

IN THE EASTERN CARIBBEN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER & NEVIS

SAINT CHRISTOPHER CIRCUIT

CASE SKBHCR 2024/0038

REX

V

SG

APPEARANCES

Mr Teshawn Vasquez for the Crown.

Mr Jason Hamilton for the defendant.

2025: JULY 16

SENTENCE

When juvenile with low intellect for rape de facto of girl aged 7

- 1 **Morley J:** SG¹ aged 19, now an adult, falls to be sentenced following guilty plea on 11.04.25 for having unlawful carnal knowledge on 20.05.23, contrary to **s 3(1) Criminal Law Amendment Act** cap 4.05, when a juvenile aged 17, with SS², a girl then aged 7, during her sports day at school, where as a stranger grabbing her he inflicted sexual intercourse on her by a girls' toilet cubicle. The maximum sentence is life imprisonment and SG is of very low IQ. Plea was accepted to unlawful sexual intercourse as count 2, instead of pursuing rape as count 1, therefore to lie on the file, to encourage settling the indictment by plea, while in a case such as this there is no effective difference.

¹ SG will not be identified in the published remarks – see para 21.

² SS will not be identified as she is entitled to anonymity.

- 2 On 20.05.23, SS had travelled with adults to the Newton Ground Day Care sports' day and alone had gone to the girls' toilet. SG entered, and with SS coming out of the cubicle, he pushed her to the ground, lifted her skirt and pulled down her panties, and getting on top of her, he put his penis in her vagina, while she was shouting at him to get off her. Kellisa Davis of the SKN defence force, whose bravery and firmness is to be commended, entered the toilet area, and hearing noise, found SG, told him to get off her, and pursued him as he crawled under the cubicles to get away. Apprehended, he kept denying he had done anything to the little girl. Arrested, he later made no comment to police questions, while SS was medically examined and found no longer to have a hymen.
- 3 By victim impact statement dated 20.06.25, the mother of SS reported:
- ...My daughter is 9 years now. She is good, she runs for sports. I wasn't really speaking to her about the incident because I just wanted her to just, so I wouldn't know if she was different after what happened. She was bubbly, laugh a lot, outgoing, happy spirited before the incident. After, she was still happy but as I said when the situation happened I never really sit down and talk to her about it again. The baby was young. The second to last, I don't even think she know what went on because she had just gone kindergarten. At that time, my first born son was very angry when he heard about the situation, and my daughter, the second born, was just shocked. I did not see any changes in their behavior after the incident. I was very angry. I couldn't sleep, wasn't focusing much. After a while I started to pray, and after a little while I started to feel better. They don't talk about the incident. I have never spoken to her about it to this day, I don't want to put her back through all of that. After it happened on the day, she was just quiet. She wasn't talking and that was not a norm for her.... I take precautions now. I watch my surroundings, I go with her when she has to go to the bathroom, every time, but I don't hold her hand constantly. I haven't noticed any trauma that came from the incident. If I were to see the guy again, I think I might be upset, feel angry. I think if I see him, I would just pray. If I were to say anything to him, I don't know what I would say to him. I think he deserves about 10 years in prison. Let him sit down and pray and talk to God. Let him change his life.
- 4 I conclude from this there is no sign yet of immediate impact on SS, though I make it plain from experience the impact will likely appear later as she grows when she becomes more sexually aware, raising pain, confusion, and uncertainty about adult relations.
- 5 Further, I consider this case is every parent's worst nightmare, that a little child innocently goes to the toilet at sports day and is raped at a toilet cubicle.

6 Concerning SG, who is small and thin in stature, there is a thorough social inquiry report dated 02.07.25 of 19 pages prepared by probation officer Tanya Belle-James.

- a. His family has been known to child protection services for 27 years, he was put in care at 14, has been overexposed to sexual activity from a young age, has left school with no qualifications, at one point went to the Cotton Thomas school for children with special needs, at 18 was assessed as performing to grade 3-4, meaning of age 8-9, and has never been employed. The report says:

...SG is the third of his mother five children. [His mother] has 4 boys and 1 girl. SG and his father spoke from time to time up until his 13th birthday when all communication seemed to have been lost and no one knew why the drastic change occurred. They went from one being very close to not speaking at all up to present. His father left the country and have had no communication with him. The SG family has a background of struggles; they have lived in poverty for most of his mother's life and is still struggling to this current moment. Academic and cognitive areas have a huge part to play in how they were raised and why they still live in poverty till today.

The SG Family has been known to the system for over 27 years. There were concerns of neglect, abuse and matters of sexual misconduct that have resulted in alternate living arrangements. SG's mother struggles with alcoholism and have for many years. The inability to care for the children and lack of support from family and the children's father led to all 5 children entering the custody of the Probation and Child Protection Services at some point. Jessica lacked the inclination to mother and care for her children, no fault of her own but due to the challenges she faces an individual.

SG lived with his mother from birth until about the age of 5. During SG's early years due to lack of adequate space in their living arrangement SG was exposed to sexual behaviors. He would have seen and heard his mother having sex with partners on different occasions. He would have also seen his mother being physically abused by partners. At age 5, MJ his adopted mother as he calls her would have taken SG and he stayed with her until his 9th when Jessica requested that he return to her. Jessica constantly moved around seeking anyway to rest her head due to conflict with her mother and even partners she would have been staying with. This did serious harm to SG's mental, emotional and psychological health. SG bounced around yet again to 4 different homes and at the age 14 he ended up at the St. Christopher and Nevis Children's Home, SG caught the attention of another cognitively challenged young lady while at the home and they engaged in sexual intercourse on numerous occasions.

It is said that SG started running away from this young lady and from time to time she would hold him down and force herself on him. Meetings were held and these matters were dealt with, he received counseling in hope of him understand that it was not right as a child and it not an act that he should take part in until he becomes an adult. SG was released back into the care of his mother and the moving around started. Jessica was unable to control SG as she was never

home and would leave instructions but SG would often do what he wanted. Based in his behavior his maternal grandmother told Jessica she no longer wanted SG living in her home...

- b. He was fostered for a time by MJ, always in attendance at court, and what she said to Officer Belle-James also bears setting out in some detail.

I met SG early December 2011. I had recently launched my small business selling educational items to support early childhood development. His mother indicated to me that he was repeating Kindergarten Class. She mentioned that he did not recognize letters, colors, numbers or shapes and was soon to be six years old. I was concerned and asked her if he had ever been tested as to why this was the case. She answered no. I suspected he might have learning difficulties and asked if we could look into it. She agreed. I inquired as to where she lived and was told they lived in St Pauls. I told her that I would come and visit her and her son on that weekend, which I did.

On meeting SG I noticed that he was very withdrawn and most of all he did not want to be touched. He pulled away. I did not push because we were meeting for the first time. He did not speak at all. I had taken some educational materials with me to identify what he knew and really didn't know. He didn't respond to me. I went every weekend after that, and he began smiling a bit and shaking his head. He really did not know the basic things that he should know at his age. One of the things I noticed was that he didn't know food items by their names. He knew some animals and things like that, but to say he knew rice, eggs, potato, etc., he could not name them. Everything was food. So, I helped him with such things. I concluded he needed professional help. I mentioned this to his mother and that I had a church friend who can help us to know what steps to take. She said that it was okay with her. I told my friend who worked at Cotton Thomas Complex about SG and she said that we should bring him in January to be tested. We got the results and were told that he should begin attending the institution in September 2012. I continued going to St Pauls on weekends. By this time, we had formed a bond, he allowed me to touch him and he enjoyed hugs and kisses from me. The easter vacation was coming up and I asked his mother if she would allow him to come and stay at our home for the duration of the vacation so that I could work more closely with him. She agreed. One of the things I noticed the next day was that he could not hold the mug of tea with one hand to drink from it. So, I threw out some of it making it lighter and he was able to manage on his own. He didn't hold his fingers straight out but curled into his palms. I took him to the beach that afternoon and massaged his arms and fingers with sand and stretched them, allowing him to play with the sand as well. I made it an afternoon routine. He enjoyed that as well. His laughter was sweet to my ears. Some afternoons I would take him to the supermarket and show him the fruit and vegetables and other foods so that he could be knowledgeable about them.

The first two mornings after we had family worship, I noticed that he was not around, so I went to look to see where he might be. He was sitting on the porch feet and hand under his body. I asked what was wrong, he said nothing and then hugged me and started crying. I asked if he wanted to go back to his family's home and he said no. I took him back to the kitchen with me where he sat on a stool quietly looking at what I was doing. From that day, that is what he did, he accompanied me and helped to put plates and forks on the table and seemed happy doing

so. The Saturday before school was about to reopen, I packed his clothing and took him to the bus terminal. We caught a bus, and, on our way, he asked where we were going and told him that he was going back home to get ready for school on Monday and to let his teacher see how much he had learned during the vacation time. He started wailing, saying he did not want to go back there. I tried to calm him down, but he would not stop crying so I told him that we would visit his brothers and come back and within seconds he stopped crying and curled up against me. We got there and he would not leave my side. After a few hours after it was getting dark, I stood up to leave and he did the same. Again, I tried to tell him that he had to go to school on Monday and that I would come to visit him on Saturday. He started crying, really loud. I kept trying to comfort him. After some time, his mother said to him, "if you want to go with the lady, go ahead" and I asked her if she was serious, she said yes. I asked her what about his school, where is he going to go to school? She said, "in town". She called his bigger brother and told him to bring his school uniform pants and let him go with the lady. That's how SG came to live with me and my family. I brought him back to my home and enrolled him in Violet Petty Primary School, because the kindergarten teacher at that time was a friend of mine who had worked with him during the time he spent with us. Her name is Ms. Annette Thomas.

She spoke with her Head and he was allowed to enroll there the following week with the understanding that he would be going to Cotton Thomas the new school year. SG did well those two (2) terms. He was not very outgoing, but he adjusted to the new change. September came and I took him to Cotton Thomas. I took him to school and sometimes I would stay with him until lunchtime and then go to my business. After six (6) weeks I saw him writing the letter 'A' backwards and I became concerned, because he was not doing that. He could write his full name including his middle name. I visited the institution asked why he would be doing that and showed them his test papers and books from kindergarten months ago. She said, "it might be because they do not write in the class that he was assigned to. I mentioned that when he was evaluated, he did not know how to draw a stickman, but since then I had seen grave improvement in him. She mentioned that since he was doing well there if I wanted to send him back to Violet Petty and they would accept him I could take him from there. I asked if he could return and the Head said, "yes he could come the very next day". When I told him he was extremely happy to hear that. SG was now in kindergarten for the 3rd time at age seven (7). When he came to sporting activities, he was reluctant and shy at first, but I encouraged him, and he participated. SG ran the 4 X 100 and the 400 on sports day. He adjusted well and moved on to Grade 2. He struggled, but I worked along with his teacher. I picked up that he was being teased at school when I overheard him singing a song with his name in it saying he had rabbit teeth, so I took him to the dentist and had them fixed. He could not stop smiling, he seemed to have more self-confidence.

It became a bit inconvenient and costly to be taking the bus from town to Ottleys to keep check on him, so I had him transferred to Beach Allen Primary School in Basseterre. I would be able to monitor him and give him a bit of independence of walking to and from school alone. I took him to school and picked him up for the first term. The second term I allowed him to go by himself. After a while he would come home late and say he was playing or that he followed another child home. I spoke with him, and he would say he was sorry and promised to do better.

I found out that he would walk around in town as well. He never got into mischief as such. Then I found out that he was lying to me and I spoke to him about it. One morning I confronted him about a swear word that I say in his exercise book and he said it was not him that wrote it, I had enough of it and told him that if you don't tell me the truth, I would send you back to your mother for good. He still would not admit to what he had done. So, I texted his mother and told her that I was sending him back to her, she responded with the letter K. I sent him on the bus to her intending that he would spend the school vacation with her and he would be back with us thereafter. She went to the school and had him transferred back to St Pauls Primary in two (2) days. It made me upset that such a thing could happen without calling me to ask anything, since she had not turned up when she was to meet me while transferring him into the said school in September.

I think he might have been exposed to some form of sexual activity because when SG was around seven (7) years old he asked me where babies came from. I proceeded to explain to him when a man and woman grow to love each other they would want to show it by kissing, hugging and sometimes having sex where the man would put his penis into the woman's vagina and her tummy would begin to grow bigger and bigger showing that the baby is growing and after 9 months the baby would come out of her tummy just like how he saw the dog get it's puppies some time ago. He then said to me "Mummy, he can also put his penis in her bottom. I told him no, that can't happen, and he said yes, he can do it. So, I asked him if he saw that happen and he hung his head, he didn't respond, and we didn't talk about it again.

SG likes singing, music, working in the garden and helping others. He once said, he would like to be a fireman. I thought, I would have seen him achieve this goal and become a grown man, live a life of happiness that he did not have as a growing child.

After SG left our home, I still looked out for him as best I could, I was met with resistance, put in my place by some so I withdrew somewhat. When I realized he would be going to High School and would be open to more hardship in his life I got involved in the background helping him get ready for graduation. He went to Sandy Point High School and there he was stripped of his trousers, videotaped and posted on Facebook. I don't know how he really felt because he never talked about it, only said that he was alright, everything good. There was no one to help him through it. No one to attend PTA meetings for him, no one to help with schoolwork, etc. He would spend some weekends with us. Later, he went to live with an aunt in Sandy Point. Then he moved back with his mother again. Sometime later, she left the home leaving him behind with her Ex, who decided he didn't want him living with him anymore because he was causing trouble in the village and he was not his child. He threw him out, sending him my way and talking about him going to live at the Horizon Home, where SG seemed terrified of being sent. He came with two (2) backpacks to Bank Street where I sold my educational products. I tried calling both the Ex and mother and I didn't receive any response. Later in the afternoon, the Ex called me and told me what had happened and why he was sent to me. I would have like to have him, but my husband had said after the transfer and because of the mother's behavior over the years that we had him, he didn't want him living with us again. So, just before four (4) o'clock I called Child Probation Office where they said that his mother's Ex had been to the office and said that he

didn't want him at his house anymore and had sent him to me. I told them that I could not take him home with me, so I was asked to bring him to the office which I did. Arrangements were made to have him stay temporarily at the Children's Home. I went with him and stayed until he had settled, and house rules were laid out. I went to visit with him every day. I know he was not happy, but it was what it was. He rebelled and things just went downhill. Got lots of complaints about him both at the home and school. I think SG needed his father. He believes in him, he has made SG promises that he has not kept. He loved my husband and my son. I want to believe he thinks we were his family. I think he feels emotions that he can't explain to anyone. This was very sad and overwhelming for me having to recall and write about SG. I love him dearly.

c. There is further information from the children's home from Shannizua James:

SG was admitted to the St. Christopher's Children's Home on April 8, 2021 [aged 15]. Initially, he presented as a cheerful, and helpful young man. He frequently volunteered to assist with tasks around the Home and in the administrative office, demonstrating initiative and a strong sense of responsibility. SG was known among staff and residents for his infectious laughter and positive disposition.

During his time at the Home, SG entered a relationship with fellow resident who was the aggressor. The relationship, which quickly became sexual in nature, raised immediate concern and safeguarding. SG often complained and stated that he felt harassed, bullied, and pressured.

Following these events, SG's demeanor changed noticeably. Once cooperative and enthusiastic, he began exhibiting disruptive behavior, both at the Home and in school settings. There were escalating reports of behavioral misconduct—some of a sexual nature—highlighting a marked shift in his emotional state. These changes were consistent with trauma responses, signaling unprocessed emotional distress. After enduring repeated harassment and feeling voiceless, SG's frustration grew. With no effective outlet or structured emotional support at that time, his behavior became more erratic and oppositional. He began acting in ways that were inconsistent with his previous self.

d. Officer Belle-James has offered a frank and moving assessment:

During my investigations, I would have had a list of 14 persons to interview on SG's behalf and it is extremely sad to say that only 4 persons were willing to go on record. Ten persons were mostly overwhelmed with the situation and just couldn't bring themselves to rehashing the hurtful childhood of this adult. It was the shared opinion of all that this child was failed by most of the adults he was entrusted to. They believe his behavior was not of his own will but was as a result of his cognitive challenges, a broken family, instability and the failure of the system to adequately intervene....

It is my recommendation that SG be given a second chance, a chance to be reintegrated with a family who loves him and have been present for this journey. Mrs. MJ is willing to take SG and ensure that he gets the help he need in order to function at his maximum ability. Due to the lack of live in facilities to help individuals like SG, I am pleading for the court's mercy on SG and

would recommend a suspended sentence be considered. The condition of this suspended sentence if granted should include the following:

1. SG is to remain in the Custody of Mrs. MJ.
2. SG should undergo mandatory counselling with a clinical counsellor.
3. SG should be forbidden for interacting with any minor without the supervision of an adult.
4. SG should not be seen in zones around schools, playgrounds, and other areas commonly frequented by children unsupervised.
5. If SG breaks any of these restrictions he would be sent to HMP where he would serve the sentence that was suspended.

It is deeply unjust that, due to the lack of proper facilities, a young man in need of an alternative sentence could possibly be placed in jail with adults. Though legally he may be recognized as an adult, mentally and emotionally he is still a child vulnerable, impressionable, and in desperate need of support, not punishment. Forcing him into an adult prison environment not only puts his safety at risk, but also severely undermines any chance of meaningful rehabilitation.

This is a failure of the system and a clear indication that our government is not doing enough to protect or invest in young people like SG. The absence of suitable alternatives is not an excuse it's a policy choice that reflects misplaced priorities. How many more SG's are out there, many of who would face hard time because of their cognitive challenges. We must demand better. The government must step up, allocate resources, and build infrastructure that offers youth-centered, developmentally appropriate alternatives to incarceration. No young person should be punished more harshly simply because the system isn't equipped to help them. GIVE SG A SECOND CHANCE !

- 7 SG was seen by psychiatrist Dr Julius Gillard from St Lucia on 19.12.24, who said of him, interalia:

Account of offence

Mr. SG reported that he went to an event. He wanted to urinate and so went to the toilet, and called the little girl. When she went over to him, he pulled down her clothes, pulled out his penis, and tried to push it inside her, but it wouldn't go in. The child screamed out and an "army woman bang me up" and then the police came and took him to the police station. When asked why he did what he did, he stated that he wanted to have sex. He was asked the girl's age, to which he stated that she is eleven. He was asked if that was the first time that had done that, he replied that he had done it in the past with a ten-year-old girl. He was asked if he knew what sex is. He replied that it is when a girl and a boy in a relationship and they have sex. He was asked whether he knew what it meant when a boy and a girl are not in a relationship, and they have sex. He replied that he did not know. He was asked whether the child was underage, to which he replied that she is underage. He was asked whether it was against the law to have sex with an underage girl, to which he replied, "I think so". He added that he knew it was wrong because she was underage, but he didn't know it was against the law. He was asked whether he would do anything differently if he were a similar situation, to which he replied that he would go "pee in

the bushes”, or he wouldn’t call the girl into the toilet...

Mental Status Examination of SG carried out on December 13, 2024

Mr. SG appeared adequately dressed and groomed. He was calm and was co-operative with the entire interview. His affect was inappropriate (he was smiling when speaking of serious matters). His speech was clear and mostly rational. He exhibited no formal thought abnormality. He expressed persecutory delusions towards prison staff. He denied having any suicidal or homicidal thoughts. He denied experiencing any hallucinations when seen. He was oriented to time, to place, and to person. His attention and concentration were impaired. His abstract thinking was impaired. His judgement was impaired. He exhibited significant subnormal intellectual functioning. He exhibited significant impairment in his responses to most of the questions that assessed his psycholegal abilities.

OPINION

1. Diagnostic and Statistical Manual of Mental Disorders 5 (DSM 5) diagnosis:

- Possible Unspecified Schizophrenia Spectrum and Other Psychotic Disorder.
- Likely Intellectual Disability.

2. Mr. SG’s history of speech and motor delay during his early years, poor academic achievement, and being referred to as “slow” by his family, suggests the presence of an Intellectual Disability. Intellectual Disability (previously known as mental retardation) is a “Neurodevelopmental Disorder”, which means that it typically manifests early in a child’s development, often before the he/she enters grade school, and is characterized by deficits that produce impairments of personal, social, or academic functioning. Persons with Intellectual Disability may encounter difficulties in planning, emotion regulation, social judgement, and understanding the consequences of their actions. They may be prone to impulsivity and may behave immaturely for their age. There is no medical treatment for this. These persons may also be susceptible to experiencing episodes of psychosis, especially during periods of extreme stress. Medications may assist with the symptoms of psychosis if they appear.

3. It is my professional opinion that, although Mr. SG may know basic things about the act of sexual intercourse, the age of consent, and why he is before the Court, he may not be able to apply this knowledge to situations where societally appropriate decisions are expected of him....

- 8 Dr Gillard then gave evidence before the court on 09.07.25 when sentence was listed, with the facts opened and mitigation considered. He said:
- a. SG knew he was having sex, and that the girl was underage.
 - b. He suffers from an intellectual disability and neurodevelopmental disorder, with a mental age of between 5-8, where his disorder affects his social judgment and his understanding of the level of wrongfulness in his actions.

- c. Impulsivity is a feature, so that although he knows of wrongfulness, he would have difficulty applying this knowledge to his actions as impulsivity affects his social judgment.
 - d. His being sexually abused or over-exposed may have an effect on his actions diminishing how wrongful they may seem to him, though this is difficult to judge.
 - e. Sexual abuse of him may have given rise to extreme stress, which may induce psychosis or schizophrenia, while intellectual disability in combination with an unstable household will affect mental health, including augmenting impulsivity and lack of empathy.
 - f. During interaction on meeting on 13.12.24, SG's brother A spoke much for him, to help the doctor understand what was being said or meant as his intellectual disability means it is challenging to receive a coherent narrative from SG on his own.
 - g. Dr Gillard cannot comment on the risk of future offending.
- 9 It should further be noted in his report of 19.12.24 Dr Gillard had originally opined SG was not fit to plead, saying:
- At the time of his interview on December 13, Mr. SG was exhibiting symptoms that strongly suggested the presence of decreased cognitive functioning which in my professional opinion, would directly influence his ability to participate fully in Court proceedings. He was determined to be unfit to plead in a Court of Law. He was, at that time, unable to:
- a. understand the nature and object of Court proceedings,
 - b. understand the possible consequences of the proceedings, and
 - c. communicate adequately with counsel.
- 10 However, in the interim, leading up to the plea on 11.04.25 Counsel Hamilton, drawing together SG's family and with further discussion directly with the defendant, has satisfied himself a plea could be properly be taken, where SG understands and accepts what he did wrong. This has the effect he will receive a determinate sentence, rather than be ordered as unfit to be detained in a psychiatric hospital indefinitely, likely on Antigua as there is none on St Kitts, perhaps never to be seen again.
- 11 Turning to sentencing options, if in the UK, SG might be a candidate for a hospital order with restriction under **s37, s41 Mental Health Act 1983**, but there is no such power here on St Kitts, nor a dedicated psychiatric hospital, nor are mental health facilities adequate to local needs which could have meant SG would have had help earlier. In this circumstance, the court fully agrees with Officer Belle-James, as above, there is a failure in the system. Indeed, reference

has been made before by the court to this abject inadequacy during sentencing remarks in **R v Michel Nicholas 2022**³, published, a schizophrenic convicted by jury of manslaughter of his grandmother by reason of diminished responsibility, and in **R v Lennox Gumbs 2025**, unpublished, convicted by jury of setting fires at island fuel dumps, also suffering mental health issues, diagnosed as bipolar with schizoaffective disorder.

- 12 Realistically, the only sentencing options are probation, a suspended sentence or a jail term, where probation is not realistic owing to seriousness, and in any event as not equipped to deal with SG's intellectual disability. Weighing matters, on the one hand, this is offending at its most upsetting; on the other, SG is a small figure, of sad home background, with clear cognitive dysfunction, begging what is the right outcome for him, in the knowledge there will be a keen public interest in this case.
- 13 Turning to the ECSC sentencing guidelines for unlawful sexual intercourse, concerning the offence, here SS was aged below 10, placing the offence in category 1. As for seriousness, while there is no specific feature in the guideline to attract level A, apart from perhaps disparity in age, nevertheless I take the view the list is non-exhaustive, and I find a stranger grabbing a 7 year old girl in a public toilet to be at the very highest seriousness. Life being the maximum, treated as a notional maximum of 30 years, I conclude the starting point is within the range higher than 65%, so instead is at the top of the range, being 80%, meriting a starting point if an adult of 24 years.
- 14 However being a juvenile aged 17, and therefore strictly a '*child*' under **s2 Child Justice Act** cap 4.15, meaning as a child specifically a '*young person*' under ECSC **para 4 practice direction 8D in 2025**, he shall attract a discount of one-third, reducing the sentence to 16 years.
- 15 Considering the offender:
 - a. Good character has reduced effect as SG is so young, and can be expected up to age 17 not to have been in trouble, meriting a reduction of 6 months to 15.5 years.

³ See paras 8-10: <https://eccourts.org/judgment/rex-v-michel-nicholas>.

- b. The question now arises how to approach his intellectual disability. On the one hand he suffers impulsivity, which may diminish his culpability; on the other, he knows what sex is, it seems has had much of it from 15 at the children's home, and he knew the girl SS to be under age. In the UK guidelines on sentencing offenders with mental disorders⁴, regard must be paid to, at point 15:

At the time of the offence did the offender's impairment or disorder impair their ability:

- to exercise appropriate judgement,
- to make rational choices,
- to understand the nature and consequences of their actions?

- c. In my assessment, SG knew he was doing wrong, evidenced by his trying to get away crawling under the cubicle partitions and then denying he had done anything to the girl, in combination with what he said to Dr Gillard as above. This means, while I accept impulsivity may have impaired his ability to exercise appropriate judgement and restraint, I still find he exercised a rational choice to pursue wrongful sex and he understood the nature and consequences of his actions. For the impulsivity inherent in his intellectual disability, I assess he should attract a deduction of 2 years, to 13.5 years.

16 Turning to credit for plea, there shall be a further deduction of one-third, to 9 years.

17 Turning to dangerousness, under **para 11 of practice direction 8A of 2025**, I consider his impulsivity makes him so, so that while it is mitigation as above, it also warns of dangers, in that SG presents a significant ongoing risk he will commit a further serious sexual assault again, particularly as there is poor mental health support on island, and therefore I increase the sentence by one year to 10 years.

18 Under the **Alternative Sentencing Powers Act**, cap 3.20, a sentence of 10 years, being more than 3 years, cannot be suspended, though the probation office sentiment was understandable, if wholly unrealistic, to want to '*give SG a second chance*'. Having noted this, nevertheless the gravamen of the offence needs to be held clearly in mind: he forced sex on a girl aged 7 in the

⁴ See: <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/>

public toilet at sports day, and absent adequate mental health disposal, instead substantial custody must follow, suitably discounted for plea, his being a child and his mental disorder.

- 19 Time on remand shall count, of 2y1m23d, to be factored by the Prison as to earliest date of release.
- 20 The sentence shall be 10 years and I express the desire SG must have regular assessment from the visiting psychiatrist to the prison, and such counselling as may be arranged to improve him.
- 21 As to anonymity, the court orders there shall be no reporting to the public of SG's name, because he was a child at the time of the offence, being 17, though now 19, so that under **s53 Child Justice Act** the court makes an order none shall publish any information which may reveal his identity. On the one hand this is a most serious offence, he is now an adult, where SG presents a further danger, there being no sex offenders register to exercise oversight, begging whether the public should know of him to protect itself; on the other, he has mental health issues, has a mental age of a person aged about 8, where there is inadequate facility to help him, while the small island community both counsel agree will likely evermore taunt him, and possibly abuse and assault him, if his identity is widely disseminated. Balancing matters, I conclude it would have a disproportionate effect if to protect the public to expose him to likely unending abuse, and so his anonymity will not be lifted.
- 22 *SG, please stand up.* For the offence of forcing unlawful carnal knowledge of SS on 20.05.23, aged 7, indistinguishable from rape, where you grabbed her in the girls' toilet at the Newton Ground day care sports day, to which you have pleaded guilty, and plainly have intellectual disability, though in my judgment are dangerous as presenting a significant ongoing risk of causing further serious harm by again acting impulsively, the sentence shall be 10 years imprisonment. You were 17 at the time; if you had been an adult aged 18 or more, you would be sentenced to a far longer term. Time on remand shall count, and you will be eligible for one-third remission if of good behavior. You may go with the gaoler.

The Hon. Mr Justice Iain Morley KC

High Court Judge

16 July 2025