

NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS OF COMPLAINANT(S) PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

**IN THE DISTRICT COURT
AT DUNEDIN**

**I TE KŌTI-Ā-ROHE
KI ŌTEPOTI**

**CRI-2024-012-000061
[2024] NZDC 28707**

NEW ZEALAND POLICE
Prosecutor

v

SAMIUELA PAUNI KOULA VATUVEI
Defendant

Date of Ruling: 28 November 2024
Appearances: Sergeant J Somerfield for the Prosecutor
R Daysh for the Defendant
Judgment: 28 November 2024

**RULING OF JUDGE M J CALLAGHAN
[ON S 106 APPLICATION]**

[1] Samiuela Pauni Koula Vatuvei, you pleaded guilty to two charges of indecent assault occurring on 10 December 2023 in Dunedin against two separate and unrelated victims.

[2] The facts to which you pleaded guilty are that on the night of 10 December 2023 the two victims were socialising together celebrating a recent graduation in a bar in Dunedin called Vault 21. You were also present at that bar with associates.

[3] In respect of the first victim, you were standing at the front of the bar near the open windows talking to an associate. She was nearby standing near talking to friends. You turned, approached her from behind and as you passed her you grabbed her buttocks with your right hand moving your fingers towards her genitalia. In response to the sexual assault she immediately spun around and threw the drink she was holding over you. She was shocked and appalled by the sexual assault on her by you and she yelled at you in disgust. You did not respond and walked away. She was so distraught by your actions that she asked a friend to take her home.

[4] A short time later you were standing near the rear of the bar not far from the toilet area. The second victim was looking for a friend in the same vicinity and as she was making her way slowly through the crowd she saw you standing directly in front of her. You looked directly at her and you reached out your hand towards her and in an upward motion forcibly ran your hand over her vagina area. Shocked by what had just happened, she immediately stopped, yelled angrily at you and slapped you around the face. You walked away making your way through the crowds towards your associates who were standing at a table. She followed you yelling at you as you walked away. She informed security staff who removed you from the club.

[5] You were arrested on 10 January 2024 and when spoken to by the police you did not make any comment. You are 25 years of age, you have not previously appeared before the Court.

[6] You seek a discharge without conviction and I have read the submissions filed. You say that you were attending a wedding function, that you had consumed an enormous amount of alcohol and you have got little or no recollection of the events that occurred.

[7] You pleaded guilty after a period of time initially having a deemed not guilty plea entered but you did then plead guilty. You were prepared to do restorative justice and you do not have any previous convictions.

[8] The victims' statements which have just been read, the first victim says that she has had social isolation for a period of time as a result of what occurred. She was

scared that there would be further contact with you which had an impact upon her family, she is anxious when she is in any social situations. You ruined the day of her graduation and the assault she says, quite eloquently, is that it is now linked to that achievement and to the start of her professional working life. So, the effects upon her are not just momentary, they are long lasting. She is also very cautious in social situations and also in the work environment.

[9] The second victim was angry that you believe that your actions were acceptable. She says that she still has vivid memories of you and your actions and that leads her to have shame, fear and sadness. She has also suffered a loss of confidence in her social setting, the loss of confidence in males and while she is no longer in the Dunedin region, she is concerned about her associates who still reside in this city. She feels shame and a sense of isolation from her family because she shuts down when she has to talk about the incident and the case with her family.

[10] You did offer to go to Project Restore and have restorative justice but that was never convened.

[11] Your counsel, who has spoken to her submissions today, says that this is low-moderate gravity in the sense of indecent assaults. She acknowledges that the touching is in or near the genital region but was over clothing. She says there is no breach of trust and it was in a public setting, so the victims were not as vulnerable as they might have been in a private setting and that the victims were young adults as opposed to children. She acknowledges that there were two victims on the same night in the same location.

[12] In respect of your personal circumstances, she says that a guilty plea, that you are remorseful, that you have taken steps to rehabilitate by going to ongoing counselling and support through your church, and I have read the reports that have been filed from the Moana House programme and also the letters that have been filed on your behalf.

[13] You have also been doing two hour counselling sessions and you are still doing those to address any alcohol issues that you might have because you were intoxicated when this took place.

[14] She says that you have prior good character and that you have been compliant with bail conditions and a curfew, so that the gravity of the situation of the charge becomes low at a low level and very low is the submission that she makes when I weigh up all of those factors.

[15] The consequences of a conviction, she says that you are likely to be deported. I have read the affidavit of Mr Ryken who says that you, more likely than not, will be served with a deportation notice and if that is served then it is likely that you would be deported. That is because you are on a resident visa coming here on 30 June 2022 and that therefore the fact that you are liable to be considered for deportation means that the consequences are out of all proportion to the gravity of the offending.

[16] He says that even though you might be able to argue that you were of good character when you came into the country, if I convict you then you would not have available to you the good character grounds to seek a waiver of the deportation notice and so therefore the probability of deportation becomes higher.

[17] She also says that if you are deported, all of your support persons are now in Dunedin and that you have no support network in Tonga. You are doing an apprenticeship and that will have an impact on the employer if you were deported and also the fact that you would be unlikely to be able to return to New Zealand in any short term.

[18] When I weigh up she says all of those consequences, then the consequences are out of proportion to the gravity of the offending.

[19] The police submissions say that while it might be considered a low level indecent assault in terms of indecent assaults which come before the Court, nonetheless would have a starting point somewhere in the region of four to five months

imprisonment and even with a guilty plea credit and your previous good conduct, the offending is still able to be classified as a moderate level.

[20] The fact that you would be deported, the police say that is the only consequence that is going to impact upon the assessment of the gravity. The other consequence is conviction and perhaps any loss of face amongst your church would be normal consequences of a conviction but the fact that you are liable to be deported they say, is not necessarily of such great moment that it outweighs the consequences of the offending, particularly the nature of the offending.

[21] In assessing the gravity of the offending, I take into account the following factors. Firstly, the women were in a situation where they were celebrating an important milestone in their life's journey, they had celebrated graduation from courses, they had been with family and friends and were enjoying, in effect, the fruits of their labours by having celebratory drinks.

[22] While you had been attending a wedding and had obviously consumed a significant amount of alcohol, you chose to firstly grab the buttocks of the first victim and move your hand towards her genital region. She responded by pouring a drink over you and that ruined her night.

[23] You were not to be deterred by that however, because a short time later you then groped another female when she was directly looking at you standing in front of you in a social situation and that resulted in her berating you and slapping you and you being removed from the bar.

[24] I do not categorise the two incidents as being at the low end of the spectrum. I consider it to be moderately serious and I base that assessment on the fact that there is a decision of the High Court recently called *Boys v Police*.¹ In that case there was a person at a restaurant, previous good character, he was intoxicated but that he was trying to touch the breasts of two of the waitresses and he did that on three occasions, twice to one and one to the other. The impact for him was that there was a real risk of him being deported.

¹ *Boys v New Zealand Police* [2024] NZHC 2132.

[25] This touching of the genital region, in my view, is a more serious impact than touching the breast area because of the touching and the proximity to the genitalia as opposed to the touching of the breasts. So, the level which I have to assess first, is that it is at least at a moderate level.

[26] Your personal circumstances have to come into play there. Your personal circumstances are that you have no previous conviction, you pleaded guilty, you are clearly remorseful, you have taken rehabilitation steps by support in counselling, including going to weekly counselling sessions. When I put those matters into the mix I am still at a situation where the offending is only just below the mean point of a moderately serious assault, particularly when I take into account the effects on the victims which we have heard today in the victims' statements.

[27] The consequences for you are that you, according to Mr Ryken, are liable to be served with a deportation notice, that you are not likely to be successful in any appeal if a deportation notice is given and you are likely to be deported. Does that consequence outweigh the seriousness of the offence? I do not believe it does.

[28] The deportation if it does occur, is one which is a consequence of offences which have occurred in a situation where two persons were entitled to feel as if they were free in a public setting from being assailed in such a manner.

[29] Accordingly, I am not prepared to grant a discharge without conviction. You will be convicted of these offences.

[30] There is an application for final suppression of your name. The high threshold for final suppression of your name, in my view, is not reached. The incidents which occurred, the fact that it occurred in a public place and the fact that you have managed to maintain your employment in my view, do not show that you can show extreme hardship to me and that is not met and there will be no final name suppression of your name.

[31] In terms of penalty, you are in employment, you have taken steps to rehabilitate yourself, undergo counselling, there is no punitive aspect required as such in terms of

sentencing you to community work or supervision because you have taken those steps yourself.

[32] However, I am going to convict you and order that you pay each victim the sum of \$750 by way of emotional harm repayment. While it will not change the harm that has occurred to them, it is a token gesture by you towards them to acknowledge what you have done or caused them. I order accordingly, in respect of both complainants.

Judge MJ Callaghan M
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 05/12/2024