

**ORDER SUPPRESSING NAME OF VICTIM AND DETAILS LEADING TO HER  
IDENTITY**

**POLICE**

v

**DANIEL MATAITI**

Date: 28 November 2014

Counsel: Ms M Henry for Crown  
Mr M Short for the Defendant

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**DECISION OF THE HONOURABLE JUSTICE CHRISTINE GRICE J**

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[1] Mr Mataiti, you are facing a serious charge of sexual intercourse with a girl between 12 and 16 years. That carries with it a maximum term of imprisonment of seven years.

[2] The offence occurred some time ago and relates to a twelve year old girl with whom you formed a relationship. You texted and swapped emails with her, as well as meeting and kissing and cuddling, from about a year before the offence occurred in December 2012.

[3] You took her, after she rang you to pick her up, to an abandoned school where you persuaded her to have sex. She was still wearing her school uniform. When she felt pain, you stopped. You knew that she was 12. You do not have any previous convictions as your Counsel has submitted.

[4] There is a victim impact report which mentions that the girl felt physically and emotionally affected at the time and it did affect her performance at school. Subsequently she has made positive progress and managed to recover. This is indicated in the letters attached to the report and to the submissions.

[5] The Crown points to the seriousness of this offence, there is a nine year age gap between you and the girl involved. It was a gross abuse of trust, the Crown submits. It refers me to a number of cases to which I will refer to later.

[6] Mr Short on your behalf made strong submissions, first, that there were mitigating points in this case and secondly that your personal circumstances and otherwise good character, which he elaborated on, should be taken into account. He also referred to the length of the relationship with this girl and the texting that went on but he made it clear that he was not suggesting that the victim was to blame in any sense by encouraging it. She was 12 years old and so it is very proper to reject that she had any part in encouraging this relationship. Your Counsel says there was only one incident and that since then the families have got together at a meeting. You have apologised to both the girl and her family. It has been two years since this happened and it has been very stressful for your family.

[7] He submits as I note from the Probation report that you have since married. You were in the relationship for some time before that. You have two children including a newborn child and you are very remorseful and accept that the incident is inexcusable but you cannot explain it and say you were caught up in the moment.

[8] Counsel also produces a number of letters from the mother and father of the child together and separately, as well as a letter from her grandmother and the victim herself all seeking leniency.

[9] Counsel summarises his points by emphasising an early guilty plea, that you have been co-operative, you are the sole provider, a good father and husband, you help your parents and you are now married and settled with this well in the past.

[10] Turning to the offence itself and the factors both aggravating and mitigating, it appears to me that you developed a relationship with this girl which was almost like a grooming relationship. You made her trust you over a period of time, you were affectionate, you kissed and cuddled with her on a number of occasions and all the time you knew she was only 12 years old. There is no question you picked her up and took her to the school and got her consent. To give you credit, you stopped when she said it was hurting and took her home.

[11] Against that I accept that you have got no previous offences and entered on early guilty plea.

[12] Turning to your personal circumstances and what has happened since, I note that your family is dependent on you. While you are unemployed at present you are the principal bread winner. This offending occurred before you met your wife or settled down with her.

[13] Both Counsel have referred me to various cases in relation to this type of offending. Counsel have indicated that while been unable to locate the case directly on point.

[14] The Crown referred me first to *R v. Katuke* which was a rape case. The starting point in that was four years but the Crown readily accepted that this was not in the same category as that case. Then the Crown referred me to the case of *R v. Ioane*, but in that case the defendant faced ten counts and there was a larger year old difference between the defendant and the girl who in that case who was aged 12 at the time of the offending.

[15] The Crown also referred me to the case of *R v Tekopua* where Justice Williams took a view that three or four years imprisonment was a starting point in relation to sentencing on a count where the girl was aged 14 years. In that case a term of two years three months was imposed.

[16] For the defence Mr Short referred me to *R v Teinakore*. In that case a sentence of five months was imposed in relation to offending which was characterised as a romantic relationship between the defendant and a 15 year old girl so again, very different from the present circumstances. In particular the age of the girl which is an important factor.

[17] In sentencing I have to take into account a number of factors. The Community requires that these types of offences are denounced and I am required to pass a sentence that not only punishes you but deters others from similar offending. The sentence has to reflect the gravity and seriousness of the offence as well as holding you accountable for it and taking into account the effect on the victim.

[18] Deterrence is an important factor in relation to offence of this type which involves a young girl and a serious abuse of trust.

[19] At the same time I must take into account your family circumstances including the family support needed. I must impose the least restrictive sentence that I can in the circumstances and if there were an option for rehabilitation then that factor would be appropriate.

[20] In the circumstances of this offence there is no option but to impose a term of imprisonment. Your Counsel candidly accepted that. I give weight to the purposes of sentencing and the pertinent principles and I am satisfied that those purposes can only be achieved in this case by a term of imprisonment. No other sentence would be consistent with the application of those principles.

[21] I have heard your Counsel's suggestion as to where I should start from in suggesting a period of months imprisonment. The Crown suggested I start from a three year starting point.

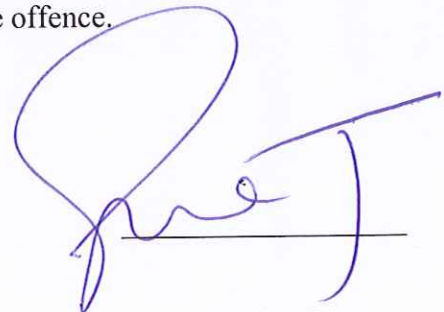
[22] I take into account all the circumstances, the fact that this was a 12 year old girl but also the circumstances as well as the fact that you pleaded guilty and the other factors that I have mentioned as well your personal circumstances.

[23] I take a starting point of three years. I have listened carefully to your Counsel's submission and I have come to the conclusion that the imprisonment term should be 18 months.

[24] Your Counsel submitted that it should be served in Aitutaki but that is not possible so it will need to be served in Rarotonga.

[25] I impose a term of 18 months imprisonment on the offence.

[26] You may stand down.

A handwritten signature in blue ink, consisting of a large, stylized initial 'G' followed by a surname that appears to be 'Grice'. The signature is written over a horizontal line.

**Grice J**