

**THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: SVGHCR 2022/0064

BETWEEN:

THE KING

and

KRISTIN SCOTT

Appearances:

Ms. Maria Jackson-Richards, Counsel for the Crown
Mr. Carl Williams, Court Appointed Counsel for the Defendant

**2024: February 6th, 23rd
March 8th
April 18th
May 23rd**

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag.]:** This matter had been before the court for some time, when on 6th February 2024, counsel for the parties requested a sentencing indication, sometimes referred to as a Goodyear Indication. The case was adjourned to allow for the preparation and filing of an Agreed Statement of Fact. Defence counsel also filed a document entitled Confirmation of Legal Counsel Instructions. This verified the defendant's desire to receive a sentencing indication. On 23rd February 2024, the sentencing indication was given. Defence counsel requested time to consider the contents of the indication, and the case was adjourned to 8th March 2024. On that date, learned counsel for the defendant indicated that he was content with the

sentencing indication, and asked that the defendant be arraigned. The defendant entered guilty pleas to seven of the nine counts on the indictment. This included attempted murder, four counts of causing grievous bodily harm, indecent assault, and failure to supply the necessities of life.

- [2] A Social Inquiry Report was sought by Crown counsel, and supported by counsel for the defendant. Following the pleas, the defendant was remanded into custody. The Social Inquiry Report was filed on 23rd April 2024. A Victim Impact Statement was filed on 15th April 2024 by the care taker of the child victim. Written submissions were filed by Crown counsel on 11th April 2024, and by defence counsel on 12th April 2024. Oral submissions were received on 23rd May 2024, and the matter now proceeds to sentencing.

The Facts

- [3] The facts in this case are startling, and provide very difficult reading. The victim is a female child who was born on 11th October 2017. She was therefore 3 years old when these events took place. She lived with her mother, who is illiterate. The statement of the mother, given on 5th August 2021, indicates that she is 23 years old, being born on March 8. However, she does not know the year of her birth. The mother indicates that she cannot recall the date of birth of the victim, her daughter. The mother, the victim and the defendant lived in what is described as a one room, unpainted shack, close to the Park Hill public road. The shack has no partitions, just an open indoor area. There is no toilet facility. The family uses a neighbour's toilet, and bathes in the nearby river. The victim's mother left school in Form 3, and apparently has speech and learning difficulties. She told police that her partner, the defendant, with whom she was involved for a few months, was in the habit of beating her child and abusing her. She went on to elaborate on that statement.
- [4] One day, between 1st and 31st July 2021, the child victim defecated on herself. This angered the defendant, who led the child from the shack to the river. Although the

child's mother was afraid of what he might do to the child, when he told her to remain in the house, she complied. The defendant would physically assault the mother if she protested the severe discipline methods he employed towards the child victim. The child's mother was afraid of the defendant.

- [5] A local farmer, who also gave a statement to police, was close to the river when he heard a loud lash, followed by a scream. When he went to investigate, he saw the defendant holding the victim by the hands. The defendant proceeded to throw the child into the deepest part of the fast-moving river. The child screamed and struggled in the water, clinging to a rock. The defendant moved away from the river towards the shack, leaving the child in the water, until the farmer confronted him. After exchanging words, the farmer rushed to rescue the child, pulling her out of the river.
- [6] The farmer immediately noticed bruises on the child's body, especially her back, including a clearly defined recent hand print. Many of the marks appeared fresh. The defendant told the farmer the marks were old, and when asked why he had thrown the child into the river, the defendant replied that the child was always urinating on herself and her bed.
- [7] All of the other incidents in this case occurred between 31st December 2020 and 4th August 2021. On one occasion, as a result of the victim defecating and urinating inappropriately in the home, the defendant tied the child's wrists together. She was then led naked to the front door. One foot was tied to the child's pram or stroller, and the other was tied to the door lock. The defendant then attached the rope tied to the child's wrists, to the roof of the building. The rope was pulled up, resulting in the victim being raised four feet off the ground. With the child hanging in that position, the defendant used a lighter to burn her thighs, in the area of her vagina, her buttocks, and elsewhere on her body. Such behaviour, the court observes, is nothing less than torture.
- [8] Approximately three days later, the victim was urinating and defecating in the house, and the defendant angrily responded by again burning her. The victim was dressed only in underwear, when the defendant used the same lighter to burn her in the same

area of the groin, and also on her feet. The defendant paid no attention to the mother's pleas to stop abusing the child.

- [9] On other occasions the defendant burned the sole of the victim's foot with the lighter, after she had defecated in the house, and used matches to burn her hands and feet.
- [10] At one point, the defendant instructed the child's mother not to feed her, in order to reduce the passing of feces. Out of fear, the mother complied, and provided only hot cocoa to the victim for a period of time. The victim begged her mother for a biscuit, but the defendant told her to refuse. He knew how many biscuits were left, and if any were missing, there would be trouble. For several days, perhaps weeks, leading up to the river incident, the victim was fed solid food only once.
- [11] The defendant insisted that the victim remain in the stroller when he was not at home, and encouraged the victim's mother to lock the child in the house by herself, if she would not go to sleep.
- [12] The defendant often beat the victim on her back and feet with a belt or a stick. The defendant also scratched the victim's face with his fingernails, choked the victim, and slammed her to the ground.
- [13] On another occasion, when the child victim ran away to escape a beating, the defendant pursued her. He threw a stone at her, striking her on the head and causing a cut. He caught her, and threw her to the ground.
- [14] At night, the defendant often tied the victim's hands, and placed her in the pram or stroller to sleep. On one occasion, while the victim was in the pram, the defendant inserted a pencil and his finger into her vagina.
- [15] This case came to light when an anonymous report was made to authorities of domestic violence and child abuse, on 3rd August 2021. A Child Development Division Case Worker and a Gender Affairs Social Worker responded the next day. They met with the child victim and her mother, and observed injuries to the victim,

which were attributed to the defendant. The matter was immediately reported to police, and the child and her mother were removed from the home.

- [16] The victim was medically examined by Dr. Alvis-Toney on 4th August 2021. A report was prepared, which indicated several injuries. There were multiple lineal crusted lesions and hyper pigmental scars to the frontal area, entire face, neck, upper and lower extremities, entire back, entire buttocks and abdomen (the longest being 10 cm in length). Ulcerated lesions were noted to both wrists, both malleolar areas, and back. Second degree burns to the right and left inner thighs were noted, as well as bruising, redness and tenderness to the vagina.
- [17] On 6th August 2021, the victim attended her home and the river with police. She pointed out various articles that were used to hurt her and areas where it occurred.
- [18] The defendant was arrested on 6th August 2021, and charged with these offences two days later. He was granted bail.
- [19] The Social Inquiry Report was prepared by Case Worker, Porsia Haywood-Cottle. It confirms that the defendant is 29 years old, with a date of birth of 3rd May 1995. He has four siblings. The defendant left school in Form 2 and has been employed as a laborer ever since. He has no criminal record. These are his first offences.
- [20] The defendant was described as a well-behaved child but was subjected to corporal punishment in the home. The sister of the defendant stated that he was severely disciplined as a child. It was speculated that this may have been a contributing factor in the defendant's behaviour towards the victim.
- [21] In relation to these offences, the defendant stated that it was in fact the victim's mother who abused the child. Despite the guilty pleas that he entered, the defendant told the author of the report that he was only responsible for beating the victim with a belt.

- [22] Members of the community of Mesopotamia described the defendant as quiet and well mannered. Prison officials similarly described the defendant as very quiet.
- [23] The complainant is now 6 years old. When she was removed from her home by the authorities as a result of this case, she went to live with her grandfather and an aunt. A Victim Impact Statement was prepared by the complainant's care taker, who is in a relationship with the complainant's grandfather. The complainant resides with them.
- [24] When the complainant first moved in, she was small and under nourished. She had sores on her face and head. She also had bruises on her hands, back, legs and face. She did not speak for the first week. The complainant had difficulty using a toilet and washroom facilities properly. She was frightened of raised voices, and had difficulty sleeping.
- [25] Although the complainant is now described as having blossomed into a beautiful little girl, these facts illustrate how families can be torn apart and victims devastated when crimes of this nature occur. The long-term effects of behaviour like that displayed by the defendant, can be wide ranging and destructive, on many levels.

The Position of the Parties

- [26] Learned Crown counsel provided an overview of the facts, before referring to the principles of sentencing, including retribution, deterrence, prevention and rehabilitation.
- [27] For the offence of attempted murder, Crown counsel submits that reference should be made to the Sentencing Guidelines for courts in England and Wales, as there are no such guidelines for the Eastern Caribbean Supreme Court. An appropriate starting point is therefore 30 years, with a range of 25 – 35 years.
- [28] Crown counsel submits that aggravating factors the court should consider include the abuse of power and position of trust, and the use of duress or threats against

another person to facilitate the commission of the offence. As to mitigating factors, the defendant has no previous criminal record.

[29] Learned Crown counsel submits that, for the counts of causing grievous bodily harm, the Eastern Caribbean Supreme Court sentencing guidelines are applicable. The court should consider the injuries suffered by the complainant, and the scars. Reference is made to the Victim Impact Statement. This was a sustained incident, with repeated assaults. Weapons were used, including stones, a belt, rope, a lighter and matches.

[30] Crown counsel submits that this places the starting point at 75% with a range of 60% - 90%. Aggravating factors for the offence are described as the presence of others, specifically the child's mother, the victim being a vulnerable child, the abuse of a position of trust with the defendant being the victim's caregiver, and the isolation of the victim and her mother by the defendant, from others in the community.

[31] With regard to the indecent assault count, Crown counsel submits that the complainant was under the age of 10 years, there was penetration and contact with her genitals, and there was a significant disparity in age between the defendant and the complainant. This results in a starting point of 65% with a range of 50% - 80%. Reference is again made to the Victim Impact Statement.

[32] For the count of failing to provide necessities, Crown counsel submits there is no local case law of assistance, and refers the court to a Canadian case where a child was malnourished and scarred, but survived. The court notes that many of the Canadian cases on the subject deal with facts where the child victim passed away. Fortunately, that is not the situation in the case at bar.

[33] Crown counsel points out that the defendant is entitled to a sentencing discount of one third, by way of plea, and of course he will be granted that.

[34] Time spent on remand must be considered, and Crown counsel has helpfully tendered a document from His Majesty's Prison Kingstown, indicating that the

defendant served time since his date of plea in this case to today's date. He should receive credit for that, and he will.

- [35] Crown counsel submits that the totality principle should be considered, but asks the court to consider running some sentences concurrently and some consecutively, bearing in mind the six-month time frame in this case.
- [36] Learned counsel for the defendant briefly reviewed the history of this matter and referred to the sentencing principles of retribution, deterrence, prevention and rehabilitation. He candidly described the incidents as a classic case of the torture of a 3-year-old infant, but directed the court to the positive comments about the defendant found in the Social Inquiry Report. Since the offences took place over a 6-month time period, defence counsel submits that the totality principle should be applied. He submits that, with regard to the attempt murder count, there was a lack of premeditation, and the defendant's culpability should not rest at the highest level. The starting point should therefore be no more than 20 years. While aggravating factors exist, defence counsel points to the good character of the defendant, where no criminal record exists. The court is reminded of the guilty plea and the consequent one third reduction in sentence.
- [37] Defence counsel submits that similar considerations should apply to the grievous bodily harm counts.
- [38] For the indecent assault count, defence counsel candidly submits that the young age of the complainant, the age disparity between the complainant and the defendant, and the penetration of the vagina, result in a starting point of 3 years and 3 months.
- [39] For the count of failing to provide necessities, defence counsel submits that a starting point of no more than one year is appropriate. Mitigating factors outweigh the aggravating factors, and when coupled with consideration for a guilty plea, a sentence at the lower end of the scale is called for.

The Law

- [40] Under **s. 317** of the **Criminal Code**¹, any person who is convicted by virtue of **s. 315** of attempting to commit murder, is liable to imprisonment for life. Under **s. 174**, any person who unlawfully and maliciously inflicts grievous bodily harm, is liable to imprisonment for fourteen years. Under **s. 127(1)(a)**, any man who indecently assaults a child under the age of fifteen, is liable to imprisonment for five years. Under **s. 197**, any person who has a duty to provide the necessities of life to another person, and who fails to do so, is liable to imprisonment for five years.
- [41] Sentencing in criminal cases involves many considerations in order to achieve the appropriate penalty. The sentencing goals of retribution, deterrence (both general and specific), prevention and rehabilitation, are confirmed in the well-known cases of **R. v Sargent**² and **Desmond Baptiste et al v The Queen**³. The more recent case of **Renaldo Anderson Alleyne v The Queen**⁴, from the Caribbean Court of Justice, describes sentencing principles as punishment, deterrence, and rehabilitation. Sentencing in criminal cases seeks to promote respect for the law and an orderly society. A sentencing court must consider the facts of the case, and the nature and gravity of the offence, balanced with the circumstances of the offender, including his age and background, whether he has a criminal record, the role he played in the offence, the design and execution of the offence, and the possibility of reform and reintegration into society. To reflect these considerations, and to enshrine them, the Eastern Caribbean Supreme Court has established its own sentencing guidelines.
- [42] The Supreme Court of Canada summed up the sentencing process, which is universal, in the case of **R. v Lacasse**⁵. Each crime is committed in unique

¹ CAP 171

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

⁵ [2015] 3 S.C.R. 1089, 2015 SCC 64

circumstances by an offender with a unique profile. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. Everything depends on the gravity of the offence, the offender's degree of responsibility, and the specific circumstances of each case.

- [43] All of this has been considered by the court in formulating an appropriate sentence in this case.

Analysis

- [44] Having received and carefully reviewed the written and oral submissions of Crown counsel, and counsel for the defendant, as well as the Social Inquiry Report, and the Victim Impact Statement, what follows is the sentencing decision in this case.

- [45] This was a terrible crime of sexual and physical violence, perpetrated by an adult male upon a young female child. It occurred in her own home, and in the immediate vicinity. It happened where she lived. This court has stated previously that a child's home is a place where he or she should feel safe and secure. Our children are our most precious resource. They are to be protected and nurtured within our community. The defendant stood in loco parentis to the victim, as he was in a relationship with the child's mother at the time. He was therefore a trusted member of the victim's family. He betrayed that trust over and over again in horrible ways. That behaviour must be denounced in the strongest possible terms. Those who would seek to harm a child must be dealt with severely. This court has stated previously that in cases of child abuse, a message of deterrence must be sent out, that such behaviour will not be tolerated, and will result in incarceration.

- [46] The facts in this case are extremely serious. As this court stated at the time of the Goodyear Indication, what happened here amounted, at times, to nothing less than the torture of a 3-year-old child. Anyone looking at these facts cannot help but be

shocked at the conduct of the defendant. Those actions terrified a mother and her child, and resulted in pain and misery for the victim. The victim's life has been hugely impacted. In addition to her physical injuries, she has been psychologically scarred. This is confirmed in the Victim Impact Statement.

[47] In describing the sentence that should be imposed upon offenders who sexually abuse young children, this court has previously referred to the case of **R. v D. (D.)**⁶. The words found there apply equally to cases of extreme physical abuse of young children. And of course, there is one sexual offence included in this case as well. Where an accused person is prepared to prey upon an innocent child, his conduct is nothing short of reprehensible, and it must be condemned in the strongest of terms. The harm suffered is cause for grave concern. Children are robbed of their youth and innocence, families are often torn apart or rendered dysfunctional, lives are irretrievably damaged and sometimes permanently destroyed. Because of this, the message to such offenders must be clear, prey upon innocent children and you will pay a heavy price. Deterrence must be the upper most consideration in sentences for such crimes. Not only must the offender be deterred, but a message must be sent to others who would consider such abhorrent behaviour, that it will simply not be tolerated. Children must be protected.

[48] In crafting the sentence for each count, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines, Re-Issue 8th November 2021**. For the offence of attempted murder, the court has used the category heading of Violence Offences - Inflicting Unlawful Violence with Intent to Cause Really Serious Harm. Since there is no specific guideline for the offence of attempted murder, the court is satisfied that the terms under this heading, with necessary modifications, are helpful and appropriate. The court has also looked to the sentencing guidelines for attempted murder from the Sentencing Council for England and Wales for assistance. Such a case requires an assessment of the seriousness of the offence and its consequences, by reference to the harm caused.

⁶ 2002 58 O.R. (3d) 788 (C.A.)

Assessing seriousness will include reference to the culpability of the offender. To establish the starting point for the offence within the relevant range, there are four stages. The first stage considers consequence by assessing the harm caused by the offence. In this case, the victim was age 3 at the relevant times. When the victim was thrown into the river, in an attempt to drown her, the defendant had also administered a beating to the victim, the recent injuries from which were clearly observed by a witness. Moreover, the nature of the behaviour of the defendant, and what he put the victim through that day, must be seen as causing serious psychological harm as well. That is confirmed in the Victim Impact Statement. The court therefore finds the appropriate classification to be Consequence Category 2 - High.

- [49] The second stage will consider seriousness by assessing the culpability of the offender. Levels of seriousness may be demonstrated in several ways. In this case, there was an abuse of a position of trust that existed by way of a family relationship. The defendant stood in loco parentis to the victim. There was also a significant disparity in age of 23 years. The attempted drowning was planned, as the defendant took the child to the river, after being upset at her behaviour. He struck her, threw her into the deep water, and walked away. Had it not been for the passing farmer rescuing the victim, the child could have died. All of this leads to a finding that the appropriate category of Seriousness is Level A - High.
- [50] Having determined the levels of consequence and seriousness, the starting point is found by consulting the sentencing guidelines grid. This leads to a starting point of 60%, or a range of 45% - 75%. The sentencing guidelines further indicate that where the maximum sentence is life imprisonment, as in this case, it is to be treated as 30 years. The court has determined the appropriate starting point to be 70% or 21 years.
- [51] Having established a starting point of 21 years, the court must consider aggravating and mitigating factors for the offence, and adjust the number upwards or downwards, as necessary. The court considers this young victim as being particularly vulnerable. There was an abuse of a position of trust, as has already been noted. Before the victim was led to the river, she had been in the company of her mother, so there was

someone else present for part of the offence. These aggravating factors serve to increase the sentence by 3 years to 24 years. The court can find no mitigating factors for the offence. The sentence therefore remains at 24 years.

[52] The court must next consider aggravating and mitigating factors pertaining to the offender, and adjust the sentencing figure accordingly. In this case, the court can find no aggravating factors pertaining to the offender. However, the defendant is a person of good character, with no criminal record. That is a mitigating factor and reduces the sentence by 1 year to 23 years or 276 months.

[53] Credit will be given to the defendant for his guilty plea. Once counsel was appointed to assist him, he sought a sentencing indication. After considering that, he entered guilty pleas. Not only did that save court time and resources, as no trial was required, but more importantly, a young child was spared the trauma of testifying in court about many unpleasant and embarrassing things. The defendant will therefore receive a one third reduction in sentence. This reduces his sentence by 92 months to 184 months or 15 years and 4 months.

[54] The defendant will also receive credit for time served on remand, after entering his guilty pleas. This will automatically count towards his total sentence. The court has been advised that the defendant spent a total of 2 months and 15 days in custody, before being sentenced today. The defendant will receive credit for that.

[55] The second, third, fourth and fifth counts are causing grievous bodily harm. Directions in sentencing for that offence are found in the sentencing guidelines under the heading Unlawful Violence Without Intent to Cause Really Serious Harm. This requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused. The first stage is to consider consequence by assessing the harm caused by the offence.

[56] In this case, there can be no doubt that the actions of the defendant caused significant degradation and humiliation to the victim. Being bound, tied and essentially strung up, can be described as nothing less. The medical evidence

confirms serious physical injuries. However, being locked up alone in a one room shack, being confined to a pram or stroller, and being repeatedly burned and beaten, must have a severe psychological impact on the victim. That is confirmed in the Victim Impact Statement. This results in a finding of Consequence - Category 1 - Highest.

- [57] The second stage is to consider seriousness by assessing the culpability of the offender. This was a prolonged series of repeated assaults on the victim. They occurred in and around her home. Weapons, including ropes, stones, lighters, matches and sticks, were used. The victim was a vulnerable person. She was a three-year-old child. All of this results in a finding of Seriousness - Level A - High.
- [58] Having determined the consequence and level of seriousness, the starting point is found by consulting the grid. This leads to a starting point of 75% and a range of 60% - 90%. The court has determined the appropriate starting point to be 75% or 10.5 years.
- [59] The court then moves on to consider aggravating and mitigating factors of the offence, and adjusts the sentence upwards or downwards, as required. In this case, the victim is a vulnerable child who was often abused and assaulted in the presence of another person, her mother. These offences took place in a domestic setting, in the home of the victim and the defendant. The position of the defendant as the partner of the victim's mother, placed him in a position of trust towards the victim. That trust was sorely violated. All of these are aggravating factors, which serve to increase the sentence by three years to 13.5 years. The court can find no mitigating factors for the offence.
- [60] The court next turns to a consideration of the aggravating and mitigating factors affecting the offender, and adjusts the sentence accordingly. No aggravating factors are noted. However, the defendant's good character with no previous criminal record is a mitigating factor that reduces the sentence by 1 year to 12.5 years or 150 months.

- [61] Just as in the first count, credit shall be given for the defendant entering a guilty plea to the four counts of causing grievous bodily harm. A one third reduction will therefore be granted. That equates to 50 months and reduces the sentence to 100 months or 8 years 4 months.
- [62] The court has examined the facts of these offences, along with the characteristics of the defendant, and is satisfied that the sentence of 8 years and 4 months is applicable to each of the four counts. Each offence is so serious that only such a custodial sentence can be justified. The court has also examined the timing of these offences. Since these four offences were bracketed as taking place in an approximately seven-month span in 2020 – 2021, the court is satisfied that those sentences should be served concurrently. There is a clear nexus and a degree of contemporaneity. However, when considering the first count, attempted murder, the court notes that it is bracketed as taking place in a one-month period in 2021. And while that also falls within the greater seven-month period, it is a very specific incident, that stands alone, separate and apart from the grievous bodily harm assaults. The court therefore finds no such connection between the first count and the other four counts. Although it involves the same parties, at the same general location, it is a completely separate offence, occurring at a specific and singular time from the other counts. Therefore, the sentence of 15 years and 4 months for count 1, is to be served consecutively to counts 2, 3, 4 and 5. This increases the total sentence to 23 years and 8 months.
- [63] The sixth count is indecent assault. Directions for that offence are found in the sentencing guidelines under the heading of Indecency. An indecency case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. To establish the starting point for the offence within the relevant range, there are four stages. The first stage is to consider consequence by assessing the harm caused by the offence. In this case, the victim was under the age of 10 years. The sexual intrusion was degrading, humiliating, and caused both physical and psychological harm to the victim. Reference is made again to the Victim Impact Statement. This leads to a finding of Consequence - Category 1 - Exceptional.

- [64] The second stage is to consider seriousness by assessing the culpability of the offender. In this case, contact with the victim's genitals occurred, a position of trust was abused, a weapon in the form of a pencil was used, there was a significant disparity of age, and violence and threats of violence accompanied the contact. All of this results in a finding of Seriousness - Level A - High.
- [65] Having determined the consequence and level of seriousness, the starting point is found by consulting the grid, and results in a starting point of 65% and a range of 50% - 80%. In this case, the court finds the appropriate starting point to be 70% or 3.5 years.
- [66] Having determined the starting point, the court considers aggravating and mitigating factors of the offence and adjusts upwards or downwards, as required. In this case, the victim was particularly vulnerable due to her age and reliance upon the defendant. The offence took place in the presence of others, being the child's mother. These aggravating factors serve to increase the sentence by 1.75 years to 5.25 years. There are no mitigating factors for the offence.
- [67] The sentencing figure is then adjusted within the range for the aggravating and mitigating factors affecting the offender. In this case, the court can find no aggravating factors for the offender. However, the lack of any criminal record is a mitigating factor that reduces the sentence by .25 year to 5 years or 60 months.
- [68] As noted for the previous counts, credit will be given for the guilty plea, and a reduction of one-third will be noted. This serves to reduce the sentence by 20 months to 40 months or 3 years and 4 months.
- [69] Similar to the analysis already conducted for the previous counts, the court finds that the incident of indecent assault was a unique occurrence which took place during the greater overall time period. It was distinct and separate from the grievous bodily harm incidents, and from the attempted murder incident. The physical contact between the parties was entirely different. The nature of the offence is sexual, and bears no

similarity to the other counts. For all of these reasons, the sentence of 3 years and 4 months for the sixth count of indecent assault, is to be served consecutively to the sentence for counts 1 through 5, and increases the sentence to 27 years.

[70] The seventh and final count of failure to provide necessities of life, is not an offence found in the sentencing guidelines. Where there is no guideline for a particular offence, judges should refer to the general principles of sentencing. In addition, courts in this region often look for assistance from the United Kingdom. In this case, reference can be made to the General Guidelines of the Sentencing Council of England and Wales. The court begins by considering the culpability of the offender (the seriousness of the offence), and the harm caused by the offending (the consequence). In considering this, the court must be careful to focus on the facts of this count, which revolve around a lack of care and feeding of the child victim. The court does not consider the physical and psychological injuries attributable to the facts in all of the other counts.

[71] The court notes that the medical report of Dr. Alvis-Toney describes the victim as having untidy and unkempt hair, but wearing clean, age-appropriate clothing. There is no mention of malnourishment, weakness, anemia or pallor. Overall, and leaving aside the presence of physical injuries attributable to the previous offences, there is no indication of obvious neglect. This leads the court to conclude Consequence - Category - Lessor, and Seriousness - Level - Lessor. This leads to a starting point of 20% and a range of 5% - 35%. The court is satisfied that the appropriate starting point is 20% or 1 year.

[72] The court then considers aggravating and mitigating factors pertaining to the offence, and adjusts the sentence accordingly. In this case, the victim was a vulnerable child, there was an abuse of trust, and the victim was at times restrained and detained. All of that is aggravating, and serves to increase the sentence by 1 year to 2 years. The court can find no mitigating factors for the offence.

- [73] Turning to factors pertaining to the offender, the court can find no aggravating factors, but the lack of any criminal record is a mitigating factor, reducing the sentence by 6 months to 18 months.
- [74] Credit shall be given for the guilty plea, and a one-third reduction takes the sentence to 1 year or 12 months. As with all of the other counts, the court considers where in the continuum of this case, this offence falls. The court is satisfied that the failure on the part of the defendant to adequately care for the victim was ongoing. Thankfully, the child suffered no lasting injury as a result. But it occurred at the same time as the other counts, and was part of the same transaction. The sentence for the seventh count will therefore be served concurrently to the other counts.
- [75] This is a shocking case of child abuse. Much of what the defendant did to the victim was nothing short of torture. Unfortunately, the child victim could not be saved from the wicked behaviour of the defendant by her mother. The child's mother is of limited education, and suffers from her own physical and perhaps mental health issues. Furthermore, and sadly, she was herself a victim of abuse at the hands of the defendant. She was therefore incapable of protecting the victim. The defendant had a quasi-parental role, a position of trust, which he breached in the worst possible ways. Despite the lack of any previous criminal record for the defendant, a message of deterrence must be sent to anyone who contemplates such behaviour in this jurisdiction. The defendant's age, however, makes him a good candidate for rehabilitation.
- [76] A fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The total sentence of 27 years is the least sentence that can be imposed to mark the extent of offending. Were it not for the guilty pleas entered, the sentence would have been more severe.
- [77] The court has considered the totality principle, which requires it to ensure that where an offender is given consecutive sentences, the total sentence does not exceed the

offender's overall culpability. The defendant was aware of the court's contemplated sentence, in the event of guilty pleas, when the Goodyear Indication was given, and this sentence conforms to that. In fact, this sentence is slightly less than the Goodyear Indication, as that was given without the benefit of knowledge of the defendant being without any previous criminal record of conviction.

[78] The sentence in this case, although severe, is not such that it will crush the defendant. He will serve his sentence, and emerge with a future still ahead of him. Long term incarceration is necessary in this case.

[79] For all of these reasons, the defendant is hereby sentenced as follows:

[80] **Count 1:** For the crime of attempted murder, to a period of imprisonment for 15 years and 4 months.

[81] **Count 2:** For the crime of causing grievous bodily harm, to a period of imprisonment for 8 years and 4 months. The sentences for counts 1 and 2 are to be served consecutively, making a total sentence of 23 years and 8 months.

[82] **Count 3:** For the crime of causing grievous bodily harm, to a period of imprisonment for 8 years and 4 months. The sentence for count 3 is to be served concurrently to counts 1 and 2.

[83] **Count 4:** For the crime of causing grievous bodily harm, to a period of imprisonment for 8 years and 4 months. The sentence for count 4 is to be served concurrently to counts 1, 2, and 3.

[84] **Count 5:** For the crime of causing grievous bodily harm, to a period of imprisonment for 8 years and 4 months. The sentence for count 5 is to be served concurrently to counts 1, 2, 3, and 4.

[85] **Count 6:** For the crime of indecent assault, to a period of imprisonment for 3 years and 4 months. The sentence for count 6 is to be served consecutively to the sentence for counts 1, 2, 3, 4, and 5, making a total sentence of 27 years.

[86] **Count 7:** For the crime of failure to provide the necessities of life, to a period of imprisonment for 1 year. The sentence for count 7 is to be served concurrently to the sentence for counts 1, 2, 3, 4, 5, and 6.

[87] Taking into account the time the defendant has served on remand, and giving him full credit for that, the total sentence is to be reduced by 2 months and 15 days. The total sentence as of today's date is therefore 26 years, 9 months and 15 days.

Richard G. Floyd
High Court Judge [Ag]

BY THE COURT

REGISTRAR