

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 58 of 2024

STATE

V

TAKIRARA TINUAU

Counsel : Mr. E. Kotoilakeba for the State
: Ms. K. Marama for the Accused

Date of Trial : 27 - 28 February 2025
Date of Judgment : 20 March 2025
Date of Sentencing Hearing: 26 June 2025
Date of Sentence : 11 July 2025

SENTENCE

(The child complainant's name is suppressed and I shall refer to her as CC in these sentencing remarks)

1. Mr. Tinaua, on 20 March 2025, after trial, I convicted you of a single count of sexual assault, contrary to section 210(1)(a) Crimes Act 2009.
2. You now appear before me for sentencing.
3. The factual basis upon which I sentence you is set out in my Judgment dated 20 March 2025. In brief summary, on 10 May 2023, CC was playing in the church hall at Fatima, Rabi when you called to her to bring your cup. When she brought your cup, you pulled down her pants and licked her vulva. CC's

elder sister pulled her away and they ran home and immediately told their mother what you had done. CC was 5 years old at the time of your offending.

Pre-sentence Report

4. In light of your history of mental illness, I ordered that you be examined at St. Giles Hospital, and that a report be provided to Court to assist me in deciding on an appropriate sentence in all the circumstances of this case.
5. St. Giles has provided a most helpful report, including recommendations for your future treatment.
6. You were first admitted for psychiatric evaluation in March 2024 and diagnosed with mild to moderate intellectual disability.
7. On 4 April 2025, you were diagnosed with schizophrenia. You were prescribed medication, and it was planned for you to be reviewed at Labasa Stress Management Ward.
8. The Senior Medical Officer at St. Giles Hospital concluded that a custodial sentence would not exacerbate your symptoms provided the medical team at the Remand Centre ensures that you take your medicines daily, and you are reviewed as per scheduled clinic at the stress ward of Labasa Hospital.
9. The psychiatric team also recommended that they be notified for continuity of treatment plans should you be moved to prison. It is also recommended that you continue your oral medication and injection under the supervision of nursing staff in prison, and you are to continue your clinic at the stress ward of Labasa Hospital.

Prosecution sentencing submissions

10. The prosecution relies on written submissions filed on 12 June 2025, and refers me to *State v. Epele Ratabacaca Laca* HAC 252 of 2011 (14 November

2012) in support of their submission that the tariff for sexual assault is between 2 years' to 8 years' imprisonment.

11. The prosecution advances as aggravating factors the fact that, as a 5-year-old child, CC was particularly vulnerable, and the wide disparity in age at the time of your offending.

Defence sentencing submissions

12. Your counsel filed written mitigation submissions on your behalf, which were briefly developed at your sentencing hearing.
13. By way of background, I am informed that you are now 60 years old, unmarried, were living with your mentally unwell brother, and earning your living as a farmer in Rabi. You have been diagnosed with schizophrenia.
14. You have no previous convictions.
15. In common with the prosecution, defence counsel has drawn my attention to the case of *Laca*.

Discussion

16. The maximum sentence for sexual assault is 10 years' imprisonment.
17. Whilst cases such as *Laca* provide broad guidance, there is a limit to the assistance that any sentencing court may glean from sentences imposed in other cases for similar offending. Every sentencing exercise is heavily fact specific, and must be approached as such.
18. Both prosecution and defence are in agreement that this case falls within category 2 (ii) of the 3 categories set out in *Laca*. In other words, they consider that the facts of this case do not place it in the most serious category of sexual assault. I do not agree.

19. Whilst the parties may be correct on a strict reading of *Laca*, this case illustrates the limitations on the utility of sentencing guidelines derived from overseas jurisdictions. Sentencing practice must be founded in local conditions and have due regard to the scheme of criminal justice in Fiji.
20. It is worth noting that the non-consensual oral penetration of a vulva constitutes the offence of rape in Fiji. Indeed, the non-consensual licking of a complainant's vulva/vagina is sometimes charged as rape. In this case, the Director of Public Prosecutions decided that the appropriate charge was one of sexual assault. That, of course, is a matter for the Director. I would only observe that it is generally desirable that charging decisions are principled and consistent. The charge laid ultimately dictates the appropriate sentencing range upon conviction.
21. Turning my attention to the purposes of sentencing as set out in section 4 of the Sentencing and Penalties Act, I have had regard to a combination of the statutory purposes.
22. My principal focus in determining the just and proportionate sentence in this case is to ensure that the sentence I impose adequately signifies that the Court and the community denounce the commission of sexual offending against children. Irrespective of whether denunciation serves to deter those who may be inclined to offend against children, it nevertheless serves to shape societal values.
23. In all the circumstances of this case, balancing the aggravating and mitigating factors, including CC's extreme vulnerability, the presence of CC's 12-year-old sister, and your clear record, I consider that the appropriate sentence is one of 8 years' imprisonment. I do not consider that your offending was connected to your mental impairments. Having presided over your trial, I am satisfied that you were aware that what you did to CC was wrong. Your culpability for your offending against a vulnerable child remains high.

24. I consider 8 years' imprisonment to be the shortest sentence commensurate with the seriousness of your offending.
25. I fix your non-parole period at 5 years' 4 months', which I consider reflects the appropriate punitive element of your sentence, and also provides a reasonable incentive for rehabilitative efforts on your part.
26. I am informed that you have been in custody since 25 June 2023. You have, therefore, served around 2 years and 2 weeks (which I round up to 25 months) in custody pending disposal of this matter, which is to be regarded as a period of imprisonment that you have already served.
27. In the result, your sentence is 5 years' 11 months' imprisonment.
28. Given that you are a first offender, and to encourage your rehabilitation and adherence to your treatment plan, the remaining time you must serve before being eligible to be released on parole is 3 years 3 months.
29. Mr. Tinaua, for the reasons I have explained, the sentence I impose is 8 years' imprisonment, less the time you have already served on remand. Your non-parole period is 3 years 3 months from today.
30. You may appeal to the Court of Appeal within 30 days.



Hon. Mr. Justice Burney

At Labasa
11 July 2025

Solicitors
Office of the Director of Public Prosecutions for the State
Office of the Legal Aid Commission for the Accused