

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 50 of 2024

STATE

V

FILIPO TUOCA

Counsel : Mr. T. Tuenuku for the State
: Ms. V. Kirti for the Accused

Date of Trial : 23 – 25 June 2025
Date of Judgment : 12 August 2025
Date of Sentencing Hearing: 19 September 2025
Date of Sentence : 9 October 2025

SENTENCE

1. Mr. Tuoca, on 12 August 2025, after trial before this Court, you were convicted of one representative count of Indecent Assault and three representative counts of rape, reflecting your serious sexual offending against your step-daughter during the period 1 January 2020 to 31 December 2023, when she was between the ages of 11 and 15. In order to protect her privacy, I shall refer to her in these sentencing remarks as “the complainant”.
2. The factual basis upon which I sentence you today is set out in my Judgment dated 12 August 2025. For present purposes, it is sufficient to set out those facts in brief summary.

3. You entered into a *de facto* relationship with the complainant's mother when the complainant was in Class 5. The following year, you began indecently assaulting the complainant by touching her breasts over her clothes. This happened on most Fridays when the complainant returned home from boarding school and her mother was away selling produce at Labasa Market. You raped her on many occasions during the period 2021 to 2023, when you were home alone with her, by forcefully removing her shorts and underwear, and penetrating her vagina with your penis. She tried to push you away, but you were stronger than her, and you did not listen when she asked you to stop. Your offending came to light in 2024 when it was discovered that the complainant was pregnant. She gave birth to your daughter on 17 June 2024.
4. I must now proceed to impose a just and proportionate sentence for the totality of your offending.

Prosecution sentencing submissions

5. The prosecution has made helpful oral and written submissions drawing the Court's attention to the relevant guideline judgments, and has also urged upon me a number of factors which they say makes your offending more serious. Chief amongst these aggravating factors are: (i) these were domestic violence offences; (ii) your prolonged and persistent offending against your step-daughter constitutes a gross breach of trust; (iii) your offending caused the complainant to endure an unwarranted pregnancy when she was only 15 years old; (iv) the severely damaging impact of your offending against the complainant, as reflected in her Victim Impact Statement. This was read aloud by the prosecutor at your sentencing hearing, and it is appropriate that I set out in full the complainant's letter to you:

"I grew up without a father. I never knew my biological father. When my mother settled with you, I was happy knowing that you will protect me. Knowing that you will be the one I run to if I needed anything. I see you as a real father not a stepfather.

You betrayed all that trust from the moment you started touching me, raping me. You raped me. You made me pregnant. You ruined my life, my dreams and the things I wanted to achieve in life.

I will never forgive the horrible things that you have done to me. I hate you and I will never consider you as part of my family. You need to pay for the crime that you have committed.”

Mitigation

6. On your behalf, Ms. Kirti has told me something about your background. You are 39 years old. You are a farmer and have been the sole breadwinner for your family. She submits that the fact that you are a first offender is a strong mitigating factor.
7. Ms. Kirti submits that the Court should consider a sentence at the lower end of the tariff given that your offending is not as serious as the offending considered by the Supreme Court in the relevant guideline judgment

Discussion and disposal

8. The maximum sentence for indecent assault is 5 years' imprisonment, and the accepted sentencing range is 12 months' to 4 years' imprisonment.
9. The maximum sentence for rape is life imprisonment. The Supreme Court has given a guideline judgment that the tariff for rape of a child is 11 years' to 20 years' imprisonment.
10. Whilst sentences imposed by other sentencing courts provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such. It is for this

reason that I reject Ms. Kirti's invitation to sentence you by reference to the particular facts of the relevant guideline judgment. Other courts have highlighted a number of issues with the guideline judgment, and it is perhaps time for that guideline to be re-visited.

11. It is also noteworthy that the accepted tariffs for the offences you have committed are wide. My task is to determine a just and proportionate sentence that properly reflects the totality of your offending across all four representative counts.
12. Turning my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act, I have had regard to a combination of the statutory purposes.
13. Sentencing courts often remark that serious sexual offending against children warrants a deterrent sentence. Whilst this is undoubtedly so, it is difficult to measure the effectiveness of particular deterrent sentences. For my part, I am doubtful that those who would contemplate raping children would be deterred from doing so based on a calculation of the potential harsh penalties involved. Certainly, it has not been the experience of the courts that the harsher sentencing regime ushered in by the Supreme Court has brought about a reduction in abhorrent sexual offending against children.
14. Having said that, it seems to me that condign punishment of those who offend against children serves an important function. By denouncing sexual offending against children in the strongest terms, sentencing courts help to shape societal values. Education through denunciation reinforces law-abiding and decent citizens' rejection of sexual abuse of children.
15. My principal focus in determining the just and proportionate sentence in this case is to ensure that the sentence I impose adequately signifies that the court and the community denounce the commission of sexual offending against children.

16. I have decided that the best way to achieve a just and proportionate sentence reflecting the totality of your offending against the complainant is to take your offending in 2023 (count 4) as the lead offence, to treat the other offending as serious aggravating factors, and to impose concurrent sentences on those counts.
17. Having regard to your limited mitigation, I have concluded that in all the circumstances of this case, including the complainant's vulnerability, the abuse of your authority and position of trust as the complainant's father, unwanted pregnancy, and the serious enduring harm you have caused to the complainant, the appropriate sentence on count 4 is one of 18 years' imprisonment. This must be uplifted to reflect the further serious offending encompassed by counts 1 to 3. Were I sentencing you for count 1 alone, the appropriate sentence would be 2 years' imprisonment. The appropriate sentence for each of counts 2 and 3 would be 17 years' imprisonment.
18. Should I order that you must serve all sentences consecutively, that would result in an overall term of 54 years' imprisonment. Clearly, that would be a crushing sentence. Sentencing principles require that I step back and make an appropriate adjustment to reflect the totality of your offending behaviour across all four counts.
19. In my assessment, an overall sentence of 24 years' imprisonment is just and proportionate.
20. Accordingly, I sentence you as follows:
 - Count 4 - 24 years' imprisonment.
 - Count 1 - 2 years' imprisonment concurrent.
 - Count 2 - 17 years' imprisonment concurrent.
 - Count 3 - 17 years' imprisonment concurrent.
21. I am required to fix a period before which you may not be considered for parole. In practical terms this will be of far more concern to you than the head sentence I impose.

22. The guideline judgment for rape of a child does not assist me in this task. Indeed, I can discern no settled practice in the decided cases. In order to avoid the impression of arbitrariness, therefore, I must adopt a principled approach.
23. Parole and remission are two different and distinct concepts.
24. Remission is dealt with in Sections 27 and 28 of the Corrections Service Act 2006. Section 27(2) that: *“For the purposes of the initial classification a date of release for each prisoner shall be determined which shall be calculated on the basis of a remission of one third of the sentence for any term of imprisonment exceeding one month.”*
25. In *Timo v State* [2019] FJSC 22; CAV0022.2018 (30 August 2019) the Supreme Court observed, at [27]:
- “The Sentencing and Penalties Act 2009 also gives no guidance to a Court as to when and in which category of cases a non-parole period should be fixed or not fixed. Therefore, a question arises: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for awarding (if at all) a non-parole period to a convict?”*
26. At the time *Timo* was decided, sentencing courts had a wide discretion whether or not to impose a non-parole period. That discretion was removed by legislative amendment of the Sentencing and Penalties Act 2009. Sentencing Courts are now required to fix a non-parole period when imposing a term of imprisonment of two years or more. It remains the case that the Sentencing and Penalties Act provides no guidance on how non-parole periods are to be calculated.
27. The rhetorical question posed in *Timo* may be appropriately re-framed as: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for fixing a just and proportionate non-parole period?”

28. This remains an important question because, as the Supreme Court highlighted, at [28]:

“This question is important because the effect of a Court directing a non-parole period on a convict is that the convict cannot be released prior to completion of the non-parole period. This could impact on the delivery and administration of justice in several ways – not only for the convict through a curtailment of his or her human right of personal liberty, but also for the Executive through a curtailment of its statutory power of granting remission and encroaching on its powers of early release of prisoners under the Corrections Service Act 2006 read with the Corrections Service Regulations 2011. It could also have an impact on society and its safety and well-being.”

29. The Court described the tension between the authority of sentencing courts to fix a non-parole period, and the exercise of power under the Corrections Service Act, at [37] as follows:

“In exercising the authority of fixing a non-parole period, the Court is, in a sense, circumscribing the exercise of power by the Parole Board and the Minister under the Corrections Service Act 2006. There may well be an extraordinary case in which the Parole Board and the Minister are of opinion that the convict is deserving of parole, but their hands would be tied because of an order of the Court fixing a non-parole period. This could amount to encroaching or subverting the discretionary power given by law to the Parole Board and the Minister, which the Courts would be loathe to do. It is for this reason that the Courts should be cautious and circumspect. This is not to say that the Courts should not fix a non-parole period in any case, but that the Courts may do so in

exceptional cases and circumstances and after following a set procedure.”

30. Adapting the reasoning of the Supreme Court to my duty to fix a non-parole period in this case, it appears to me that a principled approach would be for me to fix a non-parole period that mirrors the provisions of the Corrections Service Act which govern remission.
31. In some cases sentencing courts may consider it appropriate to circumscribe the Commissioner’s authority to grant early release, but it is beyond the scope of these sentencing remarks to consider what circumstances might warrant that approach.
32. You are a first offender, albeit the offences you have committed are of the utmost gravity. I do not consider it necessary or appropriate to ‘warehouse’ you. In my view, you should be given every opportunity to avail yourself of opportunities for rehabilitation.
33. On this basis, I consider that a non-parole period of 16 years would reflect the appropriate punitive element of your sentence, and also provide a reasonable incentive for rehabilitative efforts on your part.
34. I would encourage you to reflect at length on the inevitable harm that your offending has caused to the complainant, and to engage with any intervention programmes that may be available to you during your period of incarceration.
35. I am informed that you were in custody from 30 April 2024 to 24 September 2024. I remanded you in custody on 12 August 2025. In total, therefore, you have served almost 7 months in custody pending disposal of this matter, which is to be regarded as a period of imprisonment that you have already served.
36. Accordingly, the remaining time you must serve before being eligible to be released on parole is 15 years 5 months.

37. Mr. Tuoca, for the reasons I have explained, the sentence I impose is 24 years' imprisonment, less the time you have already served on remand. Your non-parole period is 15 years 5 months from today.
38. I am satisfied that it is appropriate to make a Permanent Domestic Violence Restraining Order with standard non-molestation and no contact conditions. This Order will be in force unless varied by a competent court. Should you breach this Order, you may be charged with an offence contrary to section 77 of the Domestic Violence Act.
39. You may appeal to the Court of Appeal within 30 days.



A handwritten signature in black ink, consisting of stylized initials "WJ" followed by a long horizontal line.

.....
Hon. Mr. Justice Burney

At Labasa

9 October 2025

Solicitors

**Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused**