THE COURT**

VM Trief
Justice Viran Molisa Trief

