

**PUBLIC PROSECUTOR VS- FELIXANO MALTURNAIM**

**Coram:** *Mr. Justice Oliver A. Saksak*

**Counsel:** *Ken Massing for Public Prosecutor  
Eric Molbaleh for Defendant*

**Date of Plea:** *28<sup>th</sup> February 2018*

**Date of Sentence:** *11<sup>th</sup> May 2018*

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**SENTENCE**

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1. Felixiano Malturnaim, you are for sentence today for having pleaded guilty to one charge of Incest contrary to section 95 (1) (a) of the Penal Code Act [ Cap. 135]. The maximum penalty for this offence was originally 10 years imprisonment but has been increased to 15 years after Parliament amended the Act in 2016 ( Penal Code ( Amendment) Act NO. 15 of 2016).
2. You also pleaded guilty to an alternative charge being unlawful sexual intercourse contrary to section 97 (2), however this was withdrawn by the Prosecution. The Court will treat this feature only as an aggravating feature of your offending.
3. Your victim was and is your very own biological daughter. At the time of the offending in November 2017, she was only 14 years old. It happened one night when you entered her room. You spoke some words to her to the effect that as your seed, you reserved the right to be the first to use her and impose yourself on her. Then you removed your clothes and hers, spread her legs apart and inserted your penis into her vagina and had sexual intercourse with her. There was full penile penetration. She felt pain in her vagina. And she felt bad about what you had done to her. Subsequently the matter was reported to the Police who investigated the report. On interview, you admitted committing the offences on four different occasions.
4. In considering and assessing appropriate sentence, I have been assisted by the sentencing submissions filed by the prosecutions on 15<sup>th</sup> March 2018 and your pre-



sentence report by the Probation Service filed on 17<sup>th</sup> April 2018. Your lawyer has not filed any sentencing submissions.

5. I accept and apply the principles set out by the Court of Appeal in the case of Public Prosecutor.v. Bae [2003] VUCA 14 where the Court of Appeal said:

*“ Parents who use their children for their own sexual gratification will go to prison. It is almost impossible to imagine circumstances in which that will not be the necessary response. This Court would anticipate that it will only be in the most truly exceptional circumstances, which are clearly and unequivocally demonstrated to exist, that this will not apply”.*

6. In light of the Court of Appeal’s clear statement of sentencing principle, the most appropriate sentence for you will be a sentence of imprisonment. This is to mark the seriousness of your offending, the disapproval of the Court for your actions, a deterrence for you and others, and to protect the young and vulnerable.
7. The aggravating features of your offendings were-
- a) You stood in a position of trust.
  - b) You abused that trust repetitively on four occasions.
  - c) The great age disparity between you being 35 years old and she being 14 years old at the time of offendings.
  - d) Your victim was under 15 years old, but over the age of 14 years. Your actions on her were unlawful actions.
  - e) The offendings occurred in the confines of your family home where the victim was supposed to feel safe and protected.
  - f) The sexual intercourse acts were unprotected, putting the victim at great risks of illness and teenage pregnancy.
  - g) The mental and physical impacts on her life as a school child and a growing child will have a lasting effect on her.
8. Putting all these features together with the serious offence that you committed, the Court sentences you to a starting sentence of 7 years imprisonment.



9. Your presentence report indicates you are a family man living in a defacto relationship with 3 children, one of whom is a daughter from another defacto relationship. Your brother and church leader and paramount chief speak well of your participation in community affairs but were greatly surprised at your offendings. You are a simple villager and gardener, planting cocoa for a living. Your highest education level was year 7 at the College de Santo in 1998. It is unfortunate given these comments, your unlawful actions were a shock to the community. You let yourself, your family and your community down.
10. The only factors the Court will give reduction of sentence for are your clean past record, your willingness to perform custom reconciliation ( although not accepted), your reconciliation with your defacto wife and her relatives, and your cooperation with the police at the investigation stages of your case. For these together, I will reduce your starting sentence by 6 months leaving the balance at 6 years and 6 months imprisonment.
11. Finally you are entitled to a 1/3 reduction for your guilty plea at first opportunity. This means that 2 years and 2 months are deducted from 6 years and 6 months. The balance is 4 years and 4 months.
12. You are therefore sentenced to an end sentence of 4 years and 4 months imprisonment. Your sentence will not be suspended as there are no exceptional circumstances warranting it.
13. Your sentence of 4 years and 4 months imprisonment is backdated to 16<sup>th</sup> April 2018 when you were first remanded in custody to await your sentencing.
14. That is the sentence imposed by the Court. You have a right of appeal within 14 days if you do not agree with this sentence.



DATED at Luganville this 11<sup>th</sup> day of May 2018

BY THE COURT



  
OLIVER.A.SAKSAK

Judge

