

**PUBLIC PROSECUTOR**  
**V**  
**SILVIO MOLI**

**Coram:** *Hon. Chief Justice V. Lunabek*

**Counsel:** *Mr K Massing for the State*  
*RT Willie for the Defendant*

**Date of Pleas:** *23 April 2024*

**Date of Sentence:** *04 June 2024*

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**SENTENCE**

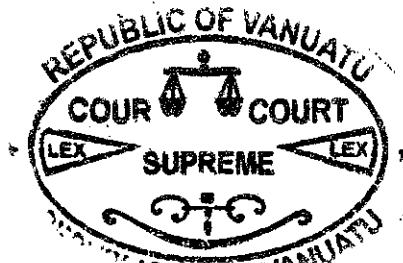
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**I. Introduction**

1. Mr Silvio Moli ("*Mr Moli*"), you appear today for sentence having being pleaded guilty to two counts of acts of indecency with a young person on 23<sup>rd</sup> April 2024, contrary to Section 98A of the Penal Code [CAP. 135] ("*the Act*").

**II. Facts**

2. The victim's date of birth was 13<sup>th</sup> of June 2013. She was just above 10 years and a month old when the offending occurred to her. She attended Class 4 at Santo East Primary School in the year 2023. Mr Moli, you were 38 years old at the time of the offence. You both (victim and you) were related to each other. At the time of the offending, Mr Moli, you were a Sanma Provincial Government Councilor and also a Vice-President of Sanma Provincial Government.
3. The offending had occurred sometimes in the year 2019. The victim used to go and spend weekends with you and your family at Banban area in Luganville, Santo. It was because you are related to each other and so she usually spends weekends with you and your family.

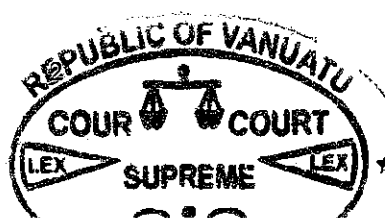


4. Sometimes in the year 2019, she went to spend the weekends with you and your family. When she went to spend weekends at Banban area with you and your family, you would enter the room in which she was sleeping. You would then push your hands into her panty and touched her vagina with your hands through her clothing. You would also touched her ass or buttock through her clothing.
5. The matter was revealed to her family sometimes in July 2023. It was when the victim told them what Mr Moli, you had done or always did to her when she went to spend the weekends with you and your family at Banban area. She also told the Police that you did this act to her more than once and it began when she was at a very young age.
6. The matter was then reported to the police. You were arrested, cautioned and interviewed by the Police. You told the police that your intention was to see whether the victim could keep secret or not.

### III. Sentence Start Point

7. Acts of indecency with a young person, contrary to Section 98A of the Act, carries a maximum penalty for 10 years imprisonment. This is the maximum sentence available for this current offence.
8. There was no mitigating features to the offending, but the following aggravating factors exist:
  - (a) There was a breach of trust (family relationship);
  - (b) There was a degree of planning as the offence occurred at night time;
  - (c) The offending was repeated (twice);
  - (d) There is an age differential of 22 (you are 32 years old whilst the victim girl was 10 years and a month old);
  - (e) There may have impact of the crime on the victim girl (in particular mental effect).
9. The case authority for such a case is the case of Public Prosecutor v Gideon [2002] VUCA 7, where the Court of Appeal stated the following principles:

*"It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse. There is nothing in this case which brings it into that category. Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable. What occurred is a tragedy for all involved. Men who take advantage sexually of young people in the society forfeit the right to remain in the community"*.
10. The prosecution refers and relies on the case of Public Prosecutor v Emile [2021] VUSC 60; where the defendant was charged with one count of acts of indecency with a young person.



In that case, the victim girl was 7 years of age and the defendant was 58 years old. The victim was the granddaughter of the defendant. The touching was through clothing. The aggravating factors of the offending are similar to the present case.

11. After considering all the aggravating features, the Court took a sentence start point of 3 years and 4 months imprisonment. The court also made appropriate deductions to reflect the personal circumstances of the defendant and his early guilty plea. The court imposed an end sentence of 2 years and 5 months imprisonment. The court declined to suspend the end sentence based on the nature and seriousness of the offending.
12. In the present case, the prosecution submits for a sentence start point of 3 years and 6 months imprisonment.
13. The defence counsel refers and relies on the following comparable cases:
  - (a) Public Prosecutor v Renso [2019] VUSC 186 – The Defendant was charged with one count of indecency contrary to Section 98(A) of the Penal Code Act [CAP. 135]. The defendant removed the victim's clothes and rubbed his penis against her vagina.

The presiding judge adopted a starting point of 3 years with no further uplift. In mitigation, the court takes into consideration the following:

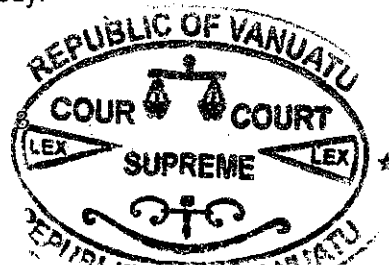
- (i) Young man with clean past records;
- (ii) Custom reconciliation performed;
- (iii) Intention to perform another reconciliation;
- (iv) Early guilty plea.

The end sentence imposed after taking into account all this mitigating factor is one of 16 months imprisonment and sentence will be back dated to date first remanded in custody.

- (b) Public Prosecutor v Ling [2018] VUSC 241 – the defendant pleaded guilty and was convicted of one count of Act of Indecency with a young person contrary to Section 98A of the Penal Code Act [Cap. 135].

The Presiding Judge adopted a starting point of 3 years imprisonment and consider the following as mitigating factors:

- (i) Guilty plea;
- (ii) First time offender and cooperation with the Police;
- (iii) Apology and remorse;
- (iv) Time spent in custody.



The end sentence imposed is one of 1 year imprisonment but suspended for 2 years and 100 hours of community work.

- (c) Public Prosecutor v Naropacen [2017] VUSC – Defendant pleaded guilty and was convicted of two counts of Act of Indecency with a Young Person contrary to Section 98(A) of the Penal Code Act [CAP. 135].

The Presiding Judge adopted 4 years starting point and consider the following as mitigating factors:

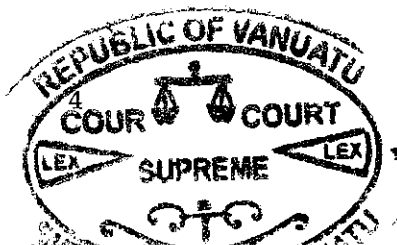
- (i) Early guilty plea;
- (ii) Custom reconciliation;
- (iii) Delay of Prosecution; and
- (iv) Genuine remorse.

The end sentence imposed after taking into consideration all this mitigating factor is one of 2 years but suspended for a period of 2 years and order for 200 hours of community.

14. In the present case, the defence counsel submits that the appropriate starting point for this case should be one of not more than 3 years.
15. I consider the above matters and based on the circumstances of the present case, I fix the sentence start point at 4 years imprisonment as the victim was under 13 years old at the time of offending and the offending was repeated and starting at the victim's earlier age.

#### IV. Personal Mitigating Factors

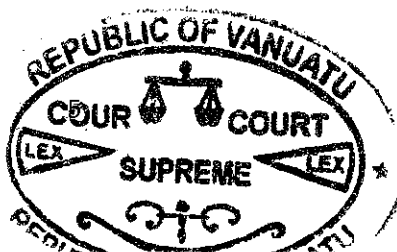
16. Mr Moli, you were 32 years old at the time of your offending in 2019. You are 38 years old when you are convicted and sentenced.
17. You are a first-time offender with no criminal record. You achieved Year 10 Certificate and later you learned joinery and construction as skills you attained. You have been also to a bible school at Banban and further undertook 2 years Theological Studies at Talua Theological School at South Santo. You were a bus driver. In 2015 through to 2023, you took leadership becoming a Sanma Provincial Government Councilor and you have been the Provincial Government Vice-President. You are also an Assistant Pastor of the Churches of Christ at Banban in Santo. But your ministerial work is shadowed due to your offending.
18. In explaining your offending to the writer of the report, you mentioned that: "*I did not have the intention to have sex with the victim, I only kissed her and touched the bottom (buttock) twice*". The Court cannot accept this as it is contrary to your guilty pleas and convictions.



19. Your wife, Mrs Nesta Moli, was employed by Vanuatu Football Federation and she was stationed in Port Vila whilst you are in Luganville, Santo. Your sexual desires may be a major driveway towards your offending taken the absence of your wife at home at Banban, Santo.
20. Mr Ron Sale, your church mentor said he had intervened to assist with your home's issues but with your strong character and pride, it is difficult for you to submit to avenues provided for during mentoring and counselling sessions. Mr Sale said you cannot tolerate the absence of your wife, and this could have been one of the reasons why you cannot manage to end up offending.
21. You have currently initiated social programs of football, boxing with nearby schools, church and other associations as part of an educational program. You have no issues with anyone in the community. You trust that through politics you can drive finances to fulfil the visions of the community. You are working towards building rent houses, and you have built a market house to support the community.
22. It is reported that you have performed a custom compensation ceremony with fines of a pig worth VT50,000, 7 bundles of taro, 5 mats and foods crops including kava.
23. I give you a credit reduction allowance of 4 months to reflect your mitigating factors.
24. I give you a further credit reduction allowance of 33% for your early guilty pleas.
25. The balance of your sentence is 30 months i.e., 2 years and 6 months imprisonment.
26. I give you also a credit reduction allowance of 3 months for the delay in the prosecution of your case since 2019.

**V. End Sentence**

27. Your end sentence is 2 years and 3 months imprisonment.
28. You were remanded in custody on 15 to 29 December 2023. You have already spent 2 weeks and 1 day in pre-custodial period. This period already spent must be deducted from your sentence.
29. The new balance of your sentence is 2 years 2 months and 15 days imprisonment.
30. I consider whether I should suspend your term of 2 years 2 months and 15 days imprisonment. In the present case, I decline to suspend it based on the nature and seriousness of your offending and your character as an offender of being a Provincial



Councilor and Vice-President of the Province. Custodial sentence is necessary based on the authority of Public Prosecutor v Gideon [2002] VUCA 7.

31. You are ordered to serve 2 years 2 months and 15 days imprisonment with immediate effect.
32. You have 14 days to appeal this sentence if you are unsatisfied with it. The 14 days starts at the date of this sentence.

**DATED at Luganville, Santo, this 4<sup>th</sup> day of June, 2024.**

**BY THE COURT**



Hon. Chief Justice Vincent Lunabek

