

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

Criminal
Case No. 22/1566 SC/CRML

PUBLIC PROSECUTOR

v

TIMOTHY TABE

Date: 15 September 2023
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mrs P. Malites

SENTENCE

A. Introduction

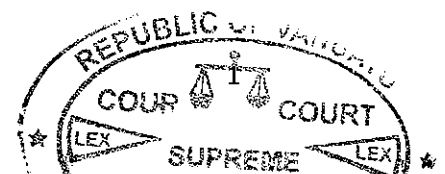
1. The Defendant Timothy Tabe pleaded guilty to act of indecency with a young person (Charge 2). He is convicted on his own plea and the admitted facts.

B. Facts

2. At the time of the offending, the complainant MJ was 14 years old. She was in primary school.
3. Mr Tabe and MJ lived in the same yard.
4. On 15 January 2022, Mr Tabe sent Mr Marka Daniel to tell MJ to follow him to a house that was still under construction. She went with Mr Marka Daniel went to that house. Mr Tabe intended to have sex with MJ but her vagina was too small for his penis. MJ held Mr Tabe's penis and he ejaculated (Charge 2).
5. Mr Tabe made full admissions to the Police.

C. Sentence Start Point

6. The sentence start point is assessed having regard to the maximum sentence prescribed, and the mitigating and aggravating factors of the offending.



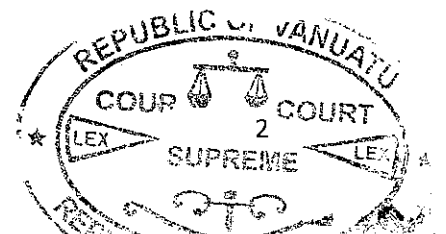
7. The maximum sentence for act of indecency with a young person is 10 years imprisonment: section 98A of the *Penal Code*.
8. The sole mitigating aspect to this offending is that Mr Tabe stopped in his attempt to penetrate MJ's vagina when he could not do so because it was too small.
9. The offending is aggravated by the following:
 - Skin-to-skin contact;
 - The age disparity between the defendant and the complainant of 28 years;
 - The offending occurred at night-time;
 - Breach of trust as they were neighbours and MJ knew the defendant well; and
 - The planning involved – luring the complainant to the location where the offending occurred.
10. The factors set out above require a sentence start point of 2 years 6 months imprisonment.

D. Mitigation

11. One third is deducted from the sentence start point for Mr Tabe's early guilty plea.
12. Mr Tabe is 42 years old. He has 2 children, both in primary school. He owns a kava bar at the Korman Stadium area. He also works in the RSE scheme and when overseas, the kava bar ceases operation. Mr Tabe acknowledges that he breached his conditions of bail, explaining that he travelled for RSE work out of need for his family. His engagement in RSE work has enabled him to pay high outstanding school fees and to meet his family's needs for which he is the sole provider. He has no previous convictions. Three months is deducted from the sentence start point for Mr Tabe's personal factors.
13. Mr Tabe 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.

E. End Sentence

14. 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 Tabe accountable for his criminal conduct.



15. Given the circumstances of the offending, Mr Tabe's prior clean record, family responsibilities, employment and prospects for rehabilitation, I am prepared to suspend the sentence for 2 years. Mr Tabe 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.
16. In addition, Mr Tabe is sentenced to 120 hours community work.
17. Mr Tabe has 14 days to appeal.
18. The details leading to the identification of MJ are permanently suppressed.

**DATED at Port Vila this 15th day of September 2023
BY THE COURT**

VM Trief
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Justice Viran Molisa Trief

