

(Criminal Jurisdiction)

**PUBLIC PROSECUTOR**

**VS.**

**BILA YACINTH**

**Mr Justice Oliver A. Saksak**  
**Mrs Anita Vinabit – Clerk**

**Mr Parkinson Wirrick for Public Prosecutor**  
**Miss Jane Tari for the Defendant**

**Date of Plea: 7<sup>th</sup> August 2012**  
**Date of Hearing Submissions: 21<sup>st</sup> August 2012**  
**Date of Sentence: 27<sup>th</sup> August 2012**

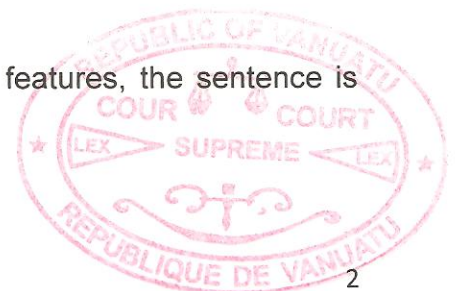
## **SENTENCE**

1. Bila Yacinth, you were charged with one count of Sexual Intercourse Without Consent contrary to section 91 of the Penal Code Act Cap 135 (the Act). The maximum penalty for this offence is life imprisonment.
2. On 7<sup>th</sup> August 2012 you pleaded guilty to the charge and conviction was entered against you accordingly. The Court heard submissions as to sentence from Counsel on 21<sup>st</sup> August 2012 and deferred sentence to today.
3. The facts of your case are simple. You are a 38 year old mature man. Your victim is 22 years old and is your step-daughter. At the times of offendings she was living under your care and protection at the family home at Panas Village, South Pentecost. The victim is suffering from a mental disability which affects her speech and which has caused her right leg to be paralyzed. The medical report dated 6<sup>th</sup> July 2012 confirms this.



4. The offendings started in August 2011 and continued until January 2012. On three separate occasions during this given period of 7 months you had sexual intercourse with her without consent. As a result, the victim became pregnant. In July this year, she gave birth to a baby boy at Pangi Health Centre. The pregnancy brought these offendings to light. A complaint was made and the Police arrested you and upon investigations, you cooperated well and admitted the offendings.
5. Counsel have referred the Court to the cases of Public Prosecutor v. Scott [2002] VUCA 29; Public Prosecutor v. Gideon [2002] VUCA 7, Public Prosecutor v. Ali August Criminal Case No. 14 of 2000, and Public Prosecutor v. Kalfau [1990] VUCA 9. These are all classic cases which provide the usual sentencing guidelines used by the Court in sexual offendings.
6. Based on Scott's and Gideon's, the only appropriate sentence for you will be a custodial one. And it is clear that the starting point shall be 8 years imprisonment. There will be an uplift by 2 years for the aggravating features as submitted which are:-
  - (i) The defendant stood in a position of trust and responsibility towards his victim as step-father.
  - (ii) The offendings were repeated on at least three separate occasions and extending over a period of 7 months.
  - (iii) The resulting effect on the victim who became pregnant and gave birth to a male child.
  - (iv) The offendings were committed within the family home where the victim was supposed to feel safe.
  - (v) The defendant took advantage of the victim's mental and physical disabilities.

With an uplift of 2 years for these aggravating features, the sentence is increased to 10 years imprisonment.



7. In mitigation, there will be a 1/3 reduction according to the principle in Scott for guilty plea at first opportunity, including the likelihood of a finding of not-guilty had the matter been contested. In effect, the sentence of 10 years imprisonment is reduced by 3 years and 4 months so that the remaining balance is 6 years and 8 months. And the Court will allow a further reduction because the victim did not report the offendings in August 2011 when it happened on the first occasion. She waited until she became pregnant and gave birth. She made a statement only on 6<sup>th</sup> July 2012. She could have done so in August, 2011 and prevented further offendings but she did not. That omission and/or failure by the victim must be taken as a mitigating factor, and added with the other factors such as being a first-time offender and good cooperation with the Police, a further reduction of 2 years and 8 months is hereby made. The sentence is effectively reduced to exactly 4 years imprisonment which commenced on 12<sup>th</sup> July 2012 when you were first taken into custody.
8. Bila Yacinth, you are hereby sentenced to 4 years imprisonment.
9. You will be eligible to apply for parole after having served half of your 4 years term, depending on your behavior and attitudes at the Correctional Centre.
10. You have a right of appeal within 14 days, if you so choose.

DATED at Luganville this 27<sup>th</sup> day of August 2012.

BY THE COURT

  
OLIVER A. SAKSAK

Judge

