

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CRIMINAL CASE NO. SLUCRD2010/1374

BETWEEN:

THE QUEEN

Claimant

and

SHELDON JN BAPTISTE

Defendant

Appearances:

Mrs. Jenin Samuel-Kisna for the Claimant

Mr. Colin Foster for the Defendant

2017: October 13.

JUDGMENT ON SENTENCING

[1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecutions for the offence of Rape for that he on the 9th November 2011 at Marne D'or situate in the Quarter of Anse La Raye did commit Rape upon the Virtual Complainant contrary to Section 123 (1)(a) of the Criminal Code of Saint Lucia 2004. At his arraignment the Defendant entered a plea of not guilty and a trial date was set.

[2] At his Trial the Defendant conducted his own defence but whilst doing so exhibited strange behaviours which caused the Court to enquire into his mental health status and whether he was fit to stand trial. The Court declared a mistrial and ordered that the Defendant be seen and evaluated by a Psychiatrist. The report of the Psychiatrist disclosed that the Defendant displayed no psychotic features but for reasons not attributable to the Defendant his trial was not recommenced in a timely manner.

[3] On the 3rd July 2017 the Defendant changed his plea to guilty. After the facts were stated and the Defendant allocuted the Court ordered a Pre-Sentence Report by produced and set a date for his sentencing hearing.

THE FACTS

[4] Prior to the commission of this offence the Defendant and Virtual Complainant were involved in an intimate relationship during which time she bore him a son. There have been several misunderstandings between them hence the Virtual Complainant has constantly asked the Defendant to leave her alone which he refuses to do. On Saturday the 6th November 2010, the Defendant visited her home ostensibly to see his son. However after he was asked to leave he remained there until Tuesday 9th November when another argument ensued and the Defendant forcibly and against her will had sexual intercourse with the Virtual Complainant. He was at that time armed with a cutlass. A report was made to the Probation Office which referred her to the police where another report was made. The Defendant was arrested and charged with the offence of Rape as aforesaid.

PRE-SENTENCE REPORT

[5] The Defendant was raised by his great grandparents and thereafter his grandparents. His childhood has been a difficult one as he never been able to establish a relationship with his parents. His mother migrated to Barbados shortly after his birth and he was left to be brought up by his great grandparents and grandparents.

[6] From his early teens the Defendant has run afoul of the law which resulted in him being sent to the Boys Training Centre. His grandmother reports that rather surprisingly when she went to take him home from the Boys Training Centre, the Defendant insisted on staying there and told her he is happy at that institution. The Defendant states that he left home at age thirteen and has been on his own since then. His formal education ended at grade V and he states that his guardians could no longer afford to send him to school at that stage.

[7] The Defendant has expressed remorse for committing this offence and states his intention to apologise to the Virtual Complainant. He says he has set his mind to live a better life especially for his son who he believes to be 'in a vulnerable and dangerous situation'.

AGGRAVATING AND MITIGATING FACTORS

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

Aggravating Factors

1. The seriousness of this offence,
2. The prevalence of sexual offences within the jurisdiction,
3. The offence was planned and premeditated.

Mitigating Factors

1. The Defendant's guilty plea,
2. The Defendant's difficult upbringing,
3. The remorse expressed.

[9] The prevalence of this offence within the jurisdiction is a well-known fact. Indeed the manner in which the Defendant attacked and raped the Virtual Complainant is indicative of the male mindset of complete disregard for the rights of women that has permeated the minds of some of the young men of the jurisdiction. The Court must show its abhorrence for the commission of this offence.

[10] Defence Counsel in his written submissions contends that the Defendant's offending behavior must be viewed against the background of his own personal disadvantaged circumstance.s Counsel went on to state that the Defendant's deprivation from birth of the opportunity to establish a positive relationship with his mother who abandoned him at birth and a father who he does not speak of resulted in his life and social history being marred by economic hardship and neglect. As a consequence his years of maturation were without the benefit of support from his parent.s Thus his sense of responsibility and/or his attribution of responsibility to criminal behavior became blurred and he was destined to fail.

[11] Though the Defendant has had a checkered past I do not find him to be in that category of offenders who constitute a danger to the society. Indeed the Court is heartened by his admission of his own shortcomings and his expressed desire to be involved in his son's life.

[12] I will go on to consider the dictum of Henry LJ in **R v Loff James Lennon** to wit:

" It is not the purpose of the judgment to seek to lay down guidelines for sentencing in cases of indecent assault. It is never easy to sentence in such cases. The circumstances of each case will vary greatly . . .What the Judge must do , as I see it , is to tailor the sentence to the particular facts of the case before the Court . In most cases , the personal circumstances of the offender would normally take second place behind the plain duty of the Court to protect the victims of sexual attacks and to reflect the clear intention of Parliament that offences of this kind should be met with greater severity than may have been the case in former years when the position of the victim may not have been so clearly focused in the public eye. "

[13] The Court accepts that short of homicide the offence of Rape is the most heinous and degrading act that could be committed on a female. Thus the commission of this offence cannot be trivialized. The absence of a victim impact statement in the Pre-Sentence Report ought not to be interpreted as the absence of psychological trauma usually suffered by victims of this heinous offence.

[14] The Court finds that the personal circumstances of this Defendant are worthy of consideration in his favour. I must however tailor the Defendant's sentence to the particular facts and circumstances herein. The relationship between the Defendant and the Virtual Complainant has been a stormy one which is further complicated by the fact that they have a child together. Thus it is inevitable that their paths will continue to cross in future when he is released from the Bordelais Correctional Facility.

[15] I accept the contentions of Mr. Foster aforesaid on the effect of the Defendant's difficult upbringing on his maturity and development of a sense of responsibility. These matters must be addressed by appropriate programs of rehabilitation to which the Defendant is not adverse.

SENTENCE

[16] I find that the aggravating factors outweigh the mitigating ones. Indeed defence Counsel has conceded that there are no mitigating factors in the traditional sense to be urged on his client's behalf. The maximum sentence of life imprisonment for the commission of this heinous offence is indicative of the seriousness with which Parliament views it.

DELAY

[17] It is common ground that the Defendant has been in custody since his arrest and detention. Though bail was granted for him in the sum of \$5,000.00 he has been unable to raise that sum to be released on bail. He was prior to the pro bona appearances of Mr. Colin Foster unrepresented by Counsel. The Court expresses its gratitude to Mr. Foster for this kind gesture. Through no fault of his own, however the Defendant's case has not been proceeded with due expedition.

[18] Thus in the circumstances the Defendant's right to a fair trial within a reasonable time has been breached, hence he is entitled to a reduction in sentence therefor. I find a starting point of 12 years imprisonment to be appropriate in the circumstances from which I will deduct 4 years for the guilty plea. I will deduct another 3 years for the delay.

[19] Accordingly the Defendant is sentenced to 5 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall serve 2 years probation during which time he shall attend relevant rehabilitative programs including but not limited to anger management and dispute resolution. The question of custody, maintenance and access to the Defendant's son shall be referred to the Family Court by the Department of Parole and Probation.

[20] In the event of the Defendant's failure to serve his probation as ordered he shall be returned to the High Court to be re-sentenced.

FRANCIS M. CUMBERBATCH

HIGH COURT JUDGE

BY THE COURT

REGISTRAR