

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

**Criminal
Case No. 24/102 SC/CRML**

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: PAUL TARI
Accused

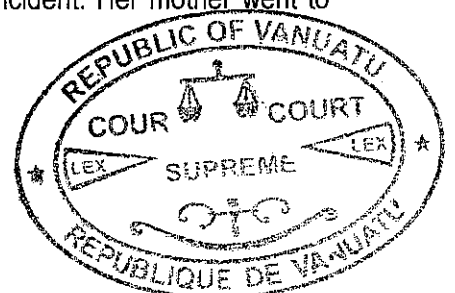
Date of Sentence: *20th day of June, 2024*
Before: *Justice W. K. Hastings*
Counsel: *Mr. L. Young for Public Prosecutor*
Mr. J. Garae for the Defendant

SENTENCE

1. Paul Tari, you appear for sentence having pleaded to one charge of committing an act of indecency with a young person contrary to section 90A of the Penal Code [CAP 135]. The maximum penalty for this offence is the years imprisonment.
2. You pleaded not guilty to one count of unlawful sexual intercourse contrary to section 97 (1) of the Penal Code. The Prosecutor entered a nolle prosequi on that charge. You are as a result discharged on that count.

Background

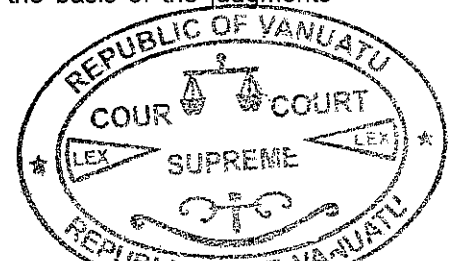
3. The facts are as follows:
4. At the time of the offending, you were 49 years old according to your birth certificate. You think you were born 9 years earlier, which would make you 58 at the time of the offending.
5. The victim was 4 years old. She attended a kindergarten that was located inside your yard.
6. On 3 December 2023, the kindergarten organized an event. The victim's mother dressed her up for it. When the victim arrived at the kindergarten compound, you called her into your nakamal. You told her to remove her clothes. She was naked. You bent over and bit her vagina. You sent her away with wet panties and told her to wash them. She went to her father first, but he told her to go to her mother. When she took the wet panties to her mother, her mother asked her what happened. The victim told her mother and other relatives about the incident. Her mother went to the police station to report your offending.



7. The sentence I impose must denounce your conduct, it must deter you and others from the same or similar offending. It must provide for public safety and encourage you to take responsibility for your actions. Finally, to the extent it can, it must provide for your rehabilitation and reintegration into the society.

Aggravating Factors

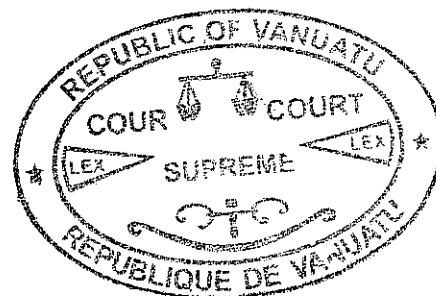
8. I identify the following aggravating factors of the offending:
 - a. There is a significant age difference between you and the victim of at least 45 years.
 - b. There is breach of trust. The kindergarten was in your yard. The children at the kindergarten were entitled to feel safe at your school. You breached that trust.
 - c. The victim was a vulnerable little girl. You took advantage of that vulnerability.
 - d. There was skin-to-skin contact when you bit her vagina. This is not fleeting or transitory touching. You bit her vagina with your mouth.
 - e. There is an element of planning involved. You took her into the nakamal away from the other people at the kindergarten.
 - f. The victim would have been emotionally and psychologically injured by your offending.
9. In *Gigina v Public Prosecutor* [2017] VUCA 139, the Court of Appeal said the appropriate starting point for an act of indecency between a boyfriend and a girlfriend involving touching of the breast and vagina over clothing was 15 months imprisonment. That case involved a charge with a lower maximum penalty. The present case warrants a higher starting point because of the disparity of age, the victims' vulnerability, and the skin-to-skin, mouth to genital, contact.
10. Mr Garae referred to a number of Supreme Court cases, one of which was *Public Prosecutor v Pierre* [2023] VUSC 82. A starting point of three years was adopted for offending that involved touching the victim's vagina. The Prosecution referred to *Public Prosecutor v Emile* [2021] VUSC 60 in which a starting point of three years and four months was adopted for offending by a 58 year old grandfather against his 7 year old granddaughter. The defendant touched the victim's vagina.
11. There are no mitigating features of this offending.
12. Having identified the aggravating features of your offending, and on the basis of the judgments referred to me, a starting point of 3 years imprisonment is appropriate.



13. I turn now to personal factors

Personal Factors

14. You pleaded guilty on the morning of the trial. This does not warrant the full one third discount. On the other hand, your plea saved this little girl having to give evidence. This warrants a discount of 25%, the equivalent of 9 months, from the starting point.
15. You are a first-time offender. You have no previous convictions. This warrants a discount of 10%, or three months and two weeks, from the starting point.
16. There will be no discount for remorse. You told the pre-sentence report writer that you feel the victims' family is trying to imprison you for something you did not do and that you pleaded guilty because you were tired of the accusations against you. These are not the words of a remorseful man.
17. You were arrested and remanded in custody on 7 December 2023. You applied for bail on 17 January 2024 but a note on the file dated 16 February 2024 says that your application for bail just sat in the registry until you were finally released in bail on 29 January 2024. That adds up to 54 days in custody, some as a result of the registry not placing your urgent bail application before a Judge for 12 more days. Fifty-four days remanded in custody is the equivalent of a sentence of 108 days or roughly three months and three weeks imprisonment. I will round that discount up to 4 months and give you further credit of 2 months for the registry's mistake and the 5 months you have spend on bail. That is a discount of 6 months which brings me to an end point of 15 months and 2 weeks imprisonment.
18. I turn now to consider whether I should suspend your sentence.
19. You are willing to perform a custom ceremony but you told the pre-sentence report writer you did not feel safe performing one while you were on bail. The Solway Community Chief describes you as "a one man band isolating himself from the community". You are a gardener and provide for your family's needs and school fees. Your wife also earns money by working in the Century shop in Luganville.
20. In light of these circumstances, the serious nature of your offending against a little girl does not warrant a suspension of your sentence.



Result

- 21. You are sentenced to serve 15 months and 2 weeks imprisonment. You are also to undertake sexual rehabilitation modules.
- 22. Section 50 of the Penal Code states that no sentence of imprisonment may be enforced until the time of the appeal of such sentence has expired or you earlier elect to begin serving your sentence.
- 23. You have 14 days to appeal your sentence.

**DATED at Luganville this 20th day of June, 2024
BY THE COURT**

