

**PUBLIC PROSECUTOR v. J T**

*Sentencing:*                    *Friday 6 March 2015 at 2.00 pm*

*Before:*                         *Justice SM Harrop*

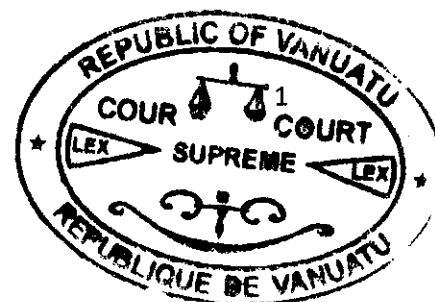
*In attendance:*             *Mr Ken Massing for the Public Prosecutor*  
                                      *Ms Jane Tari for the Defendant*

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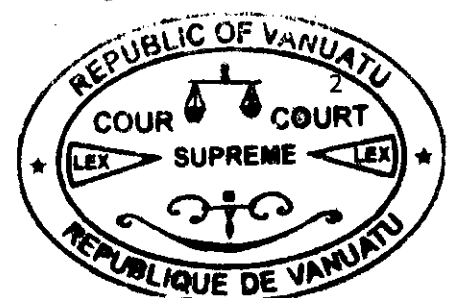
**SENTENCE**

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1. Jackson, as you are only 15, you turn 16 on the 1<sup>st</sup> of April, I will address you by your Christian name and deliver my sentencing remarks in a rather more informal way than I would if you were an adult.
2. You have pleaded guilty to one count of sexual intercourse with a nine-year old boy on 6 August 2014 at the Wailengi area in East Ambae where you and the victim live. This offence involved your telling him to follow you into your house, removing his clothes and making him suck your penis.
3. This is a very serious offence and that is confirmed by the maximum penalty of 14 years imprisonment. Usually an unsuspended prison sentence is the only appropriate sentence as the Court of Appeal confirmed in *Public Prosecutor v. Gideon* [2002] VUCA 7.
4. However, you were 15 years old at the time of the offence and Section 54 of the Penal Code says that nobody under 16 years of age is to be sent to prison unless there is no other appropriate method of punishment.



5. Despite the seriousness of this offence I am not going to sent you to prison because I consider a lesser sentence, a combination of community work and supervision is appropriate. Both Mr Massing and Ms Tari have made submissions to the same effect and what they suggest is in line with some other relevant sentencing decisions of this Court. I realise these will mean nothing to you, but I am referring here particularly to *Public Prosecutor v. RY* [1993] VUSC 19, *Public Prosecutor v. Seule* [2011] VUSC 286, *Public Prosecutor v. Bule* [2012] VUSC 227 and *Public Prosecutor v. Ray* [2014] VUSC 100.
6. I have read the helpful submissions of both counsel and the insightful probation report.
7. You have lived in Wailengi village with wider family members since your mother moved to Port Vila in 2013 to find work. You do not know who your father is, so you have not had the guidance which every boy needs from a father. I note your mother is very critical of the guidance, or lack of it, which you have received from your grandparents and other family members.
8. I was particularly concerned to read in the probation report that the village chief describes your conduct (and here he is referring also to sexual conduct towards 2 young girls in the village in respect of which charges were laid but which have been withdrawn today) as “normal behaviour”. The chief is wrong and he needs to be told that immediately, I suggest by a senior Police Officer.
9. If the chief’s view of matters indicates the kind of guidance you have received from adults in the village, then it is hardly surprising that you acted in the way you did. Also I note that you say you had seen examples of this kind of behaviour by looking at pornography on your mobile phone and you wanted to try this for yourself. Again, that makes your conduct understandable, though of course not at all acceptable.
10. You need to understand that sexual contact with children and young people, or anyone else without their consent, is a serious wrong which is not tolerated in a civilised society. It is a serious crime and that is why the Vanuatu Parliament has said a maximum penalty of 14 years imprisonment applies. So normally you will be sent to prison for this and



indeed for several years. Now that you have a conviction for this offence the chances of your going to prison if you were to do this again are even greater.

11. I take into account the fact that you have pleaded guilty and indeed you immediately admitted this offence to the Police when you were spoken to. So you have acknowledged your responsibility at the first opportunity and importantly you have avoided the need for the young boy to come to court and give evidence which would have involved his reliving the incident and further embarrassment and adverse consequences for him. You need to understand that this kind of conduct can have long term adverse consequences for the victim. It can affect their lives in many different ways and particular the way that they deal with sexual matters and relate to other people in the future. I am sure you were not thinking of anything like that at the time but you need to understand those consequences are real.
12. I also acknowledge that you are willing to perform a custom ceremony to the victim and his family. The probation officer has not been able to contact the victim's family so it is not known if that is something they would welcome or even agree to but certainly it is a desirable step and I give you credit for being willing to front up and be part of such a ceremony.
13. I am concerned about the obvious risk of your doing this kind of thing again. I agree with the probation officer that unless you get some help, guidance and some understanding from sources other than your current family members (and the village chief) it is very likely that you will do this sort of thing again. So a sentence of supervision is to my mind very important, indeed more important than punishing you.
14. I say that particularly because you have already in effect received a significant punishment in you were arrested, removed from Ambae and brought to Luganville and remanded in custody. So you were a long way from your village in Ambae and you were in custody for 22 days between 25 November and 17 December 2014 before you were granted bail. That is equivalent to serving a prison sentence of about 6 weeks and as I

