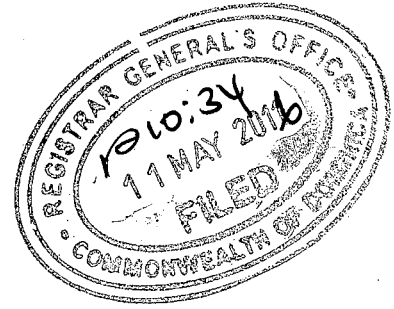


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
CRIMINAL
CASE NO. 3 OF 2015



BETWEEN:

THE STATE

V

SAMOZA JOHN

Appearances:

Ms. Sherma Dalrymple assisted by Ms. Khalita Benjamin, State Attorneys in the office of the Director of Public Prosecutions

Mr. Geoffrey Letang for Prisoner

2016: May 3

JUDGMENT ON SENTENCING

[1] **THOMAS, J[Ag]**:. Samoza John is before the High Court for sentencing having pleaded guilty to the offence of indecent assault with respect to a child of 8 years. This triggered a procedure that the court must follow in order to arrive at an appropriate sentence. In the circumstances of a guilty plea the court ordered a Social Inquiry Report to be prepared by a Probation Officer, Welfare Department. The report was prepared by Ms. Mandisa Ducreay. This will be examined in detail at a later stage of the judgment.

Relevant consideration

- [2] As part of the sentencing process the court must examine the following relevant considerations: nature of the offence, background to the offence, the manner of execution, the maximum penalty under the law, the social standing of the defendant, the principles of sentencing, the aggravating factors the mitigating factors, the Social Inquiry Report and the plea in mitigation.

Nature of the offence

- [3] The nature of the offence is contained in the definition as embodied in section 13(1)(a) of the **Sexual Offences Act 1998** and is self-explanatory. The definition reads thus: "Indecent assault means an assault or battery accompanied by words or circumstances indicating an indecent intention."

Background to the offence

- [4] The defendant rented a room from the virtual complainant's mother in the same house in which the mother and her children lived. This context gave rise to the action of the defendant when the virtual complainant ended up in the defendant's bed whereupon he put his hand in the underwear of an eight year old child and then took out his penis and told her to touch it. The child did as she was told and she noted that the penis was hard.
- [5] The indecency was discovered and interrupted by the child's mother who pulled the curtain to the room and saw her child on the defendant's bed. Much followed with mother taking the stage.

Maximum penalty under the law

- [6] The maximum penalty under the law, with respect to a child under 14 years, is 14 years.

Social standing of the defendant

- [7] The defendant was raised by both of his parents who had six children from their common law union. But when his mother migrated to Antigua to work he was raised by his grandmother.
- [8] As an adult the defendant lives with his common law partner with their two year old daughter and three other daughters of his partner, aged eighteen, thirteen and ten years. The family consists of six persons.
- [9] In terms of education the defendant attended the St. Andrews Secondary School but dropped out of secondary school when he reached third form. He however completed courses in agriculture and computer hardware repair.
- [10] In the field of employment the defendant is engaged in both of these fields.

Ages of the defendant and the child

- [11] The defendant is now 32 years old while the child was 8 years old at the time of the incident and is now 15 years old.

Principles of sentencing

- [12] The well-established principles of sentencing are: deterrence, society's retribution, reformation and protection. These principles were first enunciated in a court in England¹ and later adopted and elaborated in our Court of Appeal² and applied widely thereafter.

Prior convictions, if any

- [13] The accused has no prior convictions

Aggravating factors

- [14] The immediate aggravating factor is the age of the child. To this must be the fact that the defendant is father of a two year old child and lives in household with two other minors.

¹ See: R v Sargeant [1974] 60 Crim App. R 74

² Desmond Baptiste v The Queen Criminal Appeal No. 8/ 2003

Mitigating factor

[15] The mitigating factor is the defendant's guilty plea and the remorse shown.

The Social Inquiry Report

[16] As noted above the Social Inquiry Report was prepared by Probation Officer, Ms. Mandisa Ducreay.

[17] In the report the author examines the social background of the defendant, including his employment. Interviews were also carried out with the defendant, his common-law partner, and the victim and her mother. Her conclusion reads as follows:

Conclusion:

The offence for which Samoza stands charged is very serious and one that needs to be deterred. Samoza's action has affected the victim and she feels tremendous hatred toward him. Although [the victim] does not believe she was affected by the situation, her hatred towards Samoza shows some negative emotion on her part. [The victim] also appears to feel vindicated as Samoza was found guilty for his offence. She seems hopeful for the future and ready to move on from the experience.

Ultimately, Samoza was not depicted as a bad person by community or family members. He is seemingly someone who has been employed for most of his life and has engaged in odd jobs and volunteer work within the community. He is well known as a hard working individual. Samoza has a significant partner and children in his life who do not believe he has committed such an offence. It appears that his incarceration has caused feeling of loss and pain in their lives.

On the other hand, it does not appear that much consideration has been given to [the victim] and her family by Samoza. Further, consideration has also not been given to the fact that his actions may have caused embarrassment and unhappiness to [the victim] and her family. During the interview Samoza was very emotional and expressed regret for what he has done, however, he has not shown remorse for [the victim]. No mention was made of how his actions may have negatively impacted her life.

Sexual abuse and sexual violence committed against children are atrocious acts which cannot be trivialized. The irresponsible behavior of an adult man against a child must not be excused. Also, while his behavior cannot go unpunished, consideration can be given towards his good reputation and his family's dependence on him.

Given that the sentiments of most of his community associates and his family, is that he is a hardworking individual and protective father indicates that there may be room for Samoza to be changed.

In addition, the impact of such offences is well known and as such, should not be downplayed. Samoza should be held accountable for his actions which is hoped to serve as a deterrent to future involvement in such behaviours. The final results rest in the hand of this Honourable Court.”

Principles of sentencing in context

[18]As noted before, the principles of sentencing are deterrence, retribution, reformation and protection.

[19]The level of sexual abuse in Dominica is now well known. In fact it is fair to say sexual offences are substantially in respect of young children. In this case the victim was 8 years old. This makes the principle of deterrence a matter of necessity in an effort at reducing the level of this offence against children.

[20]Society's retribution follows naturally since no society would wish its children to be sexually abused to this extent, or at all.

[21]The probation officer, based on her interviews, has gathered that the defendant is a hardworking individual and a protective father and as such there may be room for change. These facts point towards the matter of the defendant's reform.

[22]Finally, the principles of protection which again is aimed at the society's insulation against people like the defendant who are threats to the society.

[23]All of the foregoing must be reflected in the sentence imposed by the court.

Plea in mitigation

[24] Learned counsel for the defendant advanced an extensive plea in mitigation in which he highlighted the defendant's upbringing, his dropping out of high school and his continuation of his

education by acquiring skills such as computer hardware repairs. Learned counsel also spoke to the defendant's remorse. In the end learned counsel asked the court not to impose a custodial sentence because of the dire finances of the defendant's family of six persons since the defendant and his girlfriend have to repay numerous loans.

Sentence

[25] In imposing a sentence in this type of case the court must take into account all of the relevant considerations, especially the age of the child, the aggravating factors and the principles of sentencing.

[26] In this case the aggravating factor is the age of the child which dominates the issue of sentencing. Further, as noted before, the sexual abuse of children in Dominica is a matter of national concern. And in the final analysis it is the duty of the court to impose an appropriate sentence that *inter alia* reflects society's concerns.

[27] As part of the plea in mitigation learned counsel for the defendant led evidence from persons including defendant's girlfriend and a co-worker. Essentially, the evidence went to character and family relations regarding his live-in girlfriend and 4 children, of whom three are minors. Added to that the last child, who is the defendant's biological daughter, has a medical condition which requires monthly treatment at a cost exceeding \$300 per month which is almost two times the mother's net pay.

[28] Further evidence led dealt with the incomes of the defendant and his girlfriend and the outstanding loans with high monthly repayments relative to the incomes. This applies to both incomes but that of the girlfriend is the one that is under greater pressure. In short, the net income of the defendant is greater than that of the girlfriend but these factors must be brought into the sentencing equation in order to predict or anticipate the financial position of the girlfriend and 4 children having to exist on net income that is less than miniscule. He too is under great constraints because of all kinds of loans from lenders imbued with generosity to lend but without any semblance of concern regarding basic living expenses of the borrower.

[29] Thus, with the guilty plea given, the age of the child and the prevalence of sexual abuse in Dominica the principles of deterrence, retribution and protection come into full play against the backdrop of the other relevant considerations. Also in the equation are the findings of the Probation Officer.

[30] Given the totality of the matters referred to above and on the authority of **Desmond Baptiste v The Queen**³ per Byron CJ at paras. 28-30, the court fixes a notional sentence of 4 years or 48 months and when reduced by one third yields 16 months or 1.4 years leaving a residue of 2.8 years or 32 months.

[31] The court regards the economic situation of the defendant, his girlfriend and 4 children as extremely exceptional. There are 6 mouths to be fed plus all the normal expenses associated with ordinary existence.

[32] If the defendant's income is removed, the situation becomes one of impossibility within the law.

[33] But let it be clear without these exceptional circumstances facing the defendant and his family, a custodial sentence was a certainty as the court cannot be seen to have a double standard. So this must be clear also that the court cannot ignore a dire situation which can lead to further crime. In this regard the court is fortified and guided by a paper on sentencing by Sir Denys Williams the then Chief Justice of Barbados, in which he detailed some of the difficulties facing a sentencing judge. This is what the learned Chief Justice said in part⁴:

“Many experienced judges and magistrates recognize that sentencing is one of the most difficult parts of the judicial function. Offenders vary from person to person according to the diversity of their background. Moreover the circumstances in which crimes are committed vary from case to case. A person stealing to feed his or her family does not merit the same treatment as one who steals for profit. A man breaking and entering a house cannot expect to be treated like one whose criminal behavior carries no threat of personal violence or death.

³ *Supra*

⁴ *Criminal Justice and the Role of Sentencing (Reports and Papers from a conference)* at page 13

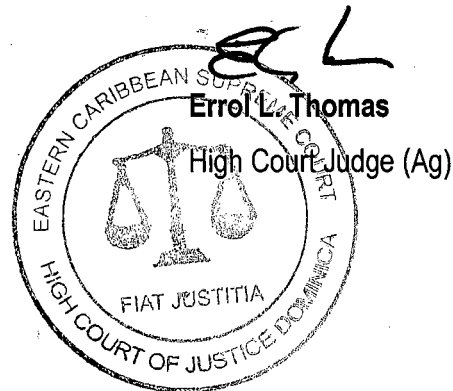
A judge or magistrate who is imposing sentence must look to the circumstances of the individual case and determine the appropriate sentencing response."

[34] Therefore pursuant to section 6(1) of the **Criminal Justice (Reform) Act**⁵ the residue of the sentence of 2.8 years or 32 months is suspended for 2 years and shall not take effect unless during the period of suspension, from 5th May 2016, the defendant commits another offence in Dominica punishable by a imprisonment for more than six months.

[35] Let it be clear also the law is not speaking of conviction but mere commission of an offence. In other words, if you are arrested for any offence carrying a sentence of more than 6 months. If that happens you will be brought to the High Court and ordered to the State prison to serve the sentence of 2.8 years or 32 months.

[36] The court also orders counseling for the defendant by officers from the Welfare Department at such times as can be arranged.

[37] Any remission of sentence must be in accordance into Rule 36 and 37 of the Prison Rules.⁶



⁵ Chap. 12:35

⁶ Chap. 12:70