

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal  
Case No. 18/1406 SC/CRML

**PUBLIC PROSECUTOR**  
**V.**  
**JOSHUA IAIAHO**

**Coram:** *Justice D. V. Fatiaki*

**Counsel:** *Ms. M. Tasso for the State*  
*Mr G. Takau for the Defendant*

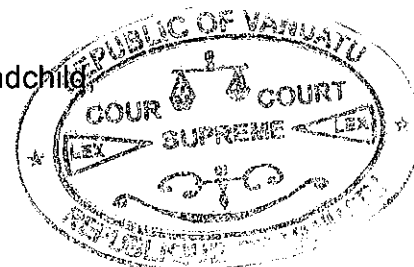
**Date of Sentence:** *31 July 2018*

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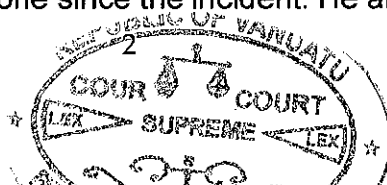
**SENTENCE**

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1. On 28 June 2018 the defendant was convicted after a trial of an offence of Act of Indecency With a Young Person contrary to Section 98A of the Penal Code. The maximum penalty for the offence is imprisonment for 10 years. It is a serious offence although I accept that like many other offences, it is capable of being committed in different ways and with varying degrees of seriousness.
2. A brief synopsis of the proven case is that on 15 October 2016 the defendant who is a plumber, had gone to the complainant's house to repair a leaking sink. While working outside the complainant had given the defendant a drink and then a towel to wipe himself. The towel was given to the defendant in the laundry area and the complainant said that defendant after receiving the towel had pushed his hand into her panty and rubbed her genital area.
3. Upon his conviction, a pre-sentence report was sought and sentencing submissions were directed to be filed. I have received both and am grateful for the assistance provided to the Court.
4. From the pre-sentence report I have extracted the following personal details and mitigating factors:
  - The defendant was born on 3 May 1973 on Tanna Island. He is now 45 years of age;
  - The defendant is married and has 5 children and a grandchild;



- The defendant is a pastor of the Apostolic Vanuatu Church at Eratap with a congregation of 60 members;
  - The defendant is also a chief in the Eratap Community of about 80 people;
  - Although the defendant only attended 2 years of formal schooling he has skills in plumbing;
  - The defendant is gainfully employed and earns an income with which he supports his family;
  - The defendant is a first time offender;
  - The defendant expressed remorse for his offending and accepts full responsibility for his actions. He has not sought to blame the victim in any way;
5. Prosecuting counsel in her sentencing submissions refers to the guideline judgment of: Public Prosecutor v Gideon [2002] VUCA 7; and Supreme Court cases of: Public Prosecutor v Mathew [2013] VUSC 79 and Public Prosecutor v Robson [2014] VUSC 56 where the Court adopted starting points of 3 years and 2 years in similar cases of indecency involving young girls. The relevant guideline is expressed in the following extracts from the Gideon case where the Court of Appeal said:
- “... there is an overwhelming need for the Court on behalf of the community to condemn in the strongest terms any who abuse young people in our community. Children must be protected. ... It is totally wrong for adults to take advantage of their immaturity”.*
- And later:
- “Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable ... Men who take advantage sexually of young people forfeit the right to remain in the community”.*
- And finally:
- “It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse”.*
6. It is clear from the foregoing that an immediate custodial sentence is the norm for sexual abuse of a young girl. the present case is also aggravated by the 30+ years age difference between the defendant and the complainant; the fact that the offending occurred at the complainant's house where she should expect to be safe; and there was an element of planning and certainly taking advantage of an innocent young girl's kindness and naivety.
7. The victim's father told the probation officer that his daughter is scared of people and finds it hard to trust anyone since the incident. He also said that it is now too



late for a customary reconciliation ceremony as the matter is before the Court for final judgment.

8. Having said that this was not the worst possible offence of its kind. It may be described as a momentary skin on skin contact of the complainant's genital area which caused no physical injury. In the circumstances, I adopt a starting point of 12 months imprisonment.
9. From that starting point, I deduct 3 months for the defendant's past good record, the limited remorse expressed to the probation officer, and the 20 months delay in finalising the case. The end sentence is  $(12 - 3) = 9$  months imprisonment which is ordered to be served with immediate effect.
10. The defendant is advised of his right to appeal within 14 days against this sentence if he does not agree with it.

**DATED at Port Vila, this 31<sup>st</sup> day of July, 2018.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

