

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CASE NO. GDAHCR2016/0071

BETWEEN:

REGINA

V

JARVIN BELFON

Appearances:

Mr. Richie Maitland for the Defence.

Ms. Crisan Greenidge for the Prosecution.

2017: April 25.

JUDGMENT ON SENTENCING

(Criminal Law – Sentencing – Offences Against the Person – Sexual Offences – Rape – Unlawful Sexual Intercourse – s.180 (1) Criminal Code – s.19 Criminal Code (Amendment) Act 2012 - Young Victims – Sentence –Aggravating and Mitigating Factors – Guilty Plea – Discount for Guilty Plea) – Commercial Concerns.

[1] **AZIZ, J:** On the 25th January 2017, the defendant, Mr. Jarvin Belfon, 22 years old at the time, entered a guilty plea to the offence of having sexual intercourse with a nine year old boy. Due to the young age of the victim he would be referred to as “JR”. The offence is contrary to section 180(1) of the Criminal Code as enacted by section 19 of the Criminal Code (Amendment) Act 2012. The laws of Grenada stipulate that the maximum sentence for this offence is 30 years imprisonment. A social inquiry report and psychological evaluation were ordered and those reports were prepared in advance of the sentence hearing. The sentence hearing was

held on the 25th April 2017 and the Court delivered its reasons on the same day. Those reasons are now reduced into writing.

The facts

[2] JR was living with his mother in St Mark. At the time of the offence JR was at school and in Grade 3. JR also knew the defendant, and they would normally converse with each other. JR recalls that on the 2nd May 2016 he was by a friend in the evening and saw the defendant. Both JR and the defendant had a conversation and they left to go to the defendant's home. To get to the defendant's home, they had to pass by some bushes and it was whilst passing through the bushes that the defendant stopped, took JR under a mango tree, took off JR's pants along with his own, then the defendant put his penis inside of JR's bottom. JR asked for the defendant to stop but he continued "jucking" on him. It was whilst this was happening that JR saw another person coming called "Tootsie", and at that time the defendant grabbed JR's hand and started to run until he finally let go of JR's hand and JR was able to meet Tootsie. JR and Tootsie proceeded home. Once JR's mother came home they reported the matter to the Samaritan Police Station. After the report was made JR was taken to the hospital and a statement later taken. Upon examination by Dr. Regis, the following injuries were noted of the anus:

1. Soil around the anus, faeces
2. There were fissures or tears, one at 5 o'clock, 7 o'clock and the other at 12 o'clock position.

In relation to the rectal examination performed there was no perforation, good sphincter tone and no bleeding. Dr. Regis was of the opinion that there was some form of penetration.

[3] The defendant was detained and eventually taken to the Union Police Station whereby he was interviewed by PC James. Among a number of questions asked were the following:

“Q. Do you know why you are detained at Union Police Station?

A. Yes.

Q. Why are you detained at Union Police Station?

A. Because I rape a little boy.

...

Q. Did JR ask you to stop?

A. Yes.

Q. Did you stop?

A. No.

Q. Why didn't you stop?

A. Because I was under the influence of alcohol and I just could not hold back.”

Crown's Submissions

[4] Ms. Greenidge, for the prosecution, submits that this is a very serious offence, with a maximum penalty of 30 years imprisonment. The defendant pleaded guilty to the offence at the earliest opportunity and has been remanded since the 30th June 2016. Counsel submits that there is grave concern over this type of offending and refers the Court to the social inquiry report. There is significant emotional impact to the victim along with physical injuries and ongoing pain including nightmares and a bad temper. Counsel referred to the consumption of alcohol as an aggravating factor which the defendant says is a coping measure to help him manage his thoughts and keep calm. Ms. Greenidge also highlights the fact that the defendant is a substantial risk to the community, a position corroborated by the psychological evaluation. Counsel also submits that there was a position of trust that was breached and also the age disparity being relevant considerations.

Mitigation and Defence Submissions

[5] Mr. Maitland submits that the abuse of trust, in this case, is not necessarily what was envisaged when those terms came into being, but also accepts that JR would have trusted the defendant and was taken advantage of by him. Mr. Maitland further submits that the defendant himself was also a victim of various abuses, such as in a sexual, physical and mental manner¹ in addition to substance abuse. The defendant has also been an alcohol user from a very early age. Mr. Maitland has highlighted the various types of abuse evidenced by the various reports.

[6] Mr. Maitland submits that the defendant has accepted responsibility for his offending as evidenced by the responses given to the police at the time of his interview. Counsel also highlights that the probation officers describe the defendant as an ideal candidate for various rehabilitative and reformatory counseling and therapy. He says that this is a man crying out for help. The defendant also has no previous convictions and is not a career or repeat offender.

Prison Officer Inspector Neckles

[7] The Court also heard evidence from Prison Inspector Neckles. Inspector Neckles indicated that the defendant has harassed other inmates and he has had to be moved from the remand block to the maximum security area where he was confined to a cell on his own. The defendant was then placed with more seasoned inmates, meaning older inmates in terms of age, in a holding area for convicted prisoners, and there have been no further incidents or reports. The Court was informed that the defendant attends Bible Classes and has a good level of respect for the authorities at the prison.

¹ Psychological Evaluation, Pages 4 and 5

Court Considerations

- [8] Sexual Offences are considered to be serious and violent offences, carried out against women, young girls and boys in today's society. This young boy had to go through an ordeal and experience that no person should ever have to be subjected to. This type of offending is intrusive and soul destroying in the most serious way. This young boy had his trust taken advantage of and therefore the nature of the offending cannot be trivialized. This type of offending causes physical, psychological and psychosocial trauma.
- [9] Any defendant's actions, deliberate and intentional, will have caused their victims to suffer for a very long time, if not for the rest of their lives. The Court must take into account the manner in which the offences were committed, and in the instant case this was of the most serious kind.
- [10] A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last, but no means least, to protect members of the community, in particular young boys and girls. The length of the sentence will depend on the circumstances.
- [11] I would certainly stress that sexual offences in general almost always involves some form of disgraceful exercise of breach of trust, threat, humiliation, and physical power over a victim. This is degradation of the victim's human personality. Let me say that I have also borne in mind the pivotal principles in relation to sentencing as set out in **Desmond Baptiste v The Queen**² those are:
1. Prevention
 2. Rehabilitation
 3. Deterrence

² Crim. App. No. 8 of 2003, R v James Henry Sargeant [1974] 60 Cr. App. R. 74

4. Retribution

[12] These principles as stated above in a number of notable cases including **R v Camillus Paris**³ where the learned judge quoted from **R v Sargeant**⁴ in which Lawton L.J. emphasized that:

“Any judge who comes to sentence ought always to have those 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 with which he is dealing.”

[13] The Court has also considered the dicta in **Winston Joseph et al**⁵, where Byron CJ listed some of the aggravating and mitigating principles, but which was a non-exhaustive list. It was stated at paragraph 17 that: the actual sentence imposed will depend upon the existence and evaluation of the aggravating and mitigating factors. It is not enough for the Court to merely identify the presence of the aggravating and mitigating factors when sentencing.

[14] A sentencing court must embark upon an evaluative process; **R v Kenny Cadoo** is cited.⁶ 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.”

[15] There are guidelines for sentencing judges, but again it has always been said that sentencing is not a science but an art. In the case of **Roger Naitram et al v The Queen**⁷ it was stated:

³ BVIHCR2010/0014 at [20]

⁴ 60 Cr. App. R. 74

⁵ St Vincent and the Grenadines , High Court Criminal Appeal No 8 of 2003

⁶ GDAHCR2015/0032, GDAHCR2015/0036, GDAHCR2015/0039

⁷ HCRAP2006/005, HCRAP2006/006 and HCRAP2006/008 [Antigua and Barbuda] CA. Judgment delivered on 15 December 2010, per Baptiste J.A.

“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 cause may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish the reason for so departing.”

- [16] In **R v Ali Sunussi**, the guidelines are not to be applied in a mechanistic way or to be too over refined⁸ depending on the particular offence. In other words the sentencing judge must do their best to ensure that the punishment is tailored to fit the crime.

Social Inquiry Report

- [17] The social inquiry report revealed that the defendant grew up in the care of his parents and siblings, all of whom were adequately provided for. The home environment was peaceful but somewhat abusive at times. It was clear that the defendant was a victim of abuse by his father who would beat him excessively and predominantly in the head area. The defendant’s general disposition whilst speaking with the probation officers was pleasant but with a severe reduction in emotional expressiveness⁹.

⁸ [2016] EWCA Crim. 38 at para [28]

⁹ Social Inquiry Report, Page 4

[18] The defendant openly admitted committing the offence and expressed remorse for and disappointment in his actions, but it is clear that he suffers from alcohol abuse. The defendant could not remember his actions fully but blamed this on alcohol induced blackouts. This is not consistent with what has been stated by Dr. Neckles in her psychological evaluation and report.¹⁰

The report states that:

“It should be noted that while Mr. Belfon, reported having experiences of not being able to remember certain events because of his alcohol use, he did not state this as a reason contributing to his actions based on his charge.”

[19] The defendant himself has been subject to sexual abuse referring to his first sexual encounter from the age of 7. The defendant’s mother spoke of him as being a quiet person, generous and helpful, but also alluded to the fact that he was an excessive user of alcohol.

[20] The defendant has not been diagnosed with any health conditions and neither does he suffer from any mental health disorders.

[21] The defendant does accept responsibility for the offence and this is evidenced by the authors of the social inquiry report¹¹. The report also indicates that as this is the defendant’s first offence there is no pattern of offending and consequently no escalation in offending. The probation officers have expressed concern about the defendant’s pattern of alcohol use which can lead to interpersonal behaviours and in itself the use of alcohol can be life threatening.

¹⁰ Psychological Evaluation, Page 12 of 17

¹¹ Social Inquiry Report, Page 8

[22] The probation officers therefore have recommended that the defendant is a suitable candidate for a substance abuse treatment and rehabilitation program, which include development of social life skills and grief counselling.

Victim Impact

[23] JR met with the probation officers and spoke of experiencing significant pain and sobbing during the incident and asking the defendant to stop but to no avail. The trauma experienced led JR to be admitted to the Mirabeau Hospital for care. It was clear that JR experienced significant pain for some time afterwards, which included experiencing nightmares, becoming short tempered and hostile. This hostility had resulted in some remarks by JR of killing the defendant.

Psychological Evaluation

[24] The Court referred the defendant for psychological evaluation¹². Such evaluation was to address the level of psychological functioning and any characteristics in need of psychosexual-specific treatment with recommendations. Dr. Neckles stated that the defendant is a 22 year old boy who appeared his stated age, tall structure and average build. He presented as adequately groomed and there was nothing unusual about his appearance.

[25] The defendant displayed no severe cognitive defects or impediments in need of neuropsychological attention, as grossly assessed by the Mental Status Examination. The report indicated that the defendant “displayed poor abstract reasoning which may be a function of his poor education”.

Dr. Neckles continued¹³ that:

¹² Report prepared by Dr Kristyn Neckles Psy. D. on the 10th April 2017.

¹³ Psychological Evaluation at Page 3 of 17.

“Mr. Belfon appeared to have complete knowledge regarding the details surrounding his offence. Specifically, he appeared aware of what his charges were and took responsibility for the charge made against him with full disclosure.

Symptom Presentation

Mr. Belfon exhibited no overt evidence of a severe psychological disturbance in need of immediate psychiatric hospitalization or pharmacotherapy, as grossly assessed by this examiner’s observations. Mr. Belfon did not appear to be suffering from a psychotic illness, as his thought patterns seemed coherent, logical, and goal directed, and he did not display or report having any delusions, preoccupations, hallucinations, or obsessions.”

- [26] The defendant has been forthcoming and indicated that he was feeling sexually active, and there was a bit of heat over him which led to this offence being committed. The defendant has had nightmares about the victim’s family and persons in the community wanting to hurt him. He has reported feeling worried, sad and regretting what happened and then stated:

“I never thought I would be in prison. I regret where it all started from and I did not think about the consequence...I thought it was ok to do because fornication is only with a woman”. The defendant further stated that “I knew it was wrong but seeing it in my own eye, reflecting on my life, I did not see it as wrong for me because it looks so easy to do and simple to me, as long as no one knows”¹⁴.

- [27] It is very apparent that this is a young man that does need formal intervention and counseling as far as his anger and substance abuse related activity. There is also

¹⁴ Psychological Evaluation, Page 11 of 17

a concern raised about “grooming” behavior¹⁵. This is a young man that has lived in a small community and has been labeled from a very young age for his acts and the acts of his father, as far as sexual activity is concerned. This is quite worrying as one day the defendant will have to be reintegrated into society and live a normal and productive life.

[28] The defendant, through speaking with an expert, has been able to open up and speak about this matter and other issues on his mind. This is a clear example of the benefits of having experts in mental health, health care professionals and suitably trained mentors and other medically qualified personnel in our schools, institutions, hospitals and community to assist and guide those who require such assistance.

Risk Assessment

[29] Dr. Neckles has indicated that there are certain limitations in assessing risk in this case. This is the first case in which the defendant has described grooming activity and engaging in pre-pubescent sexual activity. There was also the fact that the expert has not had sufficient time to explore all of the factors and additional paraphilia. There is also a concern over previous violent fantasies disclosed. The defendant has also had a traumatic childhood being the victim of various types of abuse himself including sexual abuse from the age of 6. There are concerns expressed about anxiety and chronic alcohol use.¹⁶ It is therefore considered that the defendant will meet the criteria for Borderline Intellectual Functioning.¹⁷

[30] The report also suggests that the defendant has disclosed that he has an attraction to children because he feels that they need him. Dr. Neckles has further stated that this is often the experience of pedophiles, and in relation to children they have a feeling of being in control, respected and powerful, and more so in this

¹⁵ Ibid

¹⁶ Psychological Evaluation prepared by Dr. Neckles dated 10th April 2017, Page 13 of 17.

¹⁷ Ibid.

defendant's case coming from a home in which he was abused himself. Based on early sexual experiences the defendant has strong dependency needs and early arousal patterns has become part of fantasy which are unhealthy and can lead to problematic perceptions of sex.

- [31] The defendant, it is said, has some violent fantasy and this can be classed as significant rage, and does not need to be provoked to such. Therefore the Court has been told and accepts that there is a substantial risk to the community and every effort must be made to quell such anger and fantasy for his own and the public's interest.

General Aggravating and Mitigating Factors

- [32] There is a list of aggravating and mitigating factors which have been cited in a number of earlier authorities that deal with sexual offending. This list of factors both aggravating and mitigating¹⁸ have also been set out the in UK Sentencing Guidelines, which took effect on 1st April 2014. Some of those aggravating factors include:

- ❖ Ages of the victims
- ❖ Psychological and Physical harm
- ❖ Degradation and humiliation caused to a victim
- ❖ Victim becoming pregnant
- ❖ Detention within their home or personal space
- ❖ Actual and Threats of Violence
- ❖ Infringement of socially acceptable standards
- ❖ Abuse of trust or position
- ❖ Timing of the offence

¹⁸ The non exhaustive list of aggravating and mitigating factors are not all applicable to this individual case but will be applicable to all cases of a sexual nature. The Sentencing Court will have to consider all of the factors that are applicable to the individual case and then conduct the evaluation and balancing process necessary as part of the sentencing procedure.

- ❖ Location of the offence
- ❖ Others present, especially children
- ❖ Weapon present
- ❖ Any steps taken to prevent the reporting of the incident and/or preventing the victim from receiving assistance from the police or supporting the prosecution
- ❖ Offence committed whilst on bail.

Some of the mitigating factors include:

- ❖ Age of Offender at time of commission of the offence
- ❖ Early Guilty Plea
- ❖ No previous convictions or no relevant and/or related previous convictions
- ❖ Remorse (Genuine)
- ❖ Mental Disorder, Learning difficulties especially where related to the offending

[33] In the case of **Winston Joseph** it was stated by Byron CJ that for offences of unlawful carnal knowledge of a female under thirteen years of age which carries a maximum sentence of life imprisonment in Saint Lucia that:

“Starting at a minimum where a girl is not far from her 13th birthday and there are no aggravating factors at 8 years and going upwards. It scarcely needs to be said that the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases.”

Rape

[34] In Grenada the maximum sentence that the Court can impose for Rape is a sentence of 30 years imprisonment. Section 19 of the Criminal Code (Amendment) Act 2012, states:

19. Section 177 to 183C of the Criminal Code is repealed and the following sections are substituted –

“RAPE AND SIMILAR OFFENCES

Rape

177. (1) A person commits the offence of rape if:-
- (a) He or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs, of another person;
 - (b) The other person does not consent to the penetration: or
 - (c) He or she does not believe that the other person consents to such penetration or is reckless as to whether the other person consents or not.
- (2) A person guilty of the offence of rape under sub-section (1) is liable on conviction on indictment to a term of imprisonment not exceeding thirty years.
- (3) A spouse who is guilty of the offence of rape is liable on conviction on indictment to a term of imprisonment not exceeding fourteen years.”

[35] I have considered the case of **The Queen v Andre Penn**¹⁹ in which the Learned Judge stated “*our courts in the dispensation of justice must approach these matters with a sense of consistency.*”

¹⁹ BVIHCR2009/0031

[36] It is important to stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Guideline judgments are intended to assist the judge to arrive at the current sentence but they do not purport to identify the correct sentence. Doing so is the task of the trial judge.

Having sexual Intercourse with a female of 14 years of age.

[37] It should be stated for clarity that the same or similar principles relating to the offence of rape also apply to this offence of having sexual intercourse with a female or as in this case a young male.

[38] This is a case that is disturbing in many ways, as it involved having sexual intercourse with a young boy of tender years. The defendant was calculating and deliberate in his course of conduct perpetrated against JR.

[39] It is this Court's firm view that many of the aggravating features identified above are present in this case. Firstly, this boy was very young, a mere 9 years old, the defendant was at least 12 years his senior, the defendant and JR knew each other and in my view there was a breach of trust and they were having a conversation before Mr. Belfon pounced on JR. It is clear that JR, his family and community would suffer from humiliation and JR even more so has been degraded, force was used.

[40] This type of behavior is not socially acceptable; this type of breach of trust causes physical and psychological harm to boys/girls and injures the community as a whole. This behavior not only destroys family, but the community at large.

[41] The defendant is a man of previous good character, and has pleaded guilty relatively early, and in the normal circumstances would be entitled to credit for his

plea. The Court also has, at times, to take into account commercial concerns whilst ensuring that justice is done and seen to be done for all the relevant parties. This is because one of the principles of sentencing, among others, is rehabilitation, and one day this defendant, like many others, will be living back in society and have to live within socially acceptable standards, and furthermore, there is a duty to ensure that any accused is suitably rehabilitated through the means that are available to do so, so that community can live in harmony and progress, for the betterment of all people. One question that has been posed in the past but still relevant is what useful purpose will be served by the imposition of a lengthy custodial sentence. The offender will and must be punished but consideration must be given in the appropriate case to the other principles of sentencing.

- [42] In Grenada, sexual crimes of various types are prevalent, (although the Court has not heard evidence from a professional body or authority) but it is clear that the Court's time is taken up predominantly with sexual offences and there are many committed on young women, and many of school going age.
- [43] Society must be made to understand that this type of offending, involving the sexual defiling of women, girls and boys must come to an end and must end now. This behavior ought not and cannot be further tolerated as it harms women and men in today's society.
- [44] A message must be sent out through the courts, that rape, sexual assault, or sexual abuse in any manner will not be tolerated, and the appropriate custodial sentence will be meted out to anyone who commits these types of crime.

Sentence

- [45] The Court having considered all of the factors surrounding the offence and the offender, listened closely to the submissions made by counsel. There must necessarily be a balancing exercise done to ensure justice for all parties

concerned. This is a case in which there is no other option for the Court but to impose an immediate custodial sentence. The principles of totality and proportionality have also been applied in determining the sentence.

[46] The credit given for this early guilty plea is the full one third, as Mr. Belfon admitted the offence whilst being interviewed by the police and also entered his guilty plea at the earliest opportunity. He has clearly, in the Court's view, demonstrated genuine remorse and regret for his actions, but he is a young man that calls out for professional assistance and counseling.

[47] The sentence that this court imposes, keeping in mind previous sentences of this Court for similar offending is a term of imprisonment of 9 years. The Court will also reduce that sentence by 12 months for personal mitigation. In addition to which any time that has been spent on remand will be deducted from the sentence. The defendant is a young man that requires punishment, rehabilitation and reformation. That will be done in a secure environment for his benefit and that of the public.

[48] Furthermore, the defendant is to engage with the probation and other professional services for appropriate therapy and attend an enhanced thinking skill or such like course for such period deemed appropriate by the probation and medical experts. The defendant must also attend any courses recommended to deal with addressing sexual offending behavior for a period deemed fit by the probation and medical experts. If this part of the sentence is breached, then in default the defendant will be liable to serve a term of imprisonment of 12 months consecutive to the term of imprisonment imposed. The Court must also be provided with half yearly update reports.

[49] Upon being released, the defendant is to notify the probation authorities and the police as to where he would be living/working and the authorities are to continue to monitor and/or supervise the defendant from time to time to ensure that there are

no concerns or dangers to himself and/or the public. This monitoring/supervision is to continue for a period of no more than 3 years and ought not to be in any way intrusive except for the purposes of preventing any further offending.

[50] The Court thanks Counsel for their helpful and brief submissions.

Shiraz Aziz
High Court Judge