

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

GRENADA

CASE NO. GDAHCR2018/0047-A

BETWEEN:

THE KING

And

ADRIEL CHARLES

Appearances:

Ms. Chrisan Greenidge, Senior Crown Counsel with Mr. Jordan Marshall, Crown Counsel for the Crown
Mr. Arley Gill of Counsel for the Defendant

2024: March 22;
May 24.

JUDGMENT ON SENTENCING

- [1] **INNOCENT, J.:** The procedural history of this matter is relevant to some of the issues arising in this sentencing exercise. The defendant was first jointly indicted with another for the offence of rape on an indictment dated 27th August 2018 and filed 30th August 2018 in relation to events that occurred on 24th July 2017. On his arraignment on 2nd November 2018 he pleaded not guilty to the subject offence. It appears that somewhere in the course of the proceedings that ensued on or about 22nd July 2022, his co-defendant entered a plea of guilty and was sentenced.
- [2] The defendant is presently before the court on a subsequent indictment dated 7th December 2022 and filed on 8th December 2022. It appears that the defendant had maintained his plea of not guilty until the matter came on for hearing on 8th March 2024. On even date the defendant was re-arraigned and he changed his plea to

guilty to the single count of rape contained in the said indictment. This plea was accepted by the Crown.

- [3] At the sentencing hearing the court had the benefit of both written and oral submissions from Counsel. An agreed statement of facts was filed on 23rd March 2024.
- [4] The events giving rise to the present indictment can be chronicled in the following manner. On 24th July 2017 at about 1 am the virtual complainant was alone at a party at Depradine Street, Gouyave in the Parish of S John. She eventually met up with three of her male friends. They began drinking. According to the agreed statement of facts, the virtual complainant had consumed six Stag beers and as a result she became inebriated. A male individual who was present took the virtual complainant to his house which was situated somewhere along the beach where the party was being held. The male individual placed the virtual complainant on his bed and left her in his house.
- [5] After the male individual left the house, the defendant accompanied by another man entered the house where the virtual complainant laid inebriated. One of the men removed the virtual complainant's clothing. The defendant removed his clothing and started having sexual intercourse with the virtual complainant. The virtual complainant's legs were up in the air and she was in a lot of pain. She was crying and shouting "stop, please stop" but the defendant persisted. The defendant had sexual intercourse with the virtual complainant for about half an hour before he stopped. The defendant left while the virtual complainant remained in the house. It appears that in the commission of the offence the defendant did not threaten or use any force or violence against the virtual complainant. The virtual complainant slept at the house and did not leave until later that morning.
- [6] As a result of the incident, the virtual complainant who was experiencing pain in the region of her abdomen, sought medical assistance at a health facility on 26th July 2017. She was medically examined. The medical examination revealed no laceration or bleeding. Vaginal examination revealed that there was bleeding

accompanied by a creamy vaginal discharge with a superficial laceration to both labia minora each measuring 1 cm in length. There was no hymen present.

- [7] The virtual complainant reported the matter to the police. The defendant was arrested and taken into custody on 27th July 2017 where he was interviewed under caution and granted bail on even date. It appears from the record of the interview that the defendant admitted to having sexual intercourse with the virtual complainant. For all intents and purposes it can be said that the defendant cooperated with the police authorities in the course of their investigation.
- [8] At the time of the commission of the subject offence the virtual complainant was 16 years old and the defendant 18 years old. The defendant and the virtual complainant were well known to each other at the material time, and, hail from the same community.
- [9] The defendant who is now 25 years old has no previous convictions and no history of offending. At the time of the commission of the offence he was a student. He has not been charged with or convicted for any or any other offence since this matter arose.

Approach to sentencing

- [10] In sentencing this defendant, the court will be guided by the Compendium Sentencing Guidelines of the Eastern Caribbean Supreme Court – Sexual Offences, Re-Issue 8th November 2021 (the ‘Guidelines’). This reliance on the Guidelines does not obviate the need for the court to pay close attention to the permissible aims of punishment and to recognise that in the sentencing exercise the court does not divest itself of the discretion that it has in sentencing offenders. The court is also mindful of the fact that the Guidelines are intended to create consistency in both the approach to sentencing and to achieve consistency in sentences meted out for particular offences.

- [11] There may be instances where the court may be required to depart from the Guidelines. However, this will only occur where there are cogent reasons and exceptional circumstances which warrant the same. The sentencing court ought to have regard to any special circumstances relative to the offender or the circumstances surrounding the commission of the offence which would justify a departure from the Guidelines. In so doing, the sentencing court should not overlook the principle that the sentence imposed must reflect the seriousness of the offence having regard to the offender's degree of culpability and the harm or consequences of the offence.
- [12] Additionally, the sentencing court should assess the personal circumstances of the offender which includes his character, age and whether there is any need to protect the public from serious harm from the offender. In view of the latter, the court should have regard to whether there is any need for deterrence or rehabilitation which should interrogate the likelihood of the risk of the defendant reoffending. In this manner the ultimate aim of proportionality in sentencing is achieved.
- [13] The court will first attempt to arrive at a starting point sentence by assessing the seriousness of the offence having regard to the harm and consequences caused by the commission of the offence and the defendant's degree of culpability in the commission of the offence. The figure arrived at will then be scaled upwards or downwards upon the court's assessment of the aggravating and mitigating factors accompanying the commission of the offence.
- [14] The sentence prescribed for the commission of the offence of rape is a maximum of 30 years' imprisonment. The court is well aware that the maximum penalty prescribed by statute is not necessarily or usually the starting point.
- [15] Thereafter, the court will go on to consider the aggravating and mitigating factors relevant to the defendant and adjust the figure previously arrived at upwards or downwards in light of its assessment.

- [16] The court will then go on to consider what credit, if any, the defendant is entitled to on account of his guilty plea entered into at the present stage of the proceedings. In the present case, the defendant has spent no time on remand, therefore, the court will give no consideration to time spent on remand.
- [17] The question of delay and how it ought to affect sentence in this instance has been raised by Counsel for the defendant. Therefore, the court will consider whether this is a factor which ought to operate to reduce the overall sentence that the court is minded to impose.
- [18] Furthermore, the court, particularly in light of what was advanced at the sentencing hearing by Counsel for the defendant will give consideration to the question of whether in all the circumstances of the case an immediate custodial sentence is warranted in the case of this defendant.

Seriousness – consequences or harm

- [19] Usually offences of this nature are considered serious offences against the person as they affect the inviolability of a woman's chastity. Therefore, as such, offences of this nature usually attract a custodial sentence. The court's experience in this jurisdiction has been that offences of this nature are prevalent and have indeed become a cause for societal concern. Therefore, in the court's view, there are consequences not only for the victims of these offences, but also for the society at large particularly those persons who are vulnerable.
- [20] In the case of the defendant's present offending, in the court's view, there appears to be no extreme or exceptionally significant factors going towards the issue of harm to the victim. There is no evidence of extreme psychological or physical harm to the victim except what obtained on gynecological examination. Counsel appearing for the Crown has asked the court to consider the matters revealed by this examination as constituting serious physical harm to the victim.

- [21] In the court's view, whereas, the vaginal injuries suffered by the victim were inflicted in the course of sexual intercourse and therefore concomitant thereon, the court is not inclined to believe that this was the serious harm contemplated by the Guidelines. However, the court has considered the circumstances in which the sexual intercourse took place and found that indeed minimal physical injury not going above and beyond the infliction of violence on the victim had occurred.
- [22] There is no evidence of extreme humiliation and degradation in the present case of the kind contemplated by Category 1 of the Guidelines. However, the court takes the view, that it is reasonably arguable that the victim must surely have been aware, notwithstanding her level of intoxication, that she was engaged in sexual intercourse with two men without her consent. This may very well be a source of humiliation for the victim particularly if the incident becomes a matter of public knowledge and the victim has cause to encounter the perpetrators in public. Also an operative source of humiliation would emanate from her having to recount the encounter to the police authorities. Fortunately, she has been spared the ordeal of having to recount the events in the course of a trial.
- [23] Therefore, in the court's considered view, the matters identified above by the court, do not necessarily bringing the offence within either categories 1 or 2 in the Guidelines. In the present case, there is no evidence of these matters coming from an expert or the victim herself. Notwithstanding the comments made by the court, the court is in no position to pontificate or speculate on these matters. However, the court will consider the matters which it has identified as relative to the question of the aggravation in the commission of the offence.
- [24] In the premises, the court has concluded that none of the in exhaustive list of factors in Categories 1 and 2 exist in the present case. The court's reasons for so finding will become more pellucid in the course of its sentencing remarks. Therefore, in the court's view, the present offence ought properly to fall into Category 3 of the Guidelines. Additionally, the court has formed the view that there are no other factors which the court can consider outside of the list of factors in Categories 1 and

2 which would bring the harm or consequences of the commission of the offence within either Category.

Seriousness – culpability

- [25] In the present case, there are no exceptional or extreme circumstances as contemplated by the in exhaustive list of factors listed in level A of the Guidelines; for example, a significant degree of planning; great disparity of age between the victim and the defendant; prolonged detention; a history of violence against the victim; and the use of threats or violence to commit the offence or to prevent reporting. Therefore, this brings the defendant's level of culpability in the commission of the offence within Level B of the Guidelines.

The starting point

- [26] Having assessed the consequences of the offence at Category 3 and the defendant's level of culpability at Level B which provides for a starting point sentence of 25% of the maximum penalty and a sentence within the range of 20% - 30% of the maximum sentence, the court has in accordance with the Guidelines established a starting point sentence of 7 ½ years' imprisonment.

Aggravating factors – the offence

- [27] Crown Counsel invited the court to find as an aggravating factor in the commission of the offence the fact that the victim was vulnerable because of her age. The court agrees to a partial extent. The victim's age coupled with the fact of her intoxication may have indeed made the victim vulnerable. Clearly, there is the impulse to conclude that these two factors when combined, constitute a degree of aggravation. More so, there was explicit evidence of the victim's intoxication which was patently clear to the defendant. Therefore, in the court's considered view, it is not too far-fetched to assume that the defendant took advantage of the victim's intoxication in perpetrating the offence.

- [28] It was apparent that the defendant's co-defendant would have also participated in sexual intercourse with the victim in the course of what may be aptly described as part and parcel of the same transaction.
- [29] The two factors identified above by the court can clearly be considered aggravating factors in the commission of the offence. Both of the factors mentioned, when viewed objectively, even in the absence of evidence coming from the victim herself, would more likely than not be a source of humiliation to the victim. In the court's view, this aggravates the offence. Additionally, it must be remembered that the victim is known to the defendant; and from all indications they were on friendly terms. Not only does this add to her humiliation but it also amounts to a breach of trust.
- [30] Apart from the matters which the court has highlighted above it did not appear that there were any other aggravating factors that could be ascribed to the commission of the offence.

Mitigating factors – the offence

- [31] Crown Counsel has quite correctly in the court's view, identified the absence of violence used did not go beyond that which was inherent in the offence. Also, in the court's view there are no other discernible mitigating factors surrounding the commission of the offence. Although Counsel for the defendant has asked the court to find that the defendant's offending was the result of youthful exuberance, the court declines to so find given the remarks which the court will make shortly on the question of youthfulness and how it affects culpability. However, what stands out in the defendant's favour is the fact that the circumstances surrounding the commission of the offence cannot properly be regarded as egregious.
- [32] Having assessed the aggravating and mitigating factors inherent in the commission of the offence, the court has concluded that the aggravating factors exceed the mitigating factors. Therefore, the court will adjust the starting point sentence upward by 1 year.

Aggravating factors – the offender

- [33] There are no aggravating factors to be regarded relative to this offender.

Mitigating factors – the offender

- [34] Counsel for the defendant has impressed upon the court that it should find the defendant a person of good character which should operate favourably as a mitigating factor relative to him. The court agrees. Not only does the defendant have no previous convictions, he also has not had any brushes with the law in the past.
- [35] Counsel for the defendant also asked the court to consider the defendant's youthfulness as a mitigating factor. According to Counsel for the defendant, the defendant only having been two weeks into his eighteenth birthday qualified him to be treated in accordance with the provisions of Practice Direction 8D No. 4 of 2019 (the 'Practice Direction').
- [36] The Practice Direction highlights the considerations the court must have regard to when sentencing persons below the age of 18 and how these must be applied in determining sentence. It sets out the approach which the court must consider and apply when sentencing children and young offenders. When sentencing children or young persons as at the date of the offence a court must have regard to: the principal aim, to prevent offending by children and young persons; the aim of rehabilitation; and the welfare of the child or young person. The Practice Direction sets out in detail the objectives for adopting the approach which it sets out.
- [37] Notwithstanding Counsel's allusion to the short period of time that had elapsed between the defendant's birthday and the commission of the offence, the court is not minded in this instance to apply the Practice Direction for the reasons which follow.
- [38] It cannot be disputed that the defendant may properly have been regarded as a young adult at the time of the commission of the offence. Therefore, instead of applying the Practice Direction, the court will assess the defendant's "young

adulthood” as a factor to be considered in the determination of whether the imposition of either a reduced sentence or a non-custodial sentence is appropriate in the circumstances.

- [39] The general principle is that where the offender is a young person who is in all relevant respects a first offender and appears generally motivated towards reform, there may be a benefit both to the offender and society of a significantly reduced sentence.
- [40] Therefore, youth, the level of maturity and the prospect of rehabilitation of an offender, may be considered as factors militating against the imposition of a custodial sentence or the length of the sentence which the court may be minded to impose. However, it is important to recognise that what is appropriate in any given case depends substantially on the circumstances of the case.
- [41] Whether this is so in a particular case, requires a realistic assessment which gives proper and adequate weight to the fact that the commission of a sexual act on a victim resulting in rape, even when committed by an immature offender, remains serious and egregious offending.
- [42] Once the age of majority has been attained, that is eighteen years, with the attendant conferral of important adult rights and privileges, youth by itself cannot lead inevitably to a reduction in sentence. Adult offenders must be taken, when deliberate action is engaged in, to have courted the consequences of their behaviour choices. By doing so, adult offenders cannot seek to be partially immunised in the sentencing process, by praying in aid “young adulthood” as a mitigating factor. If the age of majority is to be considered as meaningful, representing as it does both notionally and practically the portal into the world of adult decision-making and overall responsibility, then any offender of and above that age will have a severely steep uphill climb in persuading a sentencing court, that without more, comparative youth is a mitigating factor that should steer the court away from a custodial sentence or a significantly reduced sentence.

- [43] In the present case, there is no evidence to suggest that the defendant's youth played any role or contributed to influencing his behaviour in any respect. On the contrary, the defendant appeared to have made a very deliberate decision in carrying out the offence.
- [44] There is no evidence of the defendant having any prior criminal behaviour or record. The court has before it on the one hand, the defendant's good character, and on the other, the aggravating factors relative to the seriousness of the offence. In the court's view, the combination of these factors do not make the offence so abhorrent that the defendant's good character young adulthood ought to pale into insignificance, so that it fails to hold sufficient merit to justify a departure from the Guidelines which requires a custodial sentence.
- [45] The court would have commented earlier that it has not been shown demonstrably how the defendant's young adulthood would have affected or diminished his culpability in the commission of the offence. Counsel for the defendant has asked the court to consider the fact that the defendant may have been acting impulsively and was a wanton and unpremeditated act which was influenced by the opportunity which presented itself with some element of influence from his peers. However, nothing conclusive or objective has been presented to the court to explain the defendant's impulsive behaviour and whether his conduct had been affected by inexperience, emotional volatility, or negative influences.
- [46] Nothing has been presented to the court to show why the defendant may not have fully appreciated the effect his actions would have had on the victim. It has not been shown demonstrably that the defendant was susceptible to peer pressure and other external influences, generally or due to some other idiosyncrasy. Also, it has not been shown that the defendant's emotional and developmental age was not commensurate with his chronological age.

[47] For all of the reasons mentioned above, the court is incapable of making any rational assessment of how the defendant's age affected his culpability to the extent that it would otherwise serve as a mitigating factor in this case.

[48] In the court's view, the mitigating factors relative to the defendant far outweigh any aggravating factors relative to him; and in this case, no such aggravating factors exist. Therefore, the court will discount a period of 2 years from the notional sentence.

Credit for guilty plea

[49] Earlier on in its sentencing remarks, the court gave a brief chronology of the procedural history of this matter. This chronological background only served to enable the court to make a fair assessment of the timing of the defendant's guilty plea.

[50] It appears from the record that there may very well have been some inclination towards a plea at the earlier stages of the proceedings. However, it would appear perhaps for a myriad of reasons that this did not occur until now. This was a paper committal. The indictment was filed within a year of the committal proceedings. There were numerous adjournments some of which were due to the nonappearance of the defendant and at times his co-defendant. Regardless of the reasons for the timing of the plea it can be said confidently that the plea was not taken at the earliest available opportunity.

[51] Therefore, the defendant is not entitled to the usual one-third discount from the notional sentence. In this instance the court will credit the defendant with a 25% discount from the notional sentence as a result of his guilty plea. This would equate a discount of 1 year 8 months' imprisonment.

Delay

[52] Counsel for the defendant has urged the court that a discount from the notional sentence is appropriate to take account of the delay in the matter. This matter is

approximately 8 years old. There appeared to be no explanation for this inordinate delay.

[53] The court's approach to treating with delay as a factor affecting sentence was given ample amplification by the Court of Appeal in the case of **Violet Hodge v Commissioner of Police**.¹ The court does not see the necessity of reiterating the principles enunciated in that case as these principles are now axiomatic and have left an indelible stamp on our sentencing jurisprudence.

[54] Having applied the principled approach as it pertains to delay, the sentencing court should then have to make an assessment of the amount of discount that the defendant is entitled to on account of such delay. The question of whether delay is excessive is fact sensitive. It is therefore incumbent on the sentencing court to exercise its discretion by assessing the facts and making a judgment as to what is required. There is no automatic right to a reduction in sentence on the ground of delay. However, the court possesses a residual discretion in the matter. The court's discretionary power must be exercised in such a way to correct any perceived injustice. Delay is undoubtedly of relevance to the broad question of what a just sentence is when eventually and belatedly conviction occurs.

[55] It is unclear what prejudice the defendant may have suffered as a result of the delay in the matter. The defendant has been on bail throughout the proceedings. It is also unclear what the primary causes of the delay were. The sentencing judge in the case of **Marius Wilson v The King**² was confronted with a similar dilemma as this court as far as the cause of the inordinate delay not being readily apparent or ascertainable. Ward JA. Delivering the judgment of the Court of Appeal had this to say:

"I am of the view that the judge did not properly take into account the excessive length of delay, his own finding that no satisfactory reason was given to explain why the appellant's matter went on hiatus, and his further finding that the appellant contributed in "some small measure" only to this period of delay. On this basis, it is my view that this Court would be justified

¹ [2018] ECSCJ No. 46

² [2023] ECSCJ No. 229

in exercising its discretion to review the sentence imposed by reducing the appellant's sentences by 2 years, which I consider would meet the justice of compensating the appellant for the inordinate delay in bringing his case to trial. Accordingly, I would allow the appeal against sentence."

- [56] However, notwithstanding the sentencing court's inability to conduct a fact sensitive assessment, the court in exercising its discretion must see to it that justice is done. Generally, applications for reductions in sentence would be unusual. There is no set mathematical formula for determining the exact figure by which a sentence can be reduced as a result of delay. This is determined by the sentencing court applying its judicial mind to an assessment of what is fair in all the circumstances of the case.
- [57] In the present case, the court finds the period of almost 8 years delay to be untenable. Surely, the protracted proceedings would have been a cause of anxiety to the defendant and amounted to a breach of his constitutional right to a fair hearing within a reasonable time.
- [58] The court is fortified in its view by a decision closer to home, namely, **Akim Monah v The Queen**³ where the Court of Appeal held, among other things, that section 8(1) of the Constitution of Grenada guarantees the right to a fair hearing within a reasonable time; and that the main objective of the reasonable time guarantee in relation to the right to a fair hearing, is to ensure that there is efficient disposition of criminal cases.
- [59] The Court of Appeal in **Monah v The Queen** went on to find that the court had a broad discretion to fashion effective redress to secure the enforcement of fundamental rights. However, the redress which the court provides is fact sensitive. Furthermore, the fact that the court finds that a sentence imposed in the court below was not manifestly excessive does not restrict the remedies that the court may grant. Additionally, there is a consistent stream of jurisprudence which has established that a breach of the fundamental right to a fair hearing within a reasonable time of a convicted person can result in the reduction of his or her sentence. The court found

³ GDAHCRAP2021/0015 (23rd February, 2022)

that there were no impediments which prevented it from fashioning redress which included a reduction in Mr. Monah's sentence in addition to making a declaration to that effect.

[60] The court wishes to echo the sentiments of Williams J. in the case of **The State v Andre Armour**⁴ where the learned judge said:

"There is an abundance of cases emanating from the Commonwealth Caribbean that address the issue of delay, whether under the broad rubric of an abuse of process which includes circumstances which offend the court's sense of justice and propriety, or as the constitutional imperative of a right to a fair trial where the circumstances may be such that a defendant may suffer specific prejudice.

To sustain faith in the rule of law and the administration of justice, the mantra of "justice delayed is justice denied" ought to reverberate throughout the criminal justice system. Unreasonable, unnecessary and excessive delays must not be countenanced. The criminal justice system must operate to protect the rights and interests of the innocent accused and ensure that the guilty are swiftly punished."⁵

[61] In the circumstances of the present case, the court finds that a suitable reduction from the notional sentence to take account of the inexplicably inordinate delay would be 1 year and 8 months.

[62] Therefore, the court has determined that a term of imprisonment of 3 years' imprisonment is a fair and proportionate sentence having regard to the seriousness of the offence and the personal characteristics and circumstances of the defendant. This figure of 3 years' imprisonment was not calculated with precision. Instead, the court has determined based on the sentencing principles which it has explained that in all the circumstances of the case, this is a fair and proportionate sentence and one that is commensurate with the defendant's degree of culpability. In other words, the sentence imposed by the court is commensurate with the seriousness of the offence.

⁴ [2023] ECSCJ No. No. 334; see also *The State v Yannick Lander* [2023] ECSCJ No. 246

⁵ At paras [79] – [80]

Immediate custodial sentence?

- [63] Counsel for the defendant has advocated that this is a proper case for the court to depart from the Guidelines which interrogates the proportionality of the imposition of an immediate custodial sentence. This clearly brings to the fore the manner in which the sentencing judge's discretion in making such a determination.
- [64] The court is of the view that in determining what is a fair, acceptable and proportionate sentence is based on the exercise of a sound sentencing discretion. The sentence imposed must fall within the limits of a proper exercise of the sentencing discretion. That is not to say, however, that a fair and proportionate sentence is capable of expression in precise numerical terms. References to fairness and proportionality amount to no more than a recognition that there is not one particular sentence which can be demonstrated to be correct in all cases. In other words, there is no one size fits all.
- [65] Sentencing is not a mathematical process. To specify the point at which a fair and proportionate sentence begins or ends lends a misleading air of scientific precision to an exercise that cannot be precise. A sentencing judge is required to take into account all the relevant circumstances of the offence, the maximum sentence and relevant factors, such as prevalence of the crime, which are common, not to the particular offence in question, but to all offences of that type, as well as the character and antecedents of the offender. The relevant factors are to be instinctively synthesized. Therefore, the court ought to lend itself to the perception of the figure that is most likely to achieve a forensic objective and which would probably be based upon sentences imposed in other cases, where the circumstances of the offence and the offender were different.
- [66] Without doubt reasonable minds may differ on the appropriate sentence in any given case, and, therefore, there is a range of permissible sentences that is open to judges in sentencing. The sentencing court must take into account a wide variety of matters which concern the seriousness of the offence of which the offender stands to be sentenced and the personal history and circumstances of the offender. Very often

there are competing and contradictory considerations. What may mitigate the seriousness of one offence may aggravate the seriousness of another. Yet from these the sentencing judge must distil an answer which reflects human behaviour in time and measure of punishment, all of which may vary according to the overall circumstances of each case.⁶

[67] In light of the foregoing observations, the court has given serious consideration to whether an immediate custodial sentence as opposed to a suspended sentence would be appropriate in the present case.

[68] A custodial sentence may be suspended in an appropriate case where an immediate custodial sentence might have the effect of derailing the stability and future prospects of a man of good character in a case with strong mitigating factors. In such a case, the custodial sentence can be suspended.

[69] In making the determination whether a suspended sentence is appropriate, the court has taken into account the character and personal circumstances of the defendant. At the time of the commission of the offence the defendant was still in attendance at school. He is now 25 years of age. He has completed an Associate's Degree in physical education and is presently a volunteer with the national swimming program. He is a first offender and not a recidivist. He is also gainfully employed.

[70] In view of all of the above the court has determined that the sentence of 3 years imprisonment ought to be suspended. This suspended sentence ought not to be regarded as a substitute for an immediate custodial sentence. The fact remains that the defendant has a conviction and sentence registered against his name. In the court's view, given the personal circumstances of this defendant the court can see no meaningful aim of punishment that would be served by imposing an immediate custodial sentence as this would only serve the meaningful aim of retribution.

⁶ Moise v The Queen

The sentence

- [71] Therefore, the sentence of the court is that the defendant is sentenced to 3 years' imprisonment which shall be suspended for a period of 3 years. The sentence of 3 years' imprisonment herein shall not take effect unless, during the period of 3 years from the date sentence is pronounced, the defendant commits another offence punishable with imprisonment and thereafter a court having power to do so orders that the original sentence shall take effect with or without variation of its terms.

Shawn Innocent
High Court Judge

By the Court

Registrar