

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO: ANUHCR 2019/0064

BETWEEN:

THE KING
and
ALFRED GREENAWAY

Appearances:

Mr Daniel Lattery, Counsel for the Crown
Mr Pete Semaj McKnight, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2022: November 25th
December 7th

SENTENCING DECISION

- [1] **WILLIAMS, J.:** Mr Alfred Greenaway was convicted of the offence of rape by a mixed jury on the 29th of September, 2022. The offence was contrary to section 3 (1) (a) of the **Sexual Offences Act**, No. 9 of 1995 of the Laws of Antigua and Barbuda.
- [2] The 'Particulars of Offence' stated:
- "Alfred Greenaway on the 5th day of September, 2018 at Tindale Road, in the Parish of Saint John in Antigua and Barbuda, had sexual intercourse with ST [name withheld] without her consent knowing that the said ST did not consent to the intercourse or was reckless as to whether she consented to the said intercourse."
- [3] Section 3 (2) of Antigua and Barbuda **Sexual Offences Act** provides that:
- "A male person who commits the offence of rape is liable on conviction to imprisonment for life."

Sentencing Hearing

- [4] After the jury returned the verdict of guilty, Mr Greenaway's Counsel, Mr Pete Semaj McKnight, requested that a Social Inquiry Report be provided prior to sentencing. An Order was made for a report to be submitted by the Probation Department on or before the 31st of October, 2022 with the sentencing hearing scheduled for the 3rd of November, 2022. The adjourned sitting was vacated and the hearing rescheduled to Monday the 7th of November, 2022. However the report from the Probation Department was not yet ready on the 7th of November 2022 and the hearing was further rescheduled to the 25th of November, 2022.
- [5] Counsel on behalf of Mr Greenaway, referred to the Court of Appeal decision in Saint Lucia Criminal Appeal No. 4, 8 and 7 of 2000, **Winston Joseph, Benedict Charles and Glenroy Sean Victor v The Queen**, and a matter from the High Court of the British Virgin Islands, **The Queen v Curtis Bruce**, Case No. 17 of 2006.
- [6] Counsel also referred to a matter from Saint Vincent and the Grenadines, **The Queen v Emerson Delplesche**, SVGHCR 2016/0002 and 0016.
- [7] None of the cases cited were particularly helpful in addressing the present matters. While they all concerned sexual offences, they were decided prior to the Sentencing Guidelines of the Eastern Caribbean Supreme Court, ECSC; neither did the cases address the issues which were of greatest importance to Mr Greenaway, such as his mental health status; and the sentencing decisions in the cases were influenced by other circumstances not present in this matter, such as multiple offending and delayed prosecution.
- [8] The Social Investigation Report prepared by Probation Officer, Mrs Desiree Weston Williams, contained a victim impact statement from the 22 year old virtual complainant who is now the mother of two children. Crown Counsel, Mr Daniel Lattery noted that ST told the Probation Officer that she feared that Mr. Greenaway would return and attack her again.
- [9] The Probation Officer following her interview with ST reported that the virtual complainant "with the passage of time she is gradually improving." Mrs Williams also indicated that ST could "access the services of the Counselling Unit at the Family and Social Services Division."

The Guidelines

- [10] The Sentencing Guidelines of the ECSC for Sexual Offences was re-issued on the 12th of April, 2021. There are six steps to be considered before passing the sentence.
- [11] The first matter to be addressed according to the Guidelines is to arrive at a starting point for calculating the sentence for the offence. This involves a consideration of the "consequence by assessing the harm caused by the offence" and assessing the seriousness of the offence "to establish the culpability of the offender."

[12] Finding the appropriate starting point was the most challenging issue in this matter.

Presence of a Weapon

[13] The jury heard evidence that there was the presence of possibly two pairs of scissors at the scene. It was not a fundamental element of the offence for the jury to determine whether or not a weapon was used in the commission of the offence. However, the use of a firearm or weapon in the commission of the offence would carry the offence into Consequence Category 1 – Exceptional. There are no other features that would take the matter into Category 1 or even Category 2.

[14] ST in her testimony at the trial stated that she was at her boyfriend's house lying in the bed. Shortly after her boyfriend left the house to go up the road she heard a noise. She got up and saw Mr Greenaway outside. ST went back to lie down.

"I heard a noise. Alfred Greenaway came into the bedroom.... He was looking around. He ask me 'Where is David?' I told him David gone up the road to come back. He went outside and then he came back inside... he went by the step by the door... he went out a few seconds. He came back inside and asked: 'Where's David?' I told him, do you want me to go up the road and look for David? While I told him that, I was putting on my pants. He pushed me on the bed and told me to take off the pants... I tried to get up. He pushed me back on the bed. After he pushed me on the bed, he take out a red handle short scissors, he push it on the left side of my neck. He tell me if I scream, he going kill me right away. He took out the red handle scissors out his pocket. I then take up my boyfriend scissors which was on the dressing table. I tried to defend myself with the scissors.... He then tried to take the scissors from me. He made it drop behind the bed.... He overpower me, push me around backways. He put the scissors to the left side of my neck."

[15] Mr Greenaway was interviewed by the police about the incident. He was asked about the scissors:

Q: Did you have a weapon?

A: A scissors was there.

Q: What did you do with the scissors?

A: Took it away from her.

Q: What was she doing with the scissors?

A: Trying to defend herself.

Q: When you took the scissors from her, what did you do with it?

A: I put it at the side of the bed?

Q: Did you point the scissors at her?

A: No.

[16] There were two conflicting versions regarding the scissors. According to Mr Greenaway, the only scissors was the one that ST picked up and what he did was to take it away from her. On the other

hand, the virtual complainant's testimony was that Mr Greenaway was armed and threatened her; it was at that stage that she armed herself with a pair of scissors but she was dispossessed of it by Mr Greenaway who dropped it behind the bed. The virtual complainant did not testify to being put in fear or intimidated by the presence of the scissors.

- [17] One cannot say with any certainty whom the jury believed on this point or if indeed they found it necessary to resolve that issue.
- [18] However Mr Greenaway's narrative on the matter of the pair of scissors is accepted.

Getting to the Starting Point

- [19] Once the issue of the use of a weapon is resolved in Mr Greenaway's favour, it means that the applicable Consequence level is Category 3 – Significant. This is because the factors identified in Categories 1 and 2 of the Guidelines are absent.
- [20] With regard to the seriousness of the offence, there was uninvited entrance into the property where the virtual complainant was at the time of the offence. ST was at her boyfriend's home. The testimony from the virtual complainant and her boyfriend was that when the boyfriend left the house he "push[ed] in the door; it never locked." Although there was no forced entry into the premises, the fact that Mr Greenaway entered the house as a trespasser would place this matter in seriousness Level A – High.
- [21] In consulting the grid, the intersection of Consequence Category 3 and Seriousness Level A places this matter in the range 25% to 55% with a proposed starting point of 40%.
- [22] According to the Sentencing Guidelines, where the maximum sentence is stated to be life imprisonment, (as it is in the case of Antigua and Barbuda), that is to be treated as 30 years.
- [23] A reasonable starting point in this case within the range of 25% to 55% is 30%. Thirty percent of 30 years is 9 years.

Aggravating Versus Mitigating Factors

- [24] The next step is to consider the aggravating and mitigating factors with regard to the offence itself.
- [25] There were no aggravating factors with regard to the offence. Aggravating factors would ordinarily comprise matters such as if the victim was vulnerable due to personal circumstances; whether the offence was committed in the presence of others; and the use of narcotics by the offender.

- [26] Mitigating factors with regard to the offence would consider whether there was some initial consensual sexual activity and the absence of violence used beyond that inherent in the offence.
- [27] It was canvassed at trial on behalf of Mr Greenaway that there was some agreement between the Parties to have sexual intercourse. Given Mr Greenaway's explanation in his interview with the police and the jury's verdict, the notion of consensual activity was clearly rejected.
- [28] Dr Helene Scotland conducted a medical examination of ST within hours of the intercourse. The physician stated: "On examination, the vaginal area was normal. However she had a 0.5 diameter abrasion on the inner aspect of the right little finger and well as a 0.5 cm diameter abrasion at the right nasolabial fold."
- [29] There is nothing to tilt the scale one way or the other in this category.
- [30] The next consideration are those factors impacting on the offender.
- [31] Mr Greenaway, who is now 28 years old, has no previous convictions for sexual offences or relevant convictions for other offences. The offence for which he is being sentenced was not committed whilst he was on bail. There was no indication of any sexual transmitted infection.
- [32] The mitigating factors indicated that Mr Greenaway was a person of previous good character. He demonstrated genuine remorse; indeed at his interview with the police when arrested, Mr Greenaway expressed remorse in his manner, saying: "I am not proud of what I did." The Probation Officer stated that when she interviewed Mr Greenaway he "stated that he is sorry for his actions and does not know why he committed the offence."
- [33] The issue of mental disability or ill health looms very large. Mr Greenaway's trial was delayed for quite some time while he was psychiatrically treated. He was diagnosed as having dyslexia and is receiving medication for his schizophrenia. He cannot read nor write properly. Despite Mr. Greenaway's chronological age, it is apparent that there are other conditions impacting his overall growth and development.
- [34] With regard to the mitigating factors of the offender, those clearly outweigh the aggravating factors and Mr Greenaway is given a two-year reduction. This brings the sentence down to seven years.
- [35] There is no necessity to adjust the figure for a guilty plea. This was a full trial; Mr Greenaway did not avail himself of the opportunity to benefit from any discount for entering a guilty plea.
- [36] Also, this was a single offence. There is therefore no need to adjust the figure to consider the totality of the offending.
- [37] The time Mr Greenaway spent on remand has to be accounted for. According to Counsel, Mr McKnight, his client spent a total of 24 months on remand. This figure was not disputed by the Crown. This time has to be subtracted to give an accurate figure as to the time remaining to be served.
- [38] There are no applicable ancillary orders to be made.

Conclusion

- [39] The settled principles of sentencing are retribution, deterrence, prevention and rehabilitation. In imposing the sentence on Mr Greenaway, the principles that are most applicable to the case are retribution and general deterrence. Given Mr Greenaway's particular circumstances, it would be up to the prison authorities to see what appropriate rehabilitative activities could be crafted to meet his needs.
- [40] Mr Alfred Greenaway, having been found guilty of the offence of rape and having determined that the appropriate starting point is nine years. Given the deduction of two years for your personal circumstances and accounting for the two years that you spent on remand, you are required to serve the balance of five years with effect from your date of conviction, the 29th of September, 2022.

Colin Williams
High Court Judge

By the Court

Registrar