

PUBLIC PROSECUTOR

-V-

BRUCE CHARLEY

Coram: Justice D. Fatlaki
Counsel: Mr. T. Karae for the State
Mr. E. Molbaleh for the Defence
Date of Sentence: 13 May 2011

SENTENCE

1. The Defendant was originally separately charged in 6 informations with 11 counts comprising 8 counts of **Unlawful Sexual Intercourse** contrary to Section 97 (1) of the Penal Code; 2 counts of offences against Section 97 (2); and 1 count of **Act of Indecency With a Young Person** contrary to Section 98A of the Penal Code.
2. On 5 April 2011 all 6 informations were placed before the Court for pleas to be taken and the Court ordered that the charges be amalgamated into 1 composite information for convenience and in accordance with **Section 71** of the Criminal Procedure Code Act [CAP. 136].
3. On 12 April 2011 prosecuting counsel sought to withdraw **counts 5, 6, 7, 8 and 9** and to incorporate them by amending the dates of the offence on count 3 which related to the same victim. This was granted leaving an information with 6 counts as follows with the Defendant's plea recorded against each, namely:

Count 1: Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code – Defendant's plea: '*Guilty*';

Count 2: Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code – Defendant's plea: '*Not Guilty*';

Count 3: Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code – Defendant plea: '*Guilty*';

Count 4 Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code – Defendant plea: '*Guilty*';



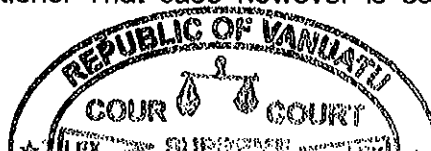
Count 10: Unlawful Sexual Intercourse contrary to Section 97 (1) of the Penal Code – Defendant plea: 'Guilty';

Count 11: Act of Indecency With Young Person contrary to Section 98A of the Penal Code – Defendant plea: 'Not Guilty'.

4. In summary, the defendant pleaded 'guilty' to 4 offences of **Unlawful Sexual Intercourse** and 'not guilty' to 1 offence of Unlawful Sexual Intercourse as well as 1 offence of **Act of Indecency With a Young Person**.
5. At the time, the Court noted that the particulars of the offences of Unlawful Sexual Intercourse alleged that the defendant "... *blong havem homosexual intercourse wetem boy*" and the Court sought the assistance of prosecuting counsel as to whether there was such an offence in the Penal Code (See: PP v. Matoa [2011] VUSC 40). After discussions, counsel accepted that the particulars were worded in that manner to make it crystal clear to the defendant exactly what the nature of the offences were, that was being alleged against him. I accept that the defendant was not misled or prejudiced in any way by the wording of the particulars in the information.
6. Prosecuting counsel then verbally entered a '**nolle prosequi**' in respect of counts 2 and 11 to which the defendant had earlier pleaded "**not guilty**" and the case continued on the basis of the defendant's 'guilty' pleas to 4 counts of **Unlawful Sexual Intercourse** with a child under 13 years of age contrary to **Section 97(1)** of the Penal Code.
7. The Prosecutor then outlined the facts in the case which may be briefly summarized as follows. On each of the dates of the offences, the defendant had invited a young boy named in the counts to his home under various pretexts. When the boy went to the defendant's home he led him into his bedroom where he would showed the boy pornographic pictures after which he sodomised each of the boys. The defendant admitted the facts outlined and was convicted on the 4 counts as charged.
8. A pre-sentence report was ordered and counsels were also given time to file sentencing submissions to assist the Court. I gratefully acknowledge the valuable assistance provided to the Court in the pre-sentence report.
9. I note the following personal characteristics of the defendant which are extracted from the pre-sentence report:
 - The defendant was born on 26 April 1993 and therefore would have been 16/17 years of age at the time of committing the offences;
 - The defendant is single and lived with his widowed father at Lagoon area, Port Vila at the time of the offences;



- The defendant completed year 6 and had to leave school prematurely owing to financial problems. He has been able to continue with his education at CNS Computer School through the generous sponsorship of Australian benefactors and he hopes to eventually graduate with a certificate at the end of this year;
 - The defendant is unemployed and is dependant on his widowed father whom he helps with gardening;
 - The defendant is ashamed and remorseful for his behaviour and has personally apologized to each of the victims;
 - The defendant cooperated fully with police investigations and voluntarily admitted committing the offences when interviewed;
 - The defendant has helped out and participated in outreach and youth activities organized by the SDA Church of which he is an active youth member;
 - Since the commission of the offences the defendant now lives with an uncle at Manples area, Port Vila;
 - The defendant claims to the police interviewing officer that he was also the victim of similar sexual abuse when he was a child which he had never revealed to anyone before then;
 - The defendant was remanded in custody on 28 October 2010 and was released on bail on 23 December 2010;
 - The defendant has no prior convictions and is a first time offender.
10. Prosecuting counsel although given a month to file sentencing submissions has unfortunately not done so and the Court will proceed to sentence without it. I am grateful to defence counsel for the submissions provided to the Court.
11. In this regard defence counsel, whilst accepting that the offences are by nature serious, nevertheless, submits that the victims *"did not sustain any serious injury whatsoever"* as opposed to the victim in **PP v. Kal Andy** [2011] VUCA 14 where the Court of Appeal recently imposed a sentence of 3 years imprisonment for an offence of Unlawful Sexual Intercourse between and 30 year old man and a 10 year old child in which the *"victim's labia majora was blood stained, her vestibule bruised and her hymen was torn and bleeding"*.
12. Counsel also relied on the case of **PP v. Randy Kenneth** [2002] VUSC which involved a 14 year old assailant and 15 year old victim attending the same school, where the Hon. Chief Justice after convicting the assailant of Indecent Assault after trial, deferred sentence under Section 56 (1) of the Penal Code for a period of 2 years with conditions. That case however is easily distinguishable



from the present case as it relates to a less serious charge of indecent assault and the age difference between the victim and assailant was just a year.

13. I accept that the victims' medical reports do not disclose any physical injuries were sustained by them as a result of the defendant's actions but there can be no denying that each would be emotionally and mentally scared by the experience. Indeed the defendant himself admits as much in revealing that he too was the victim of sexual assaults as a child.
14. The offending is also aggravated in the following respects:
 - The offences involved several young victims;
 - All victims were aged between 6 to 12 years of age at the time of the offending whereas the defendant was 16/17 years of age;
 - All were duped into going to the defendant's home under the pretext of being offered fire crackers or stickers, or to have a bicycle repaired;
 - The offences were repeated over a period of 12 months;
 - All victims claim to have been shown pornographic materials immediately prior to the offending taking place;
 - All victims claim to have been threatened by the defendant after the incidents occurred; and
 - All victims lived in the same area as the defendant and knew him well and they trusted him.
15. This is a serious case of a young man taking advantage of impressionable and vulnerable boys in his neighbourhood to satisfy his unnatural lust and sexual urges. Although the defendant is a first offender his offending was repeated and occurred over a considerable length of time. Having regard to the maximum allowable sentence of 14 years imprisonment for each offence, I consider that a starting sentence of 4 years imprisonment is called for.
16. Adopting the approach espoused in the recent judgment of the Court of Appeal in the **Kal Andy** case I consider that the defendant is entitled to a reduction of 20% for mitigating factors and a further discount of 30% for his guilty pleas, making a total discount of 50% ie. 2 years, leaving a sentence of 2 years imprisonment remaining.
17. I next turn to consider the provisions of Section 37 and 38 of the Penal Code and having regard to the expressed wishes of the victim's families I order that the defendant arrange and perform a joint custom reconciliation ceremony to the 4 victims families by 3 June 2011 to be attended by a probation officer who is to provide the Court with a report by 17 June 2011.



18. I turn next to consider the provisions of Section 57 of the Penal Code and having regard to the circumstances of the offending and the character of the offender including his plea, relative youth, time already spent on remand and his future prospects, I am satisfied that it is not appropriate to send the defendant to prison immediately and therefore I exercise my discretion and order the suspension of the remaining sentence for a period of 3 years.
19. This means that the defendant will not have to go to prison today or indeed at all, if he behaves himself and stays out of trouble for the next 3 years. If however the defendant should commit and be convicted of any other offence in the next 3 years then he can expect to go to prison for 2 years in addition to any other sentence that may be imposed for his re-offending.
20. In addition I impose a sentence of 12 months supervision with the following special conditions:
- (a) That the defendant must not possess, display or view any pornographic material;
 - (b) That the defendant not have any further contact with the complainants in this case except for the purposes of performing a custom reconciliation ceremony as ordered;
 - (c) That the defendant not have any future contact either in private or in his home with any child under the age of 16 years of age without the knowledge and prior approval of the parents or guardian of the child;
 - (d) That the defendant undertake and complete the Niufala Rod program facilitated by a probation officer; and
 - (e) That the defendant undergo spiritual and other counselling recommended by the probation officer.
21. You have 14 days in which to file a notice of appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 13th day of May, 2011

BY THE COURT


D. V. FATIAKI
Judge.

