IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **CR NO. 193/18**

POLICE

v

TEPATUA CRUMMER

Date: 23 November 2018

Counsel: Ms K Bell for the Crown
Mr N George for the Defendant

SENTENCING NOTES OF THE HONOURABLE JUSTICE PATRICK KEANE

[10:53:43]

[1] Tepatua Crummer, you appear for sentence, after trial, for a single offence of indecent assault on a 4 year old girl in January 2018; on a single occasion in January you were seen to lick the little girl's vagina.

Evidence

[2] The child, now aged 5, did not give evidence. In her prior video interview, she was not asked to promise to tell the truth. That initially was an issue. When she came to give evidence at your trial, I found she was not capable of making a coherent promise.

[3] In finding the charge proved, the jury accepted the evidence of her 15 year old cousin that he witnessed you licking her vagina when she was in your bedroom, an event he disclosed to a family member two months later.

[4] His evidence was that he came to your room, or rather towards it; and that he was able to see her sitting on your bed with her back against the wall. You had parted her legs and you were licking her rhythmically.

[5] What he saw, he said, was very brief, perhaps 4 seconds. Then, to make you stop, he pretended, in the sitting room outside, to play a game on his phone and did so loudly. Once he did that, his evidence is as the little girl came out of your bedroom. You remained in it. But he was still able to see you and you pretended to go to sleep.

[6] A major issue at your trial was whether he could possibly have seen what he said he saw. That was complicated in two ways. The first was that he described where he had been standing outside your bedroom by reference to a plan, produced by the second Crown witness police officer. The plan was inaccurate in more than one respect. But it was your case that, even on the plan, he could not have seen what he said he saw.

[7] The bed was set, on his own evidence, to the left of the door looking in. The little girl would have had her back against the wall, which would have impeded any view he might have had of her or what you were doing with her on the bed.

[8] It was put in issue by you that he did not take a photograph, when he could have. He had his phone. Also that he did not complain for two months. Your case was that he must have had malicious reasons for inventing his disclosure.

[9] You elected to give evidence and you denied the offence outright; a denial you maintain in your pre-sentence report, which recommends that you be sentenced to imprisonment in part because you show a lack of remorse.

Sentencing principles

[10] Your offence attracts a maximum penalty of 10 years. In *Marsters v. R,* the Court of Appeal recently emphasised that maximum, starting and end points must

reflect it. That case involved more sustained offending than this and is not otherwise, to my mind, helpful.

[11] The more relevant case is *Police v. Iona,* which involved indecent assaults by forced kissing, twice, on a girl under 12. Grice J, after reviewing an array of cases, saw as aggravating the child's age, 7, that the kissing was forced on her, that the offender was a trusted family member, a big brother, and that he was 17 and she 7. The disparity between the ages and sizes was large.

[12] She took an ultimate starting point of 2 and a half years imprisonment.

Submissions

[13] The Crown contends, quite shortly, that similar considerations apply in your case and in fact your case is worse.

[14] Your victim was aged 4, you 23. You are not a caregiver but the child came into your care and you were trusted. What is most decisive, the Crown says, is the high level of indecency involved in the offence.

[15] Your counsel, Mr George, submits that the sole Crown witness could not see what he says he saw. There was another child in the room and he did not explain what that child did. He could so easily have taken a photograph, or gone to the grandparents, but did neither. The jury's discomfort was manifest, when they asked to see the little girl's video. It took the jury 4 hours to reach a verdict. The verdict can only be described as perverse.

[16] He submits that I should either discharge you or, at most, impose a sentence of 6-9 months imprisonment.

Conclusion

[17] The Crown's case did suffer an incomplete and, in some respects, inaccurate reconstruction of which the jury was made well aware. The jury had to assess, with a special care, furthermore, the evidence of the sole witness as to what he said he

saw, set against your case that what he saw was impossible. That was the point strongly made by your counsel. Despite those issues, the jury clearly believed the sole witness who described what he saw graphically.

[18] He said he immediately pulled back, because he was in a state of shock. He wanted it to stop, but he did not know how to make that happen, except by making a noise outside the bedroom so that you would decide to stop. Eventually, he made the disclosure he made, which led to you being charged.

[19] That graphic account was, I consider, sufficiently cogent to enable the jury to accept it as reasonable and true. I sentence you on that basis.

[20] The offence is a serious one. It is a sexual violation by any other name. It is more serious than the indecencies in *Police v. Iona.* A higher starting point must be taken. I take a starting point of 3 years.

[21] There is no factor that I can take into account as mitigating. You have previous convictions, so you cannot claim the benefit of your character. You continue to deny the offence, so you cannot claim the benefit of remorse.

[22] I must sentence you to 3 years imprisonment.

Patrick Keane, J