IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS, Plaintiff-Appellee, v. LANES MULLER, Defendant-Appellant.	Supreme Court No. 2023-01545 OPINION

BEFORE: CADRA, Chief Justice; SEABRIGHT,* and SEEBORG,** Associate Justices

SEABRIGHT, Associate Justice:

I. INTRODUCTION

Lanes Muller ("Muller") appeals the sentence imposed by the High Court on remand for re-sentencing after this court affirmed Muller's convictions on two counts, Criminal Attempt to Commit Sexual Assault in the First Degree (count 1) and Continuous Sexual Assault of a Minor (count 2), but reversed based on insufficient evidence of the offense of Showing a Pornographic Movie to a Minor (count 3).[1] On appeal, Muller contends that the sentence imposed on remand was too lengthy and inconsistent with law. For the reasons to follow, we disagree and AFFIRM.

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* The Honorable J. Michael Seabright, United States District Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, Chief United States District Judge, Northern District of California, sitting by designation of the Cabinet.

[1] Muller's convictions on Count 1 and 2 were affirmed, and Count 3 reversed, in *RMI v. Muller*, No. 2022-01027 (July 11, 2023).

II. BACKGROUND

In order to place the re-sentencing in context, the court draws from the factual background set forth in its prior Opinion.[2]

This case involves the sexual assault of a minor, referred to as "GL" in this Opinion. Viewing the evidence in the light most favorable to the government, the facts at trial established the following: GL was born on May 20, 2011, and during all relevant times resided with her mother, Kijen Lakien ("Lakien"). Muller, 55 years old at the time of trial, was Lakien's boyfriend, and both GL and Lakien resided with Muller in Rita. During the period that she lived with Muller, Lakien left GL alone with Muller five times.

GL testified that Muller engaged in sexual activity with her on four separate occasions, between approximately November 2020 and January 10, 2021. As to the first incident, GL testified that "[Muller] grabbed [GL's] hand and made [her] touch his penis," and warned her that if she told someone, then GL and her mother "won't sleep at his house." As to the second incident, Muller "took off [GL's] clothes and started licking [her] pussy" with his tongue. When asked to point to the area that he licked, GL pointed between her legs. As to the third incident, GL stated that Muller "made me watch porn," undressed GL and himself, and then lied on top of her while naked.

The fourth and last incident occurred on January 10, 2021. GL testified that Muller "was on top of [GL] and he was trying to have sex" while they were both naked. At this

[2] In addition to appealing his sentence, Muller also argues that there was insufficient evidence to support his convictions for Counts 1 and 2. This very issue was previously decided by this Court in its July 11, 2023 Opinion, and there is no basis in fact or law to revisit that decision here. Thus, we limit our discussion to the issue of Muller's sentence after remand.

time, Lakien returned to the house, observed Muller "on his knees and facing down towards [her] daughter, eating her out, [engaging in cunnilingus]" while GL "was lying down facing up and... covering her eyes." When GL saw Lakien, she "cried and ran up" to her. Lakien then took GL to the police station.

After arriving at the police station, Captain Vincent Tani obtained statements about the incidents from both GL and Lakien. GL was then taken to the hospital for examination by an obstetrics and mental health specialist.

Muller was convicted on all three counts, and timely appealed to this Court. We affirmed Muller's convictions for Counts 1 and 2, but reversed as to Count 3 based on insufficiency of the evidence. We then remanded the case to the High Court for resentencing on counts 1 and 2. In doing so, we also informed the High Court that, in its discretion, it could hold a sentencing hearing anew or re-sentence based on the existing record.

During a September 5, 2023 resentencing hearing, the court heard the testimony of several witnesses. Dr. Holden Nena , a psychiatrist at the Majuro Hospital, explained that GL went through a "deep stress reaction, a traumatic experience." He also testified that childhood traumatic experience and sexual violence can lead to substance abuse, major depression, and even suicide. Ablos Jelmak, the Marshall Island Police Department Superintendent of Prisons, testified that since his incarceration, Muller has not violated any prison rules. And Rodwin Billy, a pastor in the Morning Star Church in Long Island, has visited Muller in prison. In Pastor Billy's opinion, Muller accepted God into his life and "he's changed. I see change in him."

After hearing this testimony and considering the positions of the parties, the High Court then sentenced Muller: 1) as to Count 1, 10 years imprisonment (with credit for time served), with 10 years to serve and no probation; and 2) as to Count 2, 25 years imprisonment,

with 20 years to serve and 5 years probation under certain conditions. The sentences as to Count 1 and 2 were ordered to be served concurrently.

Muller timely appeals the sentence imposed to this Court.

III. STANDARD OF REVIEW

The Nitijela has provided the High Court with wide latitude in weighing various sentencing factors: "In imposing a sentence of imprisonment, the court may consider as aggravating or mitigating circumstances any factor which the court deems appropriate to the ends of justice, including the custom of the Republic of the Marshall Islands." 31 MIRC Ch.1 §6.06 (3).

Further, we review the High Court's sentencing under an "abuse of discretion" standard. *RMI v. Elanzo*, 3 MILR 51, 53 (2008). Provided that the sentencing judge "fully consider[s] the factors relevant to imposing sentence, we will generally conclude there was no abuse of discretion." *Id.* As we have previously explained:

> The trial judge has the opportunity to consider many factors from which an appropriate sentence may be deduced such as a defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. A reviewing court, on the other hand, has only the "cold record." We, accordingly, give great deference and weight to the trial judge's sentencing decision so long as it is within the statutory range of permissible sentence and is not arbitrary or capricious. We will not substitute our judgment for that of the trial judge merely because we could have balanced the factors differently and could have arrived at a lesser sentence.

Id. at 53. To be clear, *Elanzo's* statement that the sentencing court will generally not abuse its discretion if it "fully" considers relevant sentencing factors does not mean that the sentencing court must articulate each and every mitigating or aggravating factor at sentencing or in a sentencing order. Instead, the sentencing court must provide a sufficient and adequate record to

allow for meaningful appellate review and to promote the perception of fair sentencing. *United States v. Fogle*, 825 F.3d 354, 358 (7th Cir. 2016); *United States v. Trujillo*, 713 F.3d 1003, 1009 (9th Cir. 2013).

IV. DISCUSSION

In its Re-Sentencing Order, the High Court took into consideration the evidence resulting in the jury's finding of guilt as to Counts 1 and 2, and the testimony received during the re-sentencing hearing. The Court then listed the following mitigating factors: 1) Muller's lack of criminal history; 2) Muller has not been charged, since the assaults in this case, with any other criminal offenses; and 3) while incarcerated, Muller has complied with the prison rules, and has accepted God into his life. The Court found the following factors in aggravation: 1) Muller repeatedly sexually assaulted a vulnerable 9-year old girl; 2) Muller's sexual assaults violated family trust and custom, as Muller was a father figure to GL; 3) Muller's actions puts GL at risk for great psychological harm as she reaches her teen years; 4) Muller caused Lakien psychological harm; and 5) Muller has not asked for forgiveness nor shown remorse (that is, Muller failed to accept responsibility for the offense conduct). The High Court also explained that its sentence addressed several purposes of sentencing, including general and specific deterrence, retribution, and protecting the public from further crimes by Muller.

Muller now argues that the sentence imposed is too harsh, largely due to Muller's age (currently 57 years old) and lack of criminal history. Although Muller does not address the abuse of discretion standard in his briefing, the Court assumes that Muller's argument is that, given his lack of criminal history and age, the High Court abused its discretion in imposing a combined sentence of 20 years of imprisonment. But this argument fails—the High Court specifically took into consideration Muller's lack of criminal history as a mitigating factor, and

was certainly aware of Muller's age. Further, the High Court addressed mitigating and aggravating factors at sentencing in sufficient detail for this Court to conduct a meaningful review and to promote the perception of fair sentencing. The High Court did not abuse its discretion.

V. CONCLUSION

Accordingly, the Court AFFIRMS Muller's sentence in all respects.

Dated: June 4, 2024

Daniel N. Cádra, Chief Justice

Dated: June 4, 2024

J. Michael Seabright, Associate Justice

Dated: June 4 , 2024

Richard Seeborg, Associate Justice