

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

Criminal
Case No. 23/761 SC/CRML

BETWEEN: Public Prosecutor

AND: Tougen Herkins
Defendants

Coram: Justice Aru

Counsel: Mrs. B. Tamau for the Public Prosecutor
Mr. R. Tevi for the Defendant

SENTENCE

Introduction

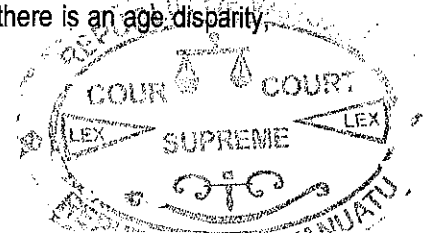
1. Mr. Tougen Herkins this is your sentence. You pleaded guilty to two (2) charges of unlawful sexual intercourse with a child under 13 years of age.

Facts

2. Sometime in 2014 the victim who was 9 years old was living with her grandmother at freshwater area in Port Vila. You were 15 years old at that time and a relative of the victim. You went to the victim's grandmother's house and saw the victim. You followed her into the house and forced your way into the toilet where the victim was. You forced the victim to take off her pants and underwear but she refused. You moved closer to her and took them off. You then took off your pants and held out your penis and told the victim to touch it but she refused. You took her hand and placed it on your penis and masturbated.
3. You touched the victim's vagina and pushed your finger inside her. She felt pain and told you to stop but you did not listen and tried pushing her face towards your penis. When you finished, you told the victim not to tell anyone about what you did to her.
4. A few months later you went back and took the victim into her uncle's room. You put her on the bed and told her to remove her underwear but she refused. You removed your pants and laid on top of her. You started licking and kissing her chest then you opened her legs and forced yourself inside her despite her pleas to stop. She was crying but you did not stop until you were finished.

Starting point

5. When considering the starting point of your sentence, I take into account the maximum sentence available for unlawful sexual intercourse with a child under 13 years which is imprisonment for life. Next, I need to consider whether there are any aggravating or mitigating factors of the offending. There are a number of factors which I consider to be aggravating factors of the offending. There is a breach of trust as you are related to the victim, there is an age disparity,



the offending was repeated, the offending occurred in a home, there is some degree of planning involved and the psychological effects of your actions will remain a scar on the victim's life.

6. There are no mitigating factors of the offending.
7. There is a 6 year difference between the victim and yourself at the time of the offending and you took advantage of the vulnerability of the victim to have sexual intercourse with her despite her repeated refusals to do what you wanted. The starting point of sentence is 8 years imprisonment to be concurrent on each count.

Mitigation

8. No pre-sentence report was filed as directed. Counsel on your behalf submits that you are a first-time offender therefore I deduct 12 months from your sentence start point.
9. You are a young man of 25 years and currently the principal of the Survival Community School at Freswota. Your fellow teachers, chiefs and Pastor speak highly of you. Taking these factors into account, I reduce the sentence start point by a further 6 months. Given the 10-year delay by the prosecution in bringing this case forward since 2014, I allow a further deduction of 6 months from sentence start point.
10. For the guilty plea the sentence start point is discounted by 33%.

End Sentence

11. Your end sentence is therefore 4 years imprisonment to be served concurrently. When considering whether or not to suspend the sentence, I have considered s57 of the Penal Code [CAP 135] and Public Prosecutor v Scott [2002] VUCA 29 and Public Prosecutor v Gideon [2002] VUCA 7 and conclude that there are no extreme or wholly exceptional circumstances that would warrant a suspension of the sentence in this case.
12. As you have been on bail prior to your sentence (see: s 50 Penal Code), unless you elect to begin serving your sentence immediately, you must present yourself to the Centre Manager of the Port Vila Correctional Centre to begin serving your sentence by **no later than 4.30pm on 12 March 2024**. Should you fail to do so, the Centre Manager will inform the Public Prosecutor and the Court of such failure.
13. You have 14 days to appeal if you disagree with the decision.

DATED at Port Vila this 27th day of February, 2024

BY THE COURT

D. Aru
Judge

