

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 186 OF 2017

BETWEEN : STATE

AND : DANIELE PECELI

Counsel : Mr S Babitu for the State
: Mr M Naivalu for the Accused

Date of Hearing : 21st October, 2019

Date of Sentence : 23rd October, 2019

S E N T E N C E

- [1] The Accused pleads guilty to defilement of a juvenile girl contrary to section 215(1) of the Crimes Act. Initially, the Accused was charged with rape. That charge was reduced to defilement on 26 July 2019.
- [2] The Accused is represented by private counsel of his choice. He pleaded guilty at the first opportunity after the charge was reduced from rape to defilement. The Court finds the guilty plea to be informed and unambiguous. Accordingly, he is convicted as charged.
- [3] The facts are that on 9 August 2017, the Accused had sexual intercourse with a 15-year old girl at Navosa in the Western Division. She was a Form 2 student at the time staying in the school dormitory. He was a Form 6 student and 18 years old at the time. Both were in a virtuous friendship. On the night in question, she secretly met him outside the school dormitory and had consensual sexual intercourse with him. After having sex she accompanied him to a farm house and had a meal together. The matter came to light the following day when a school teacher found out that she was missing from her dormitory the previous night.

[4] The maximum penalty prescribed for defilement is 10 years' imprisonment. The tariff is from a suspended sentence to 4 years' imprisonment (*Donumainasava v The State* [2001] FJHC 25; Haa0032j.2001s (18 May 2001)). In *Donumainasava*, the court said at p 3:

Reported cases in Fiji and abroad show that sentences passed range from suspended sentences (usually where the accused and victim are both of the same or similar age, and are in a relationship) to 3/4 years imprisonment where the accused is in a position of trust in relation to the victim, and much older than her.

[5] In *R v Taylor and Others* 64 Cr. App. R. 182, the English Court of Appeal laid down guidelines for the sentencing of persons convicted of having unlawful sexual intercourse with a girl under the age of 16. Lord Justice Lawton distinguished between cases of "virtuous friendship" between young people of the same age which ended in sexual intercourse, and cases where a man in a supervisory capacity set out to seduce a girl under sixteen. In the first type of case, custodial sentences were not needed; in the second, sentences of the maximum of two years, or near that scale, should be imposed.

[6] The facts of this case are clear. This is a case of virtuous friendship between two school students of similar age which ended in sexual intercourse. There was no exploitation involved. There are no aggravating factors. The Accused is a young and a first time offender, pleaded guilty at the first opportunity and is genuinely remorseful. The chances for rehabilitation are high.

[7] The Accused is sentenced to 18 months' imprisonment suspended for 2 years. Suspended sentence explained to the Accused.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Law Naivalu for the Accused