



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]**

**Criminal Case No. 04 of 2024**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

JUDE VICTORIO MWAREOW

**ACCUSED**

**BEFORE:** Keteca J

**Date of Submissions:** 30<sup>th</sup> July 2025

**Date of Sentence:** 06<sup>th</sup> August 2025

**Catchwords:** Indecent Acts in relation to a child under 16 years old contrary to Section 117 (1)(a)(b)(c) Crimes Act 2016.

**Appearances:**

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **R. Tagivakatini**

**SENTENCE**

**BACKGROUND**

1. The accused pleaded guilty to two counts of 'Indecent Acts in relation to a child under 16 years old' contrary to Section 117(1)(a)(b)(c) of the Crimes Act 2016 (**the Act**) and one count of 'Being found in a certain place without lawful authority or excuse' contrary to Section 164 (a)(i) and (b) of the Act.

## THE FACTS

2. On 07<sup>th</sup> November 2024, at around 3am, the accused entered the garage area of a residence without the consent of the owner He touched the breast of the 13-year-old victim. He also sat next to her and touched her left leg and moved his hand up to her waist.
3. The accused agreed with the summary of facts. I accepted his plea of guilty to the charges in the Information as unequivocal.
4. The accused has been custody since 11<sup>th</sup> February 2025.

## SUBMISSIONS BY THE PROSECUTION

5. The accused has no previous convictions.
6. The aggravating factors are:
  - The age disparity between the accused and the victim;
  - The incident took place in the early hours of the morning and the accused prowled around in the cover darkness;
  - The victim was in her sleeping space and the accused disregarded the sanctity of the property owner and safety of the victim.
7. Counsel referred to the following provisions of the Act on sentencing:
  - Section 277- Kinds of Sentences;
  - Section 278- Purposes of Sentencing;
  - Section 279- General Sentencing Considerations;
  - Section 280- Sentencing Considerations on imprisonment;
8. The following cases were referred to:
  - *R v Xavier Namaduk* [2024] NRSC 27-the victim was 12 years old and the accused, 39. The accused was the partner of the victim's aunt. For 2 counts of indecent acts in relation to a child under 16 years-where the accused touched her breasts and private parts the accused was sentenced to 15 years imprisonment concurrent to each other. At least 10 years imprisonment to be served before parole or probation.
  - *R v Branlen Kam* [2024] NRSC 5- The victim was 9 years old and the accused, the victim's stepfather was 27. The accused was sentenced to life imprisonment for the count of rape and 15 years for the 3 counts of indecent acts. He will need to serve 20 years in prison before he is eligible for probation or parole.
  - *R v Raiden* [2024] NRSC 2- the accused was sentenced to 30 years imprisonment with a minimum of 10 years to be served before being eligible for parole or probation.
  - *R v Togaran* [2022] NRSC 20- for one count of indecent acts in relation to a child under 16 years, the accused who was the step-father of the victim was sentenced 30 years imprisonment with 10 years to be served without parole or probation.

- **Being found in a certain place without lawful authority or excuse**
- *R v Doguape* [2024] NRSC 13- The accused was sentenced to 6 months imprisonment. This was suspended for 2 years.
- *R v Xavier Namaduk* [2024] NRSC 24- The accused was sentenced to 6 months imprisonment.

## SUBMISSIONS BY THE DEFENCE

9. On mitigation factors, Counsel submits:
  - The accused pleaded guilty;
  - He is remorseful, understands the seriousness of the offending and accepts that the offences attract heavy custodial sentences;
  - He has been in custody since 13<sup>th</sup> Feb 2025;
  - He suffers from epilepsy and has had ‘frequent epileptic episodes in the past 3 years.’
10. Counsel refers to the case of *R v Namaduk* [2024] NRSC 27- discussed above. In the Namaduk case, the accused was the partner of the victim’s aunt. In the present case, the accused and the victims are neighbors. The ‘distinguishing fact’ is that the accused pleaded guilty in the present case. Counsel concludes that a sentence of 15 years imprisonment will be appropriate here.

## DISCUSSION

11. I have considered the following provisions of the Act on Sentencing:
  - Section 277- Kinds of sentences;
  - Section 278- Purposes of sentencing;
  - Section 279- Sentencing considerations;
  - Section 280- Sentencing considerations- imprisonment;
  - Section 282- Power to reduce penalties
  - Section 282A - Pre-trial detention not to be considered for offences under Part 7
12. Considering the relevant case law and the above provisions, **I convict the accused on all 3 counts.**
13. In *Republic v Bill* [2024] NRSC 22; Criminal Case 1 of 2023 (6 September 2024), I said the following:
 

‘27. I am required to give reasons for the sentences that I pass. In *WO (a child) v Western Australia* (2005) 153 A Crim R 352 (WA CA), in a joint judgment, the court said:

***‘Every court sentencing an offender is required to give reasons for that sentence. The reasons need not be elaborate, but must in every case, be sufficient to enable the offender, and the public, to understand why that sentencing disposition was chosen and to preserve to the offender the right of appeal.***

The court added:

*'In a context where a sentence of imprisonment is a last resort (as it is both for children and for adults, although the principle has greater weight in respect of the former), those sentencing remarks will always be deficient if it is not possible to discern from them why a sentence of detention or imprisonment, as opposed to some other disposition, was selected.'*

28. In *R v Thompson* (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA), Spigelman CJ said (at 394-395; 113-114[42]-[44]):

*'Sentencing judges are under an obligation to give reasons for their decisions. Remarks on sentence are no different in this respect from other judgments. This is a manifestation of the fundamental principle of common law that justice must not only be done but manifestly be seen to be done. The obligation of a court is to publish reasons for its decision, not merely to provide reasons to the parties.'*

14. In **Republic v Namaduk [2024] NRSC 27; Criminal Case 24 of 2021 (4 October 2024)**, I said the following:

27. Noting the heavy penalty that is prescribed by parliament for sexual offences against children, and considering the relative prevalence of this offence in this jurisdiction, I take a glimpse at the deterrence and rehabilitation factors as a purpose of sentencing. Under Section 278(b) of the [Crimes Act 2016](#)- it provides: *"to prevent crime by deterring the offender and other people from committing similar offences."*

28. In *R v Radich [1954] NZLR 86 (CA)* the court said ( at 87):

*"We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes **by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment.** In all civilised countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.'*

The court added:

*"If a court is **weakly merciful**, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment."*

29. On rehabilitation as a purpose of sentencing, Section 278(d) provides:

“to promote the rehabilitation of the offender.”

30. In *Yardley v Betts* (1979) 22 SASR 108, King CJ said:

*“The protection of the community is also contributed to by the successful rehabilitation of offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of **first offenders and others who have not developed settled criminal habits**. If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in future, the protection of the community is to that extent enhanced.”*

15. I consider the above remarks, the Victim Impact Statement and the Pre-Sentence report and the totality of the case as constituting the reasons for the sentence that I will award here.

16. The accused is a first offender. He has not yet ‘developed settled criminal habits.’ I have considered his previous character, probable future life and his supposed epileptic episodes. Parliament has exercised its *jus dare* role in providing very harsh sentences for those convicted of sexual offences against children. This court is not ‘weakly merciful.’ I have made it clear in the past and I do so again here- would be offenders who have certain sexual impulses against children, be warned- if you yield to such impulses and you are convicted, you will be incarcerated for a very long time. To paraphrase what I said in *Republic v Kam* [2024] NRSC 39; Criminal Case 05 of 2024 (17 December 2024)- *This message should be declared aloud from the rooftops and pinnacles throughout Nauru. Accused persons who are convicted for sexual offences against children will be punished severely. The sentence will reflect Nauru society’s condemnation of such obnoxious and immoral criminal conduct. It also represents a symbolic, collective statement, as legislated by parliament, that when you sexually assault a child, be prepared to spend many Christmases and your birthdays behind bars.’*

## CONCLUSION

17. JUDE VITORIO MWAREOW, you are sentenced as follows:

- i. Count 1- 15 years imprisonment;
- ii. Count 2- 15 years imprisonment;
- iii. Count 3- 6 months imprisonment.
- iv. The sentences are concurrent to each other.
- v. You will serve a minimum of 10 years in prison before you are eligible for parole or probation.

DATED this 06<sup>th</sup> of August 2025

  
Kiniviliame T. Keteca  
Judge

