

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR: 347-49/08
CR: 351-62/08

POLICE

V

NOOAPII ISAMAELA
Defendant

Senior Sergeant Manavaroa for Prosecutor
Mr A. Brown for Defendant
Dated: 3 October 2008

SENTENCE OF WESTON J

1. Mr Isamaela you are here for sentence on 16 charges to which you have pleaded guilty and for which you have been convicted. There are 3 categories of those offences.
 - a) The first one is a case of an indecent act against an eleven year old of which there is one charge and the sentence on that charge is a maximum of 10 years imprisonment.
 - b) The second category is one of sexual intercourse in relation to a girl of eleven years or less and there is one charge of that in this case for which the maximum term of imprisonment is 14 years.
 - c) The third category is of sexual intercourse with a girl of twelve years or older and there are 14 charges in relation to that type of offending and the maximum for each of those is 7 years in prison.

2. From looking at the statutory maxima it is clear that the legislation has drawn a distinction between girls who are aged eleven and younger and those who are aged twelve and older in that the maximum sentence for the under eleven is 14 years but it reduces to 7 years if the girl is twelve and older.
3. The victim in this case was your step daughter. Senior Sergeant Manavaroa correctly said that was a position of trust which you have gravely abused. Your step daughter should have been safe in your house but she was not. She was subject to forced sex and threats of violence. These are very considerable aggravating circumstances.
4. Earlier this week I sentenced someone for a range of sexual offences against his natural daughter. I gave him 5 years imprisonment. She was aged 15 when he commenced that offending and it went on over a period of 4 years. I described his behaviour as disgusting and depraved and I describe yours in exactly the same way. The other man was charged with incest and he was also charged with an unrelated count of attempted rape but, in terms of the comparison to your case, it is the incest charge which is relevant.
5. You have been charged with sexual intercourse with your step daughter. I have to say reading the facts and the files in each case I would have thought that both you and this other man were lucky not to have been charged with rape. Indeed I invite the Police to reconsider their policies when dealing in the future with cases of this sort to see whether charges of rape might be appropriate.
6. The materials before me give a variety of accounts for the offending. It seems that matters started with you kissing your step daughter and that within a short time they progressed to full sexual intercourse. The incident of kissing is the subject of the first charge of committing an indecent act against an eleven year old. From that time on there were at least 15 occasions of sexual intercourse. I do not know whether

there were more but you have been charged with 15 incidents of sexual intercourse against your step daughter.

7. The victim finally told her brother what was happening and she was taken into his care and that of his wife. He notified the Police. The victim remains with her brother and I want to pay tribute to him and his wife for taking on his sister and looking after her in these terrible circumstances.
8. As with the previous sentencing that I had to undertake, I ask welfare to investigate the case to ensure that the after effects of this offending are properly addressed, for example to see whether counselling might be needed to help her get through this time. At one stage it seems you asserted that this offending was consensual: that is, that your step daughter agreed to it and even at one time I think you said that she encouraged it. It seems now that you recognize that that was not the case and indeed I cannot see how it could have been. There are at least three reasons that influence me. First, your step daughter was only a child and I cannot see how a child of that age could possibly consent to her father having sex with her.
9. Secondly, your wife subsequently aborted your baby on learning of your arrest for these offences because she didn't want to bear your child and the third reason is that you threatened to kill both your daughter and your wife if they told. That to me is a very telling illustration of how you knew you were doing wrong right throughout. The reality is that you took advantage of a young girl who was in your care.
10. It is clear from the materials before me that alcohol is a factor in your offending and that you have a pretty dismal family history yourself. I've seen a psychiatric report but in the main that simply states what you told the doctor. There is certainly no suggestion in this that you did not

know what you were doing and indeed the report ends by recording that you had admitted the charges and were remorseful.

11. There was some previous offending in 1995 when you were sentenced to 18 months for an attempted indecent act with a girl of 12 years. Neither the prosecution nor your counsel was able to assist me with any further details of that matter but it is an aggravating feature of this case.
12. There is no formal victim impact report before me which is disappointing. Nevertheless the probation report itself sets out some helpful detail about the victim. I will quote an extract but I will change the names and refer to people simply as the victim or the mother as the case might be.

"The victim confirms that she told her mother after the very first incident and she did not believe her. The victim strongly expressed her hatred towards the prisoner and to her own mother. She explained that she has been abused since she was eleven and now she is thirteen years old. The prisoner continued to have sexual intercourse with her to this year 2008 and the only way to stop this was for her to tell her brother. She could not bear to take this sort of treatment again. During the interview the victim sounded strong and is emotionally affected. She expressed that since this case came out in the open on the Island of Aitutaki she has been teased by the children at school. She feels ashamed and wants to leave school. She does not want to return to her mother. She said she rather stay with her brother as she feels safe with him. She is still fearful of the prisoner with what he had said to her that if she tells anyone he will kill her and her mother."

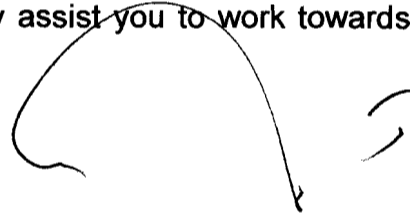
13. And as I said to the prisoner several days ago, you should be ashamed of yourself and all I can do is repeat that to you. You should be

ashamed that your own step daughter can say those things as a result of what you have done to her.

14. I also want to say something about what is happening to your step daughter at school that she's been teased. If that is so, I think that is absolutely disgraceful. Too often in these cases I see a general attitude in the community that somehow the victim is to blame. I want to repeat it's not her fault that you did this to her. She was eleven and then she was twelve. I hope that attitude might change.
15. The probation report is also useful in that it records what the victim's brother has to say about things and what he's done to assist the victim. It records how angry he is at you for what you have done to his sister and he hopes that you are not allowed ever to go near his sister again. He wants the Court send you to prison for what you have done and he also feels that his mother has let him down.
16. So what you have done is really break up your family and it's entirely your responsibility. I now propose to address each of the different categories of offending in order to assess what period of imprisonment I will sentence you to. I will then assess the overall offending to see whether my views alter.
17. So in relation to the first charge, that is of committing an indecent act, I believe the starting point, taking account of all aggravating features, is a period of 18 months imprisonment.
18. In relation to the second offence, that is of having sexual intercourse with a girl under the age of eleven, I believe that the starting point in this case is between 7 and 8 years imprisonment.
19. In relation to the third category of offences that is of having sexual intercourse with a girl over the age of 12, I believe that the starting

point would be somewhere in the range of 4 to 5 years for each offence.

20. If I am to order that you serve sentences for each of these offences concurrently that would result in the maximum term of imprisonment before any discount for a guilty plea, somewhere in the range of 7 to 8 years. I now stand back and ask whether a period of imprisonment of that length would be appropriate to recognize your overall offending. I believe that it would be. However, there needs to be a discount for your plea of guilty which spared your step daughter having to give evidence. I believe that taking all things into account the appropriate term of imprisonment for you is 6 years imprisonment including such time that you have served already.
21. Your counsel in making his plea on your behalf asked me to raise one matter that might be brought to the attention of the Prison Authorities. The Probation report records that you have been doing well in the prison and counsel seeks to have the Prison Authorities assist you in your rehabilitation. He is concerned at your mental state and whether you are dealing adequately with the consequences of your offending. I direct the Prison Authorities to ensure that you are safe in prison and that you are given such activities as may assist you to work towards your rehabilitation.



Weston J