

THE REPUBLIC

V

BRONTON NAMADUK

JUDGE: Eames, C.J.
DATE OF HEARING: 6 March 2012
DATE OF SENTENCE: 13 March 2012
CASE MAY BE CITED AS: R v Bronton Namaduk
MEDIUM NEUTRAL CITATION: [2012] NRSC 5

Criminal law – Sentencing – Unlawfully and indecently dealing with a girl under the age of 17 years – Section 216 of the Criminal Code of Queensland 1899 (1st Schedule), adopted – Prior convictions, including for assaults – Offender aged 24, girl aged 15 years – Combined correctional service and probation orders, s.8(1) *Community Justice Act 1999*.

APPEARANCES:

For the Prosecution

Mr Wilisoni Kurisaqila DPP

For the Defendant

Mr.Knox Tolenoa (Pleader)

CHIEF JUSTICE:

1. Brnton Namaduk, you have pleaded guilty to the offence of unlawfully and indecently dealing with a girl under the age of 17 years, contrary to section 216 of the Criminal Code of Queensland 1899 (1st Schedule), adopted. The offence carries a maximum term of imprisonment of 2 years. The term “deals with” includes doing any act which if done without consent would constitute an assault.
2. At about 3am on the morning of 11th of June 2011 the complainant who was aged 15 years, and a girlfriend who was aged 14 years, and some other friends were sitting at a bus bay when you arrived on your motorbike and offered the two girls a ride. The complainant sat in front of you and her girlfriend sat behind you on the motorbike. You drove the motorbike for a while and then slowed down and the girlfriend of the complainant got off the bike. You then proceeded with the complainant, alone, riding with you. After travelling for some distance together you drove into the bush where you stopped and both of you got off the motorbike. You then told the complainant to take off her clothes and sit on the bike. You then performed cunnilingus on her, and after asking her to lie on the ground then had sexual intercourse with her.
3. After a short time you took the complainant back and dropped her off close to her home. She got home at about 6am and her mother asked where she been. She told her mother that she been out training. She then had a shower.
4. At about 5pm that day the complainant spoke to her cousin and told her what occurred between you and the complainant and the cousin, without the knowledge of the complainant, went to the police. Police responded to the cousin’s call and they spoke to the complainant. She gave a statement to the police, as a result of which you were arrested and charged on 13th June 2011. A medical examination was conducted on the complainant, which disclosed no injuries.
5. Although you were originally charged with a more serious offence, the prosecution entered a nolle prosequi (“No Bill”) withdrawing that charge. Instead, the Director of Public Prosecutions substituted the present offence under section 216 of the Code.
6. The prosecution does not allege that the sexual conduct which took place between you and the complainant was without her consent.
7. The Director of Public Prosecutions alleged only one prior conviction, which you admitted, for assault occasioning bodily harm, contrary to Section 339 of the Criminal Code. On conviction for that offence, on 23rd July 2009, you were sentenced to 9 months’ imprisonment. That however was not your only prior conviction. The Chief Probation Officer, at my request, prepared a pre-sentence report which very thoroughly investigated you background. Her investigations disclosed that in 2007 you were sentenced to three week’s imprisonment for contempt of court, and were given a suspended sentence of 6 month’s imprisonment for drunk and disorderly, and were sentenced to six months’ imprisonment for serious assault, which sentence was suspended upon you entering a good behaviour bond for 12 months. Furthermore, in March 2009 you were sentenced to six months imprisonment for common assault and offensive behaviour.

8. It is very unsatisfactory that your true list of prior convictions should only have emerged in that way, and not been known and announced by the Director of Public Prosecutions. I do not hold it against you that the true picture did not emerge earlier. It is the responsibility of the prosecution to correctly inform the court on such matters and to give notice to the accused person of prior convictions that would be alleged. You admitted the additional prior convictions that the Chief Probation Officer discovered.
9. The Director of Public Prosecutions submitted that although the offence here is a misdemeanour, the court should nonetheless have regards to the need to deter such conduct with underage girls. He submitted that such underage sexual activity is common in Nauru, and should be discouraged. In this case the offender was aged 24, was in a long term relationship and was father of a child. The victim was 15 years of age.
10. Mr. Tolenoa, your pleader, extended an apology to the complainant on behalf of his client. Unfortunately, the complainant was not in court to hear that apology.
11. Mr Tolonoa submitted that notwithstanding your prior convictions the circumstances of the present offence did not warrant a sentence of imprisonment.
12. Mr Tolonoa gave me some details as to your background, but I gained much greater insight from the report of the Chief Probation Officer and I combine both sources for this summary.
13. You have never worked, and left school after Form one. You are one of 28 children of your father from his two marriages. You rely on fishing to provide for your family. Your father said you were a great helper to you family. You have been in a de-facto relationship for three years. You have a three year old child. You live in unsatisfactory accommodation at Location and have a poor standard of living. Your partner is employed by Ronphos as a security guard and earns \$190 per fortnight.
14. I called for a pre-sentence report from the Chief Probation Officer. That report was very helpful. Investigations reveal that you are a somewhat angry person, but you showed genuine remorse for this offence. You wanted to be given a chance to prove that you are capable of staying out of trouble and looking after your family. You are fortunate that your partner stands by you. Although the Chief Probation Officer graded you as a medium risk to the community of committing offences, she nonetheless concluded that you were a suitable candidate for a probation order and/or a community service order. I agree with that perceptive assessment.
15. Having considered that report, and notwithstanding your prior history of offending, I consider that this is an appropriate case for a penalty other than imprisonment. I believe that you would benefit from supervision by way of both probation and a community service order. Such a mixed order is authorised by Section 8 (1) of the *Criminal Justice Act 1999*. The community would also benefit by you being supervised and given guidance in this way.
16. The order of the Court is that you, Brnton Namaduk, be convicted of the offence of indecent dealing with a girl under the age of 17years. I impose a community service order on you pursuant to Section 22 (1) of the *Criminal Justice Act 1999* and you will be required to perform 150 hours' service in a community service group for a period of 12 months. In consultation with you, the Controller of your group will determine how those hours will be allocated over the 12 months.
17. I further order, pursuant to section 8 (1) of the *Criminal Justice Act 1999*, that upon the expiry of the period of community service you be subject to probation for a further period of one year. Such probation is to commence on the date of expiry of

- the community service order.
18. The conditions of probation shall be those set in Section 11 (1) of the *Criminal Justice Act 1999*.
 19. Mr Namaduk, the Chief Probation Officer will meet with you to discuss the performance of the community service order and also to discuss the terms and conditions of probation that will follow completion of the community service order. You are required to follow the lawful instructions of those supervising you under those orders.
 20. You are being given a chance by the court. Your list of prior convictions suggests this is your last chance. I hope you demonstrate that you deserved it.

13 March 2012
Geoffrey M. Eames AM QC
Chief Justice