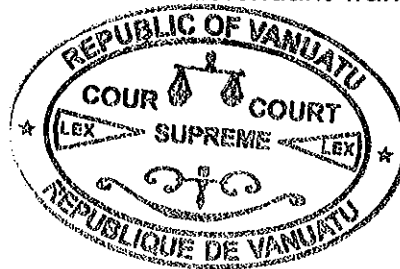


PUBLIC PROSECUTOR
V.
JEAN PASCAL BURORO

Coram: Justice D. V. Fatiaki
Counsels: Mr. T. Karae for the State
Mr. E. Molbaleh for the Defendant
Date of Decision: 24 February 2012.

SENTENCE

1. On **19 January 2012** the defendant Jean Pascal was convicted after a trial for an offence of **Act of Indecency Without Consent** contrary to **Section 98 (c)** of the Penal Code. Such an offence carries a maximum sentence of imprisonment for 7 years. This offence may be contrasted with the more serious charge under **Section 98A** for an offence of **Act of Indecency With A Young Person** where consent is not an issue and the victim is under the age of 15 years and which offence carries a maximum penalty of imprisonment for 10 years. However in the present case the complainant was born on 8 December 1995 and was therefore over 15 years of age at the time of the offence.
2. Upon his conviction the defendant was remanded in custody and a pre-sentence report and sentencing submissions were ordered and have been received. I am grateful for the assistance provided.
3. The brief facts of the case are that the defendant was the boarding master at the school which the complainant attended as a student/boarder. On the day in question the defendant invited the complainant to his living quarters in the school compound and after he had entered the room, the defendant locked the door and shut the curtains. The complainant was then shown a pornographic video on the defendant's mobile and whilst the complainant was viewing the video the defendant began touching the complainant's genitals over his trousers. After a while the defendant removed the complainant's trousers and sucked his penis until he ejaculated. The complainant then left the room.
4. The incident was reported to the school authorities who handed the matter over to the police. When interviewed the defendant frankly admitted committing the



offence. It is difficult therefore to understand the defendant's "*not guilty*" plea in the circumstances albeit that the prosecution had to establish an absence of consent on the complainant's part.

5. From the pre-sentence report prepared on the defendant, I have extracted the following personal circumstances:

- The defendant is 26 years of age, married and resides with his in-laws at **Sesivi community** in Port Vila;
- He achieved a year 10 leaving certificate and attended **Lololima Theological College** for three years;
- He worked as a Boarding Master at various schools at Santo before moving to **Montmartre Secondary School**;
- He is the sole income earner for his family which includes his wife, two sons and his handicapped father in law;
- He is a first time offender;

6. To the probation officer the defendant:

"... blamed himself for the offence stating that it was a stupid thought that came to his mind at that time that made him commit the offence..... He was very sorry for what he did stating that "mi sori tumas from wanem we mi bin mekem iko long yang victim blong mi"

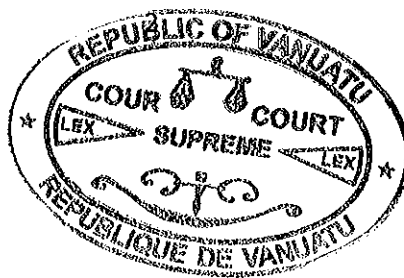
7. The probation officer formed the opinion that "*... the main contributing factor to the defendant's offending was the access to pornography via mobile phone that influenced and lead to the inability to control his sexual feeling in an appropriate way.*"

8. The pre-sentence report also attaches letters from the Chief of **Sesivi Community** and the defendant's wife pleading for a community-based sentence to be imposed on the defendant.

9. Prosecuting counsel in his helpful sentencing submissions accepts that "*... this is a one of (sic) incident and the defendant took advantage of a young boy aged 15 years who was vulnerable given that there was an established relationship between the complainant and the defendant (student-teacher relationship)*". Counsel submits that a suspended prison sentence and community work order would meet the justice of the case.

10. This offending is aggravated by the following factors:

- (a) The 10 years age difference between the defendant and the complainant;



- (b) The breach of trust and abuse of the defendant's predominant position in the relationship that existed between the defendant and the complainant;
 - (c) The showing of pornographic material to the complainant immediately prior to the commission of the offence; and
 - (d) The fact that there was a degree of premeditation and planning involved in the commission of the offence.
11. Conversely, and in the defendant's favour, are the following mitigating factors:
- (a) The incident was an isolated one involving a single victim;
 - (b) No actual violence was used in the commission of the offence and the victim was not physically injured or harmed;
 - (c) The defendant freely admitted the offence when questioned by the police but that is largely off-set by his plea of "*not guilty*" which required the victim to testify in court about the incident.
12. In considering the appropriate sentence in this case I have considered the various case authorities that have been referred to in counsel's sentencing submissions including: **PP v. Boita** [2002] VUCA 38; **PP v. Gideon** [2002] VUCA 7; **PP v. Eric Matoa** [2011] VUSC 40; **PP v. Bruce Charley** [2011] VUSC 56 and, most recently, **PP v. Kalo George** [2011] VUSC 313.
13. In respect of these latter two decisions which involved more invasive acts of sexual intercourse of young boys by young men in their mid to late teens, the defendants were given suspended prison terms and community-based sentences on their guilty pleas. Although the prison term in the **Matoa's** case was not suspended it may be distinguished on the basis that the defendant was charged with the more serious offence of Unlawful Sexual Intercourse With a Child Under 13 years of Age contrary to **Section 97(1)** and the offence had been repeated on three separate occasions extending over 3 years.
14. Jean Pascal, given the extended definition of what constitutes "*sexual intercourse*" in this country which includes what you did to the complainant [see: Section 89A (c) and (d) of the Penal Code], you are fortunate that you were not charged with the more serious offence of Sexual Intercourse Without Consent which carries a maximum sentence of life imprisonment.
15. Be that as it may, this offence represents a serious breach of trust and abuse of your superior position in circumstances where you took advantage of the curiosity and sexual naivety of the complainant while he was viewing a pornographic video that you had supplied to him. I accept that you now realise the error of your actions and that you are genuinely sorry for what you did to the complainant who would have been traumatised by the experience.



16. I am also mindful that with this conviction you are unlikely ever to be employed in the same type of employment but you only have yourself to blame for that.
17. In all the circumstances 3 years imprisonment is an appropriate starting point which I reduce by 12 months for mitigating factors making a final sentence of 2 years imprisonment.
18. I turn next to consider whether this is an appropriate case for the exercise of the Court's powers under **Section 57** of the **Penal Code** and in view of the circumstances of the case and the nature of the crime including the fact that the complainant was a willing participant in the viewing of pornographic material supplied to him, and considering your personal circumstances where you have already spent almost 3 ½ months remanded in custody, I am satisfied that your sentence of imprisonment should be suspended for a period of 3 years.
19. The effect of this suspended sentence is that you will be released from custody today but, if you should commit another offence in the next 3 years then you will be returned to prison to serve this sentence of 2 years imprisonment in addition to any other sentence that may be imposed on you for your re-offending. Whether that happens or not is entirely in your hands and I urge you to make a change in your life and devote your time and energies to caring for your young family who needs a husband and father.
20. In addition and to help you stay out of trouble, I impose a sentence of **12 months supervision** with the following special conditions:
- (a) That you do not access, store, view or distribute pornographic material on your mobile phone or otherwise;
 - (b) That you undertake and complete the **Niufala Rod Program** with the Wan Smol Bag Theatre Group; and
 - (c) That you undertake any spiritual and other counselling that may be required by a probation officer;
21. You have 14 days to appeal against this sentence if you do not agree with it.

DATED at Port Vila, this 24th day of February, 2012.

BY THE COURT


D. V. FATIAKI
Judge.

