

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2011/1184

BETWEEN:

THE QUEEN

Claimant

AND

ANDREW VALCENT

Defendant

Appearances:

Mr. Alberton Richelieu, Counsel for the Defendant
Mr. Leon France, Crown Counsel for the Crown

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2013: April 29
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** Ida Remy of Faux-a-Chaud and the defendant were close friends and had once shared an intimate relationship. During the year 2011, she performed domestic services for him such as cleaning his apartment and cooking for him. Her daughter, Alana Remy (the virtual complainant) would from time to time assist with the aforesaid chores performed by her mother. She was born on the 2nd February, 1997 and during the year 2011 was a form two (2) student at the Bocage Secondary school.

[2]. Between the 3rd of May, 2011 and the 27th of May, 2011 on four (4) separate occasions the defendant without her consent had sex with the virtual complainant when she was sent to his home by her mother to take his meals and do chores. On the last occasion the virtual complainant's mother entered the defendant's home in search of her daughter and saw the defendant over her engaged in an act of sexual intercourse with her. He apologized most profusely saying he didn't know what he was thinking.

[3]. The defendant was indicted by the Director of Public Prosecutions on the 1st November, 2012 for four (4) counts of unlawful sexual intercourse with a person between the age of twelve (12) and sixteen (16) and at his arraignment he pleaded guilty to all counts on the indictment. After the allocutus the court ordered a pre-sentence report be produced and set a date for a sentencing hearing.

[4]. **THE HEARING**

The pre-sentence report disclosed that the defendant was considered to be reliable and hard working. He was spoken of in glowing terms by his close relatives, members of the community in which he resided, and his last employer all of whom expressed shock and surprise at his involvement in this type of offence. However, he is known for consuming large amounts of alcohol at times.

[5]. Mr Richelieu for the defendant in his written submissions urged the court to consider the defendant's early guilty plea thereby obviating the need for the virtual complainant to relive the horrific experience and the absence of excessive violence over and above what was necessary for the commission of the offences. Counsel also referred the court to the positive reports of the

defendant as stated in the pre-sentence report notwithstanding his troubled upbringing and limited educational development as a result of which he is now functionally illiterate.

[6]. Defence counsel considers the following to be the aggravating and mitigating factors herein;

AGGRAVATING FACTORS

1. The virtual complainant here seems to have been psychologically affected as her Victim Impact Assessment reveals;
2. There was a breach of trust, as it appears that the virtual complainant's mother allowed the virtual complainant to go to the Defendant's home to clean, and he took advantage of the situation. She further states that she looked at him as a father;
3. The offences were frequently repeated;
4. The defendant set the stage for the virtual complainant to have sexual intercourse with him;
5. There was a considerable age, the defendant was thirty three (33), and the virtual complainant was fifteen (15) years old.

MITIGATING FACTORS

1. He has no previous convictions;
2. He has expressed remorse from the time the virtual complainant's mother came up on the virtual complainant and the defendant in the height of their activity. He expressed a never ending tireless sorry, and he did not know what entered his mind. His plea of guilty reflects that he is prepared to face the consequences of his acts when first confronted.

[7]. He opined that on weighing the aforementioned factors that the mitigating factors outweigh the aggravating ones.

[8]. Mr. France for the crown in his written submissions set out what he considered to be the applicable principles of the law as it relates to the sentencing of the defendant. He considered the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTOR

1. The prevalence of the offence in St. Lucia and the Caribbean;
2. The defendant was in a position of trust. The victim's mother who was his employee, felt that her daughter would be safe in the defendant's company;
3. Exploitation of a vulnerable victim;
4. Embarrassment, distress or humiliation faced by the victim as mentioned in the pre-sentence report;
5. The comparative age of the victim and the defendant at the time of the offence.

MITIGATING FACTORS

1. An early plea of guilty, obviating a need for trial;
2. The defendant has no previous conviction;
3. The expression of remorse by the defendant

[9]. Both counsel were ad idem in their written submissions that the classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation should be allied herein and the court concurs with their submission.

RETRIBUTION

It is common ground that the defendant was previously involved in an intimate relationship with the virtual complainant's mother. Moreover at the time of the commission of these offences the defendant was aged thirty-seven (37) whilst the virtual complainant was fourteen (14) years old and a form two (2) student at secondary school. What is more egregious is that the defendant abused the friendship between him and the virtual complainant's mother which caused her to trust the defendant and feel comfortable with sending her daughter to his home to carry out chores there in her absence. The defendant's sexual abuse of the virtual complainant was planned and premeditated. The pre-sentence report reveals that not surprisingly the virtual complainant has been traumatised by these incidents. It stands to reason that the court must show its abhorrence for this type of offence by the sentence it imposes.

DETERRENCE

By virtue of the glowing reports of the defendant in the pre-sentence report specific deterrence is not applicable to him. Though I accept the submissions by both counsel that specific deterrence is not applicable to the defendant, I do not agree with defence counsel's submission that general deterrence is also inapplicable herein. I accept the contention of Mr. France that the court must in imposing sentence, consider and apply this principle to deter others from committing this offence having regard to its prevalence in the jurisdiction.

PREVENTION

This defendant is a first offender and from all appearances is unlikely to reoffend in like manner. Hence I find that this principle is not applicable here.

REHABILITATION

This defendant has from the time he was caught in flagrante delicto by the virtual complainant's mother expressed his remorse for what he has done. The pre-sentence report discloses that the

defendant has expressed remorse and states he understands the pain he has caused the virtual complainant and her family. He admits what he did was wrong and it should not have happened and wants to apologise to the virtual complainant and her parents for the ordeal he has put them through.

[10]. I find that the aforementioned sentiments auger well for the defendant's rehabilitation. I am also encouraged by the support expressed by the defendant's previous employer and close relatives for him upon his release from prison. The defendant will however require counselling for his alcohol addiction which if left unattended may trigger recidivism. The defendant will also need to acquire literary skills to clothe him with the ability to be meaningfully employed on his release from prison. Thus I find that the defendant is a good candidate for rehabilitation.

[11]. I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of offence;
2. The offences were premeditated;
3. The defendant abused his position of trust. The victim's mother with whom he once had an intimate relationship felt that her daughter would be safe in the defendant's company;
4. The effect this incident has had on the virtual complainant as is stated in the Pre-Sentencing Report;
5. The comparative ages of the Virtual Complainant and defendant at the time of these incidents. The defendant was aged thirty-seven (37) whilst the virtual complainant was fourteen (14) years of age.

MITIGATING FACTORS

1. The early plea of guilt by the defendant which relieved the Virtual Complainant of reliving the horrendous experience in court;
2. The hitherto clean criminal record of the defendant;
3. The expressions of remorse by the defendant.

[12]. I have weighed and balanced the aggravating and mitigating factors herein in light of the facts and circumstances of this case and find that the aggravating factors significantly outweigh the mitigating ones.

[13] SENTENCE

The court of Appeal in *Winston Joseph et al v Regina* set out guidelines to be followed and applied by a sentencing court in matters involving sexual offences. In addition to guidelines, Sir Dennis Byron suggested examples of aggravating and mitigating factors which the court should consider whilst sentencing in sexual offences. I find in the case at bar of the aggravating factors suggested by Sir Dennis occur here namely the fact that the virtual complainant has suffered physiologically from the sexual assaults, the offence was repeated on three (3) occasions after the initial act and that the virtual complainant is a very young person.

Sir Dennis at paragraph seventeen (17) went on to opine thus:

“The actual sentence impose will depend upon the existence and evaluation of aggravating and mitigating factors, the more common of which I attempt to list below. It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. 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."

In R v Christopher Milberry (2003) 2 Cr. App. R. (s) 31 CA Lord Lane stated thus;

"Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence.... A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasise 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 (or in this case, young girls). 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."

[37] In R v Puru, 1985 LRC 817 Woodhouse P. stated thus at page 821 (g);

"The Court certainly must and actually does keep in mind the public anxiety and the natural public resentment that such conduct occasions. That very fact, however, inevitably poses very difficult sentencing problems when the matter is not by reference to individual cases but in a wider way. Rape always involves a disgraceful exercise of physical power over the victim and degradation of her human personality but there are some cases which have particularly aggravating features. There are cases involving very young girls or elderly women, there are deplorable examples of gang activity, there are instances of the victim being snatched off the street or invaded in the privacy of her own home and there are cases involving serious physical violence or acts of sexual perversion and other forms of

degradation. Clear distinctions must inevitably be drawn to take care of bad and finally the worst kinds of case. There is the added fact that if this margin is not kept in mind in relation to lesser offences then there could be the grave risk of the more serious attacks, even to the point of murder, by offenders who thought that there was nothing to be gained by a residual restraint which might lead to detection. The extent to which all this can properly be translated into length of sentence must inevitably vary from case to case. The important consideration is to ensure that there is an appropriate degree of flexibility left to the Judge so that the punishment can actually be made to fit the crime”.

[14]. Though Woodhouse P and Lord Lane were adjudicating in offences of rape, I find their opinions to be relevant and applicable to the case at bar.

[15]. These offences are most heinous. I have already alluded to the guidelines set out by the Court of Appeal in Winston Joseph et al. In Regina v Roger Naitram et al Baptiste JA having cited with approval, the dictum of the Lord Chief Justice in Mulberry v Regina opined thus:

Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines.

Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reasons for so departing.

[16]. I find that the defendant's abuse of his position of trust, the traumatic effect of these offences on the virtual complainant, the defendant's requests to the virtual complainant's mother to have her come to his home ostensibly to perform chores which is undisputed evidence that these offences were all planned and premeditated and his repeated acts of sexual abuse on the victim to be compelling evidence for a departure from the sentencing guidelines set out by the Court of Appeal in Winston Joseph. The court cannot ignore the fact that but for the timely arrival of the virtual complainant's mother whilst the defendant was engaged in an act of sexual abuse of the virtual complainant, these offence would have been repeated. I also find that the aggravating factors significantly outweigh the mitigating ones.

[17]. The maximum sentence provided for this offence is fifteen (15) years imprisonment. Heinous though it may be I do not find this offence to be in the category of the worst of the worst. Thus I find that a benchmark of ten (10) years imprisonment to be appropriate. I will deduct three years for the defendant's early guilty plea and one year for his hitherto clean criminal record.

[18]. Accordingly, the defendant is sentenced to six (6) years imprisonment on each count and he shall be credited for all time spent on remand whilst awaiting his trial. The sentence shall run concurrently. He shall be enrolled in the relevant educational program at the Bordelais

Correctional Facility to ensure he becomes literate by the time of his release from the Bordelais Correctional Facility. He shall also receive counselling for his alcohol addiction.


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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE

