

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

REX

-V-

'ELONE TAMEILAU

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD - Crown Counsel, and from Mr Tu'utafavia and from the defendant in person.

The defendant appears for sentencing today - having pleaded guilty on first arraignment on 07TH October 2011; to an indictment, alleging four counts of Indecent assault on two young girl, aged 14 and 15 years of age.

On 07th October 2011 the case was adjourned for the preparation of a Pre-Sentence Report and the defendant was remanded on conditional bail for the preparation of that report. It was a condition of the defendant's bail that he co-operates in the preparation of that PSR

It should be noted that the defendant - is a first time offender, and to his credit he had fully admitted his part in offending - to the police, and to this Court on arraignment.

THE BRIEF FACTS

The prosecution claims the facts revealed that in 2006 at Kolomotu'a the defendant was involved in an incident when he kissed his FIRST victims face and he fondled her bottom and her vagina without her consent over a considerable period of time.

The prosecution claims the facts also revealed that in April 2011 at Kolomotu'a the defendant was involved in an incident when he kissed his second victims face and he fondled her bottom and her vagina without her consent as per the Statement of Offences.

After a complaint was made to the child's mother, the matter was reported to the police and the defendant was arrested. The defendant admitted the facts as agreed, to the police and to this court. The defendant told the court that he had apologized to both of his victims and the apology - has been accepted by the victims family and he told the Court that he is making amends for his actions

On 14th November 2011 the defendant appeared for sentencing. Having considered all the facts of the case, including the contents of the PSR and various letters of support. I have considered the fact that the defendant pleaded guilty and, the fact the defendant co-operated with the police and with this court – and that he has apologized to his victims.

Having heard from counsel, and the defendant in person and noting he is a first time offender. I told the defendant my starting point for this type of serious offending- involving a sexual attack on a victim of tender years, by a man of 45 years of age, three times the victims age, is a sentence of between 36-40 months imprisonment – that sentence would be based on a NOT guilty plea.

After considering all the facts the defendant is sentenced as follows:-

Count 1 – The defendant is sentenced to **THREE YEARS** in prison – however the whole sentence is suspended – for a period of three years conditional upon the defendant keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment. Further, the defendant is fined \$1,000.00 of which THE SUM OF \$1,000.00 is to be paid by way of compensation via the Supreme Court - to his victim 'ALO'I FO'OU KISEPI. That sum of \$1,000.00 is to be held in a trust fund – monitored by the Supreme Court until the child reaches the age of 18.

Count 2 – The defendant is placed on Probation for three years with a condition he keep in touch with the Probation Officer and complete any course his probation Officer thinks necessary.

Count 3 – The defendant is sentenced to **THREE YEARS** in prison – however the whole sentence is suspended conditional upon the defendant keeping the peace and being of good behaviour and committing no further offending during the period of the suspension of the sentence of imprisonment. Further, the defendant is fined \$1,000.00 of which THE SUM OF \$1,000.00 is to be paid by way of compensation via the Supreme Court to his victim MILIKA FINAU. That sum of \$1,000.00 is to be held in a trust fund – monitored by the Supreme Court ,until the child reaches the age of 18

Count 4 – The defendant is placed on Probation for three years with a condition he keep in touch with the Probation Officer and complete any course his probation Officer thinks necessary. [It should be noted the defendant has voluntarily completed the ordinary Salvation Army Courses and that is to his credit]

The sentences are to be served concurrently with each other.

The defendant told this Court he was unable to pay the \$2,000.00 compensation order by 16.00 hours today, so the defendant is ordered to pay the sum of \$80.00 per fortnight, until the payment of \$2,000.00 is made in full.

Each payment of \$80.00 [compensation] is to be made to the Supreme Court Registry by 12.00 on the Friday - each fortnight. The defendant's first payment of \$80.00 is due on 30th November 2011 - by 12.00 - in default of payment the defendant will serve nine months imprisonment.

The defendant can pay more than \$80.00 each fortnight - but he cannot pay less than \$80.00 TOP each fortnight, and his payments must be regular.

For the avoidance of doubt, the \$1,000.00 compensation is to be paid to EACH complainant - by way of compensation for her distress / injuries as a result of these charges.

I certify I warned the defendant of the consequences of committing any further offences during the period of his suspended sentence, and, of the consequences of failing to pay his compensation, or, failing to comply with "Instructions of a Probation Officer."

This is to be a deterrent sentence, applying the principles enunciated in the case of - **Crown -v- Cunningham**

**A Copy of these sentencing remarks are to be served on the
defendant, and the Probation Service**

DATE: 14 November 2011

J U D G E