



HIGH COURT OF KIRIBATI

Criminal Case N° 37/2019

THE REPUBLIC

v

TT¹

*Tewia Tawiita for the Republic
Raweita Beniata for the prisoner*

Date of sentencing: 24 January 2020

SENTENCE

- [1] TT has pleaded guilty to a charge of indecent assault.²
- [2] In the early hours of 6 April 2018, the complainant, a 31-year-old woman, was sleeping next to her boyfriend at a house in Betio. The house belonged to a relative, who was a seller of *kaokioki*.³ Prior to going to sleep, the complainant and her boyfriend had been drinking *kaokioki*. The prisoner entered the house and saw the complainant sleeping. He took off his shorts and underpants and then removed her underpants. She did not wake up. The prisoner was about to lie down on top of the complainant when her boyfriend woke up and saw what was happening. He pulled the prisoner away and began to beat him.
- [3] The prisoner was aged 14 years at the time, having been born in December 2003. When he was later interviewed by the police the prisoner admitted what had happened. It transpired that the prisoner had often visited the house in

¹ These sentencing remarks have been anonymised so as not to reveal the identity of the prisoner. Refer to [18].

² Contrary to section 133, *Penal Code* (Cap.67).

³ *Kaokioki* (also called sour toddy) is the fermented sap of the coconut tree.

question, to meet with an older man. The man had been grooming⁴ the prisoner over a period of several months, during which time the man had engaged in numerous sexual acts with the prisoner. On the day in question the prisoner had gone to the house, expecting to meet up again with the man, but he was not there. It was then that he had seen the complainant sleeping.

- [4] Following his arrest for this offence, the prisoner disclosed to his parents what the man had been doing, and a complaint was lodged with the police, alleging the commission of a number of serious criminal offences of a sexual nature. It appears that the investigation into the matter is ongoing.
- [5] An information was filed on 30 August 2019, charging the prisoner with engaging in unlawful sexual intercourse. The prisoner did not make his first appearance in Court until 2 December. On 6 December a fresh information was filed, which addressed some issues with the particulars of the charge. A *nolle prosequi* was entered with respect to the original information. Counsel for the prisoner informed the Court that his client would be pleading not guilty and the matter was allocated a trial date.
- [6] On 20 January (what was to have been the first day of the trial), counsel for the prosecution applied to amend the charge to the present one. There was no objection from counsel for the prisoner. The prisoner was then arraigned on the new charge and he pleaded guilty.
- [7] The prisoner is now 16 years of age and is a student at a secondary school on an outer island. He will be entering Form 5 (Year 11) when school resumes next month. I am told that he is quite an accomplished student. The prisoner was accompanied to Court by his parents, who have been very supportive.
- [8] The prisoner is unable to explain why he committed this offence. He was not intoxicated at the time. It is submitted on his behalf that the abuse to which he had been subjected left him with a warped view of sexual matters, leading to his opportunistic assault of the complainant. He is deeply ashamed.

⁴ 'Grooming' is a term used to describe the process where an adult befriends a child or young person, establishing trust and an emotional connection, for the purpose of exploiting and sexually abusing the child or young person.

- [9] For an adult offender, the maximum penalty for indecent assault is now imprisonment for 7 years.⁵ However, as the prisoner is under the age of 18 he comes to be sentenced under the *Juvenile Justice Act 2015*, which establishes a separate regime for dealing with children and young people in conflict with the law. For the purposes of the Act, a child is aged under 14 years, while a young person is aged between 14 and 17 years.
- [10] The *Juvenile Justice Act* emphasises the importance of rehabilitation in the sentencing of children and young persons. Section 15 provides for a range of sentencing options when dealing with offending by a child or young person. These include:
- a. committal of the offender to the care of a relative or other fit person;
 - b. an order that the offender (or a parent or guardian of the offender) pay a fine, damages or costs;
 - c. having the offender enter into a bond to be of good behaviour; and
 - d. committal of the offender to custody in a place of detention (which would appear to be a place other than a prison).⁶
- [11] Under section 15(i) a young person can be sentenced to imprisonment, but only if none of the other sentencing options provided for under section 15 are suitable.⁷ Clearly the Act envisages that a sentence of imprisonment for a young person should be a measure of last resort. It is a relevant consideration that, at least for now, a young person sentenced to imprisonment would have to be accommodated alongside adult prisoners, despite section 11(3).⁸
- [12] While the prisoner's actions fall towards the lower end of the range for offences of this kind, had he been an adult I would have had little hesitation in imposing a custodial sentence. The offence is a serious one. However, even

⁵ Increased from 5 years by section 4 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018.

⁶ I understand that the responsible Minister has not yet "provided or appointed" any places of detention, as required by section 16(1), so an order for committal to a place of detention is not presently an available option.

⁷ Section 11(2).

⁸ Section 11(3) provides: "A young person sentenced to imprisonment shall not, so far as is practicable, be allowed to associate with prisoners not being children or young persons."

without the *Juvenile Justice Act*, special considerations apply when assessing the offending behaviour of a young person. As the Court of Appeal has said:


Deficiencies in decision-making ability, greater vulnerability to external coercion and the relatively un-formed nature of the adolescent character are all factors relevant to an assessment of youth culpability. Poor decision-making will often manifest itself in real-time coercive situations including a propensity for impulsive behaviour. This type of behaviour can be attributed to the fact that adolescents are less efficient than adults in processing information, and lack life experience. Youth offending will often be accompanied by other disadvantageous circumstances that may reduce culpability further; examples are intellectual disability, mental impairment and substance abuse.⁹


- [13] This case is complicated further by the fact that, at the time the offence was committed, and on top of the usual sexual turmoil experienced by teenagers, the prisoner was having to come to terms with his abusive relationship with the older man. There is a compelling argument for the prisoner to be shown some leniency. His previous good behaviour, his very early plea of guilty and his genuine remorse all add to this.
- [14] In the circumstances, I will not impose a custodial sentence. The prisoner will instead be released on his entering into a bond to keep the peace and be of good behaviour for 18 months.¹⁰ I believe that the bond will benefit the prisoner by providing him with a substantial incentive to avoid reoffending.
- [15] If the prisoner is to honour his bond, it will be necessary for him to refrain from breaking the law for the entire 18-month period.
- [16] Before leaving Court today, the prisoner must sign an acknowledgment of the conditions of the bond and of the consequences of failing to comply with those conditions. I ask that 1 of his parents also sign the acknowledgment.
- [17] The prisoner is convicted on his plea of guilty. Instead of sentencing him today, I direct that he be released on a bond without punishment for 1 year and 6 months. If, during that period, the prisoner fails to observe the conditions of his bond, he can be brought back before the Court to be sentenced for the original offence.

⁹ *Attorney-General v Teibi Benna & Benetito Kauaua* [2019] KICA 11, at [38], citing *Churchward v R* [2011] NZCA 531.

¹⁰ Section 36(1) of the *Penal Code* and section 15(g) of the *Juvenile Justice Act*.

[18] Finally, given the prisoner's age, any publication of these sentencing remarks must not reveal his identity. The version of this document for public release will be anonymised. Any publication that reveals (or tends to reveal) the identity of the prisoner may result in the publisher being liable for contempt of this Court.


Lambourne J
Judge of the High Court



The seal of the High Court of Kiribati is circular. It features the national coat of arms of Kiribati in the center, which includes a sun, a wave, and a palm tree. The text "HIGH COURT OF KIRIBATI" is written around the top inner edge of the seal, and the Kiribati motto "TE KOROAE E RIETATA I FORI" is written around the bottom inner edge.