

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 67 of 2023

STATE

V

NAVITALAI LAVEKAU

Counsel : Mr. E. Kotoilakeba for the State
: Ms. K. Marama for the Accused

Date of Trial : 16 December 2024
Date of Judgment : 31 January 2025
Date of Sentencing Hearing: 21 February 2025
Date of Sentence : 7 March 2025

SENTENCE

1. Mr Lavekau, on 31 January 2025, after trial, I convicted you of one count of indecent assault, contrary to section 212(1) Crimes Act 2009 (count 1), and one count of sexual assault, contrary to section 210(1)(a) Crimes Act 2009 (count 2).
2. You now appear before me for sentencing.
3. The factual basis upon which I sentence you is set out in my Judgment dated 31 January 2025. In brief summary, on a date in 2023, you called CC into the bedroom, where you kissed her on her mouth and, on the same occasion, rubbed her genitalia over her clothing with your hand. CC was 6 years old at the time of your offending.

Prosecution sentencing submissions

4. The prosecution relies on written submissions dated 19 February 2025.
5. The prosecution refers me to *Ratu Penioni Rokota v State* [2002] FJHC 168; HAA 68J of 2002S (23 August 2002) in support of their submission that the applicable tariff for the offence of Indecent Assault is 12 months' to 4 years' imprisonment.
6. The prosecution also refers me to *State v. Epeli Ratabacaca Laca* HAC 252 of 2011 (14 November 2012) in support of their submission that the tariff for sexual assault is between 2 years' to 8 years' imprisonment.
7. The prosecution advanced as aggravating factors the fact that, as a 6-year-old child, CC was particularly vulnerable, the wide disparity in age, given that you were 23 years old at the time of your offending, and the fact that you were entrusted to take care of CC and her siblings as their uncle living under the same roof.

Defence sentencing submissions

8. Your counsel filed written mitigation submissions on your behalf, and addressed me at your sentencing hearing. I have taken into consideration everything that Ms. Marama has advanced on your behalf.
9. By way of background, I am informed that you are now 24 years old, and married with three young children. Prior to your conviction, you were employed by Savusavu Hire earning a weekly wage of \$190.
10. There is not much that can be said on behalf of offenders such as you who offend against young children, and your counsel has very sensibly focused on the fact that you have no previous convictions, and are still a relatively young man.

11. In common with the prosecution, defence counsel has drawn my attention to the case of *Laca*. Ms. Marama has also helpfully drawn my attention to the case of *State v SW* Criminal Case No. HAC 51 of 2020. In *SW* the offender was sentenced to a term of 5 years' imprisonment for sexually assaulting his 7 year old step-daughter by fondling her genitals with his fingers.

Discussion

12. The maximum sentence for indecent assault is 5 years' imprisonment, and the maximum sentence for sexual assault is 10 years' imprisonment.
13. Whilst cases such as *Rokota*, *Laca* and *SW* provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such.
14. I have had the advantage of hearing CC's account of the context in which the offending reflected in counts 1 and 2 was committed.
15. That context included calling CC away from playing with her siblings in order to sexually abuse her.
16. I turn my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act. As is invariably the case, I have had regard to a combination of the statutory purposes.
17. My principal focus in determining the just and proportionate sentence in this case is to ensure that the sentence I impose adequately signifies that the court and the community denounce the commission of sexual offending against children. Irrespective of whether denunciation serves to deter those who may be inclined to offend against children, it nevertheless serves to shape societal values.
18. Whilst I may be inclined to regard your clear record and relative youth and immaturity as reducing the seriousness of your offending, I have to balance

this against your conduct during trial. The fact that you gave evidence casting aspersions on the other children in the household indicates to me that you have no insight into your offending. This bodes ill for your prospects of rehabilitation.

19. I must also have regard to the inevitable emotional and psychological harm that your offending has caused to CC. That was all too apparent to me as I observed her during the trial.
20. In all the circumstances of this case, including CC's extreme vulnerability, and the abuse of your authority as an uncle living together with her, I consider that the appropriate aggregate sentence reflecting the totality of your behaviour across both counts is one of 5 years' imprisonment.
21. In my view, this is the shortest sentence commensurate with the seriousness of your offending.
22. I fix your non-parole period at 40 months, which I consider reflects the appropriate punitive element of your sentence, and also provides a reasonable incentive for rehabilitative efforts on your part.
23. I would encourage you to reflect at length on the harm that your offending has caused, and to engage with any intervention programmes that may be available to you during your period of incarceration.
24. I am informed that you were in custody for 2 months and 8 days, from 22 September 2023 to 30 November 2023. I remanded you in custody on 31 January 2025, which means that you have served a further 36 days in custody. In total, therefore, you have served 3 ½ months (which I round up to 4 months) in custody pending disposal of this matter, which is to be regarded as a period of imprisonment that you have already served.
25. Accordingly, the remaining time you must serve before being eligible to be released on parole is 3 years.

26. Mr. Lavekau, for the reasons I have explained, the sentence I impose is 5 years' imprisonment, less the time you have already served on remand. Your non-parole period is 3 years from today.
27. I am satisfied that it is appropriate to make a Permanent Domestic Violence Restraining Order with standard non-molestation and no contact conditions. This Order will be in force unless varied by a competent court. Should you breach this Order, you may be charged with an offence contrary to section 77 of the Domestic Violence Act.
28. You may appeal to the Court of Appeal within 30 days.



A handwritten signature in black ink, appearing to be "W.D.", followed by a long horizontal line extending to the right. Below the signature is a dotted line.

Hon. Mr. Justice Burney

At Labasa

7 March 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**