

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

Criminal
Case No. 18/2093 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Prosecutor

AND: JIMMY SIMON
Defendant

Before: *Justice Oliver A. Saksak*

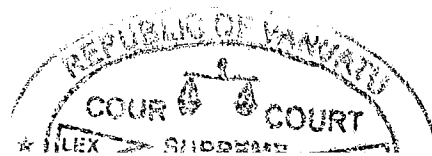
Counsel: *Damien Boe for Public Prosecutor*
Jane Tari Aru for Defendant

Date of Plea: *5th September 2018*

Date of Sentence: *7th September 2018*

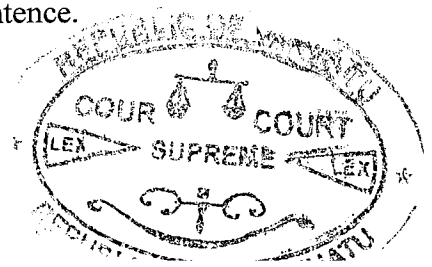
SENTENCE

1. Jimmy Simon you pleaded guilty on 5 September 2018 to one count of aggravated sexual intercourse with a child contrary to section 97 A and to one count of sexual intercourse with child under care and protection contrary to section 96(1) of the Penal Code Act [CAP 135] (the Act).
2. Under section 97 A of the Act aggravated sexual intercourse carries a maximum penalty of life imprisonment and under section 96(1) sexual intercourse with a child under care and protection carries a maximum penalty of 10 years imprisonment.
3. These are clearly very serious criminal offences. In the year 2015 on different dates and times you had sexual intercourse with Alsandra Lassa. She is now 17 years old and is a student attending the Bombua Junior Secondary School. The offendings started in 2014 when the girl was in class 6 and continued until March 2018. Your victim is related to you and calls you "Smol Dady". She has been living with you on Tutuba Island as a little girl and after her parents separated. Beginning in 2014 you started having sex with her in the bush whenever you went fishing with her. Whenever she refused you threatened to beat her with a piece of wood or a gas pipe or hose. The sexual activities you performed on her included full penile penetration of her vagina and oral sex. You abused her so many times at home on Tutuba and even



when she was at school. You became jealous over her and had written letters to persons warning them to keep away from her. You treated her as if she was your wife. There were times when your wife also became involved in the sexual activities that you had with her. She is lucky not to have been charged. Your offendings were repetitive. There were times you ejaculated into her exposing her to teenage pregnancy. All those times sexual intercourse was unprotected exposing her to sexually transmitted diseases. You have ruined her life and dignity. She will relive those abuses for the rest of her life.

4. There is a great age disparity between you and her of 22 years apart. You are a fully mature and married man with responsibility as a father to care and protect her instead you abused the trust placed on you by selfishly taking advantage of her age and to sexually abuse her subjecting her to sexual pervasions to gratify your lustful desires. Those are not actions of a man in his right mind. And now that all these have come out into the public arena, you ought to be really ashamed of yourself. But you do not appear to be so. Your actions must be denounced in the strongest possible terms.
5. The guideline principles that I have to follow in sentencing you today are torte and clear in PP v. Scott [2000] VUCA 29, Talivo v. PP [2003] VUCA 14, PP v. Gideon [2002] VUCA 7 and PP v. Ali [2000] VUSC 29. Applying the principles in these cases the only appropriate penalty this Court will impose on you is to be immediate custodial sentence which will not be suspended.
6. Taking all the aggravating features together with all factors personal to you and the seriousness of the 2 charges against you, I consider that the proposed starting sentences of 9 years imprisonment by the Prosecution and 11 years by defence counsel are way too low to achieve any useful purposes of deterrence, public disapproval and condemnation, protection of the young, weak and the vulnerable, adequate punishment and to marking the seriousness of the offences committed.
7. Having said all that I now sentence you as follows –
 - (a) For Aggravated Sexual Intercourse with Child –
 - Count 2 – Imprisonment for 13 years as the starting sentence.



(b) For Sexual Intercourse with Child under Care and Protection –

Count 3 – Imprisonment for 6 years as the starting sentence made concurrent with the 13 years for the offence in Count 2 above.

In total you will serve a total of 13 years imprisonment as a concurrent sentence.

8. I now deduct your sentence for the mitigating factors such as –

- (a) Clean past record and being a first-time offender.
- (b) Good cooperation with the Police during investigations.
- (c) Willingness to perform custom reconciliation ceremony.

For these I give credit by allowing a deduction of 1 year from the 13 years, leaving the balance of 12 Years imprisonment. I allow a further 1/3 reduction for your early guilty plea which means 4 years are taken off from 12 years leaving the end sentence of 8 years imprisonment.

- 9. You are therefore sentenced to an end sentence of 8 years imprisonment as a concurrent sentence for the charges in Count 2 and Count 3.
- 10. You have been in custody on extended remand warrants from 25 May 2018. So you do not lose your parole privilege, I order that your sentence of 8 years be backdated to 25 May 2018.
- 11. You have a right of appeal against this sentence within 14 days if you do not agree with it.

DATED at Luganville this 7th day of September, 2018.

BY THE COURT


OLIVER A. SAKSAK

Judge

