

IN THE HIGH COURT OF JUSTICE

BRITISH VIRGIN ISLANDS

(CRIMINAL JURISDICTION)

CRIMINAL CASE NO 21 of 2007

THE QUEEN

and

CLYDE CONRAD LINTON

Appearances:

Mrs. Grace Henry-McKenzie, Senior Crown Counsel and Ms. Christilyn Benjamin, Crown Counsel for the Prosecution

Mr. Kevon Swan for the Prisoner

2007: November 1st, 9th, 14th and 21st

Judgment on Sentencing

(Unlawful Sexual Intercourse with a girl under the age of 16 – Guilty Plea – 15 year-old girl – Criminal Code 1997 s119 (1))

- [1] **Joseph-Olivetti, J:** The Prisoner, Clyde Conrad Linton was charged with three counts of unlawful sexual intercourse with a girl under the age of 16 years contrary to section 119 (1) of the Criminal Code 1997 ("the Code"). He pleaded guilty on 1st November 2007 to all three counts. A sentencing hearing commenced on 1st November but I adjourned the matter to 9th November to allow the Crown to submit a victim impact assessment statement and Mr. Swan, Learned Counsel for the Prisoner, to provide a medical report. The medical report was not obtained on time as anticipated and the Court granted a further adjournment. The matter was completed on 14th November. I reserved judgment and pronounced sentence on 21st November. These are my full reasons.

The Facts

- [2] The gist of the facts as given by the Prosecution is as follows. The victim was 15 years old at the time of the offences and a Form 2 student at a high school here. Sometime in 2006 the Prisoner gave the victim a lift in his vehicle. On their way he enquired if she had a boyfriend. She told him she did not and he expressed an interest in having a relationship with her. She told him that she would think about it.
- [3] Sometime in February 2007 the Prisoner again gave the victim a lift to church and he gave her his business card with his cell phone number. The victim telephoned the Prisoner the next morning. During that conversation the Prisoner indicated that he was interested in having a relationship with her and he questioned her as to her age, which school she attended and what class she was in. She allegedly told him that she was 15 years and that she was in Form 2 at the high school. The Prisoner through his Counsel disputed that and submitted that the victim told him that she was 18. (Having seen the victim this is not difficult to believe as she looks much older than her years but I have no doubt that any closer acquaintance with her would immediately have revealed her true age.)
- [4] Thereafter, she telephoned him frequently and subsequently the Prisoner began giving lifts to the victim and visiting her at school regularly to give her lunch money. The Prisoner had sexual intercourse with the victim on three occasions in March 2007. This was only brought to the attention of the authorities when the victim's mother became aware of the situation. Nevertheless, after the Prisoner was charged he continued being intimate with the victim with the victim's full consent and as a result she is now about 6 months pregnant.

Mitigation

- [5] The following facts about the Prisoner were gleaned from Mr. Swan's plea in mitigation. The Prisoner is 36 years old, a plumber and carpenter by trade. He also does taxi work. He has lived in the British Virgin Islands "the BVI" for some 25 years having come from Dominica. He is divorced and has two minor children. He assists with their maintenance. The Prisoner was an avid football player and he injured his right knee whilst playing. As a result he had to undergo surgery and now has screws in his knee. On the 1st November

Counsel explained, clearly on instructions, that the Prisoner has to change those screws ever so often, that this is normally done in the USA because it is more economical and that the Prisoner's leg is unstable such that in all circumstances he would be severely disadvantaged if sent to prison. However, Counsel readily conceded that the medical report which he subsequently obtained does not bear out the instability or the need for the screws to be changed and I note that the doctor, albeit not his doctor in the USA, has indicated that he can care for the Prisoner here. Thus, the main argument for a non-custodial sentence is without foundation.

- [6] Learned Counsel for the Prisoner emphasized that the Prisoner is fully aware that he has committed serious offences and that he pleaded guilty at the earliest opportunity. Counsel asked the court to consider in particular that the Prisoner has no previous convictions for similar offences and that he has taken responsibility for the victim's unborn child. Counsel asked that a non-custodial sentence be imposed in view of the Prisoner's antecedents and his commitments to the victim and their child.

The Crown's Submissions

- [7] The Crown helpfully submitted the local cases of **R. v. Jason Glasgow (2000)**, **R. v. Benson Thomas (2004)**, **R. v. Clinton Hamm (2004)**, **R. v. Shem Jackson (2004)**, **R. v. Kerril Gilbert (2006)**, and **R. v. Brian Nibbs (2006)** as guides in considering the appropriate sentence to impose here. The case of **Winston Joseph v R**¹ was also submitted.
- [8] The Crown contended in essence that the aggravating factors outweigh the mitigating factors. Ms. Benjamin identified the aggravating factors as the age difference, the Prisoner's previous convictions and the frequency with which the offences were committed. Counsel identified the only mitigating factor as the guilty plea.

¹Criminal Appeal No. 4 of 2000 (St. Lucia) **Winston Joseph v R**,
Criminal Appeal No. 8 of 2000 (St. Lucia) **Benedict Charles v R**,
Criminal Appeal No. 7 of 2000 (St. Lucia) **Glenroy Sean Victor v R**.

Victim Impact Assessment

- [9] The court, being mindful that it ought not to speculate on the effect of the crime on a victim² requested a victim impact statement and a statement from the victim's mother. The victim in summary said that she and the Prisoner are partners and as a result she got pregnant. She says that the Prisoner has been supporting her financially and that he has opened an account at a department store so that she can purchase items for the baby although she has not utilized that facility to date. She expressed regret at these proceedings.
- [10] Her mother however has stated that financially it will be a burden on her as presently the family is struggling to make ends meet. She admits that the Prisoner has given some measure of financial assistance to the victim but in any event, doubts the Prisoner's good intentions in terms of financial support for the child.

Court's Considerations

- [11] The maximum penalty which this Court can impose for this offence is 7 years. However, the law has invested a wide discretion in the court on sentencing to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case. In sentencing an offender one is guided by the aims of sentencing, the primary goals being punishment, deterrence, rehabilitation and the protection of the society. I am also mindful that if a custodial sentence is imposed that it should be as short as possible to achieve the aims. See Lord Woolf CJ in **R v Cooksley**.³
- [12] In considering my sentence I am also required to engage in an evaluative process by weighing the mitigating and the aggravating factors. This is the approach endorsed by the Court of Appeal in **Winston Joseph v R** which laid down general principles on sentencing for sexual offences.
- [13] In that case Byron, C.J. said (para. 17) that the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors and that the tendency would be towards a higher sentence if the aggravating factors are outweighed by the mitigating factors and vice versa. He also listed the more common aggravating and

² See Lord Woolf C.J. Practice Direction [2001] 4 All E.R. 640

³ [2003] 3 All ER 40 at page 49

- mitigating factors. Of the aggravating factors mentioned I find the following can be identified in this case:- (i) the offence has been frequently repeated; (ii) the victim has become pregnant as a result of the crime, and (iii) the age difference.
- [14] In addition I note his antecedents. He has 9 convictions for summary offences, 3 of which can be regarded as minor traffic violations. Of the others, 4 appear to arise from one incident and concern common assault, trespass, damage to property and being armed with an offensive weapon. Albeit he has no offences of a similar nature, he cannot be treated as a first time offender.
- [15] As mitigating factors I take account of the following: - the Prisoner pleaded guilty at the earliest opportunity (generally a guilty plea entitles the offender to a reduction), he did not use any violence on the victim, all acts were consensual and he has no previous convictions of a similar nature although good character is only of minor relevance in offences of this nature. **See R v Billam.**⁴ He had the opportunity to escape from this jurisdiction but manfully returned to face his punishment. The victim has not suffered any emotional or psychological harm from the Prisoner's actions save what can be associated with being pregnant at such an early age. In this regard I note that she was fifteen and that she was undergoing counseling for similar behaviour.
- [16] However, the victim comes from a seriously disadvantaged social and economic background and the Prisoner's actions have guaranteed that she and their child will be further disadvantaged. She has been deprived of her proper education, she will have a child at 15 and what assistance either economical or emotional can she be expected to give that child? Clearly, in foisting himself on this young girl as her benefactor the Prisoner has done her an ill turn and has exploited her – her youth and her disadvantaged economic social condition. I have heard arguments to the effect that I should not incarcerate the Prisoner as he has undertaken to care for the child but if I accept this then it means that every offender has a way out if he impregnates his victim and offers to support the child. This cannot be acceptable. In accepting responsibility for one's child one is doing no more than one's ordinary duty.
- [17] I have reviewed the cases most helpfully cited by the Crown which indicate a range of sentence between 3 years to 4 years. I have also taken into account the guidelines in

⁴ [1986] Cr. App. Rep. 347

Winston Joseph v R which must be read with the necessary modifications having regard to the statutory maximum set out in the Code.

[18] In all the circumstances, in my judgment, a custodial sentence is warranted as punishment, to reinforce society's view that sexual acts with young children are reprehensible and that consent is not a defence and to serve as a deterrent both to the Prisoner and to others who might be minded to imitate him. The note must be sounded – paedophiles, whether disguised as benefactors or not are not to be tolerated. Accordingly, I hereby sentence you, Clyde Conrad Linton to 2 years imprisonment.

Rita Joseph-Olivetti
High Court Judge
British Virgin Islands