

WARNING: reporting restrictions apply to the contents transcribed in this document, because the case concerned is a sexual offence. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE COURT MARTIAL

held at

MILITARY COURT CENTRE, BULFORD

on the

28th February 2025

in the case of

REX

V

25134399 Sergeant Tauhakau Viavialevu

1st Battalion Welsh Guards

JUDGE ADVOCATE

Judge England

Assistant Judge Advocate General

SENTENCING REMARKS

JUDGE ADVOCATE: Sergeant Viavialevu, you may remain seated for now. We are sentencing you to two offences of rape and sexual assault by penetration committed on 11th day February 2023 against [name redacted]. You were convicted of those offences after trial. As a result of that conviction and a sentence we impose today you will for the rest of your life be on the sexual offenders register. That means that you must keep the police informed at all times of your personal particulars, the address at which you are living and any alteration in the name that you are using. You will be given full details of those requirements at the end of this hearing and those provisions will come into force when you

are eventually released from custody. I must further inform you that the offences of which you have been convicted are ones which will or may make you subject to barring from working with children or others. That is not a punishment of the Court it is a consequence, and you will be told of those restrictions under the Safeguarding of Vulnerable Groups Act by the Disclosure and Barring Service.

We do consider that a service compensation order is appropriate in this case. You have committed these offences, and you have the means to pay. We make that service compensation order in the sum of £11,000.00. That is the start point in the guideline tariff. We do not consider that we can go beyond that; we have no information as to what the criteria are for any increase neither do we suggest that a greater amount is not warranted in this case. But on the limited information that we have available to us we do think that is an appropriate amount for a starting figure. We order that you pay that within 90 days. You will have the means to pay because you will receive a terminal grant and you will get 12 months in default of payment. What does that mean? It means if you do not pay that amount of money you can be ordered to serve an additional 12 months in prison on top of the sentence that we impose today.

In reaching our sentencing decision we have had regard to the following guidelines. The Sentencing Council guideline on rape and the separate guideline on sexual assault by penetration, the guideline on totality and the Judge Advocate General's Sentencing Guidance Version 7. We have been assisted by a very detailed and helpful pre-sentence report and by prosecution and defence sentencing notes. We have listened very carefully to everything that has been said on your behalf including your positive character references. We have also heard about the impact that your offences had on [name redacted] in her personal statement. You are 44 years old; you are single but, in a relationship, you have two children from a previous relationship that you have some contact with. You have served for almost 24 years and in relation to these offences you have spent 29 days in Service custody. Those 29 days will count towards your sentence.

Dealing then with the facts. In February 2023 you were in Belize on a three month posting, you were part of range control. As a medic [name redacted] often accompanied range control to the jungle to provide medical cover. On occasion she was paired with you in a vehicle. You both got on well and you were both interested in exploring Belize during time off and, as a result of conversations that you had, an arrangement was made between you to travel together to one of the islands on the weekend of 10th February 2023. You shared the cost of the hire car and travelled part of the way on the Friday, you being the driver. One of the arrangements that you made was that you would sort out the accommodation and pay for it and she would pay for food and drink. When you made an overnight stop, you booked a hotel, and it turns out the only room available was a double room with one bed.

You were no more than friends, there had never been anything romantic between you and [name redacted] agreed to share the room and the bed with you believing that she could trust you as a friend. She had previously shared rooms and beds with others to save cost, it is not an uncommon thing to do, and nothing had happened on those other occasions to cause her concern and there was nothing so far on this trip or in her dealings with you at all that could or should have caused her concerns on this occasion. You were friends. But sadly, this occasion was to be very different from those other times when she had shared a room with others.

You both had dinner together and there was some drinking that you did together. We are sure that you were intoxicated by the time you got back to the room. That provides no defence and no excuse whatsoever for what you did. In bed you started to spoon [name redacted] kissing her neck. She moved away from you; she asked you to stop but you did not. You put your hand under her shirt onto her breasts, you were kissing her stomach, you pulled down her pyjamas and underwear. You penetrated her vagina firstly with your fingers and then with your penis when you raped her. Throughout this she was repeatedly telling you to stop trying to push you away and begging you to stop. She had no chance; you were significantly bigger and more powerful and certainly determined. When she tried to push you away you pushed her hands away and you, at one point, held her hands down to stop her resisting you. You were quite forceful to get what you wanted. After some time of raping her, you stopped without ejaculating.

[name redacted] got out of bed unsure what to do. She messaged a friend who was online and told her in terms what had happened. She did not use the word rape, she did not need to, her friend understood the nature of what she was saying and provided some support. Later that morning she messaged, and video called her best friend and said again in terms that you had raped her. And although much was made at trial of the fact that she did not use the word rape herself in either of those conversations we can well understand how hard it must be for someone who has gone through that experience to say or write that word. Being two to three hours away from camp in a foreign country and you being the driver [name redacted] did not feel that she had any choice but to continue the weekend insisting on separate rooms the next night. When she returned to camp, she did not feel able to report what had happened but she did ask not to share a vehicle with you again during her attachment after you had acted inappropriately towards her for a second time. When she returned to the UK she did report it. You were interviewed after caution. You accepted spending the weekend with her sharing a bed but denied that any sexual activity had taken place. That was not true. You took advantage of the position you found yourself in and you brutally raped her ignoring her pleas for you to stop.

The impact of your offending on [name redacted] has been severe. She has blamed herself for putting herself in that position although we hope in time, she will accept that she was not to blame. She was entitled to think that you would not abuse her trust in you as a Sergeant and as a fellow Service person. Simply because someone agrees to share a bed or a room as friends is no indication that there is any expectation there will be any sexual activity. [name redacted] became distant from her friends and family not feeling able to share full details of what happened so as not to burden them with it and getting snappy with her friends over minor matters which was out of character for her. It led to her feeling isolated. Her sleep was disturbed due to remembering that night. She did not feel safe to go to sleep seeing your face every time she closed her eyes. Her mental health declined to such an extent that she had to seek help and she has subsequently been diagnosed with PTSD. She was downgraded. That affected her career and in turn that affected the operational effectiveness of the Armed Forces.

The treatment she got was itself traumatic having to repeatedly talk about what you did. You affected her thirst for travel, her trust in the chain of command, her relationships with others. You have affected almost every aspect of her life. Although she is trying to move on with her life it is clear that she is still affected by what happened and she feels that she will always feel the impact of your actions. We have no difficulty in finding that these effects amount to severe psychological harm and that your actions have had a detrimental effect on the operational effectiveness of the Armed Forces as a result. [name redacted] showed great courage to report these matters, to give evidence before this Court and we hope that that same courage helps her to continue to make a recovery from what you did that night albeit that she feels that she will never fully recover.

Dealing with dismissal you have raped a colleague and a friend and in doing so you have disgraced your rank, your cap badge, and the Army. We have no hesitation in dismissing you. There is no place in the Armed Forces for those that rape their colleagues. The wider impact of such offences on operational effectiveness in terms of loss of trust in male colleagues, loss of trust in those with rank, the effect on recruitment and retention of women to the Armed Forces and in them achieving their full potential when they are in the Armed Forces cannot be understated. In our view an element of deterrence is an important sentencing consideration in offences such as this.

Dealing with categorisation of the offence the prosecution submit that culpability falls within A due to an abuse of trust placing reliance on the fact that you are a Sergeant and as a Sergeant you had a duty of care towards [name redacted]. On the other hand, Mr Hand submits that any abuse of trust that there was is not of the type envisaged in the Sentencing Council guidelines, those Council envisaging a more delineated form of trust relationship such as between a teacher and pupil. We can think of other example, coaches and people they are training, people that look after young people in services

such as Guides and Scouts and those that they are looking after. There is very clearly an abuse of trust when anyone commits a rape against someone else. There is an abuse of the mutual bond of trust that Service personnel must feel that they have in each other not to commit offences such as this against them. But we agree with Mr Hand that the abuse of trust is not that ~~is~~ envisaged by the Sentencing Council guidelines.

That is not the end of the matter though because the Judge Advocate General's Sentencing Guidance at page 59 sets out a list of Service factors that may increase culpability and harm. Included within the Service factors which may increase culpability is the use of rank or position to commit the offence. We have considered that very carefully, but we take the view that although you were a Sergeant and as such you were senior to [name redacted] you were on this trip as friends and as such we do not consider that that factor is met. However, we do consider the fact that you were a Sergeant is an aggravating factor made more serious as your rank affected [name redacted] decision and ability to report it. She feared that you would not be dealt with appropriately because you were a Sergeant, she feared that she would not be believed because it was her word against that of a Sergeant.

Any offence of this nature, as I say, does not just break the bond of trust between individual Service colleagues it shatters that bond of trust into pieces. And that comes with wide ranging consequences both in terms of [name redacted] ability to trust those with rank and the impact upon other junior ranks at the Sergeants that they look up to, the ones that they aspire to be, that they should be able to trust and feel safe with may commit such offences. So, we do consider that breach of trust in those respects is an aggravating factor but not one increasing culpability.

In terms of harm the prosecution submits that harm falls within category 2 due to the severe psychological harm suffered by [name redacted] principally but limited to PTSD. Mr Hand sought to persuade us otherwise but our view is that we have no difficulty on finding that the harm suffered by [name redacted] does amount to severe psychological harm for the reasons that we have categorised. We therefore consider that this offence falls within a category 2B. For the rape offence the start point for a category 2B is eight years with a range of seven to nine. For the sexual assault by penetration the start point is six years with a range of four to nine. For obvious reasons we will take the rape as the lead offence with the sentence for the other offence to be concurrent.

Factors increasing seriousness; as already mentioned you have held the rank of Sergeant, you have been in the Armed Forces for almost 24 years, you know the standards that are expected of the persons in the Armed Forces, and you know that the standards of a Sergeant are expected to be higher than those of lower rank. We also consider that your rank of Sergeant aggravates the offence to the

extent that because you were a Sergeant that affected [name redacted] ability to report it sooner than she did, and we understand that completely. We consider the age difference is a factor increasing seriousness. You were 20 years older than her; you were old enough to be her father. As stated, abuse of the mutual trust and respect is an aggravating factor. Any offence such as this adversely affects the reputation of the Armed Forces and that can have wider ranging impact such as on recruitment and retention and that increases the seriousness of this offence. And in terms of the location of the offence we do find that that is a factor, perhaps not the most important factor increasing seriousness but we note that it was far from camp, far from her support, it was in a foreign country, she had not been in that country very long, only for about a month, and she was reliant on you to get back to camp where she could feel safe. So, to that extent we do consider that the location of the offence increases, albeit to a small degree, seriousness. You were under the influence of alcohol, and you have previous convictions, and we note that this was at least your third drink related offence. Your first offence that was drink related was drink/driving, your second offence was ABH in a domestic context in 2019 and we do consider that to be a relevant offence. Rape is an offence of sexual violence and in this case the sexual violence against a female, the previous matter was violence against a female and was recent at the time of committing this offence. So, all of those matters we consider increase seriousness.

In terms of mitigating factors, you have served almost 24 years in the Armed Forces, for a large part until latterly mainly unblemished bar some relatively minor matters. You have several operational tours including Northern Ireland, Iraq, Kosovo and Afghanistan and that is service that you can be proud of. Your character references show that you are a valuable professional soldier but there is more to being a Sergeant than performing at a high level professionally. And in these offences, you failed to meet those high standards letting down your rank, cap badge and Service. Now, we are sure that your service will have been taken into account when you were not discharged for the ABH offence notwithstanding that a custodial sentence was imposed. But in any event in the context of this offence we do not consider that your service weighs greatly in your favour. We also note that we are dealing with two offences not one, both of which on their own warrant a substantial sentence of imprisonment albeit that they happened on the same occasion. But it is important to note it because it was made clear to you when you committed the first offence of assault by penetration with your fingers that [name redacted] wanted you to stop. You could have stopped at that point. You did not, you went on to rape her committing the second offence.

Given the number of aggravating factors, particularly the Service factors which are not incorporated into the Sentencing Council guideline, we do consider that we are entitled to go outside of the range to reflect those factors which far outweigh any mitigation which you might derive from your service

in the circumstances of this offence. And so we move outside the range to a sentence of ten years. For the assault by penetration offence the sentence will be seven years concurrent. In terms of dangerousness in order to make a finding of dangerousness the Court must find there is a significant risk that you will commit further specified offences and in doing so you will cause serious physical or psychological harm to one or more people. In this case the specified offences may be violence towards women or maybe sexual violence towards women and if you commit any of those offences you are assessed as high risk of causing serious physical or psychological harm.

And we are greatly assisted by the information provided and the assessment provided within the pre-sentence report from a very experienced report writer. You pleaded not guilty to these offences, and you continue to maintain that. You pleaded guilty to the ABH offence but in the pre-sentence report it is clear you do not still accept full responsibility for that offence putting the blame on your then partner and making excuses as to why you felt you had to plead guilty. As part of that sentence, we note that you were put on the Building Better Relationships programme a large part of which involves how you relate to others particularly females. Whilst you did engage in that programme some concerns remained as to your attitude towards females and your sense of entitlement in relation to females. Sadly, those concerns came to bear in these offences. So, even engaging in that programme did not prevent you on this occasion. You are either not willing or able to accept responsibility or accountability for your actions. Unless that changes, we consider that you are dangerous within the definition. However, we do not consider that an extended sentence is required in your case given the sentence we have imposed as it has a significant licence period.

You will serve two thirds of your ten year sentence in custody with the remainder on licence. You must keep to the terms of your licence and commit no further offence, or you are liable to be recalled to prison and then may serve the rest of your sentence in custody.

Colonel Carmichael, is there anything that we need to mention that we have not mentioned already, any aspect of the sentence that has not been explained by ~~for~~ me?

COL CARMICHAEL: Your Honour, I think you have covered everything. I was just checking that you have mentioned the time already spent in Service custody, 29 days.

JUDGE ADVOCATE: The 29 days. We have mentioned that they count towards sentence at the very beginning.

COL CARMICHAEL: Thank you.

JUDGE ADVOCATE: Mr Hand, anything that you feel that you need to add?

MR HAND: Your Honour, no. I do not know whether or not the surcharge provisions apply in this jurisdiction.

JUDGE ADVOCATE: They do not, Mr Hand.

MR HAND: They are not required. Thank you.

JUDGE ADVOCATE: Thank you, Mr Hand. Sergeant Viavalevu, would you stand? The President will announce the sentence of the Court.

SENTENCE

PRESIDENT OF THE BOARD: Sergeant Viavalevu, on each charge you are dismissed from HM Forces. For charge 1 you are sentenced to seven years imprisonment, for charge 2 you are sentenced to 10 years imprisonment. Those sentences are concurrent. You will pay a service compensation order in the sum of £11,000.00. Court Orderly, march him out.