

ORDER PROHIBITING FROM PUBLICATION ANY PARTICULARS OF THIS CASE THAT MIGHT LEAD TO THE IDENTIFICATION OF THE OFFENDER INCLUDING HIS NAME AND THE NAME OF HIS VILLAGE. THE PUBLISHED DECISION WILL REFER TO THE OFFENDER AS "THE CHILD "L" AND THE VILLAGE AS "B"

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

Criminal Case No. 1 / 2011

PUBLIC PROSECUTOR

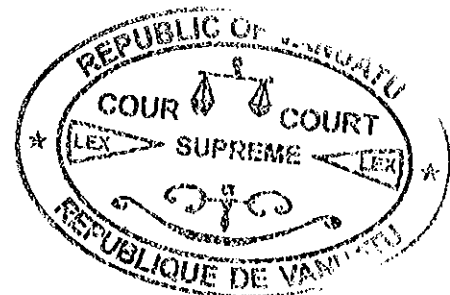
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The Child "L"

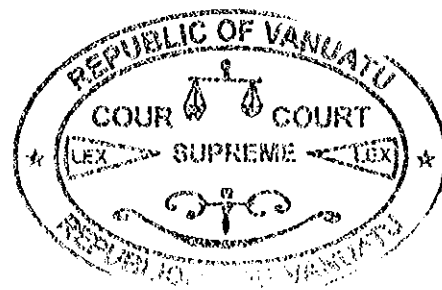
Hearing: 24 May 2011 (at Lakatoro, Malekula)
Before: Justice Robert Spear
Appearances: Simcha Blessing for the State
Tom Loughman for the Accused

SENTENCE

1. You are for sentence today on one charge for committing an act of indecency with a young person – this being an offence under section 98 (a) of the Penal Code Act [Cap.135]. You pleaded guilty this morning to that charge.
2. The offence occurred back on 14 December 2010 in your home village. The mother of a 4 year old girl put her daughter to bed because she was unwell. When she came back into the bedroom a short time later to check on her daughter, she found you right beside the young girl and you appeared quite startled when you saw the mother. You handed the little girl to her mother who then took her daughter outside. She was suspicious as to what you had been doing because of your reaction to her arrival and because the little girl's lower clothing had obviously been disturbed. She asked the little girl what had happened and she received the response that you had touched her in her private part which I take to mean her genitalia.



3. You do not dispute that you touched this little girl around her genitalia with your hand going under her clothing. Fortunately, matters never progressed further than that through the timely but accidental intervention of the mother.
4. You were committed on this charge only this morning. It has, nevertheless, been convenient for you to be arraigned today as the Supreme Court is still here on Malekula.
5. Mr Loughman has spent time with you and he has your instructions. He indicated that you were ready to be arraigned and that you would plead to the charge on the basis of an agreed summary of facts. I confirm again that you take no issue with this summary of facts.
6. It does not appear as if this incident (to adopt a relatively modest term for this offending) has caused this young girl any lasting harm. That is probably because you were interrupted and because of her age. In that respect you are fortunate and so is she. If matters had gone further, even at 15 years of age, you would have been facing a term of imprisonment. That would have been a tragedy for so many people including both you and your family.
7. As it is, this would have caused difficulties in your village where both your family and the victim's family belong. However, it can only be hoped now that you, a 15 year old boy, can learn from what has happened here and resolve never to misbehave in this way again. If you have a sexual bent towards young children and believe that you should try and take advantage of their age and vulnerability, you will be caught and the next time you will most certainly go to prison. I am saying this to you in English but of course you have limited understanding of English as you are francophone. Mr Loughman kindly agreed to translate my comments in to Bislama for you and he is beside you.
8. What is important with the sentence is that it denounces your behaviour with emphasis. It must provide a proper and proportionate response by this Court having regard to all the circumstances of this case and the people involved with it. It must do its best to promote in you a sense of responsibility and assist your rehabilitation.
9. I have received an oral pre-sentence report from the probation officer in Court today and the recommendation is for a sentence of supervision and community work. In view of your age and the limited nature of the offending, I will accept that recommendation. If you were older you would be going to prison. At 15 years of age, this offending has to be put down to poor judgment by a young man. However, you must understand that what you did was terribly, terribly wrong. As I have said, you would normally be going to prison for this offending but for your young age and the fact that the offending did not progress beyond touching. Furthermore, that the touching was flirting in duration.



10. Having regard to those circumstances, I am prepared to deal with you in accordance with the recommendation of the probation officer and that is a sentence of supervision and community work.
11. You are placed under supervision for a term of 2 years on these special conditions:-
 - a) You are to reside with your family in B village, central Malekula and you are not to move from B village without the prior permission from your probation officer.
 - b) You are to undertake the Niufala Rod Programme as directed by your probation officer.
 - c) You are to undertake spiritual counselling with your Minister as arranged by your probation officer.
 - d) You are to undertake general counselling with your Chief as arranged by your probation officer.
12. You are also to carry out 150 hours community work
13. Finally, I make an order now suppressing from publication any particulars that might lead to your identification. I do so because you are only 15 years of age and you deserve chance to put this behind you. In some other countries, you would have received name suppression as a matter of statutory course. Be that as it may, all members of your village I expect all know exactly what has occurred.
14. The case will accordingly not have your name in the sentencing notes but will be against the child L. That will be the only available reference to this case.
15. You have the right to appeal this sentence within 14 days if you do not agree with it.

BY THE COURT

