

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CRIMINAL CASE NO. 7 of 2013

BETWEEN:

THE QUEEN

and

WALTON CAMERON

2014: March 7th
March 14th

Appearances:

Mr. Valston Graham, Senior Counsel for the Crown with Ms. Shantal Flax, Crown Counsel
Ms. Corrine George of Sabals Law for the Defendant

JUDGMENT ON SENTENCE

Criminal Law – Sentencing – Offences against the person – Sexual Offences – Indecent Assault – Adult Victim – matters to be considered.

[1] **BYER J.:** On the 21st February 2014, the Accused Walton Cameron was found guilty by a unanimous jury of 8 persons on the offence of indecent assault committed against the Virtual Complainant on the 28th January 2012. The sentencing hearing was adjourned to 7th March 2014. This is now the decision on that sentencing which I shall impose on this Defendant.

BACKGROUND

[2] The facts which the jury unanimously accepted were that in the early morning hours of the 28th January 2012 the Virtual Complainant accepted an offer of a ride from Mr. Cameron to go to her home at Spy Glass Hill, West End.

- [3] The Virtual Complainant who knew the Accused as her friend and neighbour entered the vehicle of Mr. Cameron. It was during this drive that the Virtual Complainant was then subjected to Mr. Cameron attempting to kiss her and then touch her on her upper thigh in the area of her vagina through her clothing demanding sexual favours which she rebuffed.
- [4] As a result of this behaviour, which greatly upset the Virtual Complainant, a report was made to the Police and Mr. Cameron was arrested and charged with Indecent Assault for which he was found guilty and another offence for which he was subsequently found not guilty.
- [5] We do not know whether, Mr. Cameron's defence of an existing relationship between himself and the Virtual Complainant was accepted by the jury. We do know that the jury from their verdict however showed that they were convinced that Mr. Cameron had acted inappropriately and had in fact acted indecently towards the Virtual Complainant by the uninvited advances.

Plea on Mitigation

- [6] Learned Counsel for the Accused, Ms. Corrine George made a passionate plea to this court not to impose a custodial sentence on her client.
- [7] Ms. George identified that her client who is 62 years old was a married man with 3 children the youngest of whom is 15 years old.
- [8] Ms. George reminded the Court that her client was a man of good character, who was self employed before this incident and had never had any complaint made against him.
- [9] Mr. Cameron through his Counsel submitted three letters from persons he called on to speak to his good character. One such letter came from Mr. Elmore Stoutt who I understand was a former principal of the Elmore Stoutt High School and a former Legislator. He said in his communication to the Court that he has known Mr. Cameron all his life and he spoke of Mr. Cameron having "***built a respectable life base (sic) on honest hard work, goodwill, co operation, fairness, patience and responsibility.***"
- [10] This Court was also in receipt of a letter from Mr. Melvin Stoutt. He has told the Court that he knew Mr. Cameron since 1966. He has told this Court that Mr. Cameron is "***trustworthy confidential and a caring person who is always dependable.***"
- [11] One final letter was also presented to the Court from Mr. Ogard Smith Jr. who simply said that Mr. Cameron was of "***fine character.***"

- [12] Ms. George also sought to impress upon this Court that in looking at the aggravating factors submitted by the Crown, (they having during the hearing before this Court abandoned the first of the said factors), that there were in fact only three aggravating factors and not six as they sought to advance to the Court. Counsel submitted that three of the six remaining factors spoke to the elements of the offence itself and could not be properly seen as aggravating factors in and of themselves. The three factors which she has asked this Court to disregard are the gross manner in which the offence was committed, in that the Defendant's actions were highly unpleasant, gratuitous and accompanied by perversion, the commission of the offence consisted of the defendant unlawfully touching the complainant three times and the lack of remorse by the defendant.
- [13] Ms. George submitted these three factors could not properly stand as aggravating factors and that as such she submitted to this court that they should not be taken into account as submitted by the Crown.
- [12] Ms. George also submitted that the majority of the authorities submitted by the Crown referred to matters in which the offence was perpetrated against children under the age of 16 years where the penalty provided by the respective Statutes was 10 years. In any event she submitted that the average term of imprisonment in these cases was in the region of 2 years.
- [13] Ms. George further submitted and pressed upon the Court that the reluctance of the virtual Complainant to have the Defendant serve a custodial sentence, although was a matter that could not determine the final penalty, was a factor that the Court should take into account and weigh heavily in favour of the Defendant in the final determination of the sentence.
- [14] Finally, Ms. George sought to refer the Court to the powers conferred on the Court by the provisions of Section 22 et seq of the Criminal Code of the British Virgin Islands which permits the Court to impose a fine or a suspended sentence in lieu of a custodial sentence.
- [15] The Accused also spoke on his own behalf from the dock and issued an apology to all the persons concerned for what had occurred.

Submissions by the Crown

- [16] Learned Senior Crown Counsel Mr. Valston Graham submitted to the Court that in any sentencing exercise the aims must be kept in mind, namely retribution, rehabilitation, prevention and deterrence.

[17] Learned Counsel referred this Court to the seminal decision in the case of *Desmond Baptiste v The Queen*¹ and the principles laid down in that case by Byron CJ as he then was, as to what a sentencer needs to bear in mind in approaching a matter and that the aims of retribution, rehabilitation, prevention and deterrence were paramount.

[18] Senior Crown Counsel also submitted to the Court that the mere fact that the Legislators attached the penalty of 7 years to an offence of indecent assault meant, that offences of this nature must by their nature bear a certain degree of condemnation in the society.

[19] Mr. Graham identified the aggravating and mitigating factors to the Court in this case:

AGGRAVATING FACTORS:

1. The defendant did not enter a guilty plea and put the Complainant through the trauma of reliving the incident. (*this was abandoned during the presentation of the arguments*)
2. The age of the Complainant vis-à-vis the age of the defendant. The defendant was 60 at the time of the incident whilst the complainant was 43. This indicates an approximate age disparity of 17 years.
3. The gross manner in which the offence was committed. The Defendant's actions were highly unpleasant, gratuitous and accompanied by perversion.
4. Breach of trust as the defendant was a trusted neighbor and friend of the complainant.
5. Violation of the Virtual Complainant's person.
6. The commission of the offence consisted of the defendant unlawfully touching the complainant three times.
7. The lack of remorse by the defendant.

MITIGATING FACTORS

1. The defendant has no previous convictions.
2. No violence was used on the complainant.

¹ Hct Crim App. 8/2003

3. Minimal/Fleeting contact.

- [20] Senior Crown Counsel further submitted that with the prevalence of this offence a message has to be sent to the society at large that a woman's body is hers and hers alone and it is for her to decide who touches it, how it is touched, how many times it is touched and if it is touched at all.
- [21] In looking at the cases presented to the court on behalf of the Crown, Mr. Graham admitted that it was difficult to find any precedents for sentencing that involved the offence having been committed by an adult male on an adult female.
- [22] Mr. Graham further acknowledged that the Accused was a man of good character and although he accepted this indisputable fact, he made it very clear that this fact alone cannot stand as a defence.
- [23] Mr. Graham did submit however in the light of the circumstances of this case, that he would recommend to this Court that it not impose a custodial sentence but consider the options of non custodial sentences in the nature of a suspended sentence, a fine, counseling and even compensation to the victim.

Court's Considerations

- [24] Under Section 124 (1) of the Criminal Code of the British Virgin Islands.
"any man who makes an indecent assault on a woman commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years."
- [25] So the starting point for this Court in this matter is the penalty of 7 years.
- [26] In coming to a determination as to what considerations this Court must take into account, it is of paramount importance for this Court to have in the forefront of its mind the guiding principles for any sentence. Those of *"retribution, rehabilitation, prevention and deterrence."*
- [27] In light of that, it would be useful to bear in mind the words of Lawton LJ in the case of R v Sargeant². *"any judge who comes to sentence ought always to have these four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case he is dealing with."*

² 60 Cr App R 74

- [28] Now it is well established that no one case is exactly like another and each case in the mind of the sentencer must be taken separately, however it must be admitted that it is indeed helpful to have reference to precedent sentences in addressing the benchmark for a particular offence.
- [29] The Learned Prosecutor referred this Court to the cases of R v Donald Rogers³, R v Calvin Rabstatt⁴, R v Keno Allen⁵, and R v Marc St Rose⁶
- [30] All of the above mentioned cases involved the act of indecency being perpetrated against young children save and except the Marc St. Rose case where the Virtual Complainant was 24 years old.
- [31] It is generally accepted that indecent assault against a child attracts a higher penalty than against an adult in that by its very nature there is involved a certain amount of depravity on the part of the perpetrator to target vulnerable members of the society. However when an assessment is made of the sentences that have been handed down for an offence such as this, the period of incarceration is in the region of 2 years.
- [32] In the case of Winston Joseph et al v R⁷, Byron CJ as he then was provided guidance as to the sentencing exercise in sexual crimes.
- [33] At paragraph 17, thereof Byron CJ stated:
"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors ... 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."
- [34] Further as identified by Baptiste JA in the case of Roger Naitram and others v The Queen⁸ any guidelines that are given to the Court in aid of sentencing are simply that, guidelines. As he stated at paragraph 17:
"sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the

³ BVI Unrep 24/2009

⁴ BVI unrep 34/2011

⁵ BVI unrep 19/2012

⁶ St Lucia Unrep 429-43/2009

⁷ St Lucia Crim Appeal 4/2000 (consolidated with others)

⁸ Antigua Crim App 5/2006.6/2006 and 8/2006

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 ... clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid"

[35] This court is prepared to accept those words wholesale.

[36] In the case of Donald Rogers ⁹ Hariprashad-Charles J quoting from the case of R v Milberry ¹⁰ stated at paragraph 37:

"...in weighing the gravity of the offence regard must be had to the degree of harm to the victim...the level of culpability of the offender... and the level of risk posed by the offender to the society..."

[37] In the present case the Virtual Complainant suffered no physical injury but was subjected to a violation of her sexual anatomy, suffered a sense of embarrassment and there was an infringement of standards of socially acceptable behavior.¹¹

[38] The Virtual Complainant suffered an unwanted touch to her anatomy which occurred not once, not twice but three times in the same night.

[39] This is not something which can be viewed lightly.

[40] In looking at this case, it is clear that there are strong mitigating circumstances in that the Accused is a man of good character, there was fleeting contact, and that there was no violence.

[41] I am in agreement with Counsel Ms. George that when the aggravating factors are closely perused, that this Court is persuaded that there exist three factors which relate to the age difference between the Defendant and the Virtual complainant, there was a breach of trust of the friendship that existed between the parties and that there was a violation of the person of the Virtual complainant.

[42] In this instance the Court finds that there was therefore an equal amount of aggravating as there were mitigating circumstances.

[43] As Learned Counsel for the Crown submitted, we will never know what happened in the mind of the Defendant or what went through the mind of the Defendant that night. By all accounts, a man

⁹ Op Cit

¹⁰ [2003] 2 Cr App R 31

¹¹ Adapted from the Guidelines of the Sentencing advisory Panel 2003

who is a pillar of his community. But as recognized in the case of R v Millberry¹² *the Defendant's good character although it should not be ignored does not justify a substantial reduction of what would otherwise be the appropriate sentence."*

- [44] In the words of Hariprashad-Charles J. at paragraph 39 of the judgment in the case of Donald Rogers *"offences of a sexual nature are becoming prevalent in this Territory and it is time that the court sends out the signal that even the mere act of touching a woman ...will be met by stiff custodial sentences."*
- [45] In that case the judge handed down a sentence of 18 months imprisonment for indecent assault on a 15 year old girl.
- [46] I have assessed the aggravating and mitigating factors in this case and in addition I have assessed that Mr. Cameron, like the perpetrator who was 62 years old in the Marc St. Rose¹³ case, *"is at that stage of maturity when it is expected he could rigidly eschew thought or temptation to indulge in activities as heinous as those for which he was been convicted."*
- [47] In that case the accused was sentenced to one year for the indecent assault perpetrated on the 24 years old Virtual Complainant.
- [48] In our society where elders are looked up to for the mere fact of their achievement in reaching an advanced age, we do not expect them, regardless of what circumstances they may find themselves, to give into baser instincts which by then they are expected to have learnt to control. If we cannot count on these older men to set an example, what is to become of what is now being called the lost generation.
- [49] I find in the circumstances of this case that this Defendant by all accounts should have known better and it must be clear to men of all ages in this society this Court will not tolerate any act which amounts to the invasion of a woman's personal space or privacy. NO is NO. Let that resound loud and clear.
- [50] I however have heard the submissions of both sides and I am persuaded to the side of leniency but I am not persuaded to allow this matter to go without some indication of the displeasure this Court views acts of this nature.

¹² Op cit

¹³ Op cit per Cumberbatch J

[51] Thus the sentence of the court is as follows:

I sentence you Walton Cameron to twelve months imprisonment for the Indecent Assault against the Virtual Complainant the same to be suspended for a period of eighteen months.

And further I order that you are fined the sum of \$5,000.00 to be paid within 14 days of today's date in default of which you shall be imprisoned for the period of six months.

**Nicola Byer
High Court Judge**