

IN THE SUPREME COURT
REPUBLIC OF VANUATU
(Criminal Jurisdiction)

Criminal Case No. 5 of 2015 and 276 of 2016

PUBLIC PROSECUTOR
-v-
FREDSON LEO

SENTENCE

1. Fredson Leo you were charged with 4 counts of acts of indecency without consent all on separate informations. There were four separate complainants. Even though there are 4 informations any sentences of imprisonment will be concurrent.

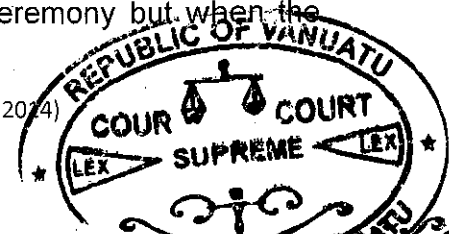
2. You are charged with acts of indecency without consent contrary to section 98 of the Penal Code even though the particulars disclosed in the facts of the offence on each information describe more serious offences. Two informations allege digital penetration which is rape. Two others show the age of the complainants as being 14 which disclose offences under section 98(A), acts of indecency with a person under 15. I propose to deal with you only on the offences with which you have been charged and which you have admitted. The maximum penalty for each offence is 7 years.

3. The starting point for offences of this type (commonly called indecent assault) would be 3 years. These are offences where it is admitted some clothing was removed and there was contact with bare flesh. In *Livae*¹ the starting point was two years for an indecent assault through clothing. These offences were a degree more serious and the starting point should reflect that.

4. I would also have to say though that there are serious aggravating factors involved in your offending. You were in a position of trust with the complainants. You were a Chaplain and teacher at a school and all the complainants were pupils, two were young girls of 14 years of age. You contrived some quasi religious ceremony which entailed you touching the complainants indecently. You deceived each complainant into submitting to these acts of indecency by invoking their faith. The starting sentence should be increased by one year to 4 years for each offence.

5. I am unable to discount the sentence because of an early plea. You entered and maintained a not guilty plea to each charge and it was only when confessions made by you to the police were admitted into evidence that your plea changed. I am also concerned by comments in the Pre Sentence Report which show very little remorse on your part. There was talk of a possible custom reconciliation ceremony but when the

¹ *Public Prosecutor v Livae* [2014] VUSC 126; Criminal Case 53 of 2014 (12 September 2014)



matter was taken on by the police that possibility was shelved. Whether it will be revived or not is a matter for you but there is no evidence of a custom reconciliation on the file at the moment.

6. However, until these matters came to light you led an apparently blameless life. You must be given credit for your previous good character. I shall reduce the sentence for each offence by 12 months to take account of your previous good character. You should also be given credit for the time spent in custody before trial. You were arrested in late November 2014 and released two weeks later on bail. This would equate to a month in prison. The sentences will be reduced by a further month making the end sentence two years and 11 months in respect of each offence. The sentences will be effective today.

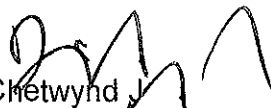
7. I have considered whether the sentences can be suspended. When offences of indecent assault have been dealt with by the courts they have often resulted in suspended sentences. However in this case I cannot say that suspending the sentence of imprisonment is practicable or consistent with the safety of the community. I also bear in mind what was said in *Gideon*²;

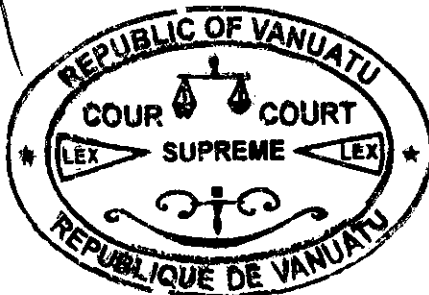
"It will only be in the most extreme of cases that suspension could ever be contemplated in a case of sexual abuse.....Men must learn that they cannot obtain sexual gratification at the expense of the weak and vulnerable. "

The circumstances as set out in the facts of the offences disclose sexual abuse. I am unable to discern any extreme cause which would allow the sentences to be suspended. The sentences will be served immediately. As I said earlier the sentences will run concurrently so the maximum amount of time you will spend in prison is 2 years and 11 months.

8. If you are dissatisfied with the sentence I have handed down you have the right to appeal and that appeal must be lodged within 14 days. I would suggest that you seek guidance and advice from your counsel before making any decision.

Dated 9th March 2016 at Luganville.

Chetwynd J. 



² *Public Prosecutor v Gideon* [2002] VUCA 7; Criminal Appeal Case 03 of 2001 (26th April 2002)