IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0077/2017
GCR 0004/2017
Case #01687/2012(1-3)

THE QUEEN

v.

OKENO NICHOLAS SOLOMON

Appearances:	**Mr. Kenneth Ferguson for the Crown**
	Mrs. Prathna Bodden of Samson Law Associates for the Defendant on Indictment 77/2017
	Mr. Neil Kumar of Furniss Attorneys-at-Law for the Defendant on GCR 4/17 & on Case #01687/2012
Before:	**Justice Marlene Carter (Actg.)**
Sentence Hearing:	**15th March 2018**
Defence Requests Mental Health Report:	**3rd April 2018**
Report received:	**25th July 2018**

HEADNOTE

Criminal Law – Rape, Indecent Assault on a female, Aggravated Burglary, Burglary, Theft – Sentence *– Starting point – Aggravating and Mitigating Factors.*

SENTENCE JUDGMENT

PREAMBLE

1. Section 31 of the Criminal Procedure Code (CPC) (2014 Revision) deals with the "*Anonymity of complainants in rape etc. cases and states*:

> *"31. (1) After a person is accused of a rape [etc.] offence, no matter likely to lead members of the public to identify a woman as the woman against whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast, except as authorised by a direction of the court."*

For the avoidance of doubt: It is the Court's view that the indecent assault charges against this Defendant fall within this section of the law by virtue of the use of the word "*etc.*" and therefore I order that there be no identification of the Complainants in this case.

2. The Defendant falls to be sentenced for the following offences.

OFFENCE:

BREACH OF A SUSPENDED SENTENCE ON CASE #01687/2012 (1-3) (GCR #0006/2018): BURGLARY X 3 & HANDLING STOLEN GOODS

3. The Defendant was sentenced on the 4th of August 2014 for three offences of Burglary and one of handling Stolen Goods. The sentence was 2 years' imprisonment suspended for two years with compensation orders for each burglary which totaled $1000.00. As far as is relevant on this sentencing exercise the burglaries were all residential burglaries.

4. The Defendant stands to be re-sentenced for these offences as the offences related to GCR #4/2017 (below) were committed during the currency of the suspended sentence received for these offences.

5. Counsel for the defence agrees that the Court may order that the suspended sentence imposed on the 4th August 2014 be activated for the full original custodial term, or a lesser term, unless it would be unjust to do so.

6. On the facts and circumstances of the offences committed on the 9th December 2015 – in relation to GCR #4/2017 (below), no submission has been advanced for a reduction of the custodial term imposed for these charges on the 4th August 2014. The offences in relation to GCR 4/17 are of the same type for which the defendant was sentenced in August 2014 and this court can find no justification for reducing the original custodial term.

7. **SENTENCE**: The previously suspended term of **two (2) years' imprisonment is hereby imposed** for the three offences of burglary and one for handling stolen goods – **to run concurrent** to all sentences imposed today.

GRAND COURT - CAYMAN ISLANDS

OFFENCES:

BURGLARY & INDECENT ASSAULT - GCR 4/2017:

8. The Defendant was found guilty of the offences of Burglary and Indecent Assault in the Summary Court.

9. These offences were committed on the 9th of December 2015 during the currency of the suspended sentence on Case #01687/2012.

10. The evidence led at the trial in the Summary Court as set out in the Crown's sentencing note, is that, on Wednesday December 9, 2015 the victim, after securing her house, went to bed in her room at about 11 p.m. and fell asleep. She was dressed in her sleep wear. Whilst she was asleep she felt someone "feeling up her buttocks". This awoke her and, because she was sleeping on her stomach, she turned over and noticed that the sheet was used to cover her had been pulled off her. At the same time she saw a figure, and this person tried to grab at her face. The person covered her mouth and she tried to bite him. She then realized that it was the offender whom she had known for about three years up to that time. The offender pulled back and ran toward her bedroom window through which he made his escape. She then informed her mother that the offender had entered her room and assaulted her and the police were called. The victim informed the police of the identity of her intruder and, later that morning, after the police had left the scene, the offender returned to the house. The victim confronted him and he denied it. He was the friend of her uncle, Giovanni Carter, and he would frequent her house and even sleep there sometimes.

GRAND COURT - CAYMAN ISLANDS

11. For the Offence of Burglary:

i. Both counsel for the Crown and for the defence have submitted that the Court should consider that, the Defendant's culpability, and the harm caused, place the offence in Category 1(B) of the Cayman Islands Sentencing Guidelines for the offence of Burglary. The maximum sentence for Burglary in the Cayman Islands is 14 years' imprisonment.

ii. The Cayman Islands Sentencing Guidelines set out the factors to be considered in determining the level of culpability of the offender. While the factors set out for High Culpability are not present on the facts relating to these offences, I agree with Crown counsel that the nature of the assault on the complainant, leaving aside the sexual assault, is such that it cannot be characterized as the use of minimal force. This results in a characterization of Culpability at Medium or at B on the guidelines.

iii. As to the level of harm caused to the complainant: The facts display an assault of a serious sexual nature and more than the "some harm" contemplated at Category 2. This, coupled with the important factor that the complainant was on the premises while the offender was present, and that the offence took place at night, puts this offence squarely within the Category 1 range.

iv. The ***Chief Justice's Guidelines***[1] emphasized that this court should consider a home invasion, whether by night or by day, a very serious offence. As has been stated above, this was a home invasion burglary at night when the complainant was at home.

[1] ***Statement on Tariffs and Guidelines for Sentencing for Certain Offences (2002)***

v. A Category 1 B offence attracts a sentencing range of 4-8 years with a starting point of 6 years custody.

vi. The aggravating factors are as follows:

(a) Three (3 previous convictions for residential burglaries;

(b) The offences were committed during the currency of a suspended sentence;

(c) The nature of the offence committed during the burglary, here a sexual assault;

(d) Lack of remorse shown by the offender.

vii. There are no mitigating features present on the facts.

viii. The presence of the aggravating factors will lead to an uplift to the starting point.

12. <u>For the offence of Indecent Assault</u>:

i. The maximum penalty is 10 years' imprisonment.

ii. The sentence range is 3-7 years.

iii. The aggravating factors identified above (at vi (b) and vi (d)) that relate to the Burglary are especially relevant. There are no relevant mitigating factors.

iv. I bear in mind that these offences arise out of the same set of facts.

GRAND COURT - CAYMAN ISLANDS

13. SENTENCES:

i. Burglary: The defendant is herein sentenced to a term of **seven (7) years' imprisonment.**

ii. Indecent Assault: The Defendant will serve a term of four **4 years' imprisonment. This sentence will run concurrent** to the sentence for Burglary.

GRAND COURT - CAYMAN ISLANDS

GRAND COURT - CAYMAN ISLANDS

OFFENCES:

RAPE, AGGRAVATED BURGLARY, THEFT – IND. 77/2017:

14. The Defendant has pleaded to three counts on Indictment #77/2017 of Rape, Aggravated burglary and Theft. The guilty pleas were made on the full facts as outlined by the Crown.

15. The facts as outlined at paragraphs 5 – 12 of the Prosecution's Sentencing Note are as follows:

i. The victim is a 32 year-old foreign national. At the time of the commission of these offences against her she had been on the island for approximately ten months.

ii. Minutes after 1:00 a.m. on Wednesday September 13, 2017 she was seated in her living room couch working on her work laptop with her television turned to the CNN network. This couch was near to the sliding glass door to the patio of the apartment. She was dressed in her night clothes and a blanket covering her. She was heavily concentrating on her work when she happened to look up towards the area of her patio when she saw a man wearing covering over his head, a pair of black gloves and holding a knife in one of his hands hovering over her.

iii. This man suddenly lunged at her and pushed her back into the couch. He held the knife at her left side and told her not to make any noise or he would use it.

iv. She struggled with him and received a graze to her left arm during the struggle. She noticed that his clothes were damp. The assailant managed to put the knife to her throat and told her that if she did not stop making noise he would use it.

v. He then ordered her to turn over on her stomach and she complied and he then bent her arms behind her and attempted to use a piece of electrical tape to gag her mouth but he was not successful. He then wrapped the entire reel of electrical tape around her face, bound her ankles and her wrists. He then set about to rummage through the living room. He then used the laces of her pair of running shoes to tie her hands behind her after which he proceeded to rummage through the entire apartment.

vi. She started to cough and have an asthma attack and he removed the tape from over her mouth and told her that if she screamed he would kill her. She begged him to take whatever he wanted but not to harm her. He used the knife to cut her underwear off and touched her and she begged him not to. He then took her into her bedroom and she continued to beg him not to harm her. She thought that he had changed his mind because he took her back into her living room.

GRAND COURT - CAYMAN ISLANDS

vii. There he tried to bend her over the couch and then took her into a second bedroom and told her to stand in the corner whilst he moved laundry off the bed. She begged him not to and asked him what if she was his mother or sister.

viii. The offender then pushed her down on the bed, dragged her to one of the corners and she told him that if he was going to rape her he should at least use a condom. He told her that he would, placed a condom on his penis and raped her. He then stopped and complained that he could not finish. He then took off the condom and put on another one and raped her again.

ix. It was the first condom that the offender left at the scene which resulted in the only and vital piece of evidence which connected him to this heinous and vile act.

x. When he was finished he took her back to the living room and where he continued to rummage through her property and demanded the password to her work mobile phones. She did not know what it was and she begged him to at least allow her to keep her personal mobile phone which he did but stole her work phones.

xi. After he finished ransacking her apartment he packed up the properties that he took and placed the knife at her throat and asked her for the key to her car. She directed him to where it was and he took it and carried them to her car that was parked in the parking lot telling her that she must not move or scream. It was while he was taking her properties to her car that she was able to determine the time from CNN network and then she ran into the bathroom and locked the door.

16. The maximum sentence for Rape[2] is life imprisonment.

17. The maximum sentence is the same for Aggravated Burglary.

18. The maximum sentence for theft is 10 years' imprisonment.

19. The Aggravating factors are as follows:

i. At the time these offences were committed the offender was on bail pending sentencing after conviction for the offences of Burglary and Indecent Assault[3];

ii. The Defendant has three (3) previous convictions for residential burglaries;

iii. In addition, the Defendant had been convicted, though not sentenced, for a series of offences of serious sexual assault during the course of a burglary at night where the victim of the assault was at home;

[2] Pursuant to s.128 of the Penal Code (2017 Revision)
[3] The facts of which are set out above

iv. The use of a weapon to cause fear during the commission of the offence;

v. Repeated rape in the course of one attack;

vi. The effect on the victim as detailed in the Victim Impact Report (VIR).

The Victim Impact Report

20. The victim impact report is un-apologetically heart-wrenching. The Complainant details the physical, emotional, psychological and financial impact that she has suffered as a result of the incident. I will not attempt to paraphrase what the Complainant has set out. Instead I have set out the most relevant aspects here:

"He took all my jewellery, thousands of dollars of jewellery, stuff that has been given to me by my parents that has sentimental value he took all of that. He took laptop, my car which was later recovered by the police and he stole random stuff out of the fridge.

He used the knife he had to cut me on my left arm and on my leg. I got a cut in my left ear which was caused by the knife. I have physical scars that remind me of this horrific incident every day. I had long hair which I cut the same day because it was matted and had blood on it. Every time I look at my hair I remember.

I have to adjust my life because of this. My parents had to fly down. My dad came down the next day so that was an extra financial burden on them. Immediately I moved to a hotel which was an added expense to me, then I had to find a new apartment. I had an alarm system installed in my home in --- [overseas]."

21. In relation to the Impact of the Offence the victim continued:

> *"I try to be level head about it but he was arrested for something similar before so why was he out of jail. Why wasn't he locked up? The system failed me!"*

22. Complainant's desire regarding sentencing:

> *"I was excited for the opportunity for the secondment. It was great opportunity. I was really doing well here so that they asked me to stay longer. Two hours changed all of that. They say a guilty plea should allow for some leniency but he was not lenient on me. He broke into my house, bound me; the one place I was to feel safe. Went through every inch of my personal space and if that was not enough he then decided he had the right to take my body. I hate what he did to me. "You pled guilty because you were guilty."*[4]

Mitigation

23. The Defendant pleaded guilty at an early stage after the DNA results, which connected him with the crime, were produced.

24. I note that the Crown has submitted that, given the fact that that the Defendant's DNA was found in a condom at the scene of the crimes – a fact which strengthened the prosecution case and made the guilty plea almost inevitable – the Defendant should not receive the full discount for his guilty plea.

[4]Paragraphs 4, 5 and 6 at page 4 as well as 1 and 5 of page 5 of the VIR

25. I have considered details in the Social Inquiry Report (SIR) wherein the offender states that he did not recall all the events of the evening as he asserts that he had taken cocaine before the incident. It is therefore arguable that it was only when he was confronted with the DNA evidence that he accepted that, despite his not recalling all the details, that he had committed the offence and that the rape had in fact taken place.

26. Counsel for the Defendant argued that full credit of 33 $^{1/3}$ percent should be given for the defendant's guilty plea. Defence counsel submits:

> "*The defendant pleaded guilty. In this type of offence, where he has saved the complainant from having to give evidence and be subjected to cross examination, full credit should be awarded. This will send a message to other offenders that the benefits of pleading guilty and saving the complainant further distress, will result in proper credit.*
>
> *The evidence against Mr. Solomon comes from his DNA on a condom, he cannot recall the offence due to using drugs – it was difficult for him to accept he had committed such an awful offence, it is significantly more serious than that (sic) his previous offending. In all the circumstances, he made no application for bail, he waited for legal advice and entered his guilty plea at an early stage of the proceedings, it is therefore submitted that full credit should be given.*
>
> *The danger of not granting full credit is that offenders may feel that the benefit of waiting to see if the Complainant attends court and so fourth (sic) outweigh the benefit of entering an early guilty plea – if the discount is not significant enough.*"

GRAND COURT CAYMAN ISLANDS

27. In ***R v Millberry***[5] the Court addressed this matter of guilty pleas and stated:

> *"Having to give evidence and especially being cross-examined can make a victim relive the offence. We have seen many victim impact statements that make this clear. Obviously the distress which is avoided is greater the earlier the victim is informed so the discount should be reduced if there is not an early plea. There is also the fact that the plea demonstrates that the offender appreciates how wrong his conduct was and regrets it. While it is desirable to avoid taking up the time of the court and incurring expense unnecessarily, this is less important in mitigation than the other two factors we have just mentioned. With the panel, we stress that the maximum credit should only be given for a timely guilty plea."*

28. The Defendant pleaded on his fifth appearance in the Grand Court. I consider that the appropriate discount for the guilty plea should be 25 percent in all the circumstances.

<u>The Social Inquiry Report (SIR)</u>

GRAND COURT - CAYMAN ISLANDS

29. The Defendant is now 25 years old.

30. The Social Worker records that the defendant had a decent upbringing for the most part but that he was subject to some physical abuse at the hands of his mother in his early years. He became involved with the justice system at the early age of fifteen years however he was able to finish high school with seven external passes despite later being diagnosed as dyslexic and he was accepted into UCCI to pursue an electrical course. The SIR records that the defendant left that institution prematurely as he did not feel motivated to return to school because he felt that he had been insulted by a teacher. However, the defendant did express to the Social Worker that he would wish to complete a course in Business in the future and also said that he had been attending classes at HMP Northward.

[5] [2003] 1 W.L.R. 546 at paragraph 27-28

31. While referring to the defendant's previous offending the Social Worker expressed that:

> *"It is of significant concern that the committal of these current offences occurred whilst client was on Court Bail. Additionally, Mr. Solomon seemingly has a pattern of committing offences of similar nature. Strikingly enough, his offences are also becoming more serious. This trend of offending behavior is suggestive of Mr. Solomon's lack of deterrence and victim empathy."*

32. When the particulars of the rape offence were put to the Defendant his response was "*the victim has no reason to lie about the incident in anyway*". He admitted to stealing the items which were listed in the Summary of Facts but said he was unable to recollect any memory of stealing the victim's Kia Picanto from the apartment parking lot. Thereafter, the Defendant indicated that although he did not remember taking the vehicle, he did identify himself in the same clothing in which he committed the offences on CCTV footage in the George Town area on the night in question.

33. The Defendant stated that he is regretful for his actions and divulged that he has had time to process the level of emotional and psychological impact that his behavior has caused the victim. He reported that since turning himself into the police for the committal of these offences he has accepted the full consequences of his actions. He conveyed to the Social Worker that he stands prepared to take any penalty that the Court may impose.

GRAND COURT CAYMAN ISLANDS

Psychiatric Report

34. The Defendant was also evaluated by a Psychiatrist by Order of the Court upon receipt of a request from his attorney. I bear in mind that Dr. Arline McGill noted:

> *"At age 13 years, he was assessed at school and started psychotherapy through our department's psychologist. The referral was made because of Okeno's verbally aggressive acting out at school as well as a history of him banging his head on walls when he was frustrated. Okeno related incidents of conflict with classmates at school usually due to provocation. He had ten sessions over a period of one year with some improvement."*

Dr. McGill also noted:

> *"He has prominent symptoms of ADHD and low self-esteem. He appears to have a strong visual memory and also difficulty with spelling, suggestive of dyslexic thinking. Screening suggested features of autism as well.*
>
> *....*
>
> *He has good short term memory and somewhat abstract psychological processing. His problem solving skills show good ability and he demonstrated normal attention. At no time was there any suggestion of psychosis.*
>
> *Impression: It is my professional opinion that Mr. Solomon displays no evidence of any major psychiatric disorder and he has displayed no bizarre behaviour during the interview nor is there any in his history."*

GRAND COURT - CAYMAN ISLANDS

THE PRINCIPLES AND AIMS OF SENTENCING

35. ***Halsbury's Laws*** Vol.11 (2), paragraph 1188 on the aims of sentencing states:

> *"The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation. However, the protection of society is often the overriding consideration. In addition, reparation is becoming an important objective in sentencing". The court is satisfied that it must consider too, the aim of the rehabilitation in sentencing of the offender."*

36. In ***R v Franklyn Huggins***,[6] Hariprashad-Charles J. at paragraph 17 of her judgment stated that:

> *"Short of homicide, it [rape] is the 'ultimate violation of self'. It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity."*

37. As mentioned above, the Cayman Islands Penal Code set the maximum sentence for Rape at life imprisonment. This is to reflect the abhorrence (the zero tolerance approach) for this type of offence. This penalty underscores the gravity of the offence as it places rape in the category of such other serious offences such as murder, manslaughter, robbery and grievous bodily harm, which nearly always warrant a custodial sentence.

[6]BVIHCR 2009/001; Judgment delivered July 2010

38. In ***R v Dilbert***[7], the Defendant was sentenced to 15 years' imprisonment. In that case the victim was attacked in her own home, had been raped repeatedly and the Appellant had inflicted other physical injuries and threatened to kill the victim.

39. The Cayman Islands Court of Appeal (CICA) has re-affirmed the Chief Justice's Tariff Guidelines[8] that the starting point for the offence of Rape with no aggravating or mitigating factors was between 10-12 years.

40. The CICA also affirmed that:

> *"The presence of any one of the following aggravating factors could warrant an uplift of the appropriate starting point to a sentence of 15 years or more".*

41. The aggravating factors so identified included, "*repeated rape in the course of one attack*" one of the aggravating features present on the facts of the instant case.

42. The CICA went on to identify further aggravating factors which would warrant an increase in the sentence passed. Relevant to and present on the facts of this case include the following: "*the use of a weapon to frighten or wound*"; and "*if the offender broke into the victim's home*".

[7] 2010 (1) CILR 10
[8] *Supra*

43. While the Crown's facts as outlined do not state conclusively that there was a break-in – in the sense of causing damage to the building to facilitate entry in the instant case – the undoing of a fastening or the opening of a closed door or window is sufficient and the Defendant accepts that he was not invited into the Complainant's apartment.

44. In ***R v Marlon Ricardo Porter***[9] the sentence of the Court was 13 years' imprisonment after trial where the victim was forced to have oral sex and sexual intercourse without her consent, and had received extensive bruising to her left buttocks and abrasions on her elbow when she tried to flee her attacker. There is no indication that the offender had any relevant previous convictions.

SENTENCES

45. I have carefully considered the submissions of the Crown and of the Defence. As well as the SIR and the VIR referred to above, I have also considered the authorities provided by Counsel and I have also had the benefit of the oral submissions of Counsel for the Defendant.

Rape:

46. In all the circumstances I consider that the Rape is the most serious of these offences on Ind.77/17.

47. For the offence of Rape, where there are at least three aggravating factors – repeated Rape, use of a weapon and breaking into the victim's home at night – an uplift in the starting point of 10-12 years is warranted.

[9] Ind. 21/16

48. The more appropriate starting point would be 15 years' imprisonment or more as expressed in ***Dilbert***.

49. Where those aggravating factors are coupled with this Defendant's significant antecedents, a sentence of up to 20 years' imprisonment would not be inappropriate. However, in light of this court's consideration of the sentencing principles set out in the Cayman Islands Sentencing Guidelines especially the totality principle stated therein, and explained further below, I find that the appropriate sentence for the offence of Rape in this case is a term of 18 years' imprisonment.

50. The Defendant will receive a discount for his guilty plea of 25 percent which will result in a sentence of **13 years and 6 months' imprisonment** – with time spent on remand for this offence to be deducted.

Aggravated Burglary:

51. For this offence the defendant is herein sentenced to **8 years' imprisonment – which will run concurrently** to the sentence for Rape above.

Theft

52. For this offence the defendant is herein sentenced to **4 years' imprisonment – which will run concurrently** to the sentences for the Rape and Aggravated Burglary.

GRAND COURT CAYMAN ISLANDS

THE TOTALITY PRINCIPLE

53. The Legislature and the Cayman Islands Sentencing Guidelines provide a number of principles to which a court should pay heed when sentencing on a number of different offences.

54. Section 4 of the Alternative Sentencing Law (2008 Revision) reads:

> *"A court shall, in imposing a punishment under this Law, take into account the following principles-*
>
> *(a) ...;*
> *(b) ...;*
> *(c) ...;*
> *(d) ...;*
> *(e) Where consecutive sentences are imposed, the combined sentence should not be unduly harsh;*
> *(f) ...;*
> (g) ...."

55. The Cayman Islands Sentencing Guidelines (2015) state:

> *"5* ***The Totality Principle***
> *"The Court, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and at the same time, is a sentence which is just and proportionate. This is so whether the sentences are concurrent or consecutive. Thus, concurrent sentences will ordinarily be longer than a single sentence for a single offence.*
>
> *It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole."*

56. Section 8 of the CPC 2014 Revision reads:

GRAND COURT CAYMAN ISLANDS

"(1) *When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor, which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other, unless the court directs that such punishments shall run concurrently.*

(2) ..."

CONSECUTIVE SENTENCES

57. The Cayman Islands Sentencing Guidelines (2015) state:

"6.2 ***Consecutive Sentences***

Consecutive sentences will ordinarily be appropriate where:

(a) Offences arise out of unrelated facts or incidents

(b) Offences are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences for example:

I. Where offences are committed against different victims;

II. Where sexual offences or domestic violence are committed against the same individual 3;

III. Where the offender commits the same or similar offence after being arrested for the original offence;

IV. ....

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...."

58. Where, as in the instant case, the Defendant is before the Court to be sentenced for offences after he has been found guilty at trial, as well as for offences to which he has pleaded guilty, the court must be scrupulous to ensure that the Defendant does not thereby receive the benefit of a guilty plea even for those offences for which he was convicted after trial.

59. In the instant case, the Court is faced with a series of offences of a similar nature, committed at different times, against different victims.

60. The facts of the various offences show an escalation in the scale of seriousness and serious harm caused by this offender. From residential burglaries where no one is harmed, the defendant moved to a residential burglary where the victim was indecently assaulted, and then moved further to the final batch of offences of Aggravated Burglary, Rape and Theft – providing alarming evidence of this rapid escalation.

61. The Court must act to try to ensure that this offender is not allowed to move beyond this point. The protection of the public, and especially women, must be at the forefront of this Court's mind.

62. It is for this reason that, coupled with my consideration of the principles set out in the Sentencing Guidelines referenced above, that I find that the Defendant's sentence of 13 years and 6 months' imprisonment for the offences under Indictment 77 of 2017 shall run consecutive to the sentence of seven (7) years' imprisonment imposed for those offences which form GCR 4/2017 – Burglary and Indecent Assault.

63. The Defendant shall therefore serve **consecutive sentences amounting to 20 years and 6 months' imprisonment**. The time that the Defendant has spent in custody awaiting sentence shall be deducted from this term.

SEXUAL HARM PREVENTION ORDER (SHPO) – S.45 (A-F) OF THE PENAL CODE (AMENDMENT) LAW 2017

64. The Crown has made an application for a Sexual Harm Prevention Order (SHPO) and it is an appropriate application in all the circumstances of his case.

65. The Legislature has seen fit that such an order can be imposed against an offender and s.45A of the Penal Code (Amendment) Law 2017 states:

> *"45A. (1) The Director of Public Prosecutions, after consultation with the Royal Cayman Islands Police Service or any other relevant agency may apply to a court for a sexual harm prevention order.*
>
> *(2) Where a person, including a young person, of or over the age of seventeen is dealt with by the court for any offence of a sexual or indecent nature and the court is satisfied on a balance of probabilities that it is necessary for the purpose of -*
>
> *(a) protecting the public or a particular member of the public from sexual harm from that person; or*
>
> *(b) protecting children or vulnerable persons or a particular child or vulnerable person from sexual harm from that person, the court, upon an application pursuant to subsection (1), may instead of or in addition to any sentence, make a sexual harm prevention order.*
>
> *(3) A sexual harm prevention order shall prohibit a person from doing anything described in the order and may include such conditions as the court considers necessary including a prohibition on travel both within and outside the Islands and shall be for a fixed period of at least five years.*
>
> *(4) ..."*

66. I am satisfied that, on a balance of probabilities, this order is necessary, and I make a Sexual Harm Prevention Order against the Defendant with respect to the two Complainants who were the victims of this Defendant's actions on the matters which are before me today for sentence.

67. This SHPO is made in addition to the sentence of imprisonment and the SHPO shall take effect from the date of the defendant's release from custody and shall remain in effect for a period of five (5) years thereafter.

Dated this the 30th August 2018

Carter J
Acting Judge of the Grand Court