

**PERMANENT NAME SUPPRESSION ORDER PROHIBITING PUBLICATION OF VICTIMS  
NAME IN THE NEWS MEDIA, ON THE INTERNET OR OTHER PUBLICLY AVAILABLE  
DATABASE WITHOUT FURTHER ORDER OF THE COURT**

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

**CR NO: 365-366/15**

**POLICE**

v

**NGATOKOTORU TUAO**

Date: 02 June 2016

Counsel: Ms A Mills for the Police  
Mr W Rasmussen for Defendant

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**SENTENCING NOTES OF HUGH WILLIAMS J**

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[1] Ngatokotoru Tuao, you appear here today to be sentenced on one charge of abduction, on the 11 September 2015, of a girl under 16 with intent to have intercourse with her and a charge of attempted sexual intercourse with that girl.

[2] You pleaded guilty to those charges on 12 May 2015.

[3] Technically at least, the attempted sexual intercourse charge carries a maximum of ten years imprisonment and the abduction charge, a maximum of seven years imprisonment.

[4] During the day today, counsel and the Probation office have been talking about what the facts of the matter really are because the version of the facts that the Police put forward was quite different from what you told the Probation officer and different again from what you told Mr Rasmussen that happened. But thankfully, with the agreement of everybody, there is now an agreed statement of facts which said that the seven year old girl was sitting at a computer in her school. You were at the school to pick up your pay. You offered her a ride back home but she refused so you then took her across to where you had your motor bike and drove with her as a pillion passenger for 100 metres or so to an

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unoccupied house, walked around the back of the house with the girl, gave her, or offered her, \$8.00 in cash which she reluctantly took. Then you made her lie down.

[5] Her clothing was removed. Your shorts were taken down and it seems clear that you lay on top of her and were intending to have intercourse with her when fortunately a bystander saw the pair of you together, shouted out and you got up and ran away.

[6] When you talked to the Police, you were remorseful and apologetic about what had happened but you admitted you had intended to have intercourse with her and you knew she was well under the age of consent.

[7] Understandably enough, what you did to the little girl on that occasion has affected her. She was fearful and in shock on the day. She now, from the victim impact statement on 16 May 2016, is unwilling to participate in activities with close friends and has bad dreams, wakes up at night, and is fearful of other people. Fortunately there was little force in what you did and with the resilience of children, probably over time, her fears resulting from what you did will quieten down.

[8] The difficulty with this is that everybody seems agreed that you have a mental age of about a ten year old, always have had, and that you like to associate with children, both boys and girls at about a ten year age group.

[9] The Police tell me you have what they call a “childish mind”, the Probation service say that you lack maturity for what you are now, a fifty year old, and the service suggests you should undergo a full psychological assessment. Unfortunately those facilities are not available here in the Cook Islands.

[10] The Probation service also suggests that I should sentence you under the Prisons Act which gives me power to send you back to Aitutaki and put you to work on the roads there to serve out your sentence. But there are not facilities available in the Aitutaki Police station for you to be kept there and even though your parents, particularly your wheel chair bound mother, rely on you for support, it just would not be right to order you to live in your parents’ home. Even though, in fifty years you have never offended before, in the small community of Aitutaki, inevitably you are going to come across school children, you will be around schools there, you will meet young folk at church and the like. It just is not the appropriate way for you to be sentenced for what you did on this occasion.

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[11] Ms Mills, for the Crown, says that the circumstances that make your offending worse than others are the girl's age; her vulnerability as a seven year old; your probable attempt to bribe her and they suggest some planning on your part because you were at the school and had money. But in your situation I cannot see any element of pre-meditation or planning. In all probability, you are just not capable of designing something like this and bringing it about.

[12] Factors making it less serious are that you co-operated with the Police. You admitted what you had done. You entered a plea of guilty at a pretty early stage and as the Crown points out, part of the difficulty here is that there is not much guidance from other cases as to what should be the appropriate penalty. Those that Ms Mills refers me to, have quite different factual situations and although I respect her submissions when she suggests that I should start at about six years in jail for you, I think that is very much too high as least as far as you are concerned.

[13] Mr Rasmussen has been very helpful as has the Probation officer in trying to assist me to decide what is the best treatment for you.

[14] I have looked at the psychological report done on you. I have read your sister's helpful description of the family's circumstances and she is still loyally supporting you today but everyone agrees, how everyone describes it, you are of limited intellectual and cognitive function.

[15] As I mentioned earlier, there is a ten year maximum sentence for the attempted sexual intercourse and seven years for abduction. The attempted sexual intercourse is more serious than the abduction which really forms part of the attempted sexual intercourse in this case.

[16] The features that make this worse than a normal charge – if there is such a thing – for attempted sexual intercourse is that it was not adult on adult. It is really a case of a child like defendant and a child. But the facts are disturbing and as I have mentioned it is a great pity there is not a more sophisticated system available which could help you come to terms, both with your offending here and your lack of maturity.

[17] Despite, I accept there not being much help from other cases the starting point to sentence you should be about a third of the ten year maximum, that is about three years' imprisonment.

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[18] That would certainly be the case if this was an adult offence on both sides. Indeed I would need to think about increasing that a bit because of the age of the girl and the circumstances, and of course the harm from which she is currently suffering.

[19] As far as the abduction is concerned, it is pretty much part of the attempted sexual intercourse and is relatively minor.

[20] You are entitled to a reduction in the sentence for the fact that it is your first offence - almost surprisingly so, given your mental age and your liking to be around little girls and boys - and of course for pleading guilty and being prepared to face up, as far as you can, to responsibility for the offence.

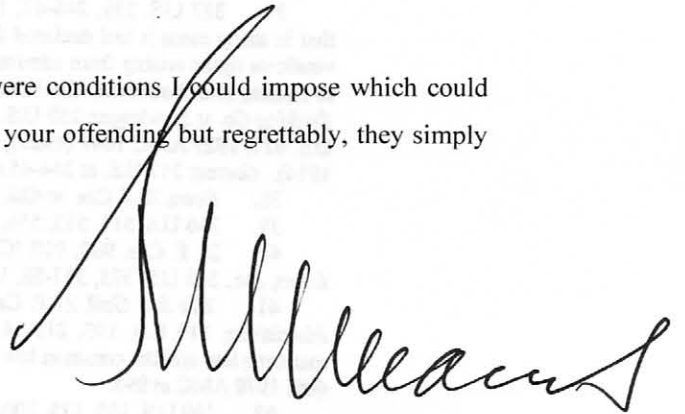
[21] I also need to take into account that you are going to be removed from Aitutaki for a while and your parents will lose your support. That will make it hard for them, particularly for your mother.

[22] Ultimately, my conclusion is first, that there has to be an order permanently suppressing the girl's name and any particulars identifying her.

[23] Then when it comes to sentencing you on the attempted sexual intercourse, making as much allowance as I properly can for your personal situation, the appropriate term of imprisonment to impose on you is two years.

[24] On the abduction, I will convict you and discharge you on that because as I said, it is really part of the other offence.

[25] You will go to jail for two years, I wish there were conditions I could impose which could assist you come to terms with your background and with your offending but regrettably, they simply are not available here.



**Hugh Williams, J**