

BETWEEN: Public Prosecutor

AND: Okis Malmere
Defendant

Date of Plea: ***21st April 2021***
Date of Sentence: ***28th April 2021***
Coram: ***Trevor NAIEU***
Appearances: ***Terry Toas for Public Prosecutor***
Defendant in Person

SENTENCE

A. Introduction

1. Mr Okis Malmere pleaded guilty ("*Yes hemi tru*") to Domestic Violence.

B. Facts

2. The complainant is a close family relative to Mr Malmere whom she refers to as her uncle.
3. On 16 February 2021 the complainant lodges an application through the Malampa Counselling Center for family protection and restraining orders against Mr Malmere whereby in light of the allegations made, he was provisionally charged.
4. The complainant alleged that on 15 February 2021 Mr Malmere forced her very young daughter who is below the age of 10 to his kitchen house and commands her to lie on the floor then he removed her skirt and uses a soap to rub on top of her buttocks and after doing that he lets her go.

5. The complainant became aware that Mr Malmere had done something to her daughter when the daughter informs her that her buttocks hurt and when asked what happen she told the complainant what happened.
6. When the Court ask Mr Malmere during plea hearing why he did what he did he responded by admitting what actually happened. He stated that he was masturbating his penis when he saw the complainant's daughter passed by so he called her over. When he removed her skirt while she lies down on the floor, it was actually his penis that he uses to rub on top of the complainant's daughter's buttocks and the watery substance on her buttocks was not soap but his sperm.
7. The complainant stated that Mr Malmere is well known and feared in their community for sexually abusing children but no one has come forward to make a complain to the Police and that he has an anger problem whereby sometimes he damages their properties or uttered threats for assault. He also consumes drugs (Marijuana).

C. Conviction

8. Conviction is hereby entered against Mr Malmere upon satisfaction that all the elements of the offence of domestic violence are met.

D. Sentence start point

9. The sentence start point is arrived at after having considered the maximum sentence available for this offending and the careful assessment of the mitigating and aggravating factors of the offending.
10. The maximum penalty for domestic violence is a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu or both.
11. There are no mitigating factors to this offending. The aggravating factor are as follow;
 - The Defendant is an adult while the victim is a child.
 - The rubbing of his penis on top of the child's buttocks and allowing his sperm to drip all over her buttocks.
 - The offending was sexual exposing the child to sexually transmitted diseases
 - The breach of trust- the child's mother is related to Mr Malmere as her uncle.
12. The start point I set for the offending is 3 years imprisonment.

E. Personal Factors

13. The following are mitigating factors personal to Mr Malmere:

- Mr Malmerer pleaded guilty at the earliest opportunity given saving the Courts time and expense in conducting a trial and importantly avoiding the embarrassment, stress and exposure of bringing the child and her mother to testify in Court. This also shows an acceptance of wrong doing and an indication of remorse. Mr Malmere's early guilty plea awarded him a one third deduction to his sentence.
- His admission of the facts of what actually happened although the complainant and the police have no knowledge and evidence of the facts he admitted.
- Mr Malmere is 44 years old and a builder.
- Mr Malmere has two sons who are currently living with their mother his de-facto partner in Santo Island.

14. The following are aggravating factors personal to Mr Malmere:

- Mr Malmere is not a first time offender because he was convicted by this Court on the 19 August 2020 for domestic violence and was sentenced to 1 year imprisonment and the sentence was suspended for 1 year and an order to perform community service.
- Mr Malmere re-offended with the same offending within the 1 year suspended sentence pronounced by this Court showing the deterrence and rehabilitation principles of sentencing were not practicable for him.

15. For Mr Malmere's mitigating personal factors I reduce 15 Months.

F. End Sentence

16. Mr Malmere is sentenced to 21 months imprisonment. This sentence reflects the need to deter Mr Malmere and other like-minded persons in the community from committing such act or similar act and to hold Mr Malmere accountable for his criminal culpability and his re-offending of the same offence within the earlier 1 year suspended sentence.

17. This sentence also re-emphasize what Judge Oliver in Public Prosecutor v Sao Christopher [2021] VUSC 49 stated;

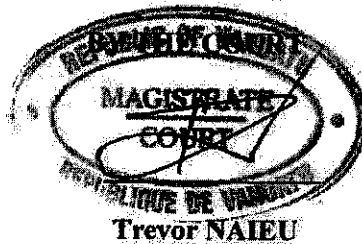
"... 15. This is to mark the seriousness of the defendant's offending, to mark public disapproval of his action, to set a deterrence for him and other like-minded persons, to protect the vulnerable members for the society and to punish the defendant appropriately. These principles are well established in cases such as R v Radich [1954] NZLR86 at 87, and Veen v The Queen (No.2) [1998] HCA 14, (1988) 164 CLR 463."

18. It is inappropriate to suspend all or part of the sentence due to the serious nature and the type of offending involved and because Mr Malmere fail to maintain a good character since his earlier suspended sentence had not yet lapsed. There is obviously a need to protect the younger and vulnerable members of the community from this type of conduct and the need for protection and prohibition of domestic violence.

G. Right to Appeal

19. The Defendant is advised of his right to appeal this sentence within 14 days if he does not agree with it.

Dated at Lakatoro this 28th day of April 2021



Trevor NAIEU

Magistrate