

BETWEEN: PUBLIC PROSECUTOR

AND: JOHN ONIS
Defendant

Date of Verdict: 22nd February 2024

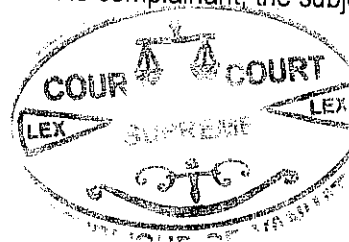
Date of Sentence: 23rd February 2024

Before: Justice Oliver A Saksak

Counsel: Ms Marie Meltebury for Public Prosecutor
Mr Roger Tevi for Defendant

SENTENCE

1. The defendant was found guilty yesterday after a trial for one count of act of indecency against section 98A (Count 1) and to 5 counts of sexual intercourse with a child under care or protection, against section 96 (1) (b) of the Penal Code Act, Counts 2, 3, 5, 6 and 7
2. He is for sentence today.
3. The complainant was born on 26th September 2006. She was 14 years old in 2018 and attending class 6 at the Mission School, Lamap. She lived with the defendant who is the brother of her father who is currently working overseas.
4. From the periods between January and December 2018 the defendant had committed acts of indecency on numerous occasions by touching the complainant's breasts and vagina over her clothes. These were the subject of the charge in Count 1.
5. Until July 2023, the defendant extended his acts to sexual intercourse on 4, 9 and 29 July 2023. These were the subjects of the charges in Counts 2, 3, 5 and 6.
6. Finally on 10 August 2023 the defendant had sex again with the complainant, the subject of the charge in Count 7.

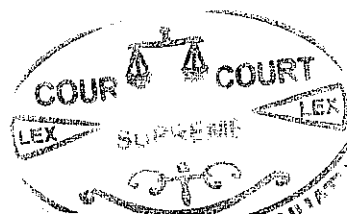


7. The Court found the defendant guilty of all the 6 charges after a trial hearing. The defendant admitted to only one count of sexual intercourse on 19th July 2023.
8. Acts of indecency with a young person against section 98A of the Act carries the maximum penalty of 10 years imprisonment. And sexual intercourse with a child under care or protection carries the maximum penalty of 10 years imprisonment as well.
9. In assessing the appropriate sentences I have considered the written submissions filed by Ms Meltebury and the oral submissions made by Mr Tevi who submitted that the mitigating circumstances of the defendant were such that the Court should reduce any starting sentence of imprisonment down to 2 years and to suspend the sentence and impose a sentence of community work instead pursuant to section 58 N (1)(a) and (b) of the Penal Code Act.
10. Mr Tevi further submitted that the cases of PP v Scott [2002] VUCA 29 and PP v Kalowat [2013] VUSC 119 as submitted by Prosecutions were different in their circumstances and could not be applicable to the defendant's case.
11. Whilst I accept that PP v Scott differs in that it was the case of rape involving the use of a weapon, I do not agree with Mr Tevi about the kalowat case. On the contrary, this case is more serious than the kalowat case in that it involves 7 different counts of acts repeatedly done in 2018 and again in July and August 2023.
12. Despite the report of his positive contributions to the community and his responsibility to his elderly mother and granddaughter, the defendant had a dark side to his life, a demon of lust lurking deep inside of him that raised its head beginning in 2018 and again in July and August 2023, making the defendant a predator who is a danger to women, young girls and the vulnerable members of the community.
13. The classic case of PP v Gideon [2002] VUCA 7 is clear that men who take advantage sexually of young girls forfeit the right to live in the community.
14. There were no mitigating circumstances for the defendant's offendings. If the complainant was acting inappropriately to him by asking questions about his sexual encounters with his wife as seen from his statement to the Police, he as a mature father and guardian had the duty to rebuke the girl, instead he took advantage of the situation and had his way to indecently deal



with her and sexually abusing her whilst she was in his care and protection. Indeed he contributed to the girl's behavior because from the evidence, it was he who posted pornographic photographs to the complainant.

15. There were clear aggravating features such as breach of trust, age disparity, degree of planning, offending occurring occasionally within the confines of the family house where the girl should be safe, the repetitive actions in 2018 and in July and August 2023, the risk of sexually transmitted disease and some measure of force exerted upon the victim.
16. All those features combined with the seriousness of the offences committed warrant an immediate custodial sentence. This is to serve as a deterrence to the offender and to other like-minded people, to mark the gravity of his offendings, to condemn his actions, to protect girls, women and the vulnerable members of the public, and to punish him appropriately.
17. I therefore sentence the defendant as follows:-
 - a) For acts of indecency, Count 1- A global sentence of 3 years imprisonment to be served concurrently with the sentence for the charges of sexual intercourse with child under care and protection in Counts 2, 3,5,6 and 7.
 - b) For sexual intercourse with a child under care and protection in Counts 2, 3, 5, and 7 as representative charges, a global start sentence of 6 years imprisonment. There is an uplift of 2 years for the offendings in counts 2, 3, 5, 6 and 7 which are treated as aggravating features. Therefore for all the charges in Counts 2, 3, 5, 6 and 7, the total of 8 years imprisonment is appropriate.
18. I point out that these charges should have been properly laid as Joinder of Counts under section 72 (1) and (2) of the Criminal Procedure Code Act [CAP 136].
19. For the purpose of sentencing, I sentence only for the charge in Count 2 but treat the charges in counts 3, 5, 6 and 7 as aggravation of the offence, thus uplifting the start sentence of 6 years by 2 years.
20. In mitigation, I accept the defendant is entitled to some reduction of sentence. I note his pre-sentence report showing he has no previous criminal convictions or record, a first time



offender, a reconciliation ceremony confirmed by his chiefs showing remorse, his personal history and character. For these factors together the defendant is entitled to a reduction of 1 year and 6 months.

21. That leaves his end sentence at 6 years and 6 months to serve at the Correctional Center in Luganville, Santo.
22. His sentence is effective immediately today as he is currently held on remand in custody.
23. He has a right of appeal against sentence within 14 days if he so chooses.

**DATED at Lakatoro this 23rd day of February 2024
BY THE COURT**

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**Hon. Oliver A Saksak
Judge**

