

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)

DOMHCR 2024/0026

THE STATE
V
LEFORD LANGLAIS

Appearances:

Ms Marie Louise Pierre-Louis, State Attorney, for the State

Mr Peter Alleyne for the Defendant

2024: October 8th, 23rd,
(Re-issued 27th November 2024)

JUDGMENT ON SENTENCING

1. **COLIN WILLIAMS J:** Mr Leford Langlais pleaded guilty to single count of indecent assault at his arraignment on the 8th of October 2024.
2. The indictment stated that the indecent assault as charged was an offence contrary to section 13 (1) of the **Sexual Offences Act, No 1 of 1998**. That section stipulates that:

“Any person who indecently assaults another is guilty of an offence and liable on conviction to imprisonment –

- (a) for ten years, if committed on a person under the age of fourteen;
- (b)

(c)”

3. The victim¹ was 9-years and four months old at the time.
4. According to the indictment,² the incident occurred on the 10th of March 2019.

The Facts

5. The victim along with two brothers and their mother spent the weekend commencing Friday the 8th of March 2019 at a relative’s house. At about 11:20 am on Sunday the 10th of March 2019, the Defendant, who is also related to the homeowner, went to the premises. The Defendant, the victim and her siblings were looking at a cartoon in a bedroom. The victim left the bedroom and went into the living room and sat on a chair; the Defendant shortly afterwards also went into the living room. The Defendant walked up to the chair that the victim was sitting on; he gave the victim a dollar; he then bent down and placed his right hand into the victim’s panty and touched her vagina.
6. The victim later that day, returned to her home. At about 5:45 pm the victim had a conversation with her parents and she narrated what transpired between herself and the defendant earlier that day.
7. The mother of the victim took the victim to the Criminal Investigations Department and she lodged a report in relation to this matter. The victim was taken for a medical examination.
8. The Defendant agreed with the facts as presented by the State.
9. Following Mr Langlais’s guilty plea, and the allocutus put to the Defendant, his counsel, Mr Peter Alleyne, requested that an order be made for a Social Inquiry Report to be prepared by the Department of Social Services. That was done.

Procedural history

10. At the time of the incident, the Defendant was 25-years old.
11. Mr Langlais was charged with the offence of indecent assault on the 28th of March 2019, eighteen days after the report was lodged with the police.
12. The preliminary inquiry in this matter commenced on the 25th of June 2020, fifteen months after Mr Langlais was charged. The preliminary inquiry continued for another four years, during which time

¹ The name of the victim/virtual complainant is withheld

² Dated the 3rd of October 2024

evidence from the four witnesses³ was taken on twelve different days of sitting up to the 15th of June 2024.

13. Another two months elapsed following evidence from the last prosecution witness before the Defendant was committed on the 28th of August 2024 to stand trial at the High Court.
14. Although Mr Langlais accessed bail when he was first charged in 2019, following the committal of his matter to the High Court in August 2024 he was remanded to prison.

Social Inquiry Report

15. At the Sentencing Hearing, Probation Officer, Ms Anya Gage, presented a Social Inquiry report. That report included:

- the family history and background of the Defendant;
- interviews with the Defendant and his relatives;
- victim impact statement as well as interviews with relatives of the victim;
- community responses; and
- input from the Coordinator of the Social Welfare Services Unit.

16. Ms Gage's report revealed that the Defendant, now aged 31-years old, is the father of a four-year-old son. Mr Langlais, the child and his girlfriend resided with his mother and extended family. Prior to Mr Langlais' conviction he was enrolled in the nursing programme at the Dominica State College and was three additional courses away from obtaining his Associate's Degree. The Defendant acknowledged that he "struggles with anger management and being overly friendly."⁴ He was involved in the Dominica Fencing Association. He was a practicing Roman Catholic.

17. The Probation officer stated that:

"Mr Langlais expressed profound remorse for the offence of indecent assault, acknowledging that the victim is his cousin and reflecting on the incident as one of his greatest mistakes. He indicated that if he is given the opportunity he will apologise. Regarding punishment, Mr Langlais advocates for probation, expressing confidence in his ability not to reoffend and emphasizing his desire to support his son outside of prison."⁵

Victim Impact Statement

³ The victim, her mother, the arresting officer and the investigating officer

⁴ Paragraph 6.1 of the Social Inquiry Report

⁵ Paragraph 13.1.1 of the Social Inquiry Report (reiterating paragraph 7.1 "Attitude Towards the Offence" where Ms Gage additionally reported about the Defendant that "he explained that the court had issued a no-contact order, but expressed a desire to apologise if given the opportunity.")

18. Ms Gage quoted the mother of the victim as saying that if her daughter had disclosed the incident to her immediately after it occurred that she “would have handled the situation differently and possibly avoided it reaching the court.”⁶ She noted that “members of the family were upset with Mr Langlais for his actions.”⁷ She also noted that even though Mr Langlais was an adult, he “was known for being overly playful.”⁸
19. The victim, who is now in her mid-teens, “expressed feeling deeply upset following the assault.”⁹ The victim informed the Probation Officer that the assault “forced her to undergo an uncomfortable physical examination [by the doctor].”¹⁰
20. Ms Gage reports the victim as saying that the incident “has made it somewhat difficult for her to trust others.”¹¹
21. The victim informed the Probation Officer that she was not afraid of the Defendant. The victim said that “she had hoped for an apology from him, but over time, she no longer feels the need for one.”¹²
22. The victim said that she had forgiven the Defendant. She “hopes for the matter to be resolved as she no longer wishes to attend further proceedings.”¹³

Sentencing submissions

23. Mr Alleyne on behalf of the Defendant noted that that Mr Langlais had no previous conviction for any offence. The Defendant was therefore a first time offender. Counsel Alleyne noted that Mr Lanaglais pleaded guilty at arraignment, therefore not requiring the prosecution to prove its case and saving judicial time. Counsel stated that the Defendant never evinced any reluctance to plead guilty.
24. Counsel Alleyne noted that the Defendant has shown remorse and was always willing to apologise to the victim.
25. Mr Alleyne highlighted the Defendants’ quiet disposition and the favourable comments from residents of the community about Mr Langlais as contained in the Social Inquiry Report. Counsel noted that the Defendant was enrolled in a programme at the Dominica State College, which, he said, was evidence of the Defendant’s intention to do positive things.
26. Mr Alleyne stated that the offence was out of character for the Defendant.

⁶ Paragraph 9.2 of the Social Inquiry Report

⁷ As above

⁸ As above

⁹ Paragraph 8.2 Social Inquiry Report

¹⁰ Paragraph 13.1.1 Social Inquiry Report

¹¹ Paragraph 8.3 Social Inquiry Report

¹² As above

¹³ Paragraph 8.4 Social Inquiry Report

27. Counsel for the Defendant also noted that Mr Langlais cooperated with the police.
28. Counsel Alleyne noted that the Social Inquiry Report also revealed that the Defendant was subjected to abuse in his earlier years, including bullying at school and sexual abuse.
29. State Attorney Ms Marie Louise Pierre-Louis relied on her nine-page sentencing submissions.
30. Ms Pierre-Louis reviewed the provisions of the **Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court for Sexual Offences, Re-Issue: 8th November 2021**.
31. Ms Pierre-Louis posited that the appropriate starting point given the consequence and seriousness of the offending, was 65% of the maximum sentence of ten years. This was based on the fact that the victim was under the age of 10-years of age and there was a significant disparity in the ages of the victim and the Defendant.
32. State Attorney Pierre-Louis opined that the starting figure of six years and six months was to be adjusted for:
- i. mitigating factors of the offender: previous good character/no previous convictions, and genuine remorse;
 - ii. one-third discount for the guilty plea at the first opportunity; and
 - iii. accounting for the time spent on remand of three months.
33. Ms Pierre-Louis submitted that in following the guidelines, Mr Langlais' sentence ought to be three years and four months. Counsel however noted that it was open to a sentencer to depart from the prescriptions of the **Sentencing Guideline**.
34. The State Attorney concluded her written submissions this way:

"Lord Chief Justice in **Miliberry v Regina (2002) EWCA Crim 2891** at paragraph 34 stated that:

"it is essential that, having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances.... Guideline judgments are intended to assist the judge [to] arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge."

Maximum penalty

35. The **Sexual Offences Act No 1 of 1998** established two separate offences for non-consensual contact falling short sexual intercourse. Those offences are indecent assault at section 13 and gross indecency at section 14.
36. The Defendant was charged with indecent assault pursuant to section 13 (1) of the **Act**.
37. Gross indecency under the **Act** is described as:
- “an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”¹⁴
38. Mr Langlais’ conduct fell short of gross indecency.
39. There was however an anomaly in the penalties for indecent assault and the more serious gross indecency. When the law was enacted, the maximum penalty an offender such as the Defendant faced under section 13 (1) was (and still is) 10-years in prison. Curiously, however, if the offending had been more significant, rising to the level of gross indecency under section 14 (1), the maximum penalty a convicted person would have faced was 5-years imprisonment. Fortunately, several years after the original enactment an amendment¹⁵ was done, providing for a penalty of 14-years imprisonment if the victim of the gross indecency was a minor under the age of sixteen years.

Non-applicability of Guideline

40. The **Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court for Sexual Offences** Sentencing guidelines must be applied
- “unless to do so would not be in the best interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.”¹⁶
41. Having considered the principles of sentencing¹⁷ as outlined in the consolidated judgment of **Desmond Baptiste v The Queen**,¹⁸ and noting the facts and circumstances in relation to Mr Langlais, and being aware of what the result would be if the **Sentencing Guideline** was to be applied, it is apparent that the length of the resulting custodial sentence would not be in the best interests of justice.

¹⁴ Section 14 (4)

¹⁵ Sexual Offences Amendment Act, No 9 of 2016

¹⁶ Page 2 of the Compendium under the heading ‘Applicability of Guideline’

¹⁷ The four principles of sentencing are (1) retribution; (2) specific and general deterrence; (3) prevention, and (4) rehabilitation

¹⁸ Saint Vincent and the Grenadines High Court Criminal Appeal No 8 of 2023

42. It is necessary to outline the exceptional circumstances of this case which militate against the application of the **Sentencing Guideline** and justify a departure from the **Guideline**. Before doing so, two things must be noted:

- 1) Sexual offences, particularly those involving minors, ought to attract a custodial sentence.
- 2) Throughout the nine Eastern Caribbean Supreme Court jurisdictions, the nomenclature of and maximum sentence for sexual offences falling short of sexual intercourse may vary.

43. There are a number of circumstances which, cumulatively amount to exceptional circumstances.

44. This case is a classic example of the injustice that flows from administrative and prosecutorial delays. One year and three months elapsed between the Defendant being charged and the commencement of the committal proceedings. Then there was an inexcusable protracted committal hearing. There can be no justification for a committal proceeding (as in this case involving just four witnesses: the virtual complainant, her mother and two police officers) to be dragged out over a period of fifty months, limping and loitering on its way to the High Court.

45. It is necessary at this stage to reiterate what was acclaimed in the **Needham's Point Declaration**¹⁹ with regard to indictable offences:

“That as a rule, trials should be held within one (1) year of the accused being charged.... During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged.”²⁰

46. While delays in the criminal justice system ought to be eschewed, practitioners in this area of the law are well aware of the deleterious effect delays have particularly on sexual offence matters.

47. During the extended period since the offence in March 2019, the Defendant started a family and fathered a son who is now four-years-old. The indications are that Mr Langlais is, commendably, playing an active role in the nurturing of his young child.

48. But that is not the only development in relation to the Defendant that can be disrupted as a result of the delay in these proceedings. Mr Langlais commenced studies and is on the verge of completing his Associate's Degree. (There are no facilities at the Prison to facilitate continuing education of inmates).

¹⁹ Adopted by acclamation on the 20th of October 2023 at the conclusion of the Caribbean Court of Justice Academy for Law 7th Biennial Conference on 'Criminal Justice Reform in the Caribbean: Achieving A Modern Criminal Justice System' at Needham's Point, Bridgetown, Barbados

²⁰ Objective 19, Needham's Point Declaration

49. The victim likewise has clearly increasingly become disinterested in the matter. The victim told the Probation Officer that initially she “hoped for an apology” from the Defendant but with the passage of time, “she no longer feels the need for one.”
50. Two other representations from the virtual complainant are particularly significant and highlight the need for minimal intervention of the law in this matter. The first is that the victim said that she has forgiven the Defendant. The second is that the victim indicated to the Probation Officer that she no longer wished to attend any further proceedings.
51. The Victim Impact Statement formed part of the general Social Inquiry Report produced by the Department of Social Services. It was submitted within two weeks of it being requested. Such reports have proven to be extremely useful in the sentencing process. Two of the principles of the **Needham’s Point Declaration** are worthy of being repeated here:
- “That appropriate measures be implemented by all relevant stakeholders in criminal justice to ensure a centralised space for victims/survivors of sexual assault.”²¹
- “That victims/survivors of crime should be given a greater voice in prosecution and sentencing process.”²²
52. The indication from the victim that she no longer wishes to attend any further proceedings in this matter may be a signal that had the Defendant opted to go to trial, the main prosecution witness may no longer have had an interest in the matter. In those circumstances, had he not pleaded guilty, he possibly would have ended up without a conviction.
53. A factor which must not be overlooked is how to break the cycle of abuse that became apparent in the Social Inquiry Report.
54. The Probation Officer in her Social Inquiry Report noted that Mrs Glenora Pacquette, the Coordinator of the Social Welfare Services Unit, at the Department of Social Services, became familiar with the Defendant when Mrs Pacquette worked as a Counselor. Mrs Pacquette told the Probation Officer that “Mr Langlais may be in need of therapeutic intervention to deal with the trauma he experienced as a child due to sexual abuse.”²³ Although Mr Langlais is a defendant in this matter, his psycho-social circumstances must also be taken into consideration.
55. In considering the overall objectives of sentencing,²⁴ the only relevant principle is that of retribution.²⁵ It is noted that:

²¹ Objective No 24, Needham’s Point Declaration

²² Objective No 25, Needham’s Point Declaration

²³ Paragraph 11.3 of the Social Inquiry Report

²⁴ See note 17 above

²⁵ Based on the reports received from the Superintendent of Prisons, there are no facilities at the institution for counseling and only a few inmates are involved in any activities

- The Defendant is a person of previous good character.
- He admitted and accepted his culpability, pleading guilty at the first opportunity.
- He is remorseful.
- He is well advanced on the road to redemption.
- There is no indication that he is likely to re-offend.
- The victim has forgiven the Defendant.
- The victim has stated that she is not willing to participate any further in the criminal proceedings.

56. The cumulative factors which justify a departure from reasons for the **Sentencing Guideline** may therefore be summarised as follows:

- 1) The victim has forgiven the Defendant.
- 2) The victim indicated an unwillingness to participate any further in the process.
- 3) Without the Defendant's guilty plea, the prosecution of the matter may not have been achieved.
- 4) The pedestrian pace at which the prosecution of this matter proceeded adversely affected the justice of the case.
- 5) With the passage of time, the circumstances of the Defendant have changed so significantly that imposing a custodial sentence would unnecessarily disrupt his life and role as a father.
- 6) The Defendant has demonstrated remorse and taken steps towards rehabilitation and being a productive member of the community.
- 7) The particular historical facts and circumstances of the Defendant where he may have been subjected to abuse.
- 8) The objectives of sentencing can be achieved without strict adherence to the **Sentencing Guideline**.
- 9) Imposing a lengthy term of imprisonment will serve no useful purpose.

57. In the circumstances of this case, there may be no need for coercive power of the State to be over bearing.

Sentence

58. To the extent that a term of imprisonment is needed to demonstrate society's abhorrence for these types of offences, what is generally referred to as 'a short, sharp, shock' may be all that is necessary in the circumstances. Mr Langlais was remanded in custody when his matter was committed to the High Court in August 2024. He has experienced the loss of liberty and the clanging of the prison doors for three months. In the specific circumstances of this case, that punishment ought to be sufficient.

59. For the offence of indecent assault, for which Mr Leford Langlais pleaded guilty, the sentence is time served.

Colin Williams
Judge

By the Court

Registrar