

PUBLIC PROSECUTOR

-V-

KALO GEORGE

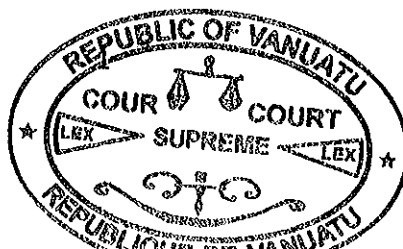
Coram: Justice D. V. Fatiaki

Counsel: Mr. S. Blessing for the State
Mr. A. Bal for the Defendant

Date of Sentencing: 19 December 2011

SENTENCE

1. On **5 December 2011** the defendant **George Kalo** was convicted after he pleaded guilty to an offence of Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code. The particulars of the offence were that the defendant had sexual intercourse with a young boy who was then 5 years of age.
2. The offence occurred at **Bongovio village** on the island of **Epi** where the defendant and the victim lived as close neighbours.
3. On the day in question in June 2007 the defendant, under the pretext of inviting the victim for lunch, took the victim away from his home. At his home the defendant sodomised the victim by penetrating the victim's anus with his erect penis. The defendant ejaculated on the victim's buttocks and thighs. After the incident the pair headed for the beach for a swim and on the way they met the victim's uncle who noticed unusual wetness on the victim's trousers around the buttocks and genital area. The victim also had difficulty



walking normally. When the victim was questioned about the wetness on his trousers the incident came to light. The victim was medically examined at the **Burumba Health Dispensary** on 4 June 2007 and was found to have a reddish anus with abdominal pain. No other injuries were detected.

4. Almost three (3) months later on 22 August 2007 an official police report was made against the defendant. The defendant was taken from his village and interviewed on 31 August 2007. The defendant frankly admitted the offence and acknowledged that what he had done to the victim "*ie nogud*".
5. He expressed his surprise however, that the matter had been reported to the police as a month earlier in July 2007 at the direction of the village chiefs, he had performed a custom reconciliation ceremony to the victim and his parents who had accepted it. He had wrongly thought that that was the end of the matter.
6. The gifts that were provided by the defendant and his family during the reconciliation ceremony which was witnessed by Chief Saksak Jelewo, included:
 - One "*bigfala buluk*";
 - One pig;
 - Five (5) mats;
 - Two (2) "*stampa kava*"; and
 - VT5,000 cash to the victim's family.
7. On 18 September 2007 the defendant was charged with one count of Indecent Assault and after a preliminary inquiry, he was committed to stand trial in the Supreme Court on 2 October 2007. The defendant did not appear for his trial and a bench warrant was issued for his arrest on 16 October 2007. Almost four (4) years later on 3 May 2011 the defendant was finally arrested and appeared in Court. He pleaded "*not guilty*" to the charge and was remanded in custody to await his trial.

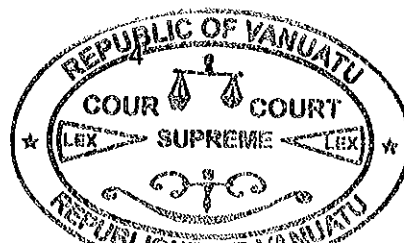


8. Eight (8) months later on 5 December 2011, at the request of counsel, the defendant was re-arraigned and this time he pleaded "guilty" to the charge. It is a matter of considerable concern that the defendant was not dealt with any earlier and although he must bear some responsibility for the initial delay, there can be no excuse for the inordinate length of time it has taken to execute the arrest warrant which was issued on 16 October 2007.
9. Be that as it may, I have received much assistance from the defendant's pre-sentence report prepared by the Probation Services which contains the following helpful details about the defendant:
- The defendant was born on 22 September 1988 and would have been 18 years of age at the time of the offence;
 - The defendant is from Bongovio village, Epi island and since the incident the defendant has formed a steady relationship and has a young child of his own;
 - The defendant received a primary school level of education and he assists his father with gardening, planting kava and cutting and selling copra as a source of income;
 - The defendant and his family performed a "huge kastom ceremony for reconciliation and seeking forgiveness" from the victim and his family and this was accepted and peace has been restored;
 - The defendant works closely with his community and his church and is well regarded and supported by his chief and elders. He hopes one day to be a pastor of his church;
 - The defendant expressed remorse for his actions and promises never to offend again;
 - The defendant has been remanded in custody since April 2011;



10. In the probation officer's assessment: "... (the defendant) *showed insight to his offending as well as saying he felt sorry for the victim. Mr. Kalo advises that he now has his own family and there is no way he would re-offend again and it has been a lesson to him.*"
11. Prosecuting counsel whilst accepting that the defendant has been able to stay out of trouble since the incident, nevertheless points out that the offence is aggravated by a serious breach of trust, in that, the defendant took advantage of his young 5 year old neighbour to satisfy his uncontrolled sexual desires.
12. In the recent decision in **PP v. Kal Andy** [2011] VUCA 14 which also concerned the sexual abuse of a young girl by a mature man which caused her injuries, the Court of Appeal in allowing the State's appeal and in re-sentencing the defendant for an offence of Unlawful Sexual Intercourse under Section 97 (1) of the Penal Code, adopted a starting point of 6 to 7 years imprisonment.
13. In an earlier decision in **PP v. Kevin Gideon** [2002] VUCA 7 the Court of Appeal in allowing a prosecution appeal against the suspension of the prison sentence imposed in that case for an offence under Section 97 (1), said:

"Whatever may be said about this man personally having learned his lesson, there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community."
14. In light of the foregoing judgments of the Court of Appeal I consider that the seriousness of the offence including the aggravating factors warrants a starting point of 3 years imprisonment, which, although on the lower side, is entirely appropriate in all the circumstances.
15. In my view this offence, although involving a serious breach of trust, was nevertheless, an isolated incident where a teenager succumbed to his uncontrolled sexual urges and took advantage of a young neighbour.

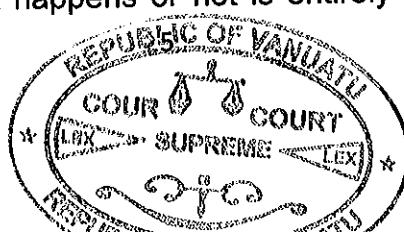


16. In the defendant's favour there are a number of strong mitigating factors including:

- His guilty plea and his earlier admissions to the police which has avoided the victim having to testify in Court;
- The fact that this is his first offence;
- His acceptance and remorse for his actions ("*Mi sori tumas*");
- The performance of a significant custom reconciliation ceremony to the victim and his family which was accepted;
- The fact that the defendant has stayed out of trouble for the past 5 years since the commission of the offence;
- The fact that the defendant is now in a steady defacto relationship and has a child of his own; and
- The fact that the defendant has already spent in excess of 10 months remanded in custody which equates to an effective sentence of 20 months imprisonment.

17. In light of the foregoing I am firmly of the view that the defendant does not represent a danger to the community nor do I have any reason to doubt the genuineness of his remorse or the sincerity of his promise never to appear in Court again. For all these mitigating factors including the defendant's guilty plea I discount 18 months imprisonment from the starting sentence leaving an end sentence of 18 months imprisonment which, having regard to all the circumstances, is suspended for a period of 2 years.

18. **George Kalo** what this sentence means is that you will be released from custody today to serve your sentence in the community but, you are warned that if, in the next 2 years you commit another offence, then you will lose your liberty and will be returned to prison to serve this sentence of 18 months imprisonment in addition to any other sentence you may receive for your re-offending. Whether that happens or not is entirely in your hands and I urge


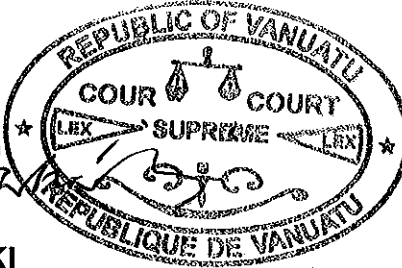


you to return to your home island and stay out of trouble caring for your parents and child who you say needs you.

19. In addition, I sentence you to 12 months supervision under the care and guidance of Chief Saksak who has generously offered to assist with your reintegration back into the **Bongovio village** community in **Epi Island**.
20. You have 14 days to appeal this sentence if you do not agree with it.

DATED at Port Vila, this 19th day of December, 2011.

BY THE COURT



D. FATIAKI
Judge.