

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Case No. HAC 31 of 2021

BETWEEN : **THE STATE**

AND : **NORMAN JAMES SNODGRASS**

Counsel : Ms. Tamanikaiyaroi, U for the State
: Ms. Malimali, B for the Accused

Judgment : 24 July 2023
Sentence : 27 July 2023

SENTENCE

1. Norman James Snodgrass, you are before the Court to be sentenced having been found guilty and convicted after trial of four counts of rape.
2. The victim was your de facto partner's niece who had come to live with you and your partner between 2019 and 2020 and attend school in Suva. She was about 14 – 15 years old and in Form 3 to Form 4 at the time of the offences.
3. The evidence at trial was that you had attended a parents and teachers interview at the victim's school. At home upon your return with the victim, you touched her vagina and penetrated it with your finger. You then pushed her onto her back and penetrated her vagina with your tongue. She told you to stop when you pulled down her pants but you paid no heed. She did not consent to what you were doing to her and you knew she was not consenting.

4. A few weeks later, you called her into your bedroom on the pretext of helping you look for something inside the room. You locked the room as soon as she was inside. You penetrated her vagina with your penis knowing she was not consenting.
5. Following another parents and teachers interview, you called her to help you print t-shirts in the nanny's quarters behind your home. Your modus operandi was the same. As soon as she was inside, you locked the room. You told her to suck your penis. When she refused, you pressed her mouth and put your penis inside knowing she was not consenting.
6. These were the incidents proven beyond reasonable doubt. The victim said you penetrated her vagina with your penis twice; digitally penetrated her two to three times, penetrated her vagina with your tongue three to four times, and penetrated her mouth with your penis four times. However, you are sentenced only for the representative counts proved in Court.
7. In an astonishing submission, your counsel submitted there was no family relationship and no breach of trust or abuse of authority because you are not related to the victim, and because she was brought to live in your home, not that you had not gone to get her to live in your home.
8. I reject that submission outright. The victim lived with you and your partner at your home in Nasese. She came to live with you after your partner agreed to look after and take care of her while she studied in Suva. While living in your home, she was in your care. You gave evidence that you and your de facto partner were in charge of the home. When your partner was not at home, you were in control. You attended her parents and teachers interviews as her guardian. Your offending is therefore a breach of trust, not only of your partner, but also of the young victim and her parents.
9. You were in a position of authority in the home and abused that authority by sexually molesting the victim.
10. The Domestic Violence Act defines family or domestic relationship as meaning the relationship of:

- (a) spouse;
- (b) other family member;
- (c) person who normally or regularly resides in the household or residential facility;
- (d) boyfriend or girlfriend;
- (e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care.

11. A person in a de facto relationship is included in the definition of "other family member" in the same way as if they were married to each other.
12. There can be no doubting that a family or domestic relationship existed and that these offences are domestic violence offending.
13. You are 36 years old and now married to the victim's aunt. You have eight children between the two of you and you helped bring up other children as well. Two of these children are dependent on you. From income from a little business that you own, you support your son and extended family. You take care of accounts and help out with your wife's business. You and your wife took in relatives in need. You are involved in church and help out with Sunday school.
14. Your previous good character and your clean record are mitigating factors. However, I do not give to it undiminished weight given the serious nature of these offences over a period of time against a child who was in your care.
15. There is a vast age difference of 18 years between you and the victim. She was under your care while she lived with you and your partner. She was a dependent in your home and was vulnerable owing to her young age and dependent circumstances. You prematurely exposed a young girl to sexual activity. Your offending was in breach of trust and an abuse of your authority. These are serious aggravating factors.
16. The State filed a victim impact statement. Section 244 of the Criminal Procedure Act grants the Court a discretion to receive evidence to inform it as to the appropriate sentence to be

passed. The victim states that she felt ashamed and has been affected emotionally and psychologically as a result of what happened to her and that counselling has helped her cope.

17. The maximum penalty of life imprisonment for rape is an indication of the seriousness with which the legislature intends for this offence to be treated. The tariff for the rape of a child is 11 – 20 years imprisonment.
18. Your counsel invites me to apply the tariff of 10 – 16 years imprisonment stated by the Supreme Court in *Kumar v State* [2018] FJHC 30; CAV0017.2018 (2 November 2018), following the tariff set by the same Court in *Raj v State* [2014] FJSC 12; CAV0003.2014 (20 August 2014).
19. However, in *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 (2 November 2018) at [25], the Supreme Court made it clear that:

The tariff previously set in *Raj v The State* [2014] FJSC 12 CAV0003.2014 (20th August 2014) should now be between 11-20 years imprisonment. Much will depend upon the aggravating and mitigating circumstances, considerations of remorse, early pleas, and finally time spent on remand awaiting trial for the final sentence outcome.

20. Said Gates P at [24]:

The increasing prevalence of these crimes, crimes characterised by disturbing aggravating circumstances, means the court must consider widening the tariff for rape against children. It will be for judges to exercise their discretion taking into account the age group of these child victims. I do not for myself believe that that judicial discretion should be shackled. But it is obvious to state that crimes like these on the youngest children are the most abhorrent.

21. In *State v Tauvoli* [2011] FJHC 216; HAC027.2011 (18 April 2011), Madigan J stated:

Rape of children is a very serious offence indeed and it seems to be very prevalent in Fiji at the time. The legislation has dictated harsh

penalties and the Courts are imposing those penalties in order to reflect society's abhorrence for such crimes. Our nation's children must be protected and they must be allowed to develop to sexual maturity unmolested. Psychologists tell us that the effect of sexual abuse on children in their later development is profound.

22. Your offending involved four different types of rape: digital, lingual and penile penetration of the victim's vagina as well the penetration of her mouth with your penis. All these acts, perpetrated without consent, constitute rape under the Crimes Act and are subject to the same penalty. In *Ram v State* [2015] FJSC 26; CAV12.2015 (23 October 2015) at [21], the Supreme Court stated:

The casting of the offence of rape in the Crimes Decree is such that no distinctions are drawn as to gravity of offending dependent on the object used to penetrate or of the orifice of the victim penetrated. No separate penalties are prescribed. Sufficient no doubt is the unwanted invasion, the violation of the person, the forcible intrusion into the privacy and body of another.

23. For the four counts of rape, I take an aggregate starting point of 11 years imprisonment, add 4 years for the aggravating features, and deduct 2 years for the mitigating factors. You are sentenced to 13 years imprisonment for the four counts of rape. You have served 1 ½ months of this period in remand, leaving now a balance of 12 years, 10 ½ months to be served. I fix a non-parole period of 11 years.
24. I issue a permanent domestic violence restraining order with standard non-molestation conditions in section 27 of the Domestic Violence Act, for the protection of the victim.



Sull
Siainiu F. Bull
JUDGE

Solicitors:

Office of the Director of Public Prosecutions for the State
Pacific Chambers for the Accused