

PUBLIC PROSECUTOR

v

JOE KALORIE

Date: 17 August 2022
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Ms J. Tete
Defendant – Ms F.L. Kalsakau

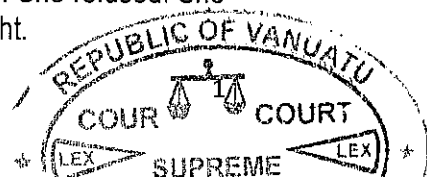
SENTENCE

A. Introduction

1. Mr Kalorie pleaded guilty to one charge of act of indecency with a young person. I convicted him on his plea and the admitted facts.

B. Facts

2. At the time of the offending, the complainant DJ was 14 years old and in Year 8 at Akama Centre School on Epi island. Mr Kalorie was 24 years old and the bursar of the school.
3. On 26 June 2021, Mr Kalorie came to DJ's house and told them to prepare food for him to eat later. He was drunk. He told them that he would knock three times on the door.
4. Early in the morning on 27 June 2021, Mr Kalorie knocked on the door. DJ and her cousin opened the door. Mr Kalorie asked for a box of matches. They had none so he asked DJ to follow him to find matches. They went to two houses but did not find any matches. On the way back to DJ's house, Mr Kalorie led them along a different road. DJ pointed this out to Mr Kalorie. He threatened to hurt her if she did not follow him.
5. Mr Kalorie led DJ to a half-built house in the bush. He told DJ to remove her clothes. She refused. He then removed his trousers and underwear and told DJ to hold his penis but she was scared and refused. Mr Kalorie grabbed her hand and forced her to touch his penis. He told DJ to masturbate him and he would give her a job. In fear, DJ did as she was told and masturbated Mr Kalorie.
6. When it was over, Mr Kalorie told DJ to follow him back to his house. She refused. She walked by herself back to her house; it was starting to become daylight.

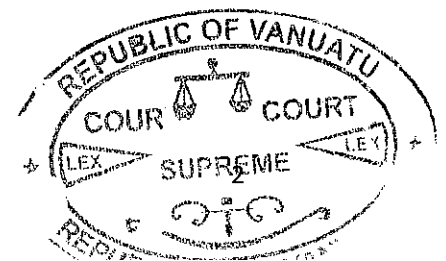


C. Sentence Start Point

7. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
8. The maximum sentence provided in s. 98A of the *Penal Code* [CAP. 135] for an act of indecency upon, or in the presence of, another person under the age of 15 is 10 years imprisonment.
9. There are no mitigating factors related to the offending. The offending is aggravated by:
 - The breach of trust involved as Mr Kalarie was in a position of responsibility at the school and the complainant a student of the school;
 - The offending occurred at night-time;
 - Some degree of planning and premeditation;
 - The age disparity between the defendant and the complainant;
 - A degree of force was used to force the complainant's hand onto the defendant's penis and to masturbate him;
 - Skin-to-skin contact; and
 - The psychological and emotional impact on the complainant.
10. The factors set out above require a sentence start point of 3 years imprisonment.

D. Mitigation


11. Mr Kalarie's early guilty plea saved the complainant the need to give evidence in Court. However, Mr Kalarie pointed out in his pre-sentence report that he asked for and obtained the complainant's consent to follow him. This does not indicate full acceptance of responsibility for the offending. Accordingly, I deduct 20% from the sentence start point for Mr Kalarie's early guilty plea.
12. Mr Kalarie is 25 years old and single.
13. He has no previous convictions. However, in offences of sexual nature, a person's previous good character has very little relevance in mitigating a sentence.
14. Mr Kalarie has performed a custom reconciliation ceremony with the complainant, her chief and family involving 1 head of kava, 2 mats and VT5,000 which was accepted.
15. I further reduce the sentence start point by 6 months for Mr Kalarie's personal factors.



E. End Sentence

16. Mr Kalarie is sentenced to 1 years 11 months imprisonment. The sentence is back-dated by 4 weeks to take into account the period that Mr Kalarie spent in custody from 24 July 2021 to 20 August 2021.
17. The sentence is imposed to denounce such criminal conduct against young girls and against the values of society, to hold Mr Kalarie accountable for his criminal conduct and to deter Mr Kalarie and others from such offending.
18. The end sentence will not be suspended. No exceptional circumstances are shown to warrant suspension.
19. This sentence of imprisonment may not be enforced until the time of appeal against sentence has expired or Mr Kalarie earlier elects to begin serving his sentence in accordance with s. 50 of the *Penal Code*.
20. Mr Kalarie has 14 days to appeal the sentence.
21. All details leading to the identification of DJ are permanently suppressed.

**DATED at Port Vila this 17th day of August 2022
BY THE COURT**


Justice Viran Molisa Trief

