

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

GRENADA

CASE NO. GDAHCR2024/1012

BETWEEN:

THE KING

And

L W

Appearances:

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

2024: December 11; 13.

JUDGMENT ON SENTENCING

[1] **INNOCENT, J.:** The defendant was indicted for the offence of incest contrary to section 183A (2) of the Criminal Code¹ as amended by section 19 of the Criminal Code (Amendment) Act² relative to events that occurred on 26th September 2022. The indictment was dated 29th August 2024 and filed on 4th September 2024.

[2] The victim in this case was the defendant's daughter. She was above the age of 13 years at the time of the commission of the offence. The victim resided with her grandparents, two other siblings and her cousin to the exclusion of the defendant. The defendant resided not too far from where she lived. The defendant would visit the premises where the victim resided to use the amenities which he did not have at the premises where he resided.

¹ Chapter 72A of the Continuous Revised Edition of the Laws of Grenada

² Act No. 29 of 2012

- [3] On 26th September 2022, while the victim was in bed, the defendant visited her bedroom where he handed her some money. He left and went upstairs. The victim returned to her bed and fell asleep. While she was asleep she was awoken by a presence. When she awoke she noticed that the defendant was on top of her. At the time she was lying on her stomach. She realised that the pants she was wearing and her underwear were situated below her buttocks and the defendant was attempting to pull them up.
- [4] The victim told the defendant to get up from on top of her and asked him to leave. The defendant instead laid next to the victim with a smile on his face. The victim's cousin at this time entered the victim's bedroom and inquired from the defendant the reason for his presence there and how he had managed to gain access to the bedroom. When confronted, the defendant maintained that he had come into the bedroom with the victim's grandmother.
- [5] When the defendant stood up it was discovered that he was clad in a towel which covered only the lower part of his body. The defendant, at this stage began to rearrange the towel. The victim's female sibling who later entered the bedroom inspected the victim's genitals.
- [6] The victim was taken to a medical facility on 27th September 2022 where she was medically examined. The gynecological examination of the victim revealed that the introitus was eryematous. There was also a white discharge. No lacerations of the vaginal area were observed. No hymen was observed.
- [7] The defendant was subsequently arrested and taken into custody. He was later interviewed by the police under caution. In the interview under caution, the defendant admitted to the police that he entered the victim's room and that at the material time he was wearing only a bath towel. He admitted also to lying down on top of her backwards. When he was questioned about his reason for doing this, he replied: "I was sexing her." When asked the reason why he was having sex with his daughter, the defendant replied: "I doh know." He also admitted that he knew the victim was his daughter when he was having sexual intercourse with her.

[8] Now the defendant was asked in the interview under caution what he had done to the victim. He responded:

“Well me and she accustom doing that. Last night I just rub up me wood in front her. Well sperm come out and that’s it and I wasn’t laughing.”

When asked whether he had touched the victim before, the defendant responded by saying:

“Yea I does always touch her, play with her, touch she vagina.”

The defendant was also questioned by the police relative to his use of illicit drugs. The defendant answered that he uses crack, marijuana, cigarettes and rum. The police inquired whether he entered the victim’s room when he used these substances. He replied:

“Not all the time, when I drink rum I does go in the room.”

In response to whether he had ejaculated on the victim’s vagina the defendant answered in the affirmative.

[9] Section 183A (2) of the Criminal Code provides:

“If a male person has sexual intercourse with a female person above thirteen years of age who is by blood relationship his daughter, granddaughter, mother, sister, aunt or niece commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding fifteen years.”

[10] In sentencing this offender the court will be guided by the principle that in arriving at a sentence that is just, proportionate and commensurate with the seriousness of the defendant’s offending and having regard to the subject factors that might have influenced the defendant in the commission of the offence. The court will also be guided by the principle that the starting point sentence is not necessarily the maximum sentence prescribed by statute for the commission of the offence.

[11] The court will first establish a starting point sentence having regard to the seriousness of the offence by reference to the consequences or harm done and the defendant’s degree of culpability in the commission of the offence. Once the benchmark or starting point sentence is arrived at, it will be adjusted upward or

downward depending on the aggravating and mitigating factors inherent in the case and relative to the defendant.

- [12] The court will then go on to consider whether any and what quantum of discount is warranted on account of the defendant's guilty plea. In addition, the court will deduct with precision, the time which the defendant has spent on remand.
- [13] The court will then go on to consider whether and what if any ancillary orders ought to be made in the circumstances.

Seriousness – Consequences

- [14] In assessing the consequences of the offence by reference to the harm, the court took in account the following matters. The victim was a child under the age of 16 years. Other than this, it did not appear that there were any of the factors mentioned at Category 1 of the Guidelines. Therefore, the court will consider consequences as falling within Category 2 of the Guidelines.
- [15] Crown Counsel Mr. Marshall has relied on the victim's affidavit filed in the sentencing proceedings in support of the contention that the victim suffered at the very least some emotional or psychological harm as a result of the incident. The court thinks it worthwhile to examine the contents of this affidavit. Mr. Edwin, who appeared for the defendant would have expressed his unwillingness to cross-examine the victim at the hearing.
- [16] The victim in this case is now 17 years old. In her affidavit she states:

"I returned to school the next day after the incident. I was reserved but I maintained a sense of normalcy. I repeated Form 1 as my concentration level reduced after the incident.

My thoughts remained focused on the incident. I continued to feel his physical presence in the home even though he was in police custody at the time. I suffered from sleepless nights and I became fearful although he was incarcerated.

I attended counseling sessions for approximately one month with the Child Protection Authority. I no longer require counseling as I feel safe now. I

received comfort from my grandparents and siblings during the time and they have assisted my recovery from this trauma.”

Having considered the matters contained in the victim’s affidavit, the court thinks that the psychological harm suffered by the victim did not equate that which is contemplated by Categories 1 and 2 in the Guidelines – it was neither extreme nor serious. However, the court does accept that at the very least, the victim did suffer some psychological harm – but at the very lowest end of the scale.

[17] The court places the defendant’s culpability at Level A – High. The defendant abused his position of trust. Notwithstanding the existing living arrangements, the defendant in large measure still stood in a position of locus parentis to the victim. In addition, there was a significant disparity in age between the victim and the defendant.

[18] In the premises, applying the grid in the Guidelines, the starting point sentence would be 50% of the statutory prescribed sentence, that is, 7 ½ years’ imprisonment adjusted within a range of 35% to 65% taking into account the aggravating and mitigating factors.

Aggravating factors – offence

[19] The aggravating factors that are discernible in the present case are as follows. The defendant engaged in the offending conduct out of a need for sexual gratification. By his own admission he ejaculated in the course of the sexual conduct with the victim. Another aggravating factor in the commission of the offence was that the sexual conduct occurred in close proximity to other members of the victim’s household to the extent that they were alerted to the victim’s protestations which gave away the defendant’s dastardly act – he was caught in flagrante delicto. Surely, this must have been a source of embarrassment to the victim. The defendant in this case was aware of his paternal relationship to the victim. The defendant, being cognizant of his wrongdoing, when confronted, concocted an explanation for being in the victim’s bedroom.

Mitigating factors – offence

- [20] No force or the use or threat of violence was employed by the defendant to commit the subject offence. Also, it would appear that the parties never lived together in the same household or family unit. That the subjective factor that influenced the defendant in the commission of the offence was his vulnerable personality and behavioural trait, exacerbated by drug and alcohol consumption. There is no evidence that the act was repeated several times; and for all intents and purposes, this was a single incident.
- [21] Having assessed the aggravating and mitigating factors inherent in the commission of the offence, the court is of the view, that the starting point sentence of 7 ½ years' imprisonment be adjusted upward by 2 ½ years. Therefore, the notional sentence ought to be 10 years' imprisonment. This uplift is based on the court's assessment that the aggravating factors in the commission of the offence outweigh the mitigating factors.

Aggravating factors – offender

- [22] Notwithstanding the defendant's lack of any significant antecedent history with the criminal justice system, the defendant in this case can hardly be described as a man of good character and good moral standing in the community where he resided. The defendant readily admitted his drug and alcohol abuse to the social worker. The defendant also admitted to readily accepting and adopting the sobriquet "Drake" given to him by members of his community. He accepted that his pseudonym was meant to describe a rogue, a person who is not well kempt, who lives a nomadic or vagrant lifestyle, or one who displays antisocial behavior.

Mitigating factors - offender

- [23] The defendant in this case is now 42 years old. He was 40 years old at the time of the commission of the offence. This defendant has no previous convictions for any relevant offence. He cooperated with the police in the course of their investigations

and readily admitted his incestuous conduct to the police when confronted with the incriminating facts.

[24] It would appear from the Social Inquiry Report (the 'Report') that the defendant grew up in a dysfunctional family. His mother suffered from mental illness which required her to be institutionalized. There appeared to have been some stigmatization of the defendant as a result of his mother's mental illness.

[25] The defendant married at age 26 from which union he fathered 9 children. His wife had another child of her own. Four of these children reside with his parents and the other five were taken away at birth and were adopted. It did not appear that the defendant plays or has played any meaningful role in his children's lives. It would also appear that the defendant's wife also suffers from drug addiction.

[26] The Report revealed that the defendant spent six months at a psychiatric hospital where he was treated for his drug addiction. He confessed to having escaped from the facility. In addition, he admitted receiving counselling for his alcohol and drug addiction but claimed that at one month into the counselling sessions he again succumbed to his addiction having been reintroduced to crack cocaine by his wife. According to the Report, the defendant admitted to using crack cocaine from that time up to the time of his incarceration for the present offence. The defendant's drug habit and subsequent addiction commenced when he was aged 21 and has continued seemingly unabated up to the present time.

[27] The writer of the Report opined that the defendant:

"... did not seem to understand the gravity or seriousness of his actions. He repeatedly suffered apparent memory loss or continued to minimize his actions and avoided taking full responsibility for the offence."

[28] The Report states, under the rubric "Acceptance of Responsibility":

"The convicted man declared, "I am sorry, and I apologize for mingling up with her, I think I was drunk at the time; I drank rum and smoked weed. I would like to say sorry and apologize for what I have done..."

[29] In considering the subjective factors that might have influenced the defendant in the commission of the offence, the court has given ample consideration to the matters canvassed in the Report under the heading “Assessment” where it states that the defendant’s actions:

“... are indicative ... because of chronic substance abuse... was subjected to early substance abuse during his childhood and was coerced into normalizing alcohol consumption... His subsequent addiction to alcohol was compounded by his use of marijuana and his practice of using harder drugs, such as crack cocaine...”

[30] The Report suggests that if the defendant’s drug addiction is not addressed, there exist the likelihood that his behavioural traits coupled with and exacerbated by his substance abuse, may present a substantial risk of him committing further sexual offences.

[31] Having considered all the circumstances mentioned above, it is beyond peradventure that there is the urgent need for the rehabilitation of this offender. Additionally, there appears to be the need to protect the public from harm from this offender. Therefore, the question then becomes, whether there is the need to impose a longer than commensurate sentence to achieve the aforementioned permissible aims of punishment. In the court’s view, there is. In the premises, the court is of the opinion that an uplift of 2 years’ imprisonment to the notional sentence of 10 years’ imprisonment would be appropriate in the circumstances. Therefore, the notional sentence ought to be 12 years imprisonment.

[32] The court also thinks that although the defendant did not plead guilty at the earliest available opportunity, he is still entitled to a discount of one-third of the notional sentence on account of his guilty plea. The court is not certain whether the defendant was represented at the committal proceedings. However, the court has repeatedly reminded defence counsel that where there is the intention to enter a guilty plea at the committal stage of the proceedings, it may be wise to follow the procedure for committal for sentence. In any event, the defendant is credited with a discount of 4 years’ imprisonment on account of his guilty plea.

[33] The result is that the defendant is sentenced to 8 years' imprisonment. The defendant has spent a total of 705 days on remand. He will be credited for all the time spent on remand which shall be deducted from the overall sentence of 8 years' imprisonment.

[34] Unfortunately, the sentencing exercise does not end here. The Report makes several recommendations regarding ancillary orders that the court ought to make in the present case. The court has no challenge in accepting the recommendations made in the Report and will adopt the same wholeheartedly.

[35] In the circumstances, the sentence of the court is as follows:

1. The defendant is sentenced to 8 years' imprisonment.
2. The defendant shall be credited for all time spent on remand which is equivalent to 705 days. This period of 705 days shall be deducted from the sentence of 8 years' imprisonment.
3. The defendant, while incarcerated shall receive counselling and treatment for his alcohol and drug abuse.
4. The defendant shall undergo Cognitive-Behavioural Therapy in an effort to develop healthier coping mechanisms, to address cognitive distortions, impulsivity and substance abuse related behavior.
5. The defendant shall enroll and participate in all vocational skills programs provided by His Majesty's Prisons, Richmond Hill.
6. A psychological assessment shall be conducted relative to the defendant and a psychological assessment report shall be submitted to the court within 3 months from today's date.

Shawn Innocent
High Court Judge

By the Court

Registrar