

**IN THE DISTRICT COURT
NAURU**

R v Boris Grundler

Criminal case No 41/2010

Magistrate Law

Mr Wilisoni Kurisqila for the Prosecution

Mr Knox Tolenoa for the defendant

Date of Hearing: 8.8.11

Date of Sentence: 22.8.11

Citation: [2011] NRDC 37

REMARKS ON SENTENCE

You have been convicted of the following offences:

Between 1st October 2009 and 1st of January 2010, at Nauru did unlawfully and indecently deal with TT, a girl under the age of 12, in contravention of s216 of the Criminal Code.

The maximum penalty for this offence is 3 years imprisonment.

Between 1st October 2009 and 1st of January 2010, at Nauru did unlawfully and indecently deal with ND, a girl under the age of 12, in contravention of s216 of the Criminal Code.

The maximum penalty for this offence is 3 years imprisonment.

A hearing was conducted on 8th August 2011 and after the testimony of the first child, TT, you entered a plea of guilty to both charges.

The evidence of TT is that she was sexually assaulted by you when she was 6 years old, just prior to her 7th birthday. She also stated it happened on another occasion when she had turned 6. She stated she would go to your house with many other children and watch TV. You told her to go into your room to get something. You followed her in and told her to take off her pants. She struggled with you but you did take off her pants. When your family arrived you told her to run home. After your family left, you went to TT's house and borrowed some cooking oil and other items and told TT to come to your house to pick them up. She said she didn't want to. Later when she went to your house and retrieved the items she hurried and left your house but you came after her and grabbed her. You picked her up off the ground and carried her to your room. You tried to take off her clothes which she didn't want to do. You removed her clothes and closed her mouth, telling her not to speak. You then had sexual intercourse with the child whilst lying on top of her. The child gave

evidence in Nauruan and used colloquial terms for sexual intercourse. She did describe you putting your private part into her private part which she bravely identified to the court.

The facts of the second charge are as follows: ND is a female child aged 9 years when this matter was reported in March 2010. During the school holidays in December 2009, ND went to your house to watch TV. You were watching cartoons inside the house. ND did not enter the house but sat at the doorway. You asked ND to go and get money from your room and she went to the room but couldn't find any. You called to her insisting the money was there on the shelf. ND went to the dressing table and saw you in the mirror coming into the room and then closing the door. You took off your shorts and underwear and removed ND's purple skirt, telling her to get on the bed. She refused and you grabbed her by the arms and lay her on the bed. You kissed her on the lips pushing your tongue into her mouth and removed her underwear. You lay on top of her and pushed your penis against her vagina. ND experienced pain and she struggled and screamed but you covered her mouth with your hand. ND cried and felt terrified and begged you to let her go but you kept pressing your body against hers with your penis against her vagina. There was a knock on the front door of the residence. You jumped up and dressed to answer the door and ND dressed and ran out the back door.

Both victims were examined by medical practitioners at the RON Hospital and doctors confirmed the hymens of each victim were not broken.

I have read the Background Report prepared by the Chief Probation Officer. You are 20 years of age and live in Nibok District with four other siblings under the care and supervision of an aunty Jane Jeremiah. Your mother passed away when you turned 6. Your father recently returned to the family home after living elsewhere for 15 years. You look after your cousin Ronwyn Jeremiah who suffers from a chronic disability and requires constant care and assistance to live at home with the family. He is bedridden and suffers from seizures and is incontinent. He requires medication every six hours. He occupies most of your time. Your aunty has written to the Court pleading for the Court to consider a non-custodial sentence as her life and others will be adversely affected, having to look after Ronwyn.

You completed year 12 studies at Nauru Secondary School. You have interest in sport and play touch rugby, basketball and volleyball. You are active and involved in youth activities such as brick making, construction and district clean ups.

These offences are very serious more especially because they involve very young children. These children are your neighbour's and were to a great extent under your care when these incidents happened. You have exploited your relationship with these children and conducted vile and offensive acts upon them. You have done this for your own gratification without any thought to the damage these sorts of incidents do to children. Children must be protected by society and it is up to the Justice System to ensure they can grow up in safe

environments. I have considered your auntie's request for the Court to consider a non custodial sentence and I recognize such a sentence will cause difficulties for your family and I will reduce the sentence accordingly. The sentence I must impose however, is not merely to ensure you do not re-offend, but to ensure others do not commit like offences.

I have considered your plea of guilty and that goes in your favour as it does indicate some insight into your offending. The plea was accepted during the trial and you have saved the difficulty and stress of a 2nd child having to give evidence of these accounts. In these circumstances, I can reduce the sentence I would otherwise have imposed by a small margin.

In determining an appropriate sentence I have had regard to the Nauru Supreme Court case of R v Boomba Adam [2002] NRSC 2 in which Chief Justice Connell set a sentence of 15 months imprisonment for a charge under s215 of the Criminal Code concerning a 13 year old victim.

In the case of R v Phuc Minh Pham¹, the Queensland Court of Appeal held that the court has clearly indicated previously that other than in exceptional circumstances, those who indecently assault or otherwise deal with children should be sent to gaol. Although the gaol sentence in that case was reduced to 12 months, from 2 years, the court was dealing with a single count. The facts found in this case distinguish it as being in the high range of criminality for an offence of this type.

A second sexual assault upon the victim TT is referred to in the facts. The Court recognizes you were not charged with that offence and I do not take into account for the purpose of sentencing. The prosecution did not raise 'course of conduct' in the proceedings. The incident is noted for the purposes of parole. When you become eligible for parole, you will have to be subject to careful supervision and guidance to ensure your access to children is restricted and supervised.

Boris Grundler you are sentenced as follows:

For Count 1 – you are to serve a sentence of 18 months imprisonment to date from today.

Four Count 2 – you are to serve a sentence of 16 months imprisonment to be served concurrently.

I order the Prison Authorities to take charge of the prisoner.

¹ The Queen v Phuc Minh Pham (1995) CCA 435