

**PUBLIC PROSECUTOR**

**v**

**HARRY SANDY**

*Date:* 22 February 2022  
*Before:* Justice V.M. Trief  
*Counsel:* Public Prosecutor – Mr D. Boe  
Defendant – Mr J. Garae

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**SENTENCE**

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A. Introduction

1. Mr Sandy pleaded guilty to one charge of unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years (Charge 4). He was convicted on his own plea and the admitted facts.
2. The Prosecution entered *nolle prosequi* on Charges 1-3. Mr Sandy was discharged on those charges.

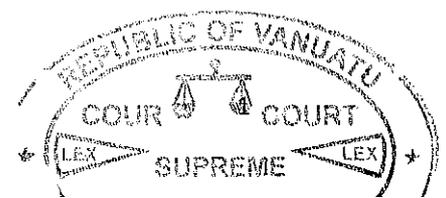
B. Facts

3. In June 2018 on Gaua island, Mr Sandy had sexual intercourse with the complainant LS. She was 13 years old.
4. Mr Sandy admitted the offending to the Police.

C. Sentence Start Point

5. The sentence start point is assessed having regard to the maximum sentence available, and the mitigating and aggravating factors of the offending.
6. The maximum sentence provided in subsection 97(2) of the *Penal Code* [CAP. 135] is 15 years imprisonment.
7. There are no mitigating factors to the offending. However the offending is aggravated by:

- The 30-year age differential;



- The offending took place at the complainant's home – where she should have been safe;
- The breach of trust because of the domestic relationship which existed between Mr Sandy and the complainant; and
- The effect upon the complainant including the effect on her mentally from being exposed to sexual activity at her young age, and exposing her to the risk of sexually transmitted infection and pregnancy.

8. The factors set out above require a sentence start point of 5 years imprisonment.

D. Guilty Plea

9. Mr Sandy did not plead guilty at the first opportunity but he saved the complainant the ordeal of giving evidence before a group of strangers in a Court and the plea is a sign of remorse. Accordingly I deduct 15% from the sentence start point for the plea.

E. Personal Factors

10. Mr Sandy is 46 years old. He has 6 children from his first marriage. He does not have children with his new wife. Mr Sandy continues to care for the children and to provide their school fees. He sustains himself and his family from gardening including from planting and selling kava.

11. Mr Sandy has no previous convictions. However, in cases of sexual offending, a person's previous good character has very little relevance in mitigating a sentence.

12. Since Mr Sandy's release on bail and return to Gaua, he has gifted land to the NTM Church where a new church building has been built and is currently involved in the construction of a Bible College.

13. Mr Sandy is stated to have been unaware of LS' age but that now he understands that sexual intercourse with underage girls is prohibited by the law, he is remorseful and regrets his actions. That does not sit well however with Mr Sandy's non-attendance at Court to receive his sentence.

14. This matter was listed for delivery of sentence at Gaua island on 10 June 2021 but Mr Sandy failed to attend Court then and subsequently. He was arrested on 27 January 2022 and has been in custody since.

15. The deduction for Mr Sandy's personal factors would have been 6 months but in the circumstances, is reduced to 3 months.

F. End Sentence

16. Mr Sandy is sentenced to 4 years imprisonment back-dated to run from 30 November 2021 as he spent 79 days in custody from December 2019 to March 2020 and has since 27 January 2022.



17. The sentence is imposed to deter offending by sending the message to the community that the law prohibits sex with young girls aged 13-14 years old. The sentence is also imposed to hold Mr Sandy accountable for his criminal conduct and to protect the community.
18. An immediate custodial sentence must be imposed for this serious sexual offending against a child: *Public Prosecutor v Gideon* [2002] VUCA 7. The circumstances particularly the nature of the crime and the character of the offender do not warrant suspension of the sentence.
19. Mr Sandy has 14 days to appeal the sentence.
20. All details leading to the identification of LS are permanently suppressed.

**DATED at Port Vila this 22<sup>nd</sup> day of February 2022  
BY THE COURT**

  
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Justice Viran Molisa Trief

