

SAINT LUCIA

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

CASE NO. SLUCRD2015/0203

BETWEEN:

THE QUEEN

Claimant

and

TERRYKSON FERGUSON

Defendant

Appearances:

Mr. Leon France for the Claimant
Ms. Natalie Da Breo for the Defendant

2016: November 9.

JUDGMENT ON SENTENCING

- [1] **CUMBERBATCH, J.:** The defendant was indicted by the Director of Public Prosecutions for the offence of Sexual Intercourse with a Person under 12 years old contrary to Section 126(1) of the Criminal Code. At his arraignment he pleaded not guilty but at a later date entered a guilty plea. After the allocutus the court ordered a Pre-Sentence Report be produced and invited counsel on both sides to present written submissions.

FACTS

- [2] The complainant is eleven years old having been born on the 12th February 2003. On the 9th January 2015 around 12:30pm she was walking home from school when she observed the defendant and two other boys walking behind her. She recognized them as boys who attend her school and would see them every day. They continued following her until they were close to her then one of them held her had pulled her to a small wooden house. The defendant opened the door and let them in then closed it. One of the boys pushed her down on a mattress that was in the kitchen area on the ground and went over her to keep her down.
- [3] The defendant then went over her, removed all her clothing and took them to the bedroom. He returned and removed his penis from his boxers, held on to her legs and put them around his waist. The defendant then held his penis and pushed it into her vagina. He did not use a condom, she told him to stop but he said no. When they were done the defendant brought her clothes back for her to get dressed then he unlocked the door for her to leave. On the 23rd of January she positively identified the defendant had sexual intercourse with her.

PRE-SENTENCE REPORT

- [4] The defendant was brought up in a single parent childhood headed by his mother. She describes her son as loving and talented. However she states that during his adolescence he would frequently leave home without permission and consume marijuana and alcohol. On one occasion he became physically aggressive towards her.
- [5] The defendant's father describes him as stubborn and disobedient person who he has had to caution for associating with idle young men in the community. He is however willing to assist in the defendant's rehabilitation and highlighted his need for guidance. His maternal grandparents expressed their willingness to assist in the proper supervision of the defendant. Community residents do not consider the defendant to be a threat to the society.
- [6] The defendant expressed remorse for his actions and seeks a second chance to show he can make better decisions.

- [7] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING AND MITIGATING FACTORS

AGGRAVATING FACTORS

1. The defendant committed a most heinous offence,
2. The tender age of the victim,
3. The prevalence of the offence,
4. The psychological effect on the Virtual Complainant as evidenced in the Victim Impact Statement of the Pre-Sentence Report.

MITIGATING FACTORS

1. The defendant's guilty plea,
2. The remorse expressed,
3. The defendant's youthful age

- [8] Having carried out a balancing exercise of the aggravating and mitigating factors I find that the aggravating factors significantly outweigh the mitigating ones.

SENTENCE

- [9] The Virtual Complainant at age 11 was crudely introduced to sexual intercourse bereft of mutual love and affection at a mature age and with a partner of her choice. Thus it is not surprising that she has been traumatised as stated in the Pre-Sentence Report. The defendant states in the Pre-Sentence Report that he did not know her age at the time of the incident. Clearly so intent was he on committing the dastardly deed for which he stands convicted that he neglected/failed to ascertain her age prior to having sex with her. Indeed the facts disclose that the Virtual Complainant attended the same school as the defendant.
- [10] The court must however consider the defendant's age at the time of the commission of this offence. Though his conduct is generally associated with that of an adult steeped in criminality he was just 16 years old and a first offender.
- [11] The defendant's rehabilitation is an integral part of his sentence. He has so far shown the intention to rehabilitate himself. Moreover he has the support of his family to assist him in this important process.

[12] The offence for which the defendant is convicted carries a maximum sentence of life imprisonment. This is indicative of the seriousness with which Parliament views the sexual violation of a victim the age of the Virtual Complainant herein. In determining an appropriate sentence the court must balance the intentions of Parliament against the personal characteristics of the defendant and the circumstances of this case.

[13] There can be no doubt that what the defendant did to the Virtual Complainant was most heinous. The court is aware of the prevalence of this offence within the jurisdiction. The aggravating factors outweigh the mitigating ones. Hence the court is required to impose a sentence commensurate with the gravity of the offence.

[14] However I find that the defendant's personal circumstances in particular his age should be accorded greater importance than the need to impose a lengthy custodial sentence commensurate with the gravity of the offence.

[15] Accordingly the defendant is sentenced as follows:

1. The defendant is sentenced to time served.
2. The defendant shall serve a period of probation in the following manner hereinafter set out:
 - a. He shall perform 60 hours community service.
 - b. He shall undergo a drug rehabilitation program at the Turning point rehabilitation Centre.
 - c. He shall attend all counseling sessions as directed by his probation officer on matters of sexual abuse.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE