

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(CRIMINAL)

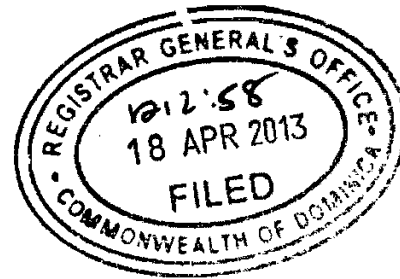
DOM HCR2012/013

BETWEEN

THE STATE

AND

WEBSTER EDMOND



[2013: February 14th]
[March 15th]

Appearances:

Mr. Gene Pestaina Director of Public Prosecution with Mr. Clement Joseph and Ms. Arthlyn Nesty State Counsel for the State.
Mr. Peter Alleyne for the Defendant

SENTENCING REMARKS

- [1] **STEPHENSON J:** Non-consensual sex is a traumatic and humiliating experience and, although the particular circumstances in which the rape takes place may affect the sentence imposed.
- [2] On the 2^{1st} September 2012 the defendant Webster Edmond was indicted for the following offences:
Count 1: Kidnapping contrary to section 65 (a) of The Offences against the persons Act.¹
Count 2: Abduction contrary to the provision of section 22(1) (b) of the Sexual Offences Act²
Count 3: Indecent Assault contrary to the provisions of section 13 (1) (b) of the Sexual Offences Act
Count 4: Unlawful Sexual Intercourse contrary to the provisions of section 8(1) (a) & (b) of the Sexual Offences Act³
Count 5: Possession of Ammunition with intent to endanger life contrary to section 12(1) of Firearms Act⁴
Count 6: Possession of a firearm with intent to endanger life contrary to section 12(1) of Firearms Act⁶
- [3] The defendant was arraigned on the 25th of September 2012 and pleaded not guilty. His trial date was set for the 6th November 2012 which trial date was adjourned to the 3rd December 2012 on

¹ Chapter 10:31 of the Dominica Revised Laws of 1990¹

² No 1 of 1998 of the law of the Commonwealth of Dominica

³ Op cit

⁴ Chapter 15:31 of the revised laws of Dominica 1990

⁵ Op cit

which day the matter was traversed to the January 2013 Assizes. The assizes commenced on the 15th January 2013 and the matter was fixed for trial on the 4th February 2013.

- [4] On the 4th February 2013 the trial commenced, the jury was empanelled, the defendant was put in the charge of the jury, the jury homily completed and the first witness, the Virtual Complainant gave her evidence in chief and there after she was cross examined by Defence Counsel and questioned by the jury. At the end of the virtual complainant's testimony, Mr. Peter Alleyne, Learned Counsel for the Defendant, applied to the court for the indictment to be re-read to the defendant whereupon he pleaded guilty to Counts 1, 4, 5 and 6. The Learned Director of Public Prosecution withdrew counts 2 and 3.
- [5] The Defendant is now before the court for sentencing.

Facts:

- [6] The facts as agreed by Learned Counsel for both parties and as disclosed from the sworn evidence of the virtual complainant can be stated as thus. On the 17th February 2011, SJ who was then 15 years old and a fourth form high school student was on her way to school at about 6:30 a.m. She was dressed in her school uniform. She did not return home from school that day and a report was made to the police who initiated a search and an investigation.
- [7] Whilst SJ was on her way to school, she told the Court that she was called by the defendant, initially that she did not respond, in fact she ran from the access road that she was walking on onto the main road. She was frightened. SJ we were told went back to the access road to see who it was that was calling her when the defendant called her by name. He grabbed her and forced her to accompany him. At this time the defendant was armed with a shot gun which terrified SJ.
- [8] The defendant took SJ across the Layou River on his back and then forced her to walk some 30 to 40 minutes south of her home to the heights of Clark Hall to a place called "Man Joe" which is a heavily wooded area south of the Layou River and above the cliffs.
- [9] From then on and for a period of forty days and forty nights the defendant kept SJ prisoner. He moved her from place to place on many occasions travelling usually by night, which terrified the young lady and made her skeptical about escaping. The areas that the defendant held SJ were on the flats high up in the mountains where the surroundings were heavily forested and very bushy.
- [10] Whilst SJ was held captive by the defendant they ate ground provisions which he got from the bush and on occasions she ate meat and drank soft drinks which he brought to her. Whilst in captivity, the virtual complainant hardly bathed and wore her school uniform and a shirt given to her by the defendant. Whilst she was in captivity, the defendant had sexual intercourse with SJ every day including the day he took her captive and sometimes twice a day.
- [11] At around the same time a missing person report was filed for the defendant who was 37 years old and an employee of a trucking service located close to where the virtual complainant lived.
- [12] Extensive searches and surveillance were conducted by the Commonwealth of Dominica Police Force and on Monday 28th March 2011, the defendant was observed by Police Officers with a bag on

his back and a twelve gauge shot gun in his hand. He was apprehended and arrested by the police and was found to be also in possession of five (5) rounds of ammunition. Upon his arrest the defendant led the officers to "Man Joe" where the virtual complainant SJ was found in an improvised tent.

- [13] A search was conducted of the tent and eleven (11) more rounds of ammunition were found and a quantity of what appeared to be *Cannabis Sativa*.
- [14] The virtual complainant told the court that during the time that she was up in the mountains in captivity she hardly bathed and in fact she was found in a disheveled condition with her hair all matted. She was taken to the hospital where she was examined by the doctor and she was later admitted to a Psych unit at the hospital for a short while.
- [15] SJ told the court that she still has nightmares and the terrible memories of her ordeal still affect her. She told us that she has had to return to the hospital and the Psychiatric unit on occasion. SJ has returned to school and is now in fifth form however she told us that her friends remind her of the incident and sometimes in school while she is in class she would see the defendant in her mind.
- [16] In her testimony before the court SJ described to the court some of the sexual encounters she suffered at the hands of the defendant.
- [17] The defendant confessed to kidnapping SJ and that he had sexual intercourse with her many times. He also admitted to being in possession of a twelve gauge shot gun and ammunition without being licenced to carry same.
- [18] A Pre-sentence Report and a Psychiatric Report was ordered by the Court which reports were provided by Mr. Leroy Morvan, Welfare Officer and Mr. Griffin Benjamin MD, MPH, MBA, DM Consultant Psychiatrist respectively.

Plea in Mitigation

- [19] Learned Counsel for the defendant Mr. Peter Alleyne in his written submissions on mitigation and sentencing urged the Court to take into consideration the contents of the Pre-sentence Report in support of his contention that the defendant was exposed to physical and emotional abuse as a child at the hands of his father whilst having a very loving relationship with his mother. Counsel urged the Court to consider that the defendant's motivation was to assist the victim in her troubles and that his actions were not an act of pedophilia. I hasten to say that I do not agree with Counsel's contention as to the defendant's motivation. It would be indeed a bizarre thought for an adult male to kidnap a young teenage girl from the road on her way to school and take her up the mountains into the bushes into the wilderness so to speak and subject her to continued sexual abuse and say he was doing it to assist her.

The pre-sentence report:

- [20] In the report the Welfare Officer interviewed a number of persons, the virtual complainant's mother, the accused and his mother, members of the community who knew both the virtual complainant and the accused and some of the teacher's at SJ's school.

[21] It is to be noted that regrettably the Welfare Officer was unable to conduct an interview with the virtual complainant due to feeling that since the incident she has become unstable and there was a fear that an interview with her would cause her more harm than good. However during her evidence in Court she spoke of how she felt since the incident and that has been taken into consideration in my sentencing decision.

[22] The accused expressed no remorse for his actions and is in some denial as to his responsibility in the matter at hand. In fact the accused seemed to be more concerned about his deprived liberty than with the offence for which he is before the Court. He is regarded by some members of the community as being a threat. The accused is said to have been subjected to physical abuse by his father and as having a difficult childhood with no academic achievement. It is noted that he is no stranger to law enforcement having had previous criminal convictions.

Considerations by the Court

[23] The law has vested a wide discretion in the High Court on sentencing to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case. At all times the punishment should fit the crime.

[24] This however is not an arbitrary exercise. The sentencing Judge is required to take into consideration the principles and objects of sentencing which are punishment, deterrence, rehabilitation and the protection of the society as applied by Chief Justice Hugh Wooding (as he then was) in 1964 in Trinidad & Tobago in the case of **Benjamin -v- R⁶** and later expounded by Lawton LJ in **R v Sergeant⁷** and judicially acknowledged and applied in the Eastern Caribbean in the **Desmond Baptiste case⁸**.

Count 1 – Kidnapping

[25] The defendant pleaded guilty to the offence of Kidnapping. Section 65 (a) of the Offences against The Persons Act says:

"Any person who, without lawful authority, forcibly seizes and confines or imprisons any other person within the State, or kidnaps any other person with intent –

(a) To cause the other person to be secretly confined or imprisoned in the State against his will; ... is liable to imprisonment for seven years. ..."

[27] The offence of Kidnapping is defined as consisting of
"the taking and carrying away of one person by another by force or by fraud without the consent of that person and without lawful excuse"⁹

⁶ (1964) 7 West Indian Reports 459

⁷ (1974)60 Cr App R 74

⁸ Criminal Appeal No 8 of 2003 (St Vincent & The Grenadines)

⁹ Re: D [1984] AC 778 (House of Lords)

- [28] The aggravating features of this type of crime to be considered by the sentencing court includes:
- i. Where there are number of perpetrators
 - ii. Where the victim is very vulnerable
 - iii. What was duration of the loss of liberty
 - iv. Was there the using and or brandishing, threatening or possession of weapons
 - v. Were other offences committed
 - vi. What was the extent of the concealment
 - vii. How unpleasant were the circumstances of detention
 - viii. What was the effect upon the victim and other persons such as the family of the victim
 - ix. Were there possible sinister motives of the perpetrator such as terrorism
 - x. Was there a ransom involved
 - xi. Were there threats intended to discourage the victim from reporting the offence¹⁰

[29] The mitigating circumstances are the absence of the above listed features.

[30] The Court's task is to pass sentence that is reflective of the accused's culpability. The kidnapping of SJ was an offence of unspeakable cruelty, which has to be visited with a custodial sentence of appropriate length to reflect your culpability and the harm consequent on the offence.

[31] In the Eastern Caribbean Supreme Court cases of this nature are a rarity. There are no authorities or decisions easily available within our jurisdiction that I have been able to find that are similar to the facts that offer any definitive sentencing guideline for the case at bar.

[32] The English Case of **R v Spence and Thomas**¹¹ offers some guidance in the dicta of Lord Lane CJ:

"In this case it was held that there is a wide possible variation in seriousness between one instance of kidnapping and another. At the top of the scale comes the carefully planned abductions where the victim is used as a hostage or where ransom money is demanded. Such offences will seldom be met with less than 8 years' imprisonment or thereabouts. Where violence or firearms are used, there are other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will be very much longer than that. At the other end of the scale are those offences which can perhaps scarcely be classed as kidnapping at all. They very often rise as a sequel to family tiffs or lovers' disputes, and seldom require anything more than 18 months' imprisonment, and sometimes a great deal less."

¹⁰ Taken from The Crown Prosecution Service Legal Guidance for Kidnapping, false imprisonment

¹¹ (1983) 5 Cr.App.R.(S.) 413

- [33] In **Brown**¹² the defendant kidnapped a young lady by forcing her into a car and causing minor injuries in the ensuing struggle and he was sentenced to five years on the kidnapping charge.
- [34] In **A-G's reference**,¹³ the offender was convicted of kidnapping and indecently assaulting a seven year old girl whom he enticed into a car. After assaulting her he returned her to the street where he found her. In the Court of Appeal Rose LJ indicated that a sentence in the order of eight or nine years would have been appropriate.
- [35] In the case at bar, the defendant armed with a shotgun snatched SJ the virtual complainant who was 15 years old at the time from the road where she was on her way to school. He took her to various locations in the mountains at Clarkehall, and kept her prisoner for forty days and forty nights subjecting her to living in inhumane conditions and numerous sexual assaults.
- [36] In the UK the maximum sentence for kidnapping is at large whereas in Dominica it is seven (7) years. Taking this into consideration I believe that an appropriate starting point should be three years (3) where there are no aggravating factors based on the 7 year maximum sentence.
- [37] The existence of aggravating factors may significantly increase the sentence. In deciding the sentence to hand down in the matters at caption I have considered all the circumstances of this case and the dictum of Chief Justice Byron in **The Winston Joseph et al Case**.¹⁴
- [38] In this case the aggravating factors include the fact that the virtual complainant was held captive for a period of 40 days and 40 nights in a wilderness like existence without proper food, clothing and shelter. We were told by SJ that when the accused took her captive he had on his person a shot gun which terrified her. We also know he kept this weapon with ammunition in his possession throughout her ordeal. It is noted that he was also indicted with the offence of being in possession of said weapon and ammunition to which he has pleaded guilty also. Whilst the accused held SJ in captivity he repeatedly had unlawful sexual intercourse with her and the places where he kept her were hidden from the public and the Court was told he moved her from time to time to avoid detection. We were told by SJ in her sworn evidence before the court that she still suffers from night mares and is haunted so to speak by the memories of her ordeal even whilst she is at school. It is also to be noted that SJ was admitted to and has since been admitted to the Psychiatric Unit at the Princess Margaret Hospital which admissions would speak for itself as to the effect this ordeal has had on her. Whilst giving her testimony SJ also told this Court about in the early days of hearing her mother screaming and calling her name ... clearly her relatives and family were affected by her disappearance.

Count 4 – Unlawful Sexual Intercourse

¹² (1985) 7 Cr App R (s) 15

¹³ (No 77 of 1998) [1999] 2 CR App R (S) 336

¹⁴ St Lucia Criminal Appeal No 4 of 2000, Criminal Appeal 8 of 2000 and Criminal Appeal no 7 of 2000 (Consolidated) Per Chief Justice Dennis Byron

[39] The accused also pleaded guilty to "Unlawful Sexual Intercourse". The case of **Winston Joseph et al –v- The Queen**¹⁵ laid down guidelines on sentencing in sexual matters with the intention of promoting greater consistency in the approach to sentencing in these types of matters within the jurisdiction. These guidelines have been referred to and applied in cases of this nature throughout the jurisdiction. I must bear in mind when taking the guidelines into account that I ought not to slavishly follow the guidelines lest I arrive at a sentence which can be seen as unjust.¹⁶

[40] It is important that the facts of the case be examined in order to assess the seriousness of the offence and the level of culpability of the accused. Consideration is given to the extent to which the accused intended to cause harm to SJ. Based on the facts presented to the Court, the activity was nonconsensual and coercive. What was the nature of the sexual act complained of? Penetrative acts which are more serious than non-penetrative acts.¹⁷

[41] Chief Justice Dennis Byron (as he then was) said
"...A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher."...

[42] Chief Justice Byron also identified the aggravating factors that existed in that case¹⁸ as:

- i. *If the girl has suffered physically or psychologically from the sexual assault.*
- ii. *If it has been accompanied by abhorrent perversions e.g. buggery or fellatio.*
- iii. *Violence is used over and above the force necessary to commit the offence.*
- iv. *The offence has been frequently repeated.*
- v. *The defendant has previous convictions for serious offences of a violent or sexual kind.*
- vi. *The victim has become pregnant as a result of the crime.*
- vii. *The victim is either very young or very old.*¹⁹

[43] The mitigating factors were identified as follows:

- i. *A plea of guilty should be met by an appropriate discount, depending on the usual considerations, that is to say how promptly he confessed and the degree of contrition and other relevant factors.*
- ii. *Where incest was consensual, in the case of a girl at least 16 years of age if it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for sexual inclinations.*

¹⁵ Ibid

¹⁶ See **Roger Naltram et al Per Baptiste JA** at page 11 in paras 17 & 18

¹⁷ See **Sentencing Guidelines Council Definitive Guidelines Pages 7-2** at paras 1:12 through 1:18

¹⁸ **Winston Joseph et al –v- The Queen** *ibid*

¹⁹ *Ibid* at page 9 para 12

- iii. *Where the girl of at least 16 years of age made deliberate attempts at seduction.*
- iv. *Where the defendant is a first offender and/or is a youth.²⁰*

[44] My task is now to weigh the aggravating factors of this case against the mitigating factors in determining the appropriate sentence.

[45] The mitigating factors; firstly the accused led the police to the place where he had SJ, he also cooperated with the police and answered the questions put to him and he pleaded guilty at the trial of the matter.

[46] There are a number of aggravating factors that exist in this case.

- i. Firstly, the virtual complainant in this matter was fourteen (14) years old at the time she was taken captive by the accused. He was thirty seven years old. I therefore have to take into consideration the considerable age gap between the virtual complainant and the accused.
- ii. The accused kept the virtual complainant captive for a long time from the 17th February to the 28th March 2011, for some forty (40) days and forty (nights) when he was arrested and took the police to where he was holding her. I am of the view that had he not been captured by the police on the evening of the 28th March 2011 heaven knows how much longer the virtual complainant would have had to endure the ordeal.
- iii. The accused had sexual intercourse with the virtual complainant many times, every day whilst she was with him "sometimes in the day and sometimes in the night, which means the offence was repeated numerous times and often. Further he used little or no form of birth control.
- iv. The accused had in his possession a gun with ammunition at the time he took SJ captive and had the said gun and ammunition during the time he held her captive. SJ said she was scared of and by the gun. There was a degree of coercion used by the accused.
- v. The accused kept the virtual complainant in what conditions that I could only describe as depraved. In that she was found by the police under a tarpaulin tied to the trees in the area. There were no conveniences and minimal shelter and protection from the elements during the 40 days and nights that he kept her in captivity.
- vi. The virtual complainant during the time she was in captivity bathed only a few times in the river. The clothes she had on when she was taken captive was never washed. She was found in a very unkempt state.
- vii. SJ has been psychologically affected by her experience. She told the court of having night mares and of reliving her experience, of being in class and feeling as though she was seeing the accused. SJ told this court that she spent some time in the Psychiatric Unit of the Princess Margaret Hospital and has had to be readmitted there since.

²⁰ Ibid page 9 para 19

[47] In the case at bar, save that the virtual complainant was not and is not pregnant all of the aggravating factors mentioned by Byron CJ in the **Winston Joseph Case** are present and more.

Court's considerations

[48] Section 8(1) (a) & (b) of the Sexual Offences Act²¹ says:

“Any person who has sexual intercourse with another person who-
(a) Is not the spouse of the first mentioned person; and
(b) Is fourteen years of age or more but has not attained the age of sixteen years,
is guilty of an offence and liable on conviction to imprisonment for fourteen years.

[49] This to my mind is one of the worst crimes perpetrated against a teenaged girl in this country. You took the lady from the road in the early morning whilst she was dressed in her school uniform and heading to school. You took her into the hills where you made her captive in various camps in wilderness like conditions which you set up with her as captive and you subjected her to unlawful and illegal sexual activities.

[50] In the Territory of the Virgin Islands Justice Indra Hamprashad Charles in the case of **The Queen -v- Andre Penn**²² in considering the starting point for the offence of Unlawful Sexual Intercourse against a girl under the age of 13 where the maximum sentence was 14 years considered 7 years a suitable starting point where there are aggravating and extenuating factors the sentence imposed will be increased. Mr Penn was sentenced to 8 years on the count of unlawful sexual intercourse with a girl under thirteen years. In that case the Learned Trial Judge found that the aggravating factors far outweighed the mitigating factors.

[51] Having identified the aggravating and mitigating factors, I must evaluate these factors. I must weigh the aggravating factors against the mitigating factors and in the case at bar the aggravating factors clearly outweigh the mitigating factors, thereby tending to a higher sentence. I am conscious of the requirement to exercise caution in the process to avoid “double counting” when considering the aggravating factors in the event that that factor may be an essential element of another offence charged on the indictment.

[52] In the case at bar the accused has been charged and has pleaded guilty to the offence of kidnapping which concerns his taking SJ and keeping her in captivity which I consider to be an aggravating feature of the charge of unlawful sexual intercourse. It is therefore noted that this has already been considered in indicting the accused.

[53] In the case of **R-v-Mcvane**²³ the defendant pleaded guilty to the offence of Unlawful Sexual Intercourse with a female aged 14 years old who was not his spouse. The defendant was no stranger to incarceration having had convictions previously for unrelated offences. In that

²¹ Op Cit

²² BVIHCR2009/0031

²³ SLUCRD2010/0215

matter the virtual complainant bore a child as a result of the unlawful sexual activity and that Defendant was sentenced to 7 years.

- [54] In **The State –v- Andrew Valmond**²⁴ the defendant was charged with unlawful sexual intercourse with a girl who was not his spouse and who was under the age of 14 years old. In that matter the defendant was the virtual complainant's stepfather and he was sentenced by this Court to 8 years in prison.

Counts 5 & 6 Possession of ammunition and firearm with intent to endanger life.

- [55] The defendant also pleaded guilty to the offences of being in possession of Ammunition and a firearm with intent to endanger life. Section 12(1) of the Firearms Act²⁵ says:
"A person who has in his possession any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person to endanger life or cause serious injury to property is, whether any injury to person or property has been caused or not, liable on conviction on indictment to imprisonment for ten years."
- [56] This offence has been described as a "specified violent offence"²⁶ In the UK prior to the amendment of the relevant legislation the maximum sentence for this offence was 14 years and in the case of **R-v- Avis**²⁷ Lord Chief Justice Lord Bingham of Cornhill, sought to give sentencing guidance in Firearm related matters and he had this to say

"The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

²⁴ Claim No. DOMHCR 2010/0009

²⁵ Op Cit

²⁶ Archbold 2007 Para 24-38

²⁷ [1998] 1 Cr. App. Rep.420

(3) *With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.*

(4) *What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.*²⁸

[57] The Lord Chief Justice went on to review a few sentencing decisions of the English Court including for the offence such as that which is before the court. Reference was made *inter alia* to the following decisions:

- (i) In R v Haddock (1985) 7 Cr App R(S) 306 a sentence of 3 years' imprisonment imposed on a plea of guilty to this offence was held to be "entirely and exactly right".
- (ii) R v Fish (1985) 7 Cr App R(S) 310 a sentence of 4 years' imposed on a plea of guilty to this offence was reduced by this court to 2 years'
- (iii) R v Khan (1986) 8 Cr App R(S) 334 the defendant had produced a Browning automatic pistol with which he had threatened the victim, apparently believing himself to be threatened. He was sentenced to 30 months' imprisonment following a contested trial, and this term was reduced by this court to 2 years' imprisonment on grounds which are not altogether easy to reconcile with the jury's verdict;
- (iv) In R v Field (1986) 8 Cr App R(S) 476 the defendant pleaded guilty to a number of firearms offences, including a count under section 16. The case involved a sawn-off shotgun, which the defendant had fired at a police officer, who was struck by several pellets (although the defendant had not intended this result). Sentenced to life imprisonment, this court reduced the sentence to 8 years' imprisonment.

[58] It is to be noted that these cases were considered in the case of R-v- Francis²⁹. In that case the Court of Appeal upheld a concurrent sentence of 6 months' imprisonment for possessing a loaded sawn-off shotgun in a public place. The Court made this observation about the cases which were quoted above said this...

"Departing for a moment from the consideration of the instant appeal, this Court has no hesitation in stating that henceforth those cases cannot properly be regarded as guidelines to the appropriate level of sentencing in firearms cases. At the present time, the use of firearms, and in particular sawn-off shotguns, is becoming ever more prevalent and the courts must not be inhibited from passing sentences designed to deter those minded to use a firearm for whatever purpose and in whatever context."

[59] However that statement was made also in the context where the statutory limit for sentencing was

²⁸

²⁹ (1995) 16 Cr App R(S) 95,

increased from 14 years to life imprisonment. In Dominica the statutory limit for the sentence to be handed down for this offence is 10 years which is the old statutory limit in England. It is therefore my humble and considered opinion that the aforementioned cases can be considered good benchmarks for the offence of possession of a firearm and ammunition with the intention to endanger life.

The Sentence

[60] A sexual offence is always a serious crime which calls for an immediate custodial sentence which is necessary for a variety of reasons. The gravity of the offence must be considered and a statement made highlighting same. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women especially children.

[61] In the State –v- Andrew Valmond³⁰ I said and I reiterate:
"I am concerned by the fact that there seems to be in the Caribbean and indeed in Dominica some amount of incidence of sexual abuse of children I am also conscious that the Courts must do everything possible to discourage sexual activity of persons of a very young age.
In the House of Lords decision of R. v. G.³¹ Baroness Hale of Richmond said:

para 44" ...The offences of unlawful sexual intercourse [with children] were often colloquially known as "statutory rape". This is because the law regards the attitude of the victim of this behaviour as irrelevant to the commission of the offence {although it may, or course, be relevant to the appropriate sentence}. Even if a child is fully capable of understanding and freely agreeing to such sexual activity, which may often be doubted, especially with a child under 13, the law says that it makes no difference."

Baroness Hale of Richmond stressed the importance of protecting children from premature sexual activity when she said...

para 45 "6, ... It is important to stress that the object is not only to protect ... children from predatory adult pedophiles but also to protect them from premature sexual activity of all kinds." ³²

[62] The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case. Having considered all the relevant factors and circumstances of the crime including the impact on the victim and the personal circumstances of the prisoner I am of the view that this is a very serious offence that merits a custodial sentence of a length sufficient to punish the offender, to deter others and to emphasize the need to protect young girls from sexual exploitation and corruption. This is particularly appropriate because of the aggravating circumstances in particular the age of the victim and the facts involved which is particular to this case.

³⁰ (2009) 1 AC 92

³¹ [2009] 1 AC 92

³² Paragraphs 8, 9 & 10 ibid

- [63] I am also mindful of Dominica's responsibilities pursuant to Article 34 of the Conventions of Rights of the Child which was ratified by Dominica on 13 March, 1991, to protect its children from all forms of sexual exploitation and sexual abuse.
- [64] Having regard to the authorities cited the appropriate starting point for a contested case of sexual intercourse with a girl above the age of fourteen years and under the age of 16 years would be 5 years, taking all the circumstances and the offences for which the accused has been charged with having applied the principles enunciated by Byron CJ in the **Winston Joseph Case** and having weighed the aggravating and mitigating factors in this case the sentence of this case on the third count of Unlawful Sexual Intercourse would be seven (7) years reduced by 20% (being the discount awarded for the guilty plea) which means it would be reduced by one and half years. The defendant is therefore sentenced to five and a half years (5 ½) on the second count.
- [65] With respect to count number 1 of Kidnapping the defendant is sentenced to four years reduced by 20% which means it would be reduced by 9 and half months to years. The defendant is therefore sentenced to 3 years and 2 and half months on the first count.
- [66] With respect to counts number five and six of possession of ammunition and a firearm with intent to endanger life the accused, taking into account that statutory maximum and the decided cases a fair starting point would be 3 years and taking into consideration the aggravating and mitigating circumstances and the facts specific to the case at bar the accused is sentenced to four years on each of these counts reduced by 20% which means it is reduced by 9 and half months to 3 years and two months to run concurrently with each other.
- [67] It is convenient in this matter to group these offences into three categories to wit: (a) Kidnapping; (b) Unlawful Sexual Intercourse and (c) Possession of fire arm & ammunition with intention to endanger life and having regard to entire circumstances of this incident, the effect that this incident has had on the virtual complainant and the principles of law governing consecutive sentences I am of the view that each of the categories should run concurrently with each other.
- [68] For the avoidance of doubt the accused Mr Webster Edmund is hereby sentenced to 8 years and 9 months from the date of his remand which was the 6th September, 2012.
- [69] I wish to thank Mr Peter Alleyne for his brief written submissions on sentencing in this matter that was of some assistance to the Court. However, it should be noted that in spite of repeated orders and requests from the Office of Director of Public Prosecutions no submissions were made on behalf of the State, hence the Court was compelled to conduct its own research in preparing the written sentencing remarks which resulted in some delay.

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M.E.B. Stephenson
High Court Judge