

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

Criminal
Case No. 24/2627 SC/CRM

BETWEEN: Public Prosecutor

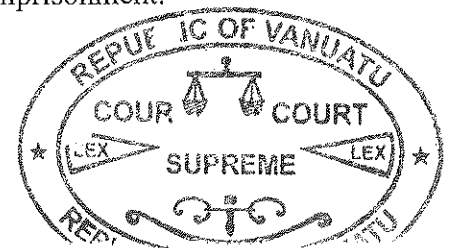
AND: Melip Nivet

Date of Conference: 19th day of September, 2024
Before: Justice E.P Goldsbrough

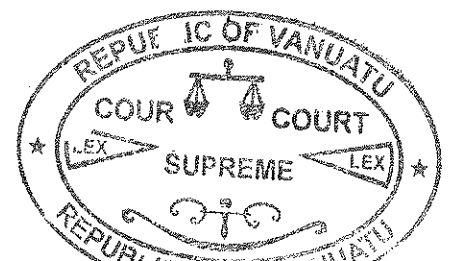
In Attendance: Tasso, M for Prosecution
Garae, Jr for Defence

SENTENCE

1. Melip Nivet, you have pleaded guilty to two offences of committing an act of indecency in the presence of a young person. Both of those offences involved you exposing yourself to the same child.
2. The first time this happened was at your house in 2023. Having been told to go into your room by another, the girl entered your room when she was not expecting you to be there, but you were there, and your penis was exposed for her to see. She immediately left the room, and that was the end of the matter. She did not tell anyone what had happened.
3. Then, in June 2024, you visited her house the following year when she and other children were having breakfast. After the meal, the children all made to leave the kitchen, but you called upon the girl to come back into the house. She came back into the kitchen, and you removed your trousers to expose your naked penis to her. She ran out, crying and reported what she had seen to her mother as soon as possible.
4. Both of these incidents amount to the offence under section 98A of the Penal Code, which is known as committing an indecent act in the presence of a person under 15 years of age. Both of these offences carry a maximum sentence of ten years imprisonment.

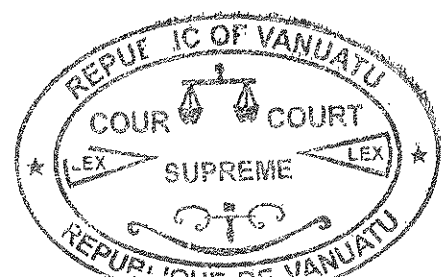


5. That maximum sentence, taken together with the circumstances of the offences, informs the Court as to the correct sentence to be imposed on you. Some things make these two offences worse than other similar offences. There is an age difference between you of about 16 years. The girl is family to you, and this offending took place where she was supposed to feel safe and secure: family homes. At least as far as the second offence is concerned, you planned for it to happen.
6. The offence under section 98A of the Penal Code is comprehensive. It ranges from this type of indecent exposure to much more serious acts amounting to just less than penile penetration. It includes offences where there is skin-to-skin contact and where the victim sees the offender ejaculate. This is at the lower end of that scale of offending. That is why the Court cannot accept the submission made by the prosecution that this offending compares with that dealt with in *PP v Jackson Mathew* [2013] VUSC 79 (removing clothing and using fingers to touch the genital area) and *PP v Lenny Robson* [2014] VUSC 56 (rubbing penis against victim's legs until ejaculating). In both of those cases, there was skin-on-skin contact, which made the offending more serious.
7. All of that leads this Court to the conclusion that, to begin with, a sentence of imprisonment of eighteen months should be a starting point.
8. You have admitted your guilt at the first available opportunity. You are entitled to be given credit for that admission. You have already spent time in pre-sentence custody. You were arrested on 10 July 2023 and kept in custody until your release on 23 July 2023. You have no previous convictions. Each factor must be considered when your final sentence is determined. The effect of your guilty plea is to reduce the starting point from eighteen months to twelve months imprisonment. The further impact of your personal circumstances and your time in custody reduces that to ten months imprisonment.
9. In the pre-sentence report, the Probation Officer says that he could not speak with the victim's family. However, the same report records a meeting where customary reconciliation was considered. Several chiefs responsible for the Ambrym community living in Santo attended that meeting, and five representatives of the victim's family were



present. A customary settlement was achieved, and the meeting ended with the parties shaking hands and shedding tears.

10. The minutes of that meeting are exhibited as part of the pre-sentence report. They are comprehensive. The offending was discussed correctly, and a resolution was reached. This Court will not do anything to interfere with that process or decision which has the support of the victim's family. A punishment was imposed, which seems to have been met. Meeting that customary obligation is also to be considered in determining the final sentence to be imposed.
11. The Chiefs ask this Court to dismiss this case because it has been dealt with in a customary manner. That request is understood but can only be met partially. Melip Nivet has broken the law; he has admitted to breaking the law, and a punishment must be imposed. This Court, however, will consider the Chief's decision. Given the most impressive record of the deliberations and their comprehensive nature, the like of which the Court rarely, if ever, sees, this Court proposes to maintain the convictions recorded against Melip Nivet but, acknowledging the authority of the Chiefs and the compliance with the customary obligations imposed, this Court proposes not to impose any separate penalty for the two offences before the Court now but to make an order that Melip Nivet returns to Court if called upon within the next twelve months to be sentenced. Whether he is recalled within the next twelve months will depend upon his future behaviour and a report from his Chiefs on whether he has been able to behave correctly, especially towards young females within the community.
12. This sentence reflects the provisions of sections 37, 38 and 39 of the Penal Code, which require the Court to have regard to keeping offenders within the community, to promote reconciliation, and to take into account custom compensation. It also falls under section 56 of the Penal Code, which allows the Court to release any person convicted of any offence, or before which any person appears for sentence having regard to the circumstances, including the nature of the offence and the character of the offender instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as the court thinks fit. The conditions imposed here are that Melip Nivet



commits no further offences within the next twelve months and behaves in an acceptable way to his Chiefs. If that happens, he will not be called upon again to be sentenced. To facilitate this process, the Chiefs are asked to file a report with this Court by August of 2025 on his behaviour so that the Court can decide whether Melip Nivet should be called upon for sentence. He will be notified in September 2025 of the decision of the Court.

13. This Court also orders that nothing that could lead to the public identification of the female victim in this case may be published.
14. It should be clear that this Court considers that a sentence of imprisonment of ten months is warranted for these two offences, each to be served concurrently. That is the sentence that may be imposed should it be necessary for you to be called upon for sentence. Whether you are indeed called upon for sentence within the next twelve months will depend now on your future behaviour.
15. This Court expresses its thanks to the Chiefs who met in July 2024 to consider this matter and who took the time to see that a well written record of the proceedings was available to the Court. The Court will look forward to receiving a report in August of 2025. If that avoids further offending and the need to send this man into custody then it will have been worthwhile.
16. You, Mr Melip Nivet, have the right to appeal against this decision should you so wish but you must do so within 14 days from today.

DATED at Port Vila this 19th day of September, 2024

BY THE COURT

E.P. Goldsbrough

E.P Goldsbrough

Judge of the Supreme Court

