

PUBLIC PROSECUTOR

-V-

KENETH ATUARY

*Mr. Gregory Takau for the State
Mr. Bennett for the Defendant
Mr. Kenneth Atuary*

SENTENCING

The facts themselves as set out in the sentencing submissions of the state which briefly indicates that this young person of 19 years of age dropped off near her home in a taxi was abducted by you at knife point and you directed her to be quiet and to accompany you. Your instruction that she must not shout or cry. Your companion chased away the other person. You physically pulled her and directed her to follow your instructions. You used a knife when giving these instructions and applied force in this way. You removed her clothes, pushed her to the ground, she complied with your request for the removal of clothes because of fear. There was force used in addition to the rape by you holding her neck and telling her not to shout. Details as to the rape are in the summary. She dressed after the rape, she was so frightened of you to run away and she followed you as instructed. You went to an area identified in the fourth paragraph of the summary, she was tired and went to sleep, when she woke she requested to be released and you refused. You became aware that the police were searching for you. The Court note that you're an escaped prisoner when you took an innocent member of the public in this way, raped her and forced her to remain with you for a period of approximately six days. This is an appalling incident. During the summary you were given opportunities when requested by the complainant to be allowed to leave, to give consideration to that request. You refused, it is clear that you regarded the complainant as a person that must comply with your sexual demand and so the summary makes that out and makes it clear. Once alerted, you removed yourself from that area but you again assaulted the complainant and made demands that she complied with sex. At no stage does it appear that before the incident should be brought to a close by releasing her. It was a trick or ploy on her part that allowed her to escape. The manner of escape indicates the poor position she must have been in. She run away and went to a house, the house owner and family helped her, brought her to the Teouma Shopping Center and thus to her home.

I am grateful to the counsel involved for their submissions and their help. The prosecution making it clear in their submissions with reference to the case of Koilo which necessary to remember Koilo was a defended case. Hinge where evidence was heard with a change of plea, reference to Gideon which is a reference supporting his submission that suspension of imprisonment as inappropriate which I accept, suspension is not an issue in this sentencing. To Scott and Tula where the starting point suggested is a that a person who abducts the victim and holds her captive the starting point should be 8 years. The Court further stating that where anyone or more aggravating factors are present the sentence should be substantially higher than the figures suggested as the starting point.

The Prosecution suggested a number of points that were aggravating:-

- violence over and above the force necessary to make a rape
- Weapon
- Repetition of the conduct
- The age of the victim
- The abduction itself
- The detention
- And the extent of the violence and threats.
- Impact upon the victim or the complainant as confirmed in the submission from the state that she doesn't wish to return to the area.

And their final submission is that a penalty of eight years to be increased reflecting on the aggravating fixtures but taking into account eventually the discount for a plea guilty and of course a consideration as to totality.

Mr. Bennett for the defendant made a number of points particularly the emphasis that the abduction if it is used as part of the factual background and as an aggravating feature of the rapes that it should not double counted and I accept that I propose to deal with the sentencing on the basis that the lead offense being the rape and a lesser penalty being imposed upon the abduction which will then be concurrent.

The aggravating features some of which were challenged, mentioned by the crown or by the state related to the summary and the identification of any further force but I have endeavoured to deal with that submission in covering the summary of facts provided to me by the prosecution.

As I grasp it the prisoner's submission that they accept it that a term of imprisonment was appropriate but the emphasis needed to be on its term, a discount for the plea of guilty, the explanation as to the delay in the plea being entered and that finally when reaching that point one needs to be concerned with the issue as to the totality so that a crushing term of imprisonment is not imposed. The starting point is acknowledged as I grasp it by both counsel as being of eight years. Aggravating features in my view, are the taking of a young woman from near the safety of her home and treated as an object of pleasure for a number of days. Accepted so I grasped considering those aggravating features of domination, the use of a weapon in the form of a knife and the opportunities that I have identified to change the conduct but not taken and in an addition incident terminated not by some insight from this prisoner but rather from the alertness of the complainant herself. So there was no value to the prisoner in termination of the event on

its face he wished to continue. He being an escaped prisoner at the time of offending in my view is a major aggravating feature.

The community are entitled to see that the Courts will impose penalties that should deter others from behaving in this way. There is an issue of deterrence, an issue of denunciation and a high level principled comment to be made to protect the community and those young women in it. Because of those features I set the starting point as a term of 12 years imprisonment. It needs to be borne in mind that when giving a discount, that many complainants who give evidence are frequently devastated by their appearance in Court and the revisiting of the incident. So I give the prisoner a genuine discount for that factor. So I've given him the discount setting the starting point I fix a term of 9 years imprisonment to be imposed in respect of his conduct. So in respect of the counts in the indictment. The defendant is convicted and sentenced to 9 years imprisonment (4 counts).

In respect of the abduction count which I agree I have taken into account in the fixing of the term of imprisonment on the rapes he is convicted and sentenced to 5 years imprisonment which is clearly concurrent. The penalty in respect of the rape is to be cumulative to the sentence of the 10th December 2008. The escaping features for which he had been imprisoned is to be concurrent with the sentence and that is dated 24th June 2009. I stood back and considered the issue of totality and the offending for which this prisoner is a sentenced prisoner is separate in type and nature and is not part of an ongoing series of events. And I've also considered the content of the pre-sentence report in respect of being high risk and the offending itself and as I previously stated the clear requirement to protect the community from people who choose to behave in this way.

You have 14 days to appeal my decision.

DATED at Port Vila this 27th day August 2009

BY THE COURT

