

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR 232/2003,233/2003

POLICE

V

NGATOKORUA ANAU

Defendant

Mr Tetava for Police
Mr Petero for Defendant
Date of sentence: 9 July 2004

DECISION OF GREIG, CJ

Ngatokorua Anau you appear for sentence on two charges of sexual intercourse with a girl over 12 and under 16. The girl in question was aged 14. The events occurred on two separate occasions, she was a neighbour of you and your partner and some friends who were living altogether in a house. She obtained cigarettes from you from time to time. The first occasion occurred on a Sunday when she was in the house with you watching television with your five year old child. She fell asleep and woke up to find you on top of her, you then had sexual intercourse with her. Some weeks later in the middle of the morning you came home, she was also in her house, she came over and asked you for a cigarette and once again there was sexual intercourse.

This matter came before me for sentence in the last session when your counsel challenged the factual summary that was presented by the Police. In those circumstances I ordered that the matter should be dealt with by a hearing. The complainant was interviewed again and a further statement was taken but this morning, you through your counsel chose not to have hearing but as I

understood it to accept the report and the summary of facts. However your counsel has attempted to reject that and to provide a contradictory view of the circumstances. I must deal with the matter as set out in the summary of facts. You pleaded guilty to the charge and have chosen not to challenge in a Court hearing the facts as presented by the complainant and by the Police.

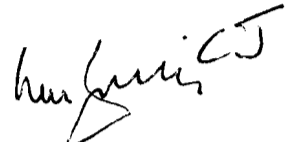
You are not charged with rape, you are charged with what is sometimes known as statutory rape, it is just the fact that you had sexual intercourse with this young girl. The circumstances as presented to me are of some peculiarity. It is of note that this girl although shocked and dismayed, as she says, on the first occasion was prepared to come back and visit you alone in the house on the second occasion. The fact is however matters of consent are not in issue nor indeed your knowledge of the girl's age. She has said that you knew her age, that she told you. I am aware that nowadays, children, young girls some times belie their age by their appearance; but you were a neighbour and I must say I find it difficult to believe that you were not aware that she was under 16.

I am not taking into account and I ignore the matters that have been put forward as in contradiction of the Police statement and I also ignore the fact that it is said some other persons are charged on different occasions for a similar offence in respect of this girl. I know nothing about the details of that, those remain unresolved and for all I know these others may not be guilty.

This is treated as a serious offence in the criminal code with a maximum of 7 years imprisonment. It is always a difficult matter to deal with because there is sometimes the possibility that notwithstanding what is being said there may be a belief of an age above the age of consent and the possibility of some consent to the matter or at least a belief in consent.

I take into account your plea of guilty, the fact that you are appearing for the first time, you seem to be of good character although you were clearly disloyal to your partner. You have been in custody since the last appearance and I take that into account as well.

Having regard to all the circumstances I have decided to extend leniency to you and not impose any sentence of imprisonment. Instead I am going to impose a sentence of 9 months community service and that is the sentence of the Court.


CHIEF JUSTICE