

(Criminal Jurisdiction)

PUBLIC PROSECUTOR

VS.

JEAN TARI

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr P. Wirrick for Public Prosecutor
Miss J. Tari for Defendant

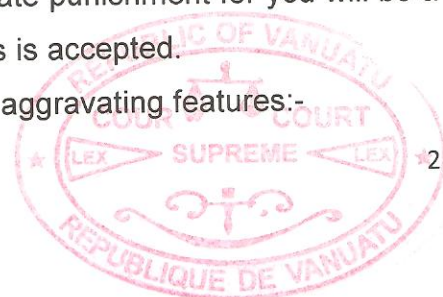
Date of Plea: 7th August 2012
Date Submissions Hearing: 21st August 2012
Date of Sentence: 27th August 2012

SENTENCE

1. Jean Tari, you were initially charged with two offences namely; Sexual Intercourse With Child Under Care or Protection (Count 1) contrary to section 96 (1)(b), and with Abortion (Count 2) contrary to section 117 of the Penal Code Act Cap. 135 (the Act). The charge in Count 2 was however withdrawn by the Prosecutions prior to plea.
2. On arraignment, you pleaded guilty to the first charge in Count 1. It is a serious offence as Parliament has laid down the maximum penalty at 10 years imprisonment.
3. The facts of your case are as follows –
 - (a) You are 44 years old and your victim was 17 years old at the time of offendings.
 - (b) You are the complainant's foster father and the victim was living at your home as a member of your family under your care and protection.



- (c) She started living with you on 8th February 2011 after her step-father (David Toa) was convicted and sentenced to 4 years imprisonment on 20th April 2011 for sexual offending against the complainant. (See Criminal Case No. 37 of 2010).
- (d) Prior to the offending, you took the victim to a custom village under the pretext of her explaining to you what her step-father did to her. The victim followed your instructions.
- (e) At the custom village you said words to the effect that you would demonstrate how her step-father had sex with her. You then instructed her to go to the nearby bushes and remove her clothing. After removing her shirt and trousers and upon your instructions she laid down on the ground. You then removed your clothes and proceeded to lie on top of her and inserted your penis into her vagina you had sexual intercourse with her. You withdrew just in time to ejaculate outside her vagina. Both of you then dressed and returned to the village with your clear instructions to her not to tell anyone about what you did to her.
- (f) You and your wife had given the victim strict instructions not to leave home or socialize with other people. You also told her she was under strict instructions from the Police at Saratamata to adhere to your instructions. Sometimes in June 2012 you instructed the victim to go and live with another young man with whom the victim had some sort of relationship. It was around this time that the victim discovered she was pregnant.
4. Both the Public Prosecutor and the defence Counsel have submitted to same cases to guide the Court impose an appropriate sentence for your offending: These are the cases of Public Prosecutor v. Gideon [2002] VUCA 7; Talivo v. Public Prosecutor [1996] VUCA 2; and Public Prosecutor v. Joe [2004] VUSC 123. The latter case of Joe was an additional case referred by Miss Tari.
5. It is clear from those cases that the only appropriate punishment for you will be a custodial one and that the starting point of 6 years is accepted. There will be an uplift by 2 years for the following aggravating features:-



- (a) Your victim was only 17 years old.
- (b) You are a mature man of 44 years old. These range of ages indicate the great disparity between you and her.
- (c) Your position of responsibility towards her as foster-father and the serious breach of trust.
- (d) You took advantage of her vulnerable state of mind in regard to her previous sexual encounter with her step-father.
6. In mitigation, it is clear from Gideon's case that you are entitled to a 1/3 reduction for early guilty plea. In effect, 2 years and 8 months are deducted from the sentence of 8 years leaving the balance at 5 years and 4 months.
7. I will deduct your sentence of 5 years and 4 months further by 4 months leaving the balance at exactly 5 years imprisonment. I felt inclined to grant a greater allowance for remorse and reconciliation ceremony, but in view of defence counsel's indication that she has had difficulties contacting appropriate persons to make confirmations about the ceremony, it remains doubtful that it was performed, therefore no further allowance was necessary.
8. Jean Tari, you are hereby sentenced to a term of 5 years imprisonment commencing on 25th July 2012.
9. You will be eligible to apply for parole after serving half of your 5 years term, depending on your behavior and attitudes towards correction.
10. You have a right of appeal within 14 days, if you so choose.

DATED at Luganville this 27th day of August 2012.

BY THE COURT


OLIVER A. SAKSAK

Judge

