

to his offending. I do not propose to canvass the evidence again in any detail in relation to this sentence.

3. The offending took place between the 14th December 2016 and the month of January 2017. The prisoner at the time of the offending which involved his 17 year old daughter was aged 44. She had gone to live with her father and step mother in the final year of her schooling. She had a troubled existence living with her uncle and had been suspended from school for truancy some time before the offending. The prisoner was unrepresented but in my view defended himself competently, his defence being that the allegations had been manufactured it seemed because his daughter had wanted to get away from him because she feared he would beat her for not attending an examination. In fact, she had attended and had passed the examination. I preferred the evidence of the complainant who gave her evidence carefully and my observations of her appear in the judgement on verdict. I further note that, although it was not required for verdict on the incest charges the offending, in my view, was non-consensual. From the outset of offending, she had been threatened by her father and had been the victim of a serious assault which he admitted. She was the victim of very serious sexual abuse.
4. The head sentence will be count 6 (incest by a male person) that occurred in or about the first week of December 2016. This was the first of four counts of incest. Prior to that, the prisoner had, on the 14th December 2016, whilst at home alone with her had told her to smoke some ice (methamphetamine) and threatened to beat her up if she did not. He then had laid her down, taken off her pants and underwear and had oral sex with her. He also used his penis to rub on her vagina and sucked her breast. He threatened to kill her if she talked. That offending constituted the first of five counts of serious indecent assault all of which but one

involved similar conduct during the 2 month period of sexual offending alleged in the indictment. One did not involve oral sex.

5. The serious indecent assault was the precursor of more serious sexual offending involving carnal knowledge which took place in the home in the early morning. She said she was a virgin and it occurred when his wife was in the next room. It was painful and he told her it was all right and not to reveal it to anyone. She noticed a brown discharge coming from her vagina. This was the first of the four other charges of incest all accompanied by serious indecent assaults.
6. The prisoner was married with three children. He lived in the former family home in Afa. He had two other children including the complainant by his first marriage. He seems to have had a reasonable education attending school until the sixth form and he entered and served with the Armed Forces for six years including a period in Bougainville. He has, however, a number of convictions for dishonesty dating back to 1992 theft, several for housebreaking and theft including one in 1998 when he received an 8 year sentence. He also had one conviction for growing Indian hemp and possession. In 2007, he was again convicted of theft and manslaughter by negligence for which he was sentenced to three and half years imprisonment.
7. He continued to deny the offending apart from the assault to which he had pleaded guilty. He said that the reason for the assault in the probation report was that it was right that he assaulted the accused for disobeying him, to maintain her obedience and discipline. I did not accept the rather sanitised view of the offending which he and his wife presented at the trial. I accept what the complainant had said that he had been drinking and that she was watching television with his wife. He had laid down beside her and she had pushed him away. He had

said to her after kissing his wife; "my baby the one I love the most." He became angry, got a socket wire and commenced to strangle her. She cried and said sorry. He said that she was behaving like her mother did. He walked outside got a pair of scissors and said he would use them to cut around or cut up her vagina to avoid any boy liking her. She cried and said sorry. He then went to his room telling her not to speak to him again. I consider that this incident speaks loudly about the prisoner and his attitude to women including his daughter. The impression I got at trial was that he was an authoritarian, dominating personality, not without cunning and able to present a more affable personality when required.

8. I consider that an appropriate starting point for the incest with count 6 being the head sentence is 8 years imprisonment. As I have said, this was non-consensual incest and I have no doubt the complainant was put through a frightening and humiliating experience. He took her virginity and she will forever have to live with this experience. The long term consequences for her are problematic but at trial I formed the view that she was a resilient personality who hopefully will be able to put this offending behind her. The eight years takes into account all the sexual offending, most of it aside from count one, being associated with events that led to incest. The assault count and the first count of serious indecency, however, will be considered separately. I consider that 8 years for the incest is reflected in such cases as Tu'ifa [2010] TLR 80 where Ford CJ sentenced the prisoner to 7 years imprisonment with no suspension for five counts of incest observing that had the prisoner not pleaded guilty he would have imposed a sentence of 8 to 9 years, and R v X [2012] TOSC 81 where a sentence of 8 years and 6 months imprisonment was reduced to 7 years imprisonment for guilty plea and contrition. The Crown drew my attention to my own recent decision in Pahulu SC (13th December 2016) where I sentenced the

prisoner to 8 and a half years imprisonment for multiple counts of incest on two girls, after guilty pleas were entered and contrition shown. I said in Pahulu;

“The overall starting point must be set at a level which objectively not only denounces this kind of offending in Tonga, which as I have said is regarded as taboo, but acts as a deterrent and is protective of girls and young women.”

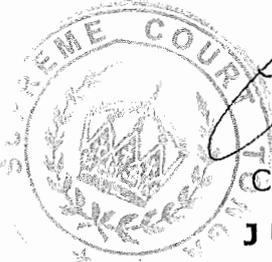
9. I do not consider here that there are any mitigating features. The prisoner in his probation report and again at sentence did not improve his position by continuing to maintain his denial.
10. In so far as the first count of serious sexual indecency (count one) is concerned, this involved several sexual acts and oral sex as well, so I consider a sentence of three years imprisonment, the maximum being five is appropriate. The first year will be cumulative upon the sentence of 8 years imprisonment for the incest and the other sexual indecencies.(Count 6).
11. The assault charge (count 2) in my view is serious and must have been terrifying for the complainant. I sentence the prisoner to 9 months imprisonment for this offending and this will also be served cumulatively, making the overall sentence 9 years and nine months imprisonment for counts 6 (the head sentence), 1 (the serious indecent assault) and 3, the common assault.
12. I have considered the question of whether any part of the sentence should be suspended and I see no basis whatsoever for any period of suspension.
13. The sentence I pass after conviction is;

- i. Count one; serious indecent assault - 3 years imprisonment the first year being served cumulatively upon count 6.
- ii. Count 2; domestic violence - 6 months imprisonment concurrent with count 6.
- iii. Count 3; common assault - 9 months imprisonment the sentence to be served cumulatively upon the sentences imposed in counts one and 6.
- iv. Count 4; domestic violence - 6 months imprisonment concurrent with count 6.
- v. Count 5; Serious indecent assault - 3 years imprisonment concurrent with count 6;
- vi. Count 6; incest by a male - 8 years imprisonment (part of the sentences on count 1 being 12 months imprisonment and the sentence of nine months on count 3, are added to the sentence on count 6 making a total combined sentence of nine years and 9 months imprisonment.
- vii. Count 7; domestic violence - 9 months imprisonment to be served concurrently with count 6
- viii. Count 8; serious indecent assault - 2 years imprisonment to be served concurrently with count 6
- ix. Count 9; incest by a male person - 4 years imprisonment to be served concurrently with count 6.

- x. Count 10; domestic violence – 9 months imprisonment to be served concurrently with count 6.
- xi. Count 11; serious indecent assault – 3 years imprisonment to be served concurrently with count 6.
- xii. Count 12; incest by a male person – 4 years imprisonment to be served concurrently with count 6.
- xiii. Count 13; domestic violence – 9 months imprisonment to be served concurrently with count 6
- xiv. Count 14; serious indecent assault – 3 years imprisonment to be served concurrently with count 6.
- xv. Count 15; incest by a male person – 4 years imprisonment to be served concurrently with count 6.
- xvi. Count 16; domestic violence – 9 months imprisonment to be served concurrently with count 6

The sentences are backdated to the date of the prisoner's remand in custody for this offending.

DATED: 14 **DECEMBER 2017**


C. B. Cato
JUDGE