

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No.: HAC 63 of 2023

STATE

V

XY

Counsel : Mr. T. Tuenuku for the State
: Ms. V. Kirti for the Accused

Date of Trial : 27 – 28 August 2025
Date of Judgment : 24 October 2025
Date of Sentencing Hearing: 13 November 2025
Date of Sentence : 19 November 2025

SENTENCE

1. **XY**, on 24 October 2025, after trial before this Court, you were convicted of five counts of serious sexual offending against your 10-year-old biological daughter. To protect her identity, I have anonymized your identity, and I shall refer to her as CC in these sentencing remarks.
2. The factual basis upon which I sentence you today is set out in my Judgment dated 24 October 2025. For present purposes, it is sufficient to set out those facts in brief summary.
3. On 6 August 2023, you indecently assaulted CC by kissing her on her mouth (count 1), sexually assaulted her by licking her neck (count 2), and sexually assaulted her by rubbing your penis on her vagina (count 3).

4. On 19 August 2023, you sexually assaulted CC by fondling her breasts (count 6), and sexually assaulted her by licking her vagina (count 7).
5. I must now proceed to impose a just and proportionate sentence for the totality of your offending.

Prosecution sentencing submissions

6. The prosecution has made helpful written and oral submissions. Mr. Tuenuku has drawn my attention to the relevant guideline judgments, and has also urged upon me a factor which he says makes your offending substantially more serious. Your repeated sexual abuse of your 10-year-old biological daughter was a gross breach of that relationship of trust.
7. I have carefully considered the victim impact statement, which vividly sets out the emotional, financial, and familial impact of your offending against CC. In recognition of her place at the centre of these proceedings, I set out in her own words what CC wishes to say to you directly:

“My father betrayed my trust. He should go behind the bars. He is an animal. Because of him I can’t trust anybody. He spoiled my life.”

8. On your behalf, Ms. Kirti has told me something about your background. You are 35 years old and married with four young children, for whom you were the sole breadwinner through casual labour.
9. Ms. Kirti submits that your offending is less serious because you are a first offender.
10. Both parties submitted that the statutory maximum sentence for sexual assault is 10 years’ imprisonment. When I queried this by reference to section 210(2) of the Crimes Act 2009, there was consensus that the statutory maximum

sentence for a sexual assault involving the mouth coming into contact with genitalia is 14 years' imprisonment.

Discussion

11. The maximum sentence for indecent assault is 5 years' imprisonment, and the maximum sentence for sexual assault is 10 years' imprisonment (14 years' imprisonment if it involves mouth/genitalia).
12. The applicable tariff for the offence of Indecent Assault is 12 months' to 4 years' imprisonment. The widely applied tariff for sexual assault is between 2 years' to 8 years' imprisonment.
13. Whilst sentences imposed by other sentencing courts 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.
14. It is also noteworthy that the accepted tariffs for the offences you have committed are wide. My task is to determine a just and proportionate sentence that properly reflects the totality of your offending across all five counts.
15. 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.
16. Sentencing courts often remark that serious sexual offending against children warrants a deterrent sentence. Whilst this is undoubtedly so, it is difficult to measure the effectiveness of particular deterrent sentences. For my part, I am doubtful that those who would contemplate raping children would be deterred from doing so based on a calculation of the potential harsh penalties involved. Certainly, it has not been the experience of the courts that the harsher sentencing regime ushered in by the Supreme Court has brought about a reduction in abhorrent sexual offending against children.

17. Having said that, it seems to me that condign punishment of those who offend against children serves an important function. By denouncing sexual offending against children in the strongest terms, sentencing courts help to shape societal values. Education through denunciation reinforces law-abiding and decent citizens' rejection of sexual abuse of children.
18. 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.
19. I have decided that the best way to achieve a just and proportionate sentence reflecting the totality of your offending against CC is to impose an aggregate sentence for your offending on 6 August 2023, and to impose separate consecutive sentences to reflect the gravity of your offending on 19 August 2023.
20. I have concluded that in all the circumstances of this case, including CC's vulnerability, the abuse of your authority and position of trust as her father, and the serious enduring harm you have caused to CC, I consider that the appropriate aggregate sentence on counts 1 - 3 is one of 8 years' imprisonment. The appropriate sentence on count 6 is 2 years' imprisonment consecutive, and the appropriate sentence to reflect your most serious offending in count 7 is 14 years' imprisonment consecutive.
21. I consider that only the imposition of the maximum sentence available to the Court in relation to count 7 would meet the justice of this case. In this regard, I note that this type of offending is often charged as rape, for which the maximum sentence is life imprisonment, and the sentencing range for rape of a child is 11 - 20 years' imprisonment. In my view, it is sexual offending of the utmost gravity when committed by a parent against their young child.
22. Sentencing principles require that I step back and make an appropriate adjustment to reflect the totality of your offending behaviour across all five

counts. In my assessment, an overall sentence of 21 years' imprisonment would be appropriate.

23. Accordingly, I sentence you as follows:

Count 1 - 3: 8 years' imprisonment.

Count 6: 2 years' imprisonment consecutive.

Count 7: 11 years' imprisonment consecutive.

24. I am required to fix a period before which you may not be considered for parole. In practical terms this will be of far more concern to you than the head sentence I impose.

25. I am not aware of any consistently applied guidelines to assist me in this task. Indeed, I can discern no settled practice in the decided cases. In order to avoid the impression of arbitrariness, therefore, I must adopt a principled approach.

26. Parole and remission are two different and distinct concepts.

27. Remission is dealt with in Sections 27 and 28 of the Corrections Service Act 2006. Section 27(2) that: *"For the purposes of the initial classification a date of release for each prisoner shall be determined which shall be calculated on the basis of a remission of one third of the sentence for any term of imprisonment exceeding one month."*

28. In *Timo v State* [2019] FJSC 22; CAV0022.2018 (30 August 2019) the Supreme Court observed, at [27]:

"The Sentencing and Penalties Act 2009 also gives no guidance to a Court as to when and in which category of cases a non-parole period should be fixed or not fixed. Therefore, a question arises: What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for awarding (if at all) a non-parole period to a convict?"

29. At the time *Timo* was decided, sentencing courts had a wide discretion whether or not to impose a non-parole period. That discretion was removed by legislative amendment of the Sentencing and Penalties Act 2009. Sentencing Courts are now required to fix a non-parole period when imposing a term of imprisonment of two years or more. It remains the case that the Sentencing and Penalties Act provides no guidance on how non-parole periods are to be calculated.
30. The rhetorical question posed in *Timo* may be appropriately re-framed as: “What should be the procedure, in accordance with the requirements of justice, that a Court should adopt for fixing a just and proportionate non-parole period?”
31. This remains an important question because, as the Supreme Court highlighted, at [28]:

“This question is important because the effect of a Court directing a non-parole period on a convict is that the convict cannot be released prior to completion of the non-parole period. This could impact on the delivery and administration of justice in several ways – not only for the convict through a curtailment of his or her human right of personal liberty, but also for the Executive through a curtailment of its statutory power of granting remission and encroaching on its powers of early release of prisoners under the Corrections Service Act 2006 read with the Corrections Service Regulations 2011. It could also have an impact on society and its safety and well-being.”

32. The Court described the tension between the authority of sentencing courts to fix a non-parole period, and the exercise of power under the Corrections Service Act, at [37] as follows:

“In exercising the authority of fixing a non-parole period, the Court is, in a sense, circumscribing the exercise of power by

the Parole Board and the Minister under the Corrections Service Act 2006. There may well be an extraordinary case in which the Parole Board and the Minister are of opinion that the convict is deserving of parole, but their hands would be tied because of an order of the Court fixing a non-parole period. This could amount to encroaching or subverting the discretionary power given by law to the Parole Board and the Minister, which the Courts would be loathe to do. It is for this reason that the Courts should be cautious and circumspect. This is not to say that the Courts should not fix a non-parole period in any case, but that the Courts may do so in exceptional cases and circumstances and after following a set procedure.”

33. Adapting the reasoning of the Supreme Court to my duty to fix a non-parole period in this case, it appears to me that a principled approach would be for me to fix a non-parole period that mirrors the provisions of the Corrections Service Act which govern remission.
34. In some cases sentencing courts may consider it appropriate to circumscribe the Commissioner’s authority to grant early release, but it is beyond the scope of these sentencing remarks to consider what circumstances might warrant that approach.
35. You are a first offender, albeit the offences you have committed are of the utmost gravity. I do not consider it necessary or appropriate to ‘warehouse’ you. In my view, you should be given every opportunity to avail yourself of opportunities for rehabilitation.
36. On this basis, I consider that a non-parole period of 14 years would reflect the appropriate punitive element of your sentence, and also provide a reasonable incentive for rehabilitative efforts on your part.
37. I would encourage you to reflect at length on the inevitable harm that your offending has caused to your daughter, and your other children, and to engage

with any intervention programmes that may be available to you during your period of incarceration.

38. I am informed that you were in custody from 25 August 2023 to 23 November 2023 when you were bailed. Your bail was revoked on 7 May 2025 and you have been remanded in custody since that date. In total, therefore, you have served around 10 months in custody pending disposal of this matter, which is to be regarded as a period of imprisonment that you have already served.
39. Accordingly, the remaining time you must serve before being eligible to be released on parole is 13 years 2 months.
40. XY, for the reasons I have explained, the sentence I impose is 21 years' imprisonment, less the time you have already served on remand. Your non-parole period is 13 years 2 months from today.
41. For the protection of CC, I am satisfied that it is appropriate to make a Permanent Domestic Violence Restraining Order with standard non-molestation and no contact conditions. This Order will be in force unless varied by a competent court. Should you breach this Order, you may be charged with an offence contrary to section 77 of the Domestic Violence Act.
42. You may appeal to the Court of Appeal within 30 days.



Hon. Mr. Justice Burney

At Labasa

19 November 2025

Solicitors

Office of the Director of Public Prosecutions for the State

Office of the Legal Aid Commission for the Accused