

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

Criminal
Case No. 20/3347 SC/CRML

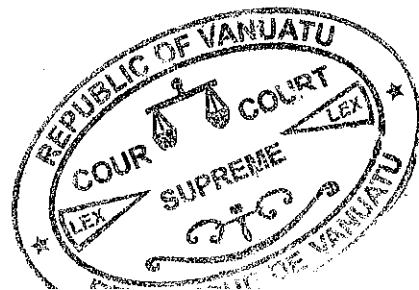
BETWEEN: Public Prosecutor

AND: Joseph Avock
Defendant

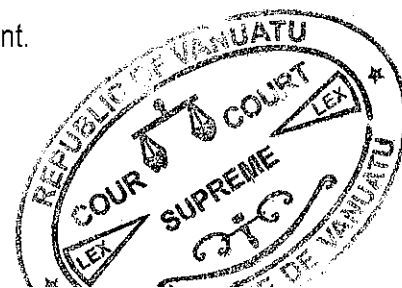
Date of Plea: 2 February 2021
Date of Sentence: 25th February 2021
By: Justice Oliver.A.Saksak
Counsel: Mr P. Toaliu for Public Prosecutor
Mrs K. Karu for the Defendant

Sentence

1. Joseph Avock pleaded guilty to 2 charges of act of indecency with a young person contrary to section 98A and to one count of aggravated sexual intercourse with a child, sections 97(A) (2) (d), of the Penal Code Act [CAP 135]. He is for sentence today.
2. The first incident occurred on 19 June 2020 at Crystal Blue area, Efate. The victim is a 5 year old girl. She was at home when the defendant approached her and asked her to follow him to the Community Hall. She did. At the Hall he removed her clothes and touched her vagina. Subsequently he removed his clothes and exposed his penis to the girl. He then told her to return home. This was the charge in Count 1.
3. The third and fourth incidents occurred on 19 August 2020 also at Crystal Blue area on another young child of 4 years old. At around 6:30 am that day the defendant went to the store where he met his victim. She gave 20 vt to the storekeeper for a packet of twisties. Whilst being served the defendant approached her, called her and they left the store. At the defendant's house the defendant removed his penis from his trousers and exposed it to the little girl. This was the charge in Count 3.
4. The defendant then subsequently lifted up the little girl's skirt and then sucked on the girl's vagina. This was the charge in Count 4.



5. The charge of act of indecency in Count 2 was denied by the defendant and the Prosecution entered nolle prosequi under Section 29 of the Criminal Procedure Code Act. He was acquitted on that charge.
6. These are serious offences. The offence of indecency with a young person, section 98A of the Penal Code Act carries the maximum of 10 years imprisonment. And an offence of aggravated sexual intercourse with a child, section 97A (2) (d) carries the maximum of life imprisonment.
7. The defendant's action of sucking the vagina of the second victim amounted to sexual intercourse as defined in Section 89A of the Penal Code Act.
8. The defendant appears to have cultivated the habit of lust for little girls. He exposed his penis to 2 different little girls on 2 different occasions. He went further to touch the first victim's vagina. That was skin to skin contact. And for the second victim he committed an act of sexual intercourse by sucking on the little girl's vagina. That too was a skin-to-skin contact.
9. These were very young victims with tender ages of 4 and 5 years. There as a great disparity of ages between them of about 48 years. There was a breach of trust as they all live in the same community and are related to each other. There was some degree of planning and luring away of the victims to isolated spots.
10. These are the aggravating features of the defendant's offendings. There are no mitigating circumstances for the offendings.
11. The defendant is a risk to the community and in particular little girls. He does not deserve to be in the community. His offendings warrant sentences of imprisonment. This is to mark the seriousness of his offendings, to mark public condemnation of his actions, to deter him and other like-minded persons, to protect the young and vulnerable, and to punish him adequately for his offendings.
12. These principles are well recognised and established in numerous cases such as PP v. Kalosil [2015] VUSC 149, PP v. Gideon [2002] VUCA 7 and PP v. George Dick [2004] CRC 1/2004.
13. I therefore convict and sentence the defendant as follows:-
 - a) For act of indecency – Count 1, a start sentence of 3 years imprisonment. As it was a separate offending on a different date on a separate victim; this sentence will be made consecutive to the sentences for the 2 charges in counts 3 and 4.
 - b) For act of indecency with a young person – Count 3, a start sentence of 4 years imprisonment to be served concurrently with the sentence for the aggravated sexual intercourse in Count 4.
 - c) For aggravated sexual intercourse, Count 4, a start sentence of 9 years imprisonment to be served concurrently with the 4 years for the charge in Count 3.
14. Altogether the defendant is sentenced to a term of 12 years imprisonment.



15. In mitigation, I consider the factors raised in the defence submissions. First his guilty pleas. Whilst he pleaded guilty to the charges in Counts 1, 3 and 4, the defendant pleaded not guilty to the charge in Count 2. Had the Prosecution not entered nolle prosequi in relation to that charge the case would have gone to trial. That was the choice of the Public Prosecutor, not the defendant himself.
16. Further the defendant has, from his pre-sentence report committed similar acts on other victims in the past although no charges were laid. That shows he is a habitual offender.
17. It is for those reasons I accept Prosecution's submissions that the defendant is not entitled to the full 1/3 reduction for his guilty plea. To accord him the full 1/3 reduction would enable the defendant and any other like-minded persons to take advantage and abuse the entitlements in the future.
18. In my view the defendant is only entitled to 25% reduction for his guilty pleas. This means that 3 years are deducted from his term of 12 years leaving the balance at 9 years imprisonment.
19. I now consider his personal circumstances available from his pre-sentence report. I deduct a further 6 months for these factors.
20. That leaves his end sentence at 8 years 6 months imprisonment for all 3 offences he committed and charged with under Counts 1, 3 and 4.
21. Finally I take into account his pre-custodial period from 27 August 2020.
22. So the defendant does not lose his parole privilege I order that his end sentence of 8 years 6 months imprisonment be backdated to 27 August 2020, when he was first remanded in custody.
23. That is the sentence of the defendant. He has a right to appeal against the sentence within 14 days if he disagrees with it.

Dated at Port Vila this 25th day of February 2021

BY THE COURT


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Oliver Saksak

Judge

