

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

**CR NO. 155/09**

**POLICE**

**V**

**FAKIKI MUNOKOA ARAIPU**  
**Defendant**

Mrs Saunders and Mr Lynch for Informant  
Mr Brown for Defendant  
Date: 16 April 2009

**SENTENCE OF WILLIAMS CJ**

1. Mr Araipu, you appear for sentence today on 3 charges, all in relation to a 9 year old girl. First rape, pursuant to s. 141 of the Crimes Act where the maximum penalty is 14 years imprisonment. Second, detaining a girl with intent to have sexual intercourse with her pursuant to s. 230A of the Crimes Act, where the maximum penalty is 14 years imprisonment. Thirdly, indecent assault on a girl under the age of 12 where pursuant to s. 146 of the Crimes Act, the maximum penalty is 10 years imprisonment.
2. The facts make most unpleasant reading. On the 15<sup>th</sup> of February 2009 the victim was at home with her uncle in Takuvaine. She was someone known to you. She was sitting outside and you drove your car up and down the road past their house about four times. On the last occasion you stopped and beeped the horn and called the victim over to you. When she approached you grabbed her arm and ignoring her screams forced her into your car carrying her in your arms. You locked the passenger car door and taped her mouth with cellotape to subdue her. You then pushed the seat back so that the victim could not be seen. You took her off towards Arorangi along the back road, and at the Telecom building, drove into the mountains and stopped in an isolated area of the bush.
3. You told the victim to get out of the car and forced her to walk with you some 50 metres up a deserted track. During the ensuing offending you picked her up and went further along the track deeper into the bush. You made the victim lie on the

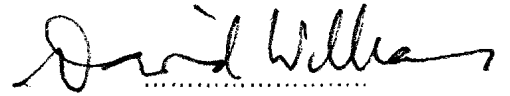
ground, removed her clothing and yours and then raped her and digitally penetrated her numerous times at each of the separate locations to which you had taken her. The force used caused bleeding from her vagina.

4. During the offending you would become angry and hit her on the face and around the head in an attempt to stop her crying and struggling. Eventually she managed to struggle free and ran away. You drove after her but hearing the car approaching the little girl hid on the side of the road and then continued running until she finally arrived back at her grandmother's house.
5. As to her injuries she suffered numerous bruises to various parts of her body. The Victim Impact Report and the statement from her grandmother signify that the incident has had serious consequences. She has a great fear of being alone, she is trying to block out memories of the incident and she has distanced herself from her friends and family. She has an inability to sleep. She's crying at night and her dependence on her grandmother is very great. Unfortunately there was gossip which led to the need for her to change her school.
6. Mrs Saunders for the Crown has helpfully made submissions about the level of sentencing in cases of this kind. She has drawn attention to the statement of the Cook Islands Court of Appeal that an appropriate starting point for a non-contested rape in the Cook Islands is 4 years. She also drew attention to the position in New Zealand where the penalty for rape has increased but she acknowledges that the ultimate decision of this Court is one which must be in accordance with the law of the Cook Islands. There is no doubt, however, that the digital penetration as a matter of law is treated no differently to male penile penetration.
7. The way that Mrs Saunders has approached sentencing is to treat the indecent assault as being a concurrent act and then look at the two separate charges which relate to rape and detaining.
8. Referring to the aggravating factors, she begins by pointing out that force was used to take the child from her home and cellotape used to stop her crying out. You also chose to take her to remote isolated spot where you would not be

detected and this in itself also would have increased the level of fear on the part of the complainant.

9. Mrs Saunders says that taking into account the aggravating factors which I will list in a moment, the starting point before any mitigating factors would be 8 years on the rape charges and 8 years on the detainee charges. She lists the following significant aggravating factors. The victim's age. The previous conviction that you have for incest (5 years imprisonment;) sexual intercourse with a girl under 12, (1 year imprisonment). The fact of multiple digital penetration; physical injuries; emotional distress, and that the prisoner was known to the victim and used that relationship to entice her; gross breach of trust; degree of pre-meditation; and the degree of violence, both to facilitate the detaining and during the sexual offending; the fear created by the prisoner, the fact that she was not voluntarily released and the pursuit of the victim after her escape.
10. As to mitigating factors, the New Zealand Court of Appeal has said that an early guilty plea entitles the defendant to a maximum discount of between 30-33%. She then invites me to look at the totality of the offending and suggest that something around 10-11 years would be appropriate and ends up saying that 10 years sentence on the rape and detaining charges to be served concurrently would be appropriate. She sums up by saying that this was a terrifying ordeal for a brave 9 year old girl which lasted some hours and points to the vulnerability of the victim.
11. I have read the grandmother's statement and the impact statement and it supports everything that Mrs Saunders has said about the serious adverse emotional and psychological impact on the victim.
12. Mr Brown has listened carefully to what the Crown has said and he refers rightly to the early plea of guilty. It is his suggestion that 8 years imprisonment would be more appropriate.
13. In my view, the submissions made on behalf of the Crown are both balanced as well as compelling and I come to the view, looking at the matter in its totality, that the sentence of 10 years imprisonment is appropriate. The decision of the Court is

that on the charge of rape, the sentence is 10 years imprisonment, the charge of detaining it is 10 years imprisonment, for the indecent assault, the penalty is 6 years. All of these terms will be served concurrently so that the end result is that the defendant must serve 10 years in relation to all of these matters.



David Williams  
Chief Justice

