

**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

CR 73 of 2012

R E X

V

TAU'AIKA TA'ANE FONUA

BEFORE THE HON. JUSTICE CATO

SUMMARY OF SENTENCE DELIVERED ORALLY

The prisoner pleaded guilty to one count of rape of a feeble-minded person contrary to S 118 (1) (c) of the Criminal Offences Act.

He was aged 62

First offender

The complainant was aged 45 and was known to the complainant. She used to visit a kava club and ask for cigarettes. On the night in question the prisoner went to her home which was across the road from the kava club. She was naked and the prisoner opportunistically had intercourse with her. The complainant then told members of her family

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who lived in a separate house on the premises and they made a complaint to the police. The prisoner admitted having intercourse with her.

The complainant was diagnosed as have mild to moderate retardation which corresponded with the terms in the act, feeble – minded and or imbecile.

The accused had a large family and largely supported them with his activities fishing. He had a long term alcohol problem but had given up drink after the offending. His family was supportive of him. Two children were still at home and one had a mental problem.

The accused had apologised to the family and they had accepted this.

He had a favourable probation report.

Protection of vulnerable person a major sentencing consideration – feeble-minded condition considered and aggravating factor justifying a sentence of 6 years, that is one year more than the starting sentence for rape of five years.

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Reduced by 2 years for guilty plea, previous good character, and contrition

SENTENCE

Four years imprisonment; with final two years suspended on condition he commit no further crimes punishable by imprisonment for a period of three years.

Worthy or rehabilitative considerations – had ceased to take alcohol – self employed fisherman with family obligations – accepted responsibility

The nature of the offending however meant that the suspension should as a matter of public interest be no more than two and not the three year suspended the defence had contended should be allowed. A fully suspended sentence imposed by Ward CJ in the cases of indecent acts R v Falemaka [2006] Tonga L R 370 (conviction only reported) distinguished on the ground here that the Court was concerned with rape.

DATED: 26 APRIL 2013