

**PUBLIC PROSECUTOR**

**v**

**LEONI TARI**

Date of Plea: 2 December 2024  
Date of Sentence: 31 January 2025  
Before: Justice M A MacKenzie  
Counsel: Public Prosecutor – Ms J Tete  
Defendant – Mr S Garae

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**SENTENCE**

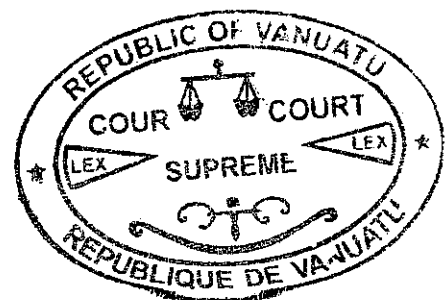
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**Introduction**

1. Mr Leoni Tari, you appear for sentence having pleaded guilty to a charge of act of indecency with a young person, contrary to s98A of the Penal Code [CAP 135]. The maximum penalty is 10 years imprisonment.

**The Facts**

2. The victim, aged 13 years at the time of the offending, is your biological daughter. The offending happened on Ambae Island. You were aged 36 years.
3. One night in October 2023, you sexually offended against the victim. The victim was at home in her bedroom. You came into your daughter's bedroom once you had finished drinking kava. You touched her body and got on top of her. The victim was terrified. You then put your hand into her underwear and caressed her vagina. You also pulled her clitoris, which caused the victim to cry loudly due to the pain. The crying caused the victim's mother and brother to wake up. They came into the victim's bedroom, and you were told off by your wife.



4. Under caution, you admitted the offending.

### **Sentencing purposes/principles**

5. The sentence I impose must hold you accountable and must denounce and deter your conduct. The sentence should ensure you take responsibility for your actions and help you to rehabilitate. It must also be generally consistent.

### **Approach to sentence**

6. Sentencing involves 2 separate steps; *Jimmy Philip v Public Prosecutor* [2020] VUCA 40, which applied *Moses v R* [2020] NZCA 296.

### **Starting point**

7. The first step is to set a starting point to reflect the features of the offending itself and with reference to the maximum penalty.

8. The aggravating factors are:

- (a) There is a gross breach of trust, as the victim is your biological daughter. You should have protected her, rather than used her for your own sexual gratification.

- (b) The victim's vulnerability because of her age and the age disparity. She was 13 years, and you were 36 years. The age differential is 23 years.

- (c) The offending happened at home in the victim's bedroom where she was entitled to feel safe.

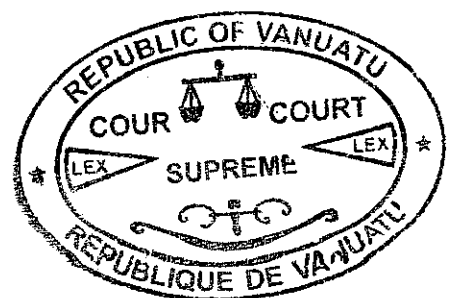
- (d) The offending involved skin on skin contact, and the touching was highly intrusive as you touched and pulled her vagina.

- (e) Impact on the victim- she was scared and reacted immediately. There will likely be significant psychological harm.

9. There are no mitigating features of the offending itself.

10. The prosecutor submits that a starting point of 3 -5 years imprisonment is appropriate. Mr Garae submits that a starting point of 2-3 years imprisonment is appropriate.

11. The cases referred to by counsel in their submissions indicate a range of starting points for indecent act with a young person offending of between 2- 4 years imprisonment.



This likely reflects the wide-ranging nature of acts of indecency. No two cases are ever the same. I consider that this indecent act offending is serious, given the significant breach of trust, that it happened at home and the highly intrusive nature of the touching. I do acknowledge however, that it was a one-off incident. The starting point should not be as high as 4 years, as the present case is less serious factually than *Public Prosecutor v Tasso* [2019] VUSC 16, where the 5-year-old victim's step grandfather touched her vagina at home, and then made her touch his penis. The starting point adopted was 4 years imprisonment. In *Public Prosecutor v Tabi* [2016] VUSC 74, the starting point for the act of indecency was 3 years imprisonment. The defendant, the 14-year-old victim's uncle, saw her walking along the road, pulled her to the side of the road, held her waist, reached down into her underpants and touched her vagina. I consider that the present case is more serious comparatively, given the gross breach of trust, the intrusive nature of the touching and that it happened in the home.

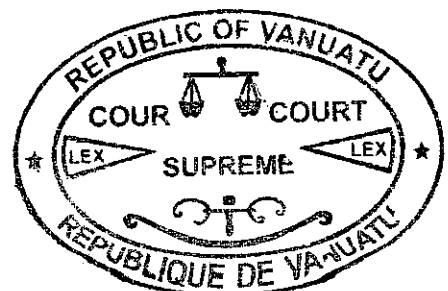
12. Taking into account the aggravating factors, and the cases I have referred to, I adopt a starting point of 3 years 6 months imprisonment.

### **Guilty plea and personal factors**

13. There was an early guilty plea. However, the case against you was overwhelming, so there was little option but to plead guilty. The sentence is reduced by 25 percent for the guilty plea. The sentence is reduced by 11 months.
14. There is no presentence report. However, Mr Garae has provided information as to your circumstances. You are aged 36 years and are a first offender. You are remorseful, and regretful. You have family responsibilities, and work to take care of your family and pay for school fees. Your wife depends on you, given that you have children. For these factors, the sentence is reduced by 4 months (10%).
15. There has been a custom ceremony. Custom compensation of VT 40,000 was paid. This was accepted by your daughter and the family. This must be taken into account. The sentence is reduced by 2 months for this factor (5%).

### **End Sentence**

16. The end sentence is 2 years 1 months imprisonment.
17. Mr Garae submits that the sentence should be suspended, particularly as you have already spent time in custody. There is a discretion to suspend the sentence, in whole or in part, pursuant to s 57 of the Penal Code, taking into account the circumstances, the nature of the crime, and your character.
18. As the Court of Appeal said in *Public Prosecutor v Gideon* [2002] VUCA 7, it will only be in an extreme or exceptional case that suspension could ever be contemplated in a



case of sexual abuse. Recently, the Court of Appeal in *Public Prosecutor v Daniel* [2024] VUCA 55, said that in cases of less serious forms of sexual abuse, sentencing Courts may not be so constrained in finding exceptional circumstances. As recognised in *Daniel*, acts of indecency are generally a less serious form of abuse than rape and unlawful sexual intercourse, and the conduct which may constitute indecent acts can vary greatly both in form and seriousness.

19. While I note that you are a first offender, have family responsibilities, are remorseful, and have made a custom payment, this is serious offending in the context of an indecent act against a young person. First, you took advantage sexually of your daughter, who should have been safe at home. Instead, you used her for sexual gratification. Second, it was highly intrusive as you touched and pulled the victim's vagina and it included skin on skin contact. Your daughter was not your sexual plaything. This type of behaviour must be condemned. There is nothing exceptional about the circumstances, or your character so as to justify suspension of the sentence, and I decline to do so, either wholly or in part. A term of imprisonment without suspension is required to acknowledge the seriousness of the offending in its context, and to meet the need for accountability, deterrence and denunciation.
20. I impose an immediate sentence of 2 years 1 months imprisonment. You have been in custody since 18 September 2024. Therefore, the sentence is to be backdated to commence from that date.
21. You have 14 days to appeal against the sentence.
22. I make a final order suppressing the victim's name and identifying details.

**DATED at Port Vila this 31st day of January 2025  
BY THE COURT**

*name*  
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Justice M A Mackenzie

