

IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

BETWEEN: **P O L I C E**

Prosecution

A N D: **MAIAVA LOLE**, *male of*
Siusega and Sapapalii

Defendant

Presiding Judge: Justice Slicer

Counsel: T Toailoa and E Niumata for the prosecution
F K AINU'U for the defendant

Hearing: 29 March 2012

Sentence: 23 April 2012

Charge: Rape/Attempting to Have Sexual Intercourse With A Young Related
Girl

SENTENCE

1. The defendant has pleaded guilty to two charges of Rape and one of Attempting to Have Sexual Intercourse With a Young Related Girl, contrary to the Crimes Ordinance 1961, sections 47 and 50. The acts of rape occurred between January and July 2008 and on 30 September 2011. The attempt occurred between July and December 2008. It was after September 2011 that police became involved.
2. Maiava Lole (“Lole”) was originally charged with 12 sexually related crimes but pleaded to the 3 described above after an assessor panel had been summoned and the

pleas taken in their presence. He is entitled to the benefit of not putting a young woman through the ordeal of giving evidence and some small allowance for a late plea.

3. The young woman was aged 18 years at the time of the first offence and pregnant. The offender was aged 56 and there remains a 37 years age difference.
4. The prosecution submits that a starting point should take into account breach of trust, premeditation, age difference, multiple offending and the place where the events took place. Given the seriousness of the crimes and taking into account the aggravating factors Counsel suggests that 18 years is an appropriate head sentence which represents aggravating matters to be discounted by mitigating factors.
5. The Court will adhere to the approach taken in *Police v Sione* [2011] WSSC 128 and *Police v Filippo* [2011] WSSC 127. The Court regards these events as coming within Rape Band 3 as stated in *Sione* (supra) as 12 – 18 years. The Court will, before considering mitigating matters, apply a midline application of 15 years.
6. The mitigating matters are stated as:
 - (1) Force and the position of the offender were used but no actual violence used;
 - (2) There were no physical injuries although there has been ongoing psychological harm caused to the complainant;

- (3) Lole is a first offender;
 - (4) He pleaded guilty albeit at a late stage;
 - (5) He was in custody for 2 weeks in November 2011 and such will be taken into account;
 - (6) The Court notes that there has been no ifoga. On 24 October 2011, the families wrote to the Commissioner of Police and copied to the Attorney General a letter stating that there had been a reconciliation and requesting that all charges be withdrawn. Little regard will be had to the claimed reconciliation designed to avoid prosecution. The complainant has suffered ongoing harm and states that she has not forgiven the defendant for his actions.
7. The result of those mitigating matters would be a sentence of 13 years.
 8. The defendant is now aged 66. Warner on *Sentencing* states at 3.510:

“In the rare instances where an offender is of advanced age years old, age may be regarded as mitigating.” (See: *Cobiac v Liddy* [1962] 11 CLR 257)
 9. As King CJ said in *Hunter* (1984) 36 SASR 101:

“...a sentencing judge cannot overlook the fact that each year of the sentence represents a substantial proportion of the period of life which is left to him.”

10. The Court will make a further allowance for the advanced age of the offender and the conditions of the Samoan prison system which, for understandable reasons, has few facilities for aged care. In those circumstances a 2 year allowance will be given.
11. The sentence will be that of 11 years.

ORDERS OF THE COURT

- (1) Maiava Lole is convicted of the crimes of Rape and Attempting to Have Sexual Intercourse With A Young Related Girl.
- (2) Maiava Lole is sentenced to a term of imprisonment for a period of 11 years, such sentence to commence as and from 29 March 2012.
- (3) The names of the victim, her family and village are suppressed.


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(JUSTICE SLICER)