

**IN THE SUPREME COURT OF GRENADA
AND IN THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

GRENADA

CASE NO. GDAHCR2024/1041

BETWEEN:

THE KING

And

J T

Appearances:

Mr. Jordan Marshall Crown Counsel for the Crown
Mr. Jerry Edwin of Counsel for the Defendant

2024: March 7; 10, 17.

JUDGMENT ON SENTENCING

- [1] **INNOCENT, J.:** The doctrine of total depravity is the fallen state of human beings as a result of original sin. This doctrine espouses the view that all humanity is in a self-imposed bondage to sin. All people are inescapably predisposed to evil. As a result of the fallen state of mankind, every person born into the world is enslaved to the service of sin as a result of their fallen nature. Perhaps it is for this very reason that society has enacted laws to rule and govern the conduct of its citizens. For indeed, in keeping with Hobbs' Leviathan, life would be harsh, brutish and short.
- [2] The court's recitation of the foregoing theological and philosophical principles is not an attempt at proselytizing. Instead, it merely serves the purpose of setting the backdrop for the peculiar circumstances of the present case. It is also emblematic of the nature of the conduct for which the court must pass sentence on this offender.

In fact, it brings to the fore the very nature and provenance of the principles of sentencing which the court must apply in sentencing this offender.

- [3] The offender in this case was indicted on four counts of carnally knowing the victim, a female person under 13 years of age whom he knew to be his step child contrary to section 183C (1) of the Criminal Code as enacted by section 19 of the Criminal Code (Amendment) Act.¹ The said offences occurred on four separate occasions, namely, on 15th December 2021, 30th March 2023, on a day unknown between 1st January 2022 and 31st December 2022 and on a day unknown between 1st January 2022 and 31st December 2022.
- [4] The defendant was arraigned and upon his arraignment he entered pleas of guilty to the first three counts on the indictment and not guilty to the fourth count. His plea was accepted by the Crown who offered no evidence on the fourth count.
- [5] The facts surrounding the offenders conduct giving rise to the present proceedings are set out below. The offensive conduct in which the offender engaged, in the court's view, are sordid to say the least.
- [6] The first incident involving the victim commenced when the victim was 11 years old. The victim resided with her mother and her older sibling at the defendant's house. The victim slept in a room with her older male sibling.
- [7] On 15th December 2021, the virtual complainant was asleep in her bedroom. She laid on her side and her brother was sleeping in front of her. The victim awoke to pain which was emanating from her anus. She realized that someone was lying down behind her. She took the scent of alcohol and tobacco. She attempted to get up. The individual lying beside her covered her mouth with their hand and said "don't go and tell your mother." The victim recognised the voice as that of the defendant. The defendant then left the bedroom.

¹ Act No. 29 of 2012

- [8] In the morning the defendant told the victim: "don't tell your mother I have sex with you otherwise I doh buying no food for all you." After the incident the victim felt pain in her rectum.
- [9] Between 1st January and 31st December 2023, the victim was at the defendant's house. On that occasion the defendant unlawfully sexually assaulted the victim by inserting his penis in the victim's rectum.
- [10] On 30th March 2023, the victim was at the defendant's house. She was asleep and fully clothed. She laid on her stomach. She awoke having felt the presence of the defendant lying on top of her. She felt the defendant's penis inside her rectum. She experienced pain and attempted to get up. However, the defendant held her by the wrist and pulled her back telling her not to go and tell.
- [11] The victim subsequently made a complaint to family members. The defendant was arrested and detained. He was interviewed under caution by the police. It appears from the interview that the defendant admitted that the victim was his step-daughter. He acknowledged that he thought the victim was 11 years old. He admitted to the police that he had sexual intercourse with the victim about three to four times. Interestingly, when the defendant was questioned about how many times he had anal and vaginal sex with the victim, he responded: "only once in she vagina because of how she turn."
- [12] In the interview the defendant explained how he first sexually assaulted the victim. He stated:
"...in she bedroom at night, I go and I lie down by her, she just have on she drawers and I pull it aside then after I put spit on me wood then after I rest it down on her and I start to whine up on her, but she was lie down on she side and she open she leg. I go up and I push myself on her."
- [13] The defendant also described in the interview how he had sexual intercourse with the victim on the last occasion. The defendant stated:
"... in the night I come home drunk and I go inside she mother was sleeping. I go inside my room and she come across and lie down on the bed and I asked her if she come to do anything tonight she say yes, she had on a

dress and she draws so I lie down over her, me penis set and she lie down on she belly and I go over her and I start whining on her, my penis was inside she bottom, when I done I catch myself I jump and I say what I doing I go to tell the mother but I afraid."

- [14] The questions and answers given by the defendant in the course of the interview under caution hereinafter appearing are instructive to the sentencing exercise. The defendant was asked why he started having sexual intercourse with the victim. His response was: "She used to be naked around me right through." When asked how that made him feel he responded: "maybe temptation."
- [15] The sentencing court will adopt the following approach to sentencing. The court will start from first principles, that is, that the sentence imposed must be commensurate with the seriousness of the offence as highlighted by the defendant's degree of culpability in the commission of the offence and the consequences or harm caused by the offending.
- [16] To ensure that the sentence is proportionate, the court will have regard to the aggravating and mitigating factors inherent in the commission of the offence and the aggravating and mitigating factors relative to the defendant. In the latter consideration, the court will address its mind to any subjective factors that might have influenced the defendant in the commission of the offence.
- [17] The aforementioned approach to sentencing has been encapsulated in the Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court (Sexual Offences) republished and updated on 6th January 2025 (the 'Guidelines'). The court will apply the Guidelines in sentencing this offender.
- [18] The Guidelines mandate that the sentencing court first establish a starting point sentence by having regard to the seriousness of the offending by making an assessment of the consequences of the commission of the offence by reference to the harm caused and the offender's degree of culpability in the commission of the offence.

[19] Thereafter, the court will adjust the starting point sentence arrived at upwards or downwards having made an assessment of the aggravating and mitigating factors inherent in the commission of the offence. The court will make a further assessment of the aggravating and mitigating factors and adjust the nominal sentence upwards or downwards depending on these factors. The court will thereafter consider whether any reduction to the nominal sentence is necessary to take account of the defendant's guilty plea and any time spent on remand.

[20] Section 183C. (1) of the Criminal Code as enacted by the Criminal Code (Amendment) Act provides:

"A person of the age of twenty-one years or over who has sexual intercourse with a person under thirteen years of age when this person is—

(a) the adult's adopted child, step-child, foster child, ward or dependent;
or

(b) not being the adult's adopted child, step-child, foster child, ward or dependent is at the time of the intercourse living with the adult as a member of the family or is under the adult's care or protection, commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding thirty years.

Seriousness – consequence

[21] The victim in this case is now 13 years old. She was 11 years old when the incidents of sexual assault commenced. Based on what is contained in the agreed statement of facts it would appear that the victim suffered physical harm as a result of the unnatural sexual intercourse. In her affidavit which stood as her victim impact statement which was unchallenged by the defendant, the victim stated:

"The sexual molestation affected my daily life significantly. After the incidents, I felt uncomfortable in my home and feared my stepfather as he threatened me. This made me constantly cry and I was in a constant state of fear especially when I saw him.

After the incidents were reported I had to readjust my life. I had to relocate to another school. I also had to constantly move from home to home but I felt a relief that I was no longer in the same environment as the defendant (sic)."

[22] The court had the benefit of a report from the Child Protection Authority (the 'Authority') who had intervened when the matter was referred to them by the police. It appears that the victim was offered counselling intervention through the Authority's Psychological Assessment and Treatment Team. The report states that the victim did not complete these counselling sessions. The report states that the victim was re-engaged sometime in February of this year regarding the continuation of the services provided by the Authority, and she agreed that therapeutic intervention was still needed.

[23] The report also chronicles that in the case of this victim, she has experienced what the writer of the report describes as the rippling effects of trauma from the abuse that she endured. The writer of the report stated that evidence of this can be seen as feelings of fear and psychological challenges involving suicidal ideation which have presented themselves in the case of the present victim.

[24] The writer of the report opined:

"Being a victim of this abuse has placed her in a state of fear and anxiety to the point that when she reflects on the experience by speaking about it or seeing the perpetrator, her psychological wellbeing is affected, e.g. trembling..."

[25] In the circumstances, it would appear from the report prepared by the Authority that the victim in this case is likely to suffer some long term serious psychological harm. In the court's view, this places the consequence of the commission of the offence by reference to the harm done at Category 2 – High.

Seriousness – culpability

[26] In assessing the seriousness of the subject offences the court has concluded that it ranks at Level A – High. The defendant abused his position of trust while cohabiting with the victim's mother and while the victim was under his care and protection. There was also a significant disparity in age between the offender and the victim. These despicable acts of perversion were repeated over a period of time. It would appear from the agreed facts that the defendant took steps to prevent the victim from reporting the incidents of sexual assault.

The starting point

- [27] Having consulted the grid in the Guidelines, the court has determined that the starting point sentence is 40% of the sentence prescribed by statute which equates 12 years' imprisonment with an adjustment within the range of 25% to 55% to take account of the aggravating and mitigating factors relative to the offence and the offender to arrive at a notional sentence.

Aggravating factors – offence

- [28] The court has discerned the following aggravating factors inherent in the commission of the subject offences. The offence was committed on at least one occasion in the presence of the victim's sibling. The agreed facts also suggest that on at least one occasion the offence was committed in the presence of the victim's mother. There was evidence of voluntary intoxication by the offender's own admission. It would appear from the agreed facts that on each occasion that the offences were committed the offender was intoxicated.

Mitigating factors – offence

- [29] In the court's considered view, there are no mitigating factors relative to the defendant's offending.
- [30] Therefore, in all the circumstances of the case, the aggravating factors inherent in the commission of the offences far outweigh the mitigating factors. In the premises, this necessitates an uplift from the starting point sentence of 12 years' imprisonment. Therefore, the court will adjust the starting point sentence upward by 3 years' imprisonment. This will result in a notional sentence of 15 years' imprisonment.

Aggravating factors – offender

- [31] There are no aggravating factors relative to this offender per se. However, the court has, in its interactions with the offender in the course of the proceedings, discerned that the offender has a penchant for imbibing spirits which is suggestive of some

stage of alcoholism. It may very well be the case that the offender's alcoholism may have been a subjective factor that influenced him in the commission of these offences. This, in the court's view, does not serve to palliate the offender's wrongdoing. However, the offender's own admission that he felt tempted by the victim's nudity suggest that there is something organically and intrinsically perverse in the offender's character of which he might have been well aware. Clearly, it is unnatural for adult males to experience sexual attraction to underage females, particularly those in their care and with whose mother they share a relationship. In any event, the offender's conduct does not lend itself to any suggestion that his conduct was fueled by impulsivity. The offender's personality traits clearly require further investigation.

Mitigating factors – offender

- [32] The only mitigating factor which the court could discern relative to this offender is that he has no previous convictions for any or any similar offence. Apart from the offender having no previous convictions, the court also took into account the fact that for all intents and purposes, the offender cooperated with the police authorities in the course of the investigation.
- [33] In the court's view, the aggravating factors outweigh the mitigating factors relative to the offender. Therefore, an uplift to the notional sentence of 15 years' imprisonment is required. Therefore, the notional sentence will be increased by 1 year resulting in a notional sentence of 16 years' imprisonment.

Guilty plea

- [34] The court thinks that the offender ought to be credited with a full one-third discount from the notional sentence on account of his guilty plea which appears to have been entered early on in the proceedings. Therefore, the notional sentence of 16 years' imprisonment will be discounted by a period of 5 years' and 4 months' imprisonment which would result in a sentence of 9 years' and 8 months' imprisonment.

Totality

[35] In sentencing this offender, the court has applied its mind to the principle of totality in sentencing. Section 80 of the Criminal Code provides:

“With respect to cases where one act constitutes several crimes, or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, that is to say—

- (1) where a person does several acts against or in respect of one person or thing, each of which acts is a crime, but the whole of which acts are done in execution of the same design, and, in the opinion of the Court before which the person is tried, form one continuous transaction, the person may be punished for the whole of such acts as one crime or for any one or several of such acts as one crime, and all the acts may be taken into consideration in awarding punishment, but he or she shall not be liable to separate punishments as for several crimes;”

[36] Although the commission of the several offences cannot properly be said to form part of the same transaction or a series of events, the court has considered whether by imposing separate punishment for the commission of each offence it would be commensurate with the totality of the defendant’s offending. The court thinks that the imposition of separate sentences for the commission of each offence would be excessive in all the circumstances of the case. Therefore, the court is of the view, that a sentence of 10 years’ imprisonment would be sufficient to reflect the totality of the defendant’s offending.

Time on remand

[37] The defendant has spent a total of 115 days on remand. The period of 115 days spent on remand shall be deducted from the overall sentence of 10 years’ imprisonment.

Ancillary orders

[38] The court think’s it necessary to make ancillary orders both relative to the victim and the defendant. This is the case particularly in light of the recommendation made in the Authority’s report that therapeutic intervention is required to support the victim

in the healing process. In the case of the offender, it is evident that he suffers from some stage of alcoholism.

[39] In the circumstances, the court's sentence is as follows:

1. The defendant is sentenced to a term of incarceration of 10 years relative to each count to run concurrently. The period of 115 days spent on remand shall be deducted from the sentence of 10 years' imprisonment.
2. The defendant shall undergo such counselling as provided by the counsellor assigned to His Majesty's Prison, Richmond Hill for the duration of his incarceration to curb his alcoholic traits.
3. The victim shall attend counselling sessions to be provided by the Child Protection Authority for such period as the Authority in its discretion deems necessary.

Shawn Innocent
High Court Judge

By the Court

Registrar