

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR2022/0015

BETWEEN:

THE QUEEN

v

NEIL SILCOTT

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Defendant appears in person

Before: The Honourable Mr Justice Colin Williams

2022: April 4th, 7th, 29th

SENTENCING DECISION

[1] **WILLIAMS J.:** What is the appropriate sentence to be imposed on the defendant, Mr. Neil Silcott, who pleaded guilty at his arraignment on the 4th April, 2021 to two Counts of Sexual Intercourse with a Female Under the Age of Fourteen, contrary to Section 5 (1) of the **Sexual Offences Act**, No. 9 of 1995 of the Laws of Antigua and Barbuda?

[2] The offences for which the Defendant has pleaded guilty occurred as follows:

- (1) On a date unknown “between the 1st and 31st day of December, 2019”. At the time of this indictment, the Virtual Complainant (Referred to by the pseudonym ‘Roslyn Walker’ or R.W. for the purpose of this judgment) was aged 11-years-old;

(2) On a date unknown “between the 1st and 31st (sic) day of September 2020”. At the time of the time of this incident, the Virtual Complainant was 12-years-old.

[3] The Defendant was born on the 21st September, 2001; he was 18-years-old at the time of the offences.

[4] The facts as presented by the Prosecutor and which were accepted by the Defendant state:

“In 2019, R.W., an eleven-years-old girl, went to live with her foster mother Ms. Kerisha Martin. Ms. Martin has a son name[d] Neil Silcott, the Defendant, who was eighteen-years-old. Whenever Ms. Martin would leave for work, she would leave R.W. in the care of the Defendant. During the year 2019, the Defendant developed a relationship with R.W. The Defendant had sexual intercourse with R.W sometime in December 2019. This relationship between the Defendant and R.W. continued. In September 2020, the Defendant had sex with R.W. for the last time.”

“On December 18th, 2020, R.W, went by Ms. Martin’s mother where she saw the Defendant. She told the Defendant that her belly was hurting her. The Defendant placed his head on R.W’s belly and said he felt something move. The Defendant then told Ms. Martin what was happening, and Ms. Martin took R.W, to the police to report the matter. Upon being inspected (sic) by Dr. Sonja Gilkes, it was revealed that R.W. was pregnant.”

[5] Mr. Silcott did not have the benefit of legal representation. At the sentencing hearing, Mr. Silcott spoke on his own behalf; he responded to all questions that were asked of him.

[6] When Mr. Silcott was arrested by the police on the 22nd December, 2020 he gave a statement under caution in which he said:

“I remember that we be dey ah live Bathlodge. Roslyn come and live with we. She was 11-years-old. Sometime after Carnival last year, 2019, ah we go Willikies to live. It was me, me Mommy, Roslyn and she little cousin. I remember sometime in September this year, close to me birthday, me bin home alone. My Mommy was at work and Rebecca bin garn school. Me bin dey ah watch porn on me phone in the backroom. I start to masturbate, but me bin forget to lock the door and Roslyn walk in on me ah masturbate, so me frantically pull up me clothes and go in the front room to sit down. Later in the evening Roslyn question me about what she see me doing earlier. I told her and she start question me about sex. So me ask she if she know how sex feel and she say “yes’. She start to touch me and so me and she go in the room and she started feeling me up and started taking off my clothes. We then had sex. I did not have any condom and we have sex for about half an hour.”

[7] Had Mr. Silcott been represented by counsel, the Court’s attention no doubt would have been drawn to the further statement from the Virtual Complainant which she gave at the Special Victims Unit on the 23rd December, 2020 when she said:

“I like Neil at first and when we started talking I feel love for him. I was the one that approached him about sex. I was the one that kept on troubling him.”

- [8] It must be noted, however, that the essence of the charge is the incapacity of the minor child to consent to anything sexual and that at all times, the Defendant, Mr. Silcott, was the adult. Although it can be gleaned that the victim was an active participant and the incidents of intercourse were not procured through the use of force, intimidation or things of that nature, the fact is, the law seeks to protect minors and children.

Principles of Sentencing

- [9] There are four classic principles of sentencing. These are outlined in the consolidated judgment of **Desmond Baptiste v The Queen**, Saint Vincent and the Grenadines Criminal Appeal No. 8 of 2003, judgment delivered on the 6th December, 2004. The principles are: retribution, deterrence, prevention and rehabilitation (see paragraphs [20] to [25]). The importance or significance of any of the factors may vary from one case to another case. Not all of the factors need to be present in every case:-

Retribution is the means by which the Court must express the public's disgust with offences such as this. Children belong to a vulnerable group who must be protected.

Deterrence is both (a) general and (b) specific. Given the incidence and prevalence of these types of offences, a signal needs to be sent to would-be offenders that there are serious consequences for such conduct. Indeed, a casual scrutiny of the list of matters to be tried would reflect a significant number of similar type offences

Prevention has to do with protecting society from individuals who persist in high rates of criminality. This factor is significant when dealing with repeat offenders, rather than young, first timers such as the Mr Silcott.

Rehabilitation is usually one of the most important aspects of sentencing, particularly for offenders upon whom long sentences are imposed. The convicted person ought to be exposed to programmes and activities that would assist in their reformation and equip them with the necessary skills to return to society and productive individuals.

- [10] The factors which are most appropriate to Mr Silcott's case are retribution and general deterrence. There is no need therefore for his sentence to reflect specific deterrence, prevention or rehabilitation.

Prison Report

- [11] The Acting Superintendent of Prisons, Mr. Jermaine D. Anthony on the 13th April, 2022 provided to the Court a 'Character Report on Inmate Neil Silcott'. The Report stated that since Mr. Silcott's remand at Her Majesty's Prisons:

"...he has not had any incidents of misconduct or breach of prison rules or discipline. Mr. Silcott's countenance is very reserved and compliant. For all intents and purposes he has been a model inmate."

- [12] The Report from the Acting Superintendent of Prison, Mr. Anthony, fortifies the view that there is no need for the sentence that is imposed to have at its foundation the principle of rehabilitation.

Some Cases

- [13] It is useful to look at some recent sentences imposed in Antigua and Barbuda on young persons who were convicted of similar offences to Mr Silcott's.
- [14] **Regina v Steffan Sylvester**, ANUHCR 2020/0018 and ANUHCR 2020/0058, concerned the sentencing of a Defendant aged 18-years at the time of the offence who pleaded guilty to two separate counts of unlawful sexual intercourse with girls aged 13-years and 14-years respectively. The Defendant requested a 'Goodyear Sentence Indication' for one count in relation to each girl; (there were three counts on each indictment). Mr. Sylvester was an assistant coach in a sporting discipline at the school the girls attended. Mr. Sylvester befriended the young ladies via Facebook. He later visited the 13-year-old's home, where the girl's father issued a warning to her. The father also went to Mr. Sylvester's home with a Sergeant of Police to warn him. The mother of the 14-year-old informed Mr. Sylvester of her daughter's age. Later in the year Mr. Sylvester lost his job at the school, in part it seems because of his involvement with the minor girls. The dismissal followed a meeting at the school with the girls' parents. Mr. Sylvester however continued his relationship with the girls. He was sentenced to concurrent sentences of 18-months and 12-months.
- [15] **Regina v Theodore Horsford**, ANUHCR 2020/0024, concerned a Defendant aged 19-years at the time of the offence, who pleaded guilty to one count of unlawful sexual intercourse with a 13-year-old. The young lady said she had a crush on Mr. Horsford. Mr. Horsford had sex with her at his house; he had seen her earlier that day in her school uniform. Mr. Horsford spoke with the police weeks after the incident; he claimed that he was intoxicated at the time. When the matter came up for sentencing two years after the offence, Mr. Horsford was by then the father of a 1-year-old girl and living with the child's mother. The Judge placed Mr. Horsford on two years' probation, and fined him \$1,000.00 to be paid in three months. The Probation Order placed Mr. Horsford under the supervision of a Probation Officer and sought to regulate his residence, conduct and activities during the operative period.
- [16] **Regina v Ladaniel Nedd**, ANUHCR 2020/0052, concerned a Defendant, who was aged 20-years at the time who pleaded guilty to unlawful sexual intercourse with a minor. He was sentenced to 12-months imprisonment following his guilty plea.
- [17] The case of **Director of Public Prosecutions v Shane Williams**, ANUHCRA 2018/0011 is generally cited with regard to the non-applicability of suspended sentences to Antigua and Barbuda. Some of the relevant facts however are worth repeating. The DPP appealed a sentence of two years imprisonment suspended for one year that was imposed by the trial judge, following a guilty plea by Mr. Williams to a count of sexual intercourse with a girl under 14 years. The DPP successfully argued that the learned Judge did not have jurisdiction to impose a suspended sentence. Alternatively, the DPP submitted that the sentence imposed was manifestly lenient. The Court of Appeal allowed the appeal and substituted the sentence imposed by the Judge with the seven days Mr. Williams spent

on remand. The Court of Appeal at paragraph 28 indicated that their Lordships accepted both of the Appellant's submission [that is with regard to the non-applicability of suspended sentences and the sentence being unduly lenient].

- [18] Reference was made by the Appellant in **DPP v Shane Williams** to the decision in **Winston Joseph, Benedict Charles and Glenroy Sean Victor v The Queen**, Saint Lucia Criminal Appeals Nos. 4, 7 and 9 of 2002 (delivered 17th September, 2001 and re-issued 31st October, 2001) in which Byron CJ (as he was then) in providing guidelines for sentencing in sexual offence cases stated that in situations of carnal knowledge of a girl under 13, the maximum starting point was eight years imprisonment where there are no mitigating factors.

Mitigation Plea

- [19] Mr. Silcott's submission on his own behalf was short, but he appeared to be sincere and contrite:

"I understand the severity of my case. It was not intentional. It my first time. I went a bit overboard and get myself in trouble. I have done wrong. I am so sorry with what I put my mother and the young lady through."

- [20] Mr. Silcott said that prior to the incident, he resided with his mother; Miss Walker and a younger female also lived in the house. He is his mother's only child. Mr. Silcott's father has other children, but those children resided elsewhere. Mr. Silcott explained that he completed Secondary School in 2019. Prior to his arrest, he earned money from landscaping. Mr. Silcott said that he knew what the virtual complainant's age was and that at the time she was in First Form. He also knew that having sex with a minor was an offence.

- [21] Mr. Silcott, who has been in custody since his arrest in December 2020, went on to explain:

"When I go out [of prison] I have to take care of my child. My father was not there for me; I will not do the same to my child."

- [22] It was noticeable that Mr. Silcott's language and manner of speaking in court were distinctly different from that which appears in his caution statement.

- [23] Mr. Silcott's grandmother, Ms. Joslyn Murray, appeared as a character witness. Ms. Murray pleaded for leniency. She stated:

"He is not a rude boy. He is very respectful. He got himself caught up in a situation. He came and spoke with me. I told him to tell his mother and the process start... He is not a little boy that get himself in problem. I ask to be lenient with him."

Victim Impact Statement

- [24] On the 22nd April, 2022 Senior Probation Officer at the Family and Social Services Division, Mrs. C. Marsha James-Pharaoh, submitted a Victim Impact Report to the Court. In that Report, the Senior

Probation Officer pointed out that the virtual complainant, Miss Walker now aged 14-years, has resumed her formal Secondary School education.

[25] Mrs. James-Pharaoh's report outlined a number of things in relation to the Virtual Complainant:

"Miss Walker related that she lived with the defendant's mother before, during and after the incident, as the defendant's mother was her guardian and her mother's friend. She highlighted that her mother and the defendant's mother are still friends.

"In relation to the incident, the victim related that she was in a relationship with the defendant and claimed that the incident has not impacted her in any negative way. She said that she is able to function and do what she has to do including continuing her education."

[26] The child that Miss Walker gave birth to carries Mr. Silcott's surname and is being cared for by Mr. Silcott's mother. Ms. Walker however gets to spend weekends and holidays with the infant.

[27] The Senior Probation Officer ended the section of her report in which she spoke with the virtual complainant by noting:

"According to the victim, she would not like the defendant to be incarcerated which might interfere with her daughter growing up without her father. She recounted on the struggles her mother experienced in taking care of her without her father and hoped she will not have a similar experience. She said that she does not communicate with the defendant because of the matter being before the court; and although she accepts that having sex with a minor was not acceptable behavior she would like the court to be lenient with the defendant."

Sentencing Guidelines

[28] Section 5 (1) of the **Sexual Offences Act** provides that a person convicted of sexual intercourse with a minor is liable on conviction to imprisonment for life.

[29] The **Sentencing Guidelines of the Eastern Caribbean Supreme Court** (re-issued 8th November, 2021) points out that for the purpose of calculating the starting point, where the legislation provides for life imprisonment it is to be treated as thirty years.

[30] The first step is to assess the seriousness of the offence and its consequences by reference to the harm caused.

[31] None of the factors identified in Consequence Category 1 apply to this case. Where there is a pregnancy as a consequence of the offence, that factor would place the offending in Category 2 – High.

[32] The seriousness level is considered to be a borderline Level A (High) as opposed to Level B where none of the factors listed in Level A are present. It is "High" where there is inter alia, an abuse of a position of trust, especially in a familial relationship. The Defendant's mother was the Virtual Complainant's foster mother; young Miss Walker went to live in the same household as the Defendant some months prior to the first encounter. As the Crown pointed out in giving the facts of

the case, on occasions when the Defendant's mother went to work, she would leave the Virtual Complainant in Mr. Silcott's care. He was therefore in a position of trust with regard to Miss Walker.

- [33] In consulting the grid, Consequence Category 2 and Seriousness Level A is in the range 25% to 55% of the maximum with a starting point of 40%. Having previously indicated that this was a borderline Level A, (that is, closer to Level B) and noting that the range for Level B is 5% to 35% of the maximum with a starting point of 20%, the appropriate starting point in this case is 25 % of the maximum which is equal to seven-and-a-half years.

Calculation of the Sentence

- [34] Having determined that the starting point is seven-and-a-half years, adjustments have to be made for aggravating and mitigating factors of the offence. Care must be taken to avoid any double-counting of any factors previously considered; for example, the fact of the pregnancy occurring as a result of the offence has already been factored into the consequences of the offence and therefore cannot again be considered as an aggravating factor. There are no additional aggravating factors with regard to the offence.
- [35] Mr. Silcott is however to be given the benefit for the fact that there was (a) the absence of any violence; (b) the absence of any threats, inducements or warnings directed towards the virtual complainant to pressure her not to disclose the offending; and (c) notwithstanding the virtual complainant's incapacity to consent, the parties were involved in a consensual relationship and there was no extreme disparity of age. Those factors would reduce the seven-and-a-half years by two-years and six months, to leave five years.
- [36] There are no aggravating factors with regard to the Defendant (as distinct from the offence). He has no previous convictions for sexual offences, he did not commit the offence whilst on bail, neither did he infect the victim with any sexual transmitted infection. Those factors, if they were present, would have increased the sentence.
- [37] There are a number of mitigating factors in Mr. Silcott's favour. He is of previous good character – he had no previous convictions whether for similar type offences or any offence at all. Mr. Silcott expressed remorse and the prison authorities have spoken highly of his conduct, referring to him as a “model prisoner.” Mr. Silcott's grandmother noted that he was “not a rude boy” nor “a little boy that get himself in problem.” Significantly, the Virtual Complainant through the Senior Probation Officer is pleading for leniency. Importantly as well, Mr Silcott expressed a desire to be a part of his child's life. At the sentencing hearing, he noted that the child's first birthday was in fact the preceding day – a fact confirmed in the Probation Officer's Report. Notably, both the Defendant and the Virtual Complainant referred to the impact of absentee fatherhood on their lives and the desire for it not to affect their child. To the extent that the Court can assist in breaking the cycle of absentee fatherhood, that objective ought to be encouraged.
- [38] Mr. Silcott's youthful age at the time of the offence is a major mitigating factor; as Byron CJ said in the case of **Desmond Baptiste** (referred to earlier), at paragraph [30] of that judgment:

“On this issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account.”

- [39] Given the absence of any aggravating factors with regard to Mr. Silcott and the overwhelming mitigating factors, the five-years is reduced by a further three-and-a-half years, leaving one-and-a-half years.
- [40] Having pleaded guilty at his very first appearance at Court, Mr. Silcott is to benefit from the full one-third discount for his early guilty plea. That would reduce the balance by six months, leaving one year.
- [41] An upward adjustment however has to be made. Mr. Silcott has pleaded guilty to two offences. The calculation of the sentence was based on the Second Count on the indictment. In assessing the totality of the Defendant's offending, two months are to be added on to the one year to account for both offences. This would give a total of one year and two months,

Sentence

- [42] It is noted that the Defendant was detained on or about the 22nd December, 2020 for these offences. He has remained in custody since. The time he spent on remand of one year four months and 13 days have to be accounted for. That time period exceeds the balance of one year and two months that were remaining.
- [43] Neil Silcott, for the two counts of Sexual Intercourse With a Female Under the Age of Fourteen, to which you have pleaded guilty, for which the appropriate starting point was seven-and-a-half years, and following the deductions which were made for the mitigating factors and early guilty plea and an adjustment made to give account for the totality of your offending, and further, considering the time spent on remand which has to be accounted for, you have completed your sentence: time served.

Colin Williams
High Court Judge

By the Court

Registrar