IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 39 of 2024

STATE

V

SAKIUSA MAQORA

Counsel	:	Ms. E. Thaggard for the State
	:	Ms. K. Marama for the Accused
Date of Hearing	:	20 December 2024
Date of Sentence	:	24 January 2025

SENTENCE

1. On 17 July 2024, Mr Maqora ("the offender") was arraigned on an Information dated 16 May 2024 containing four counts alleging sexual offending against a young child, who I shall refer to as "Child A".

2. Count 1, to which the offender pleaded guilty, charged that, contrary to section 212(1) of the Crimes Act 2009, on 21 March 2024, the offender unlawfully and indecently assaulted Child A by kissing her on her neck.

3. Count 2, to which the offender also pleaded guilty, charged that, contrary to section 210(1)(a) of the Crimes Act 2009, the offender unlawfully and indecently assaulted Child A by rubbing her vulva above her panty.

4. The offender pleaded not guilty to a charge of sexual assault, the particulars being that, on 21 March 2024, he unlawfully and indecently assaulted Child A by squeezing her naked buttocks (count 3).

5. The offender also pleaded not guilty to count 4 of rape, the particulars being that, on 21 March 2024, he penetrated the anus of Child A (a child under the age of 13 years) with his finger.

6. In accordance with good practice, the matter was listed for trial in the school vacation.

7. On 20 December 2024, the offender was re-arraigned, and maintained his earlier pleas of guilty to counts 1 and 2, and not guilty to counts 3 and 4.

8. Pursuant to section 135 Criminal Procedure Act, the following facts were agreed:

> *"1. That the accused person in this matter is Sakiusa Maqora.*
> *2. That the accused was 64 years old, unemployed at the time of committing the alleged offences.*
> *3. That the victim in this matter is [Child A], 6 years old …*
> *4. That on 21 March 2024 the victim was playing with [Child B] after school.*
> *5. That [Child B] also resides with the accused.*
> *6. That while [Child A] and [Child B] were playing outside, the accused called [Child A] inside his room to massage his back.*
> *7. That the accused then started to rub around Child A's genitalia area above her clothes.*
> *8. That the accused did not utter a word to Child A however kept on touching her.*
> *9. That the accused then started rubbing Child A's genitalia above her panty and then started kissing her neck where Child A tried to block the accused with her elbow."* ("Agreed Facts").

The prosecution case

9. The sole witness for the prosecution was Child A.

10. She gave unsworn evidence remotely from the child-friendly room in the Labasa Court Complex. Her mother was present in the room to provide comfort.

11. Preliminary rapport-building questioning by the prosecution clearly revealed Child A to be a bright child, who was well able to understand the questions asked and answer appropriately. It was established that she understood the importance of answering truthfully.

12. In line with the Agreed Facts, Child A confirmed that she was playing with her school friend after school when the offender called her to go inside his room to massage his back.

13. She was alone in the room with the offender and, when she was massaging his back, he put his hand over her genitalia, and was rubbing that area over her clothes.

14. The offender took off her clothes, turned her so she was lying face down on the floor, and put his *"balls"* on her back. The offender was not wearing any clothes when he did this.

15. Child A said that she did not remember anything else about that day.

Defence submission of no case to answer on counts 3 and 4

16. Appreciating that Child A's evidence did not touch on counts 3 and 4, defence counsel very sensibly made the decision not to cross-examine Child A.
17. Rather, Ms Marama made an application that the offender had no case to answer on those counts.

18. Ms. Thaggard quite properly conceded that there had been no evidence adduced supporting counts 3 and 4.

19. I acceded to the defence application and acquitted the offender of counts 3 and 4 accordingly.

Counts 1 and 2

20. I have no doubt that the offender's pleas to counts 1 and 2 were properly informed, voluntary and unequivocal.

21. I am satisfied so that I am sure that the Agreed Facts establish the elements of counts 1 and 2. I find the offender guilty as charged and convict him accordingly.

22. I must now proceed to impose a just and proportionate sentence.

Prosecution sentencing submissions

23. The prosecution relied on written submissions dated 2 October 2024, filed after the offender had initially pleaded guilty to counts 1 and 2, and these submissions were briefly supplemented at the sentencing hearing on 20 December 2024.

24. 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.

25. 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.

26. The prosecution advanced as aggravating factors the fact that, as a 6 year old child, Child A was particularly vulnerable, and also the wide disparity in age, given that the offender was 63 years old at the time of offending.

27. His antecedent report reveals that, on 6 June 2016, the offender was sentenced by Taveuni Magistrates' Court to 4 years' imprisonment for sexual assault. When questioned about this at the sentencing hearing, the offender admitted this conviction, and informed the court, through defence counsel, that this conviction related to offending against a young child.

Defence sentencing submissions

28. The defence relied on written submissions dated 25 September 2024.

29. By way of background, I am informed that the offender is 64 years old and single. He used to be actively involved in village activities at his village in Taveuni, and is leader of the Yavusa Qaraniau in Togo Village.

30. It is also advanced on his behalf that the offender committed the current offences as a result of an *"uncontrollable sexual urge"*, which he found difficult to suppress, albeit that he understands that his actions are inexcusable and intolerable.

31. In common with the prosecution, defence counsel has drawn my attention to *Rokota* and *Laca*.

32. Three matters advanced in mitigation are the offender's advanced age, his guilty pleas, and his request for forgiveness and promise not to re-offend.

Discussion

33. The maximum sentence for indecent assault is 5 years' imprisonment, and the maximum sentence for sexual assault is 10 years' imprisonment.

34. Whilst cases such as *Rokota* and *Laca* 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.

35. I have had the advantage of hearing Child A's account of the context in which the offending reflected in counts 1 and 2 was committed.

36. That context included the offender calling Child A into his room on the pretext of giving him a massage. Indeed, this was an agreed fact at trial.

37. It was Child A's evidence that, inside the offender's room, he undressed her and rubbed himself against her naked body. I accept Child A's evidence to be both truthful and reliable, and I am sure that the offender did remove her clothes and rub himself against her naked body.

38. Whilst this conduct was not charged separately, and I must be careful to avoid imposing separate punishment for these uncharged acts, this context is relevant to the sentencing exercise I must undertake in this case. It is relevant because, in contradistinction to a fleeting touching of Child A's genitalia over her clothing, the evidence shows the offending behaviour to have been prolonged and highly sexualised.

39. 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.

40. In this case, for obvious reasons, I have less regard to deterrence and rehabilitation. The offender is a repeat sexual offender against young children. The lengthy term of imprisonment imposed on him in 2016 neither deterred his repeat offending nor rehabilitated him.

41. Rather, my principal focus in determining the just and proportionate sentence in this case is protection of the community. I also consider it important in cases such as this for the sentence imposed to adequately signify that the court and the community denounce the commission of sexual offending against children.

42. Protection of the community is my overriding purpose in light of my concluded view that the offender is a committed paedophile. On his own account, he has uncontrollable sexual urges which he finds difficult to suppress. This is borne out by his offending in this case within a few years of being released from a lengthy sentence for sexual offending against a young child.

43. In all the circumstances of this case, including Child A's extreme vulnerability, the abuse of the offender's authority as a village elder, the pre-planning and subterfuge, the prolonged nature of the assaults, and his status as a repeat child sex offender, I consider that the appropriate aggregate sentence reflecting the totality of the offender's behaviour across both counts is one of 9 years' imprisonment.

44. I do not consider that what is said to be his advanced age has any value in mitigation. Nor do I attach any weight to the offender's promise not to re-offend. Indeed, it is not a promise he can make in good faith having regard to his *"uncontrollable"* sexual urges.

45. In reality, the offender's only effective mitigation is his early guilty pleas. Whilst those pleas did not obviate the need for Child A to give evidence in his trial on counts 3 and 4, the offender was acquitted of those charges at the close of the prosecution case.

46. Irrespective of whether his early guilty pleas reflect true remorse, in my view there is real utilitarian value in sending a clear message to those accused of

serious sexual offending that sentencing courts will give substantial credit to those who accept responsibility at the earliest opportunity.

47. An unambiguous and settled approach to the thorny issue of credit for plea would enable defence counsel to advise their clients with confidence, and is likely to lead to more early guilty pleas, and thereby promote the efficient administration of criminal justice.

48. Whilst acknowledging the unease that sentencing courts may feel at giving substantial credit to those who accept responsibility for some of the most heinous sexual offending, it seems to me that it is precisely in these types of cases that the encouragement of early acceptance of guilt is most valuable.

49. Having made those general observations, I consider that the offender's early guilty pleas in this case warrant a full one-third discount.

50. Mr Maqora, you have pleaded guilty to two despicable sexual offences against an innocent and vulnerable child. You have accepted that you have served a lengthy term of imprisonment for similar offending. It would appear that you have some insight into your offending behaviour, but have failed to take any steps to address your deviant behaviour. In my view, you are a committed paedophile, and a danger to children in your community.

51. Having regard to all the circumstances in this case, were I sentencing you after a trial, the appropriate sentence to reflect the totality of your offending would have been one of 9 years' imprisonment. However, by pleading guilty at the earliest opportunity you have saved the court's time and resources. This is an important consideration quite separate from the question of whether your early guilty pleas reflect your genuine remorse.

52. In all the circumstances of this case, I reduce your sentence by one-third, resulting in a final sentence of 6 years' imprisonment. In my view, this represents the shortest term commensurate with the seriousness of your offending.

53. I fix your non-parole period at 5 years, which I consider reflects the appropriate punitive element of your sentence, and also provides a reasonable incentive for rehabilitative efforts on your part.

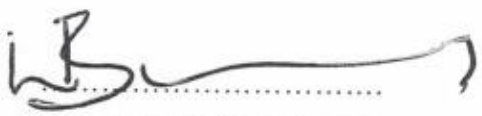
54. I would encourage you to reflect at length on the inevitable harm that your entrenched pattern of offending causes to vulnerable young children, and to engage with any intervention programmes that may be available to you during your period of incarceration.

55. I am informed that you were in custody for 1 month and 23 days, from 31 March 2024 to 23 May 2024. I remanded you in custody on 20 December 2024, which means that you have served a further 35 days in custody. In total, therefore, you have served 88 days (which I round up to 3 months) in custody pending disposal of this matter, which is to be regarded as a period of imprisonment that you have already served.

56. Accordingly, the remaining time you must serve before being eligible to be released on parole is 4 years 9 months.

57. Mr Maqora, for the reasons I have explained, the sentence I impose is 6 years' imprisonment, less the time you have already served on remand. Your non-parole period is 4 years 9 months from today.

58. You may appeal to the Court of Appeal within 30 days should you choose to do so.



Hon. Mr. Justice Burney

At Labasa

24 January, 2025

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