

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

Criminal
Case No. 20/486 SC/CRML

PUBLIC PROSECUTOR

v

KALO CHARLEY

Date: 8 May 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms M. Tasso
Defendant – Mrs P.K. Malites

SENTENCE

A. Introduction

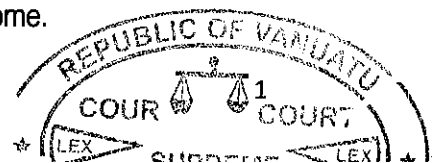
1. Mr Charley pleaded guilty to two charges of act of indecency with a young person and three charges of act of indecency without consent. The maximum sentence for these offences is 10 years and 7 years imprisonment respectively.
2. I convict Mr Charley on his pleas and the summary of facts.

B. Facts

3. There are 4 different complainants ranging in age from 9 years old to 17 years old. They reside on Epi island.

Count 1

4. Early in the morning on 3 November 2019 Mr Charley went to the house where his 17 year old step-daughter JB was sleeping. Mr Charley reached through the window and shone a torch at JB's face. He left but a few minutes later returned and again shone the torch at her face. JB opened her eyes and saw Mr Charley standing outside naked. Mr Charley urinated at JB's window while she was watching him. JB was terrified. She cried because Mr Charley is her step-father. In the morning she left the house and told a female witness about what had happened. Since then she has been too frightened to return home.



Count 2

5. The complainant DK was 16 years old. Sometime during October 2019, she came to Mr Charley's house. When Mr Charley saw her, he walked out of his kitchen, unzipped his pants, pulled his penis out and showed it to DK. When she saw his penis, DK was afraid and went to her uncle's house.

Count 3

6. Later in October 2019, DK was sitting outside her uncle's kitchen. Mr Charley came by, saw her and entered the kitchen where he spoke with DK's mother. He came out of the kitchen and sat about 2 metres away from DK. He lifted up one of his legs, pulled down his pants, removed his penis from his pants and showed it to DK. No one was there or near them at that time. He continued to show his penis to her until DK's uncle arrived when he put his penis back in his pants and left. DK did not feel good. She went into the kitchen to her grandmother, crying and told her what had happened.

Count 4

7. Sometime during October 2019, 9 year old FP went to buy local bread from Mr Charley who was baking it. When FP arrived at Mr Charley's house, she asked him if the bread was cooked. He responded from inside his kitchen that not yet and invited her into the kitchen. She entered the kitchen and saw that Mr Charley did not have a shirt on. Mr Charley told FP that he wanted to look for lice on her head. While he looked for lice at the same time he rubbed his penis on her backside and forced her to hold his penis by taking hold of her hand and making her touch his penis. FP tried to leave but Mr Charley was too strong and continued making her touch his penis. This continued for a while until Mr Charley's children arrived and he left FP and went out of the kitchen.

Count 5

8. The complainant VK is Mr Charley's biological daughter. She was 12 years old. Sometime in 2018 she and other children were watching a movie in the sitting room of their house. Mr Charley was inside his bedroom. The doorway to that bedroom did not have a door hung on it, just a curtain to block the view from the sitting room. VK was sitting facing that bedroom doorway. During the movie showing, Mr Charley lifted the doorway curtain and when VK looked at him, he removed his pants and showed his penis to her. VK was terrified to tell her mother about what her father had done to her. She kept it to herself until Mr Charley did the same thing to her elder step-sister JB (Count 1) and then she too reported him. Since then VK has been afraid of her father.

C. Aggravating Factors of the Offending

9. The aggravating factors to the offending are:
 - Mr Charley's sexual offending was repeated, occurring on five separate occasions over at least a 10 month period. Mr Charley offended twice against the same complainant, and against three other complainants. His offending became more serious over time.



- The skin-to-skin contact involved in the offending against FP and use of force. Mr Charley rubbed his penis against FP but then held her hand and forced her to touch his penis. He continued forcefully holding on to her and made her continue to touch him, stopping only his children arrived.
- The age differential between the complainants and Mr Charley who was 34 years old. The complainants were just 9 to 17 years old. They are children and vulnerable. Mr Charley's offending was at its worst against the youngest of the complainants, exploiting her powerlessness against him.
- The breach of trust in offending against Mr Charley's own biological daughter and step-daughter. Offending within the family environment where children should be secure is particularly serious. Moreover, the offending against Mr Charley's biological daughter was in their house where more than any other place she was entitled to be safe and secure.
- The harm suffered by the victims. The fear that Mr Charley caused his biological daughter was such that she was too terrified to tell her mother, much less anyone else, for up to a year. She is afraid of her father now. He caused fear in the other complainants too. All four complainants spoke in their victim impact statements of the fear they felt. His children spoke too of their shame as a result of their father's offending.
- There was a degree of persistence and determination. Mr Charley shone a torch onto JB's face. He then left but returned minutes later completely naked and again shone a torch onto her face. He exposed himself to her and urinated at her window while she was watching him. Similarly, Mr Charley had sighted DK sitting outside her uncle's kitchen. He first went into the kitchen but then came back outside then proceeded to expose himself to her. He had made sure no one was there or near them at the time before doing so. Mr Charley told FP he wanted to look for lice on her head in order to get close to her to carry out his offending.

D. Mitigating Factors of the Offending

10. There are none.

E. Offending Starting Point

11. I set the global sentence start point taking all the offending into account at 6 years imprisonment.

F. Factors Relevant to the Offender

12. Mr Charley is married and has 4 children and a step-daughter. They are all in primary and secondary school at Epi. He supports his family through seasonal work overseas. His wife replaced him on the seasonal work program after he was remanded in custody. Mr Charley presented as remorseful to the pre-sentence report writer. His offer to perform a custom reconciliation ceremony has been refused by the complainants and their families. Mr Charley's wife is still on good marriage terms with him, for which he is said to be truly



grateful. He believes his children will shun him for his actions for which he says he will live with regret all his life. Mr Charley has no previous convictions.

13. I reduce Mr Charley's sentence start point by 3 months imprisonment for his personal factors.

G. Deduction for Guilty Plea

14. Mr Charley entered his guilty pleas at the first opportunity. By doing so, he has saved the girls the trauma of having to give evidence at trial. Accordingly I allow a discount for that and for the saving of Court time and expense as a result of the guilty pleas, of a further 33.3%.

H. End Sentences

15. Taking all of those matters into account, I impose the following end sentences:

- Count 4 - Act of indecency with a young person 3 years 10 months imprisonment
- Count 5 - Act of indecency with a young person 3 years 6 months imprisonment
- Count 1- Act of indecency without consent 3 years 6 months imprisonment
- Count 2 - Act of indecency without consent 3 years imprisonment
- Count 3 - Act of indecency without consent 3 years imprisonment

16. The sentences are to run concurrently. They are to commence from 21 November 2019 when Mr Charley was remanded.

I. Suspension

17. An immediate custodial sentence must be imposed. *Public Prosecutor v Gideon* [2002] VUCA 7 is authority for that proposition. This is to mark society's disapproval, to deter others, to protect society and to hold the offender accountable for his criminal acts.

J. Other

18. Mr Charley has 14 days to appeal this sentence if he disagrees with it.

19. The names and details leading to the identification of JB, DK, FP and VK are permanently suppressed.

**DATED at Port Vila this 8th day of May 2020
BY THE COURT**


V.M. Trief
Judge

