

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

**Criminal
Case No. 20/501 SC/CRML**

BETWEEN: Public Prosecutor

AND: Jackson Mansen
Defendant

Coram: Justice Aru
Counsel: Mr. T. Karae for the Public Prosecutor
Ms. J. Kaukare for the Defendant

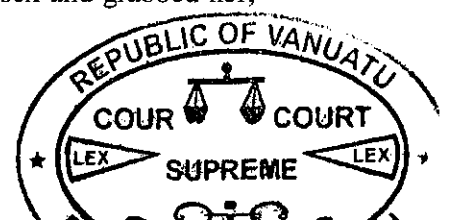
SENTENCE

Introduction

1. Mr Jackson Mansen pleaded guilty to a single charge of unlawful sexual intercourse with a child under 13 years of age. This is his sentence.

The facts

2. On 12 December 2019 around 2pm the victim was playing with her sister and three other friends. While playing the defendant called the victim that he had something for her brother and that she had to go and collect it from him. When the victim went to the defendant's house he grabbed her, covered her mouth and took her inside his house. The defendant locked the door and took the victim to his bed. He took his clothes off then undressed the victim before lying on top of her and pushed his penis inside her vagina and had sexual intercourse with her.
3. After having sex with the victim the defendant gave her a packet of noodles and pushed her out through a window. She felt pain in her vagina but did not understand what the defendant did to her. The victim's sister said before the incident, the defendant sent her to go and look for three girls but could not find them and returned to playing with her friends. She saw the defendant calling her sister and taking her inside his house. She went to the house and heard the victim crying inside. She returned to her friends and told them what she heard. A few minutes later they saw the victim coming out of the house crying and in pain. The victim told them what the defendant did to her.
4. Upon being interviewed by the Police the defendant admitted that the victim was her cousin and was an underage child but he really wanted to have sex and grabbed her, covered her mouth and had sex with her inside his house.



Sentence start point

5. The maximum penalty for unlawful sexual intercourse with a child under the age of 13 years was increased in 2017 from 14 years to imprisonment for life. The offending in this case occurred in 2019. It was one of single incident.
6. A number of aggravating factors stand out. First there is an age disparity of 12 years. The defendant was 23 and the victim was 11 years old. The unprotected sex exposed the victim to pregnancy and sexually transmitted diseases and psychological effects on her life.
7. There are no mitigating features of the offending.
8. The starting point is therefore set at 6 years imprisonment.

Personal Factors

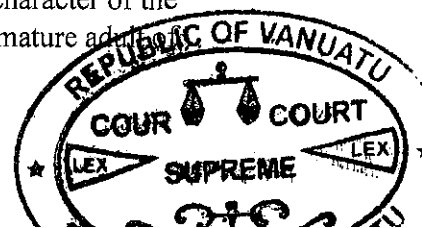
9. Initially Mr Mansen pleaded not guilty to the charge. A few months later he sought to be re arraigned and pleaded guilty. The guilty plea was not entered at the first available opportunity therefore the starting point is reduced by 12 months for the late guilty plea.
10. Mr Mansen is now 24 years old and is a first time offender with no previous convictions. He lives in a de facto relationship and has a child. He has shown remorse for his actions by performing a custom reconciliation with the victim's family by exchanging the following items:-
 - Mats
 - A pig
 - Some rolls of calico
 - Uncooked food items – manioc, banana etc
 - VT100, 000
11. He also spent 2 months in custody prior to being bailed. For his personal factors the sentence is further reduced by 10 months.

End sentence

12. The end sentence that I impose is therefore 4 years and two months imprisonment.

Suspension

13. The defendant submits that whatever sentence is imposed it must be suspended. Section 57 of the Penal Code [CAP 135] provides that a sentence may only be suspended if in view of the circumstances, the nature of the crime and character of the offender it is appropriate to do so. The defendant is not a teenager but a mature adult.



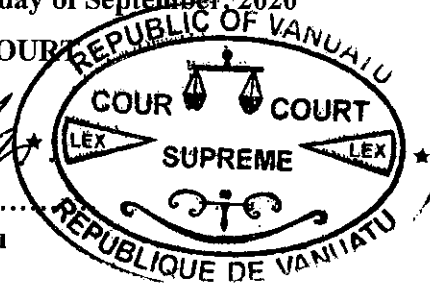
23 years. He made his intentions known that he wanted to have sex by sending for girls and when none was found lied to the victim that he had something for her brother and grabbed her to satisfy himself.

14. Considering the nature and seriousness of the offending the sentence will not be suspended.

15. The defendant has 14 days to appeal if he is not happy with the decision.

DATED at Port Vila this 11 day of September, 2020

BY THE COURT



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D. Aru
Judge