

**PUBLIC PROSECUTOR -v- KELLY MAHIT**

**Coram:** Chief Justice Lunabek

**Counsels:** Ms Kayleen Tavoia for the Public Prosecutor  
Mr. Hillary Toa for the defendant

**SENTENCE**

This is the sentence of the defendant, Kelly Mahit. The defendant was charged and pleaded guilty to the offence of indecent assault, contrary to Section 98(1) of the Penal Code Act [CAP.135].

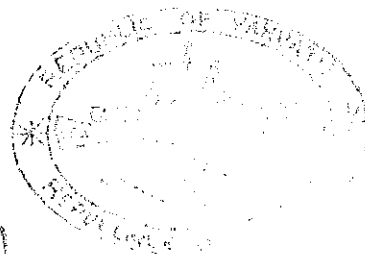
The maximum penalty imposed by law is 10 years imprisonment. The defendant is a young and first time offender of 15 years of age. He is a minor.

Indecent assault is always a serious offence. Indecent assault on a child girl constitutes a more serious one because of her tender age.

It must warrant an imprisonment sentence.

Section 38 of the Criminal Procedure Code reads:

- (1) No person under 16 years of age shall be sentenced to imprisonment unless no other method of punishment is appropriate. Where any such



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person is sentenced to imprisonment, the Court shall give its reasons for so sentencing.

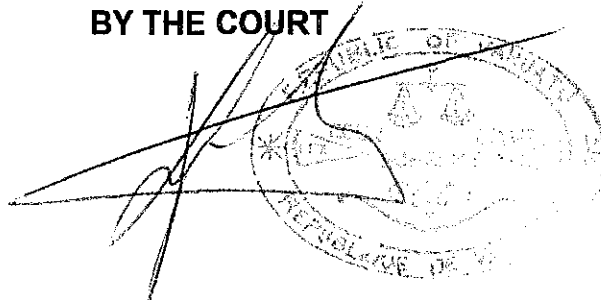
- (2) An offender under the age of 16 years shall serve a sentence of imprisonment in a special established or, if no such establishment exists, shall be separated from offenders of 16 years of age and over.”

The brief facts of this case indicate that the defendant is a minor. The provision of Section 38 of the Act must be taken into account and complied with. The defendant is a first time offender and pleads guilty at the earliest opportunity. These are taken for the defendant's credit.

The defendant won't be sentenced to prison. There is other appropriate method of punishment. The details are explored with the assistance of both counsels.

Dated at Port-Vila this 12<sup>th</sup> Day of May 2004

BY THE COURT

A handwritten signature in black ink is written over a circular official seal. The seal features a central emblem with a scale of justice and is surrounded by the text "REPUBLIC OF VANUATU" at the top and "REPUBLICA DE VANUATU" at the bottom.

Vincent LUNABEK  
Chief Justice