

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

Criminal
Case No. 21/547 SC/CRML

PUBLIC PROSECUTOR

v

RICHARD FRANK

Date of Hearing: 6th April 2021
Before: Justice Josaia Naigulevu
Counsels: Public Prosecutor – Mrs. G. Kanegai
Public Solicitor – Mr. H. Vira

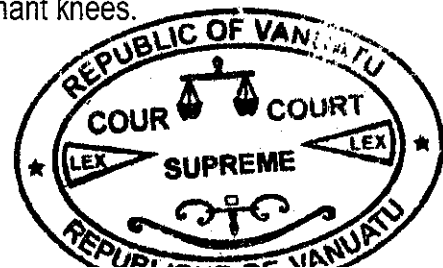
SENTENCE

Introduction

1. You pleaded guilty to a count of unlawful entry into a dwelling house contrary to section 143 (1) of the Penal Code and a count of act of indecency with a young person under the age of 15 years contrary to section 98A of the Penal Code.
2. You were duly convicted on your plea.

Facts

3. You were 23 years old at the time of the offending; the complainant was 2 years and 8 months old. You both resided at Emua Village on Efate.
4. On the 26th November 2016, you unlawfully entered the dwelling house whilst the complainant was asleep. You had no authority to be there and entered the house with the intent of committing an offence.
5. Shortly after 5pm, the complainant's father happened to walk into his house to find you, with your pants down around your knees, lying behind and spooning the complainant. You had placed your penis on the back of the complainant knees.



6. You were only charged on the 30th September 2020, some 4 years after the offending.

Statutory Sentence

7. The maximum sentence of the offence of Unlawful entering a dwelling house is 20 years imprisonment, and of the Act of indecency with a young person is 10 years imprisonment.

Sentencing purpose and Guideline

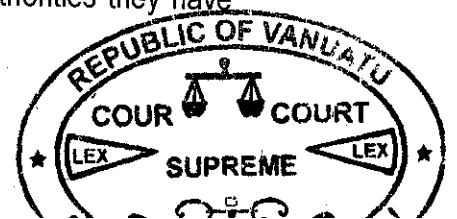
8. There are several principles that guide the sentence to be imposed on you. They include the proposition that you must be held accountable and must take responsibility for your action. Additionally, your action is the kind that is denounced by society, and that similar future acts by you and others must be deterred.
9. Equally important is that you must be given ample opportunity to rehabilitate and reintegrate.
10. The approach taken in the present case follows the guidance given by the Court of Appeal in the case *Philip v Public Prosecutor* [2020] VUCA 40.

Aggravating Factors

11. The following circumstances constitute the aggravating factors in the present case:
 - a) *The offending took place in the complainant's home, where she was entitled to feel safe and secure;*
 - b) *The complainant was especially vulnerable at the time, when she was asleep late in the day;*
 - c) *The indecent act involved skin to skin touching; and*
 - d) *The age differential between you, as 23 years old, and the complainant who was less than 3 years old.*

Starting Point

12. In assessing the appropriate starting point, I have taken into account the statutory maximum sentence, as well as the aggravating and mitigating factors of the offending.
13. I have considered the submissions of counsel as well as the authorities they have referred to for the Court's consideration.



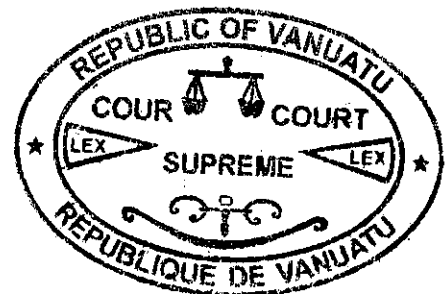
14. The defendant's counsel conceded that the present case was a serious one and proposed a starting point of 4 years. The prosecuting counsel helpfully drew the Court's attention to a number of comparable cases that accepted the starting points that ranged from 3 to 5 years.
15. I adopt a starting point of 4 years 8 months.

Guilty Plea

16. You entered a plea of guilty at the earliest opportunity. It indicates that you have accepted your wrong doing. You saved the Court time and expense. I reduce your sentence by 25% from the starting point.

Mitigating and Personal Factors

17. You are 28 years old, are single and live with your parents. You are a labourer by trade, mainly in roading works.
18. You have no previous conviction.
19. You had taken part in a modest custom reconciliation ceremony.
20. You claim to have been assaulted by the complainant's father at the time. He admits that he kicked and hit you. There was no evidence before the Court that this was a significant event. I see it as a natural reaction by a father upon seeing his daughter being so abused. The mitigation available is therefore not significant.
21. There was a delay in this matter before it was concluded, the offending occurred in November 2016, and the matter was concluded on 2021, four and a half years later.
22. For these personal and mitigating factors, I reduce the starting point by a further 12 months.
23. The Court does not consider your claim that you were affected by alcohol at the time as mitigatory. It acknowledges that you have disabilities- profound hearing loss and difficulty with speaking. However, I do not consider that it warrants any further discount.



End Sentence

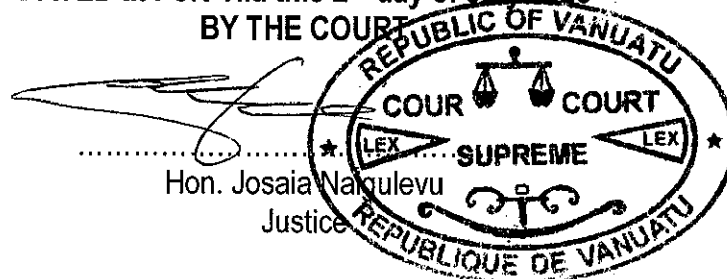
24. I have taken all these matters into consideration and impose an end sentence of 2 years 8 months.
25. Your counsel has urged this Court to suspend your sentence. Suspending your sentence cannot possibly be countenanced. There are two reasons for this. The first is that the offending was too serious. Due to the nature of the offending, suspending all or part of the sentence is inappropriate.
26. The second reason is that you had deliberately evaded the police and the law for a prolonged period of 4 years and two months. You constantly moved to and from Efate Island to elude arrest.
27. You had been on bail and were required to appear for sentence on the 29th March 2021. You did not turn up, and from that day avoided the police.
28. The prosecuting counsel has helpfully referred me to the case Public Prosecutor v Mike Rarua, Criminal case No.1945 of 2022. In that case the accused did not attend his sentencing on the 21st December 2022 but travelled abroad on a seasonal work program instead. He was arrested and sentenced upon his return several months later. In sentencing him, this Court said:

"You breached your bail condition and a warrant was issued for your arrest. Your sentence will not be suspended. A custodial sentence is warranted to serve as a deterrent to your future offending."

29. Mr. Frank, you have 14 days to appeal this sentence.

DATED at Port Vila this 2nd day of July 2025

BY THE COURT



Hon. Josaia Nankulevu
Justice