

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

Criminal  
Case No. 22/165 SC/CRML

BETWEEN: Public Prosecutor

AND: Tony Jimmy  
Defendant

*Court:* Justice G.A. Andrée Willens  
*Counsel:* Mr D. Boe for the Public Prosecutor  
Mr R. Willie for the Defendant  
*Date for Sentence:* 19 May 2022

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Sentence

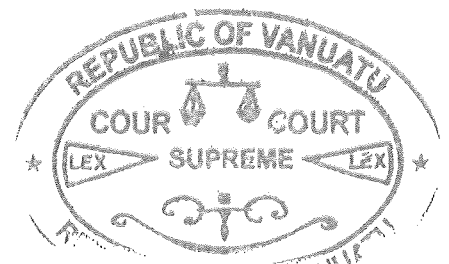
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A. Introduction

1. Tony Jimmy is for sentence having pleaded guilty to charges of: (i) act of indecency with a young person, and (ii) unlawful sexual intercourse with a child under 13 years of age.

B. Facts

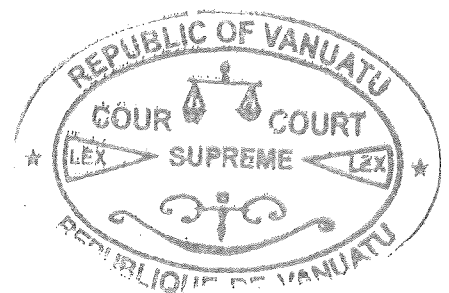
2. The complainant, DL, was only 7 years old at the time of the offending; Tony Jimmy was then 35 years old. They are related, in that he is her uncle, as he is married to DL's elder sister. Tony Jimmy and his wife frequently baby-sat DL when required.
3. In December 2021, DL was staying with Tony Jimmy and her elder sister at Chapuis area, Luganville. One evening Tony Jimmy escorted her to the shops. On the way home, he took her on a dark road, and while walking along there, Tony Jimmy pushed his hand inside DL's clothing and touched her vagina.



4. Tony Jimmy subsequently took DL to a chair, removed his trousers and hers, as well as her underpants, and then pushed his penis inside her vagina. He instructed DL to open her mouth, but she refused. He then spat on her vagina and pushed his penis into her vagina again. DL was crying but unable to resist.
5. The offending came to light, in January 2022, when DL's sister noticed DL trying to hide from Tony Jimmy. Persistent questioning eventually elicited what had occurred.
6. When questioned by the police, the defendant admitted his offending.

C. Sentence Start Point

7. The sentence start point is to be arrived at by having regard to the maximum sentences available and then factoring in the aggravating and mitigating aspects of the offending.
8. The maximum sentence for act of indecency with a young person is 10 years imprisonment. The maximum sentence for unlawful sexual intercourse with a child under 13 years is life imprisonment.
9. There are no mitigating aspects to the offending. However, there are the following aggravating aspects:
  - The gross breach of trust due to their being related;
  - The extreme youth of DL;
  - The elements of premeditation and planning involved;
  - The age differential – she was 7, he was 35;
  - During the act of indecency, there was skin-on-skin contact;
  - The repeat nature of the offending;
  - The additional indignities imposed on DL; and
  - The lack of protection used, exposing DL to sexually transmitted disease;
10. The start point that I adopt for the offending on a global concurrent basis is 8 years 6 months imprisonment.



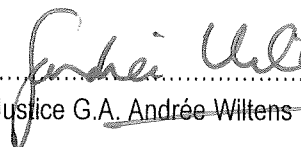
D. Mitigation

11. Tony Jimmy entered guilty pleas to the charges on the morning of trial, in the face of strong evidence against him. Having pleaded to charges 1 and 2, charge 3 was then dropped – so the pleas were part of an arrangement with the prosecution. Nevertheless, the pleas served to obviate the need for an extremely young child to have to give evidence. I noted that DL was already in Court, but did not fortunately appear too stressed. For the guilty pleas, I reduce the sentence start point by 25%.
12. Tony Jimmy is married with 3 children. He assists his partner in preparing and selling food at the Luganville market.
13. He has no previous convictions. He claims to be remorseful, but the lateness of the plea demonstrates no remorse.
14. There has not been a custom reconciliation ceremony.
15. In the circumstances, there will be a reduction of 4 months for Tony Jimmy's personal factors.

E. End Sentence

16. The end sentence that I impose is (rounded down) 6 years imprisonment. I impose that on the charge of unlawful sexual intercourse with a child under the age of 13 years. In relation to the charge of act of indecency, I impose an end sentence of 1 year 6 months. The sentences are to be served concurrently.
17. Tony Jimmy has already spent time in custody. Accordingly, in order to preserve his parole rights, the sentence will commence to run from 18 February 2022.
18. This offending is both too serious and of the wrong nature to consider suspension of any part of the sentence.
19. Tony Jimmy has 14 days to appeal the sentence.

Dated at Port Vila this 19th day of May 2022  
BY THE COURT

  
Justice G.A. Andrée-Wiltens

