

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO.: ANUHCR2023/0058

BETWEEN:

THE KING

and

KARL WARNER

Appearances:

Mr. Daniel Lattery, Counsel for the Crown
Defendant appears in Person

2024: November 26th

SENTENCING JUDGMENT

Background

- [1] **BAKRE, J.:** By Indictment filed on 22nd March, 2024 the defendant, Karl Warner was charged with six counts of unlawful sexual intercourse, contrary to section 6(1) of the **Sexual Offences Act, No. 9 of 1995 of the Laws of Antigua and Barbuda** and one count of serious indecency, contrary to section 15(1)(a) of the **Sexual Offences Act, No. 9 of 1995 of the Laws of Antigua and Barbuda**.
- [2] The Defendant was arraigned on the 26th day of February, 2024 and pleaded not guilty to all counts on the Indictment. Trial of this matter commenced on 1st October, 2024. The trial by jury concluded on 4th October, 2024 and the Defendant was unanimously found guilty on all seven (7) counts on the Indictment. He was remanded into custody for sentencing pending the preparation of a Social Inquiry Report. The Defendant is now before the court for sentencing.

Facts

- [3] The Virtual Complainant (is “XYZ” the use of letters in place of the Complaint’s name is done to preserve her anonymity). She was 14 years old at the time of the encounters with the Defendant.
- [4] Karl Warner, the defendant in this matter, was 40 years old at the time of the said encounters.
- [5] “XYZ” often visited the Defendant’s place of business after school, she would confide in him about difficulties in her home life and her relationship with her parents. They would also talk about her progress at school.
- [6] Between 23rd February, 2021 and 14th May, 2021, at Craft Market in the city of St. John’s, specifically at his business place, Karl Warner had unlawful sexual intercourse on six different occasions with “XYZ”. Throughout this period, and specifically on 24th February, 2021 the Defendant also committed serious indecency on “XYZ” by sucking her vagina.
- [7] The Defendant groomed “XYZ”, gained her trust and then took advantage of her. His actions were calculated, deliberate, and designed to prey on her innocence.

The Social Inquiry Report

- [8] The Social Inquiry Report was prepared by Mr. Irvin Henry, a Probation Officer within the Probation Unit of the Family and Services Division. Mr. Henry interviewed the Defendant, The Defendant’s mother, his brother and members of the Craft Market community where the Defendant operated his business with the object of preparing a social inquiry report to guide the court in its sentencing of this Defendant.
- [9] Mr. Henry’s overall assessment of the Defendant is that he had a period of stability between his formative years and his young to adult life. According to his mother, though she and the Defendant’s father resided separately, his father assisted with nurturing and guiding the Defendant and his siblings through a rigorous form of discipline. After the Defendant’s father passed and she migrated, it appears that the Defendant and his siblings maintained a closely-knit-family through family relations. According to the criminal records at Criminal Records Office, there is nothing known of the Defendant in terms of convictions or arrest but for a minor offence of battery.

It therefore appears that the Defendant was living as a relatively law-abiding citizen until committing the offences presently before the court.

- [10] Mr. Henry noted it as unfortunate that more information was not obtained from the Defendant's daughter who he tried to contact on multiple occasions with no success. She could have shared more information about the Defendant's pattern of behaviour with respect to his interactions while raising her and the rumours of inappropriate conduct that could not be substantiated by outside sources.
- [11] Mr. Henry noted that the victim stated that she accepts some blame for returning to the Defendant's place of business once her school project was completed. Mr. Henry's noted that there is little to blame her for, given that she was a minor who was seeking comfort and guidance from an adult who she trusted.
- [12] During his interview with the Mr. Henry, the Defendant expressed his regrets for not being more responsible and severing ties with "XYZ" once her school project was completed. He also expressed his desire to offer his apologies to "XYZ", her family and the Court.

Victim Impact Assessment

- [13] Mr. Henry also interviewed "XYZ" who is now seventeen (17) year old. She is presently pursuing tertiary level education in the field of Business Administration and resides with her grandmother but said she maintains close ties with her mother and her two elder sisters. "XYZ's" mother says that she observed that her daughter seems to have gravitated to studying and seeking to achieve a higher level of education as a mean to "shut-out" feelings and memories of the matter before the court.
- [14] As for "XYZ", she reported that she still has issues trusting people as a whole and male persons in particular. She further reported that when she befriended the Defendant, she had a series of family conflicts with her parents. She recalled she was attending secondary school at the age of 14 years, and needed information for a school project. She said that this was a turbulent period in her life and she wanted a friendly, trustworthy individual with whom she could confide. The Defendant offered that comfort in the initially stages of their association. She added that while their attachment started out of her need for mental comfort, the Defendant gradually made the conversations about sexual characteristics of her body and her sexuality. Thereafter, they started exchanging hugs and verbal sexual pleasantries at his place of business and on the phone. "XYZ" expressed feelings of regrets in retrospect, stating that she felt powerless because of the Defendant's constant

sexual advances, his “charming personality” and his ability to convince her to see things from his perspective. “XYZ” stated that she presently feels used, ashamed, and on many occasions blames herself for what happened as she could have prevented what occurred by ceasing her visits to the Defendant’s business place but did not do so. Moreover, she claimed that she has not been romantically attracted to any male figure for the fear that they might abuse her trust again. According to “XYZ”, she is much stronger now and she is doing her best to forget the offence.

Mitigation

- [15] The Defendant gave an emotional address to the court wherein he apologised to “XYZ” and her parents for his actions. He stated that having read the Victim Impact Assessment he realised that he cannot begin to understand the effects of his actions on “XYZ” and indicated that it was not his intention to cause any harm. He also indicated that he was proud to read that “XYZ” was continuing her studies to tertiary level education. He indicated that he disagreed with the Crown’s assessment of him as being categorised as High in terms of their assessment of him under the Sentencing Guidelines and wished the court to note that his offences involved no violence, no sex and no abuse.
- [16] The Defendant also presented two written character references from his biological brother Karim Warner and Onika Octave. Both references spoke to his good character and his clean record up to this point.
- [17] The Defendant also called a witness into court to give oral evidence of his good character in the person of Calvin Pilgrim. Mr. Pilgrim’s evidence was that he has known the Defendant for quite a while having taught him when he was a child. He indicated that they attended the same church and that they were friends. He said that the Defendant grew up in a Christian household but that his career path as a body modification artist must have derailed his spiritual upbringing. He said that he has never known the Defendant to be in any trouble with drugs or fights.
- [18] Mr. Pilgrim also spoke to the Defendant’s intelligence noting his ability to accurately recall information he learned when pursuing studies in the art of body modification.
- [19] When examined by the Crown Mr. Pilgrim clarified that the last time he interacted with the Defendant at church was some 10 years ago.

Construction of the Sentence

- [20] In constructing the sentence the Court is guided by the Sentencing Guidelines for Sexual Offences, Re-Issued 8th November, 2021 particularly the guidelines for unlawful sexual intercourse and indecency.

Unlawful Sexual Intercourse

Harm

- [21] The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.
- [22] The Victim Impact Assessment demonstrates the psychological harm that “XYZ” suffered as a result of the Defendant’s manipulation and grooming. She explained that she developed a bond with the Defendant, one that she thought was authentic. She confided in him and trusted him but he was only grooming and manipulating her. Undoubtedly, the effects of this has had significant lasting impacts on her psychology, resulting in her ongoing distrust of people and self-blame for the abuse that occurred.
- [23] Consequently, the harm caused by the offences is assessed to be Category 2 – High.

Seriousness

- [24] The second stage is to consider seriousness by assessing the culpability of the offender.
- [25] The Defendant, in his questions to “XYZ” at trial demonstrated that he was grooming her. He asked her about close and personal things she confided in him about issues regarding herself and her family life, it is therefore clear to this court that the Defendant used this position to create a false sense of trust that brought her closer to him.
- [26] Additionally, there is a significant disparity of age as “XYZ” was 14 and the Defendant was 40. The evidence that emerged also demonstrated that there was a significant degree of planning by the Defendant who gradually worked his way towards engaging in sex acts with “XYZ” after a period of building a rapport with her.
- [27] Consequently, the level of seriousness is assessed to be Level A - High.

The Starting Point

[28] Having determined the harm and the level of seriousness, the starting point can be determined. The maximum sentence for the offence of unlawful sexual intercourse is a term of imprisonment of 10 years according to Section 6(1) of the **Sexual Offences Act, No. 9 of 1995 of the Laws of Antigua and Barbuda**. The appropriate starting point is 40% of the maximum sentencing within a range of 25%-55% of the maximum sentence, the starting point is therefore 4 years imprisonment for each count on the indictment.

Aggravating and Mitigating Factors of the Offence

[29] Having determined the starting point, I will now consider the aggravating and mitigating factors of the offence and adjust upwards or downwards as required.

[30] The aggravating factors of the offences are as follows:-

- a. The fact that the Defendant ejaculated during his encounters with "XYZ".
- b. The repeated incidents of sexual intercourse.
- c. The fact that the offences took place inside the Defendant's place of business at Craft Market in the heart of the capital, demonstrating the barefaced and brazen attitude of the Defendant while committing the offences as he was apparently unconcerned with being noticed by members of the public who might have observed the repeated visits of a minor child that was unrelated to him at his business place.
- d. I also note the lack of remorse displayed by the Defendant who continued to deny the allegations throughout the course of the trial. While the Defendant apologised to "XYZ" and her parents at the sentencing hearing his attitude at trial and his constant denial of wrongdoing indicates that the apology given is not genuine. I also note that at sentencing the Defendant stated that there was "no sex" and "no abuse", an indication that he still fails to acknowledge what he has done and the harm he has caused.
- e. The prevalence of these types of crimes in Antigua and Barbuda.

[31] I note with interest the presence of "no violence" as a mitigating factor in the guidelines I also note that this was raised by the Defendant in his plea in mitigation. To be clear I consider any act of sexual contact with a minor to be an act of violence against the said minor and therefore cannot seriously consider this as a mitigating factor. Therefore, there are no mitigating factors.

[32] Having considered these aggravating factors, I will adjust the sentence upwards by 1 year, bringing the sentence to 5 years imprisonment for each count on the indictment.

Aggravating and Mitigating Factors of the Offender

- [33] I am now to consider the aggravating and mitigating factors of the offender and adjust upwards or downwards as required. Having reviewed this matter I find that there are no aggravating or mitigating factors relevant to this Defendant.
- [34] The sentence therefore will not be adjusted at this stage.

Totality

- [35] At this stage the Court can adjust the sentence assessing the totality if sentencing for more than one offence. If appropriate dangerousness should also be considered.
- [36] Having regard to the egregious nature of these offences I will further adjust the sentence upwards. I regard the Defendant as a dangerous predator who repeatedly abused the trust of his victim. In the circumstances the sentence is adjusted upwards to 5 years and 6 months for each count.

Credit for Guilty Plea

- [37] The Defendant having plead not guilty cannot be considered for one-third reduction in his sentence.

Serious Indecency

- [38] I now turn to the other offence on the indictment, which is serious indecency. The Defendant was charged with committing an act of serious indecency on "XYZ" by sucking her vagina.

Harm

- [39] The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.
- [40] As previously indicated the Victim Impact Assessment demonstrates the psychological harm that "XYZ" suffered as a result of the Defendant's actions. I also note that "XYZ" was under the age of 16 years at the time of the offence.
- [41] Consequently, the harm caused by the offence is assessed to be Category 2 – High.

Seriousness

- [42] The second stage is to consider seriousness by assessing the culpability of the offender.
- [43] As stated above the Defendant, in his questions to “XYZ” at trial demonstrated that he was grooming her and abused his position as a trusted adult in her life.
- [44] Additionally, there is a significant disparity of age as “XYZ” was 14 and the Defendant was 40.
- [45] The evidence also demonstrated that there was a significant degree of planning by the Defendant who gradually worked his way towards engaging in sex acts with “XYZ” after a period of building a rapport with her.
- [46] Consequently, the level of seriousness is assessed to be Level A - High.

The Starting Point

- [47] Having determined the harm and the level of seriousness, the starting point can be determined. The maximum sentence for the offence of serious indecency is a term of imprisonment of 10 years according to section 15(1)(a) of the **Sexual Offences Act, No. 9 of 1995 of the Laws of Antigua and Barbuda**. The appropriate starting point is 45% of the maximum sentencing within a range of 30%-60% of the maximum sentence, the starting point is therefore 4 years and 6 months imprisonment.

Aggravating and Mitigating Factors of the Offence

- [48] Having determined the starting point, I will now consider the aggravating and mitigating factors of the offence and adjust upwards or downwards as required.
- [49] The aggravating factors of the offence are as follows:-
- a. The fact that the offence took place inside the Defendant’s place of business at Craft Market in the heart of the capital, demonstrating the barefaced and brazen attitude of the Defendant while committing the offence as he was apparently unconcerned with being noticed by members of the public who might have observed a minor child that was unrelated to him visiting him at his business place.
 - b. The prevalence of this type of crimes in Antigua and Barbuda
 - c. I also note the lack of remorse displayed by the Defendant who continued to deny the allegation throughout the course of the trial and his statements

at the sentencing hearing that there was “no abuse” which demonstrate a lack of accountability on his part.

[50] There are no mitigating factors.

[51] In the circumstances I will adjust the sentence upwards to 5 years and 6 months imprisonment.

Aggravating and Mitigating Factors of the Offender

[52] I should now consider the aggravating and mitigating factors of the offender and adjust upwards or downwards as required. I note however that there are no aggravating or mitigating factors relevant to this Defendant. Therefore, the sentence will not be adjusted at this stage.

Credit for Guilty Plea

[53] The Defendant having plead not guilty cannot be considered for one-third reduction in his sentence.

Totality

[54] At this stage the Court can adjust the sentence assessing the totality if sentencing for more than one offence. If appropriate dangerousness should also be considered.

[55] Counsel for the Crown has submitted the case of **R v Wheatley (1983) 5 Cr. App. R (S) 417**; **R v Harvey [2006] 2 Cr. App. R (S) 47** for the Court’s consideration. In this case, a man pleaded guilty to driving while disqualified, driving with an excess alcohol level and driving without insurance. He was sentenced to 12 months imprisonment for driving while disqualified and six months for driving with excess alcohol. The sentences were ordered to run consecutively. On appeal, the Court of Appeal, after taking into account the offender’s consistently outrageous behaviour, ruled that the consecutive sentences were justified. The Court distilled the principle that *“Although it is unlikely to be the case, in matters being tried in the superior courts, if the maximum sentences allowed by statute, do not adequately address the egregious nature of the offences, then consecutive sentences, still subject to the ‘totality principle’, may be considered”*.

[56] I also note that in the Court of Appeal case of **Kirk Mitchell v R** [2011] JMCA Crim 1 wherein the Court distilled the following principle of law from the cases of **Delroy Scott**, **R v Rohan Chin** (SCCA No. 84/2005 (delivered 26 July 2005) **and R v Gerald Hugh Millen** (1980) 2 Cr. App. R. (S) 357: *“If offences were committed on*

separate occasions or were committed while the offender was on bail for other offences, for which he was eventually convicted..., there is no objection, in principle, to consecutive sentences."

- [57] Having regard to these cases and the totality of the offending in this matter the sentences of the six counts of unlawful sexual intercourse and the offence of serious indecency will run concurrently.

Sentence

- [58] Karl Warner, for the offences of unlawful sexual intercourse you are sentenced to 5 years and 6 months imprisonment for each count and for the offence of serious indecency you are sentenced to 5 years and 6 months imprisonment. The sentences for Counts 1, 3, 4, 5, 6 and 7 will run concurrently. The sentence for Count 2 will run consecutively to the other counts. This means that the entire term of imprisonment to be served is 11 years. Time spent on remand for these offences is to be taken in account.

Ancillary Orders

- [59] In keeping with section 10(1)(b) of the **National Sex Offender Register Act No. 24 of 2022** the Defendant is ordered to report to the Police Headquarters at the end of his period of imprisonment for registration on the National Sex Offender Register.

The Court would like to note the very serious nature of this matter and wishes all adult males in Antigua and Barbuda to be put on notice that offences involving sex acts with minors will not be tolerated. The issue of the fault of the minor in continuing the association with the Defendant has come up repeatedly throughout this matter, I wish to state here that the law in Antigua and Barbuda does not contemplate the existence of a minor child that can consent to sexual activity with an adult, a minor in such circumstances therefore cannot be held responsible for the actions of a defendant in these cases.

Tunde A. Bakre
High Court Judge

By the Court



Registrar