IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Keniapisia J)
COURT FILE NUMBER:	Criminal Appeal Case No. 66 of 2024 (On Appeal from High Court Criminal Case No. 369 of 2023)
DATE OF HEARING:	15 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	REX -V - ELIZAH TINAE PAO
ADVOCATES: APPELLANT: RESPONDENT:	 L. Pellie L. Waroka
EX TEMPORE/RESERVED	RESERVED
ALLOWED/DISMISSED	ALLOWED
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JUDGMENT OF THE COURT

Introduction

1. This is an appeal by the Crown against the sentence of two (2) years imposed on the respondent by the sentencing judge for the offence of persistent sexual abuse of a child.

Background

2. The respondent was charged with and pleaded guilty to two (2) Counts of persistent sexual abuse of a child contrary to section 142 (2), 139 (1) (a) and 139 (2) (a) of the Penal Code, Cap 26 as amended by the Panel Code (Amendment) (Sexual Offences) Act 2016. The offences involved two (2) victims, aged 9 and 10 years old, each of whom was subjected to sexual abuse on three (3) separated occasion. The sentencing judge imposed a two (2) years imprisonment sentence on the respondent.

3. The sentencing judge adopted a starting point of 8 years imprisonment which was uplifted to 15 years after taking into consideration the aggravating factors. The sentencing judge then made a series of deduction for mitigating factors namely: 4 years for guilty plea; 2 years for being first offenders, and 6 years for old age.

4. The sentencing judge then imposed a head sentence on each of the two Counts; Count One, 3 years and Count two; 3 years. The sentence were made to run concurrently. To have them served consecutively, the sentencing judge said, "will have a crushing effect on Mr. Pao, an old aged man whose usual life left after release will become hopeless."

5. The Crown's appeal rests on three grounds, namely

   (i) The learned judge erred in giving excessive weight to old age as a mitigating factor.

   (ii) The learned judge erred in ordering the sentences to run concurrently.

   (iii) That the sentence of two (2) years imprisonment imposed by the learned High Court Judge is manifestly inadequate.

Power of the Court

6. The Court of Appeal Act grants the Director of Public Prosecutions a right of appeal against an acquittal and a manifestly inadequate sentence. This can be found in section 21 (1) (a) and (b) of the Act. Subsection (2) goes on to provide for the power of the Court in such an appeal. Section 21 (1) and (2) provide as follows:

> *"21 (1) Subject to the provisions of this section, the Director of Public Prosecutions may appeal under this part of this Act to the Court of Appeal where-*
>
> *(a) a person is tried before the High Court in the first instance and acquitted, (whether in respect of the whole or part of the indictment) on any ground of appeal which involves a question of law only; or*
>
> *(b) in the opinion of the Director of Public Prosecutions the sentence imposed by the High Court is manifestly inadequate.*
>
> *(2) On an appeal brought under the provisions of this section, the Court of Appeal may, if it thinks that the decision of the High Court should be set aside or varied on any ground of a wrong decision on any question of law, make such order which the High Court could have made or remit the case, together with the judgement or order to the High Court for determination whether or not by way of trial de novo or re-hearing, with such directions as appear to the Court of Appeal to be necessary or expedient."*

7. In addition, section 23 of the Act further provides for the power of this Court in appeals against conviction and sentence. Section 23 (3), relevant to their present appeal provides as follows:

> *"(3) On an appeal against sentence, the Court of Appeal shall, if they think, that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether*

more or less severe) in substitution therefor as they think ought to have been passed, or may dismiss the appeal or make such other order as they think just."

Applicable Principles

8. It is well established that this Court will not intervene on an appeal by the Crown against sentence unless there has been an error in principle or the sentence is so out of proportion to the seriousness of the offence as to be manifestly inadequate. These principles had been expressed so eloquently in the various cases dealt with by this Court. In *Kaimanisi -v- Reginam*[1] this Court stated

> *"The principles governing the appellate court's jurisdiction to review sentence imposed by a trial judge are well settled in this jurisdiction: see Saukoroa -v- R (1983) SILR 275 and Berekame -v- DPP (1985-1986) SILR 272. The principle laid down in those cases is that the appellate court will not interfere with the sentence imposed by the trial judge in the exercise of his discretion unless it is shown to be manifestly excessive or manifestly inadequate either because the judge has acted on wrong principle or has clearly overlooked or understated or overstated or misunderstood some salient feature of the evidence".*

9. In *R-v- Su'umania*[2] like *Kaimanisi*, was an appeal against the excessiveness of the sentence. Nevertheless, they firmly established the principles earlier referred to.

10. *R -v- Kada*[3] and *R -v- Pige*[4] are Crown Appeals against sentence. This Court similarly expressed the applicable principles in a case of an appeal against sentence.

> *"The Court will not interfere unless the sentence is manifestly inadequate, whether because the judge has acted on wrong principle or has clearly overlooked or misstated or misunderstood a salient feature of the evidence; where there is no patent error, the error will be implied where the sentence, at all events, could not have been imposed unless the discretion of the sentencing*

[1] [1996] SBCA 2, CA-CRAC 003 of 1995 (23 February 1996)
[2] [2005] SBCA 3; CA – CRAC 29 of 2004 (4 August 2005)
[3] [2008] SBCA 9, CA-CRAC 35 of 2007 (18 July 2008)
[4] [2023] SBCA 36; SICOA -CRAC 9014 of 2023 (13 October 2023)

court had miscarried. This principle is so clear that it does not need authority to justify it but reference can be made, for example to Kaimanisi v R [1996] SBCA 2 and R v Su'umania [2005] SBCA 3.

Principle in sentencing in section 142(2) Offence

11. We feel strongly that different considerations must apply when it comes to a section 142 (2) offence. As we have just said in *S L -v- Rex* (2025) Solomon Islands Court of Appeal Civil Appeal No.12 of 2024 (31 October 2025)

> *"Section 142 has been enacted to cater for a particular situation where a child has been repeatedly sexually abused "over a period of time" and the child is unable to remember the particulars of each of the individual act of abuse since it happened many time and over a period of time. The Prosecution of individual and separate acts of abuse in such situations would not be possible because the child could not remember them, and all that the child could say is that it "happened many times." So section 142 was created to enable the prosecution to overcome the evidentiary hurdles arising because the child could not remember the details of each incident due to the repetitive nature of the abuse over "a period of time". These are the exceptional circumstances that section 142 was enacted to handle and therefore the considerations in the cases of Sinatau and Pana do not fit in."*

12. In her submission, Ms Pellie of Counsel for appellant referred to *R -v- Sobana*[5] to make the point that in sentencing the respondent for an offence under section 142, the sentencing judge take into consideration, not only the repetitive nature of the offending but that the actions of the respondent represented a course of criminal conduct toward a child. We agree with Counsel' intimation.

Ground one (1) Old Age

[5] [2024] SBCA 16; SICOA-CRAC 42 of 2023 (14 October 2024)

13. The appellant's argument is that having correctly referred to the seven (7) aggravating factors, the sentencing judge placed too much weight on the respondent's 'old age' and gave him a generous discount of six (6) years and a further three (3) years for the same mitigating factor. This was doubling up the respondents 'old age' as a mitigating factor. There is force in Counsel's submission that the sentencing judge accorded excessive reduction of six (6) years for 'old age' in favour of the respondent in this case. Advanced age may justify some leniency but it cannot be used to substantially reduce punishment for repeated sexual abuse of children, whether for offences under section 142 (2) or under any other provisions of the Penal Code.

14. In our view, the sentencing judge erred in principle by giving disproportionate weight to the respondent's 'old age' and insufficient weight to the seriousness of the offence and the harm done to the two victims. The resulting two (2) years sentence was manifestly inadequate. That is not justice.

Result of the Appeal

15. Consequently, in our view the law warrants a different sentence than that imposed by the sentencing judge on the respondent in this case. Taking the baseline consideration established in *LS -v- Rex* of 8 years, the starting point must be 15 years with an uplift of 5 years bring it to 20 years; then reduced by 30% (i.e 6 years) for guilty plea, leaving 14 years; then reduced by 4 years for 'old age' leaving him with 10 years and for his first offending the sentence is further reduced by 2 years leaving him with final sentence of 8 years on each Count. The sentence of 8 years in our view is the proper sentence in this case.

16. Having the sentences served concurrently would also accommodate the respondent's concern about his 'old age'. The 8 years sentence on each Count are to be served concurrently.

Order

1. Appeal allowed
2. The Sentences imposed by the primary judge are quashed.

3. The respondent is re-sentenced to 8 years imprisonment on each Count which sentences are to be served concurrently commencing at the date of his original sentence ordered by the High Court.

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Muria P

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Gavara-Nanu JA

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Morrison JA