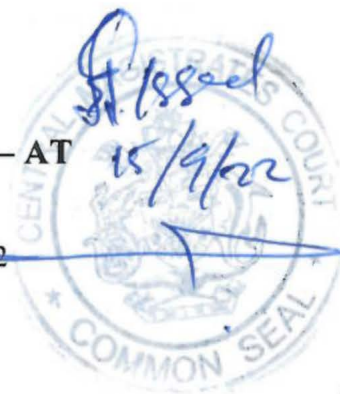


**IN THE CENTRAL DISTRICT MAGISTRATE'S' COURT – AT
HONIARA**

Criminal Jurisdiction

Criminal Case No.: 137 of 2022

On the 15th day of September 2022
Before Deputy Chief Magistrate Ricky Iomea



Ms. Pellie for the Prosecution (ODPP)
Mr. Harunari OF Public Solicitor's Office for the Defendant

REGINA

-v-

PATTERSON MELANE TOLLY

SENTENCE

Mr. Tolly, your appearance today is for me to impose sentence on you after you had pleaded guilty to two counts of Indecent act on a child under the age of 15. Section 139 (2) of the Penal Code (Amendment) (Sexual Offences) Act 2016 makes it an offence for a person to commit indecent act on a child who is under 15 years of age.

The maximum penalty for this offence is 7 years imprisonment. Therefore, the only form of punishment available for consideration in this case is a custodial sentence. The only issue is what would be the appropriate length of the imprisonment term that will be imposed on you.

The facts of the case as agreed by you through your Lawyer and the Prosecution are as follows;

You are 45 years of age from Meo village, Santa Cruz Islands, Temotu Province.

The Complainant is Levistas Menatei and she was 5 years old at the time of the first offence and 6 years and 8 months old at the time of the second offence. She was born on 13 October 2015.

The complainant and you are related, she referred to you as her grandfather. The complainant and you resided in the same house at Monkey Street, Henderson area at the time of the two incidences.

The first incident happened on an unknown date between 1st November and 30th November 2020 at Henderson area around 5:00pm. You carried the complainant and sat her on your thighs and then you touched her buttocks and vagina with your hand.

The second incident happened on 3rd June 2022 between 5:00am and 5:30am inside the complainant's and her mother's bedroom at Henderson area. You went into the

bedroom where the complainant was sleeping alone and pulled down the complainant's pants and trousers and you stroked the complainant's vagina with one of your fingers.

Not long after, the complainant's mother arrived from her night shift as a security officer and she saw you inside their bedroom.

The complainant then reported to her mother what you did to her that morning. The matter was then reported to Henderson Police Station and an investigation was carried out.

You were formally arrested on 5th June 2022. You participated in a Record of Interview and fully cooperated with the Police in their investigation.

The following factors aggravate this offending.

The victim is of a very young age. As agreed in agreed facts, she was 5 years old at the time of the first offence and 6 years and 8 months old at the time of the second offence. She was born on 13 October 2015.

There is clearly a significant disparity in age between you and the victim. You are 45 years old and the victim 6 years old. The victim was a vulnerable person given her very young age and you took advantage of that and committed the offence on this unsuspecting young victim.

The complainant and you are related, she referred to you as her grandfather. The complainant and you resided in the same house at Monkey Street, Henderson area at the time of the two incidences. Home should be the safest and most secure place for this victim but instead, as submitted by the Crown, you turned it into a crime scene. As a person of very mature age and a grandfather, you should be the one protecting the victim. It is assumed from the facts that the mother of the victim had placed her trust in you as a person residing in the same house with them and a mature person regarded as a grandfather to her daughter, to respect and protect her child. On this instance, you have grossly violated and abused that trust.

I note that the offence was repeated. You should have reflected on your first action and stopped but you have allowed evil thinking to take hold of you and committed the same offence on the victim for the second time. This will be considered when deciding the appropriate starting for Count 2 which I will come to in the later part of this sentence ruling.

The only significant mitigating factor in this case is your plea of guilty. Whilst I consider your personal circumstances, I am also conscious of the statement made in the English case of *Millberry v R*¹. The Court states "the defendant's good character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence".

You are a first time offender. You are 45 years old father. You are married with four children.

¹ [2002] EWCA Crim 2891 (09 December 2002) at para 29; 2003 1 Cr App R 142

I do not think that there is delay in prosecuting Count 2. The two counts were reported to the police immediately after the incident in Count 1 was discovered. Thereafter the matter was progressed steadily before this Court right up to this appearance today.

I have been referred to a number of comparative cases. It is a trite principle that each case is fact specific. This means that the sentence that is to be imposed in each case is mainly determined by the facts and merits of each case. Past sentences will only be of limited assistance and serve only as guidelines.

It is my view that whilst the overall imprisonment sentence that will be imposed in this case must reflect punishment. It must also reflect the principle of deterrence. You must be punished for your unlawful acts and stop from such behavior in the future. To likeminded members of the community, the Court and community greatly disapprove of this kind of behavior and therefore, will expect similar punishment to be imposed against them if they behave in similar fashion and are brought to court and are found guilty.

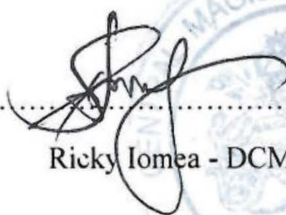
In view of the facts of this case, the aggravating features present in the offending and the need for punishment and deterrence, I am of the view that a starting point of 2 ½ years and 3 years imprisonment are appropriate for Counts 1 and 2 respectively. Count 2 is further aggravated by the fact that he had a huge opportunity after the commission of the first offence to amend his behavior but he did not. He went on and engaged in similar behavior against the same victim.

The sentences are to be served concurrently.

To reflect your plea of guilty, your personal circumstances and the fact that you are a first time offender, I deduct 6 months.

The total effective sentence that you will serve is 2 ½ years imprisonment. The sentence is backdated to commence on 7th June 2022, the day you were first remanded in custody on these charges.

The Court,


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Ricky Iomea - DCM

