

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

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

CASE NO: SVGHCR 2023/0045

BETWEEN:

THE KING

and

DANROY DALLAWAY

Appearances:

Mr. Richie Maitland, Counsel for the Crown

Mr. Danroy Dallaway, Self-Represented Defendant

2024: March 7th

April 18th

May 23rd

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag.]**: The defendant, Danroy Dallaway, was charged with eight counts. On 7th March 2024, he was arraigned, and entered guilty pleas to six counts. This included four counts of rape, one count of assault causing actual bodily harm, and one count of damage to property. The remaining counts were withdrawn by the Crown.
- [2] A Social Inquiry Report was sought by Crown counsel, and the defendant was remanded into custody. The Social Inquiry Report was filed on 10th May 2024. A Victim Impact Statement was filed on 16th April 2024. Written submissions were filed

by Crown counsel on 21st May 2024. Oral submissions were received on 23rd May 2024, and the matter now proceeds to sentencing.

The Facts

- [3] The complainant and the defendant are both adults. They are distantly related to one another, and have known each other all their lives. The defendant is also known as “Bad Man.” On Saturday, 23rd July 2022, the complainant went to the Plaza Bar in Chauncey, where she planned to meet her cousin and her cousin’s boyfriend, at approximately 7:00 PM. They were not there. So, she left with a friend and travelled to other locations, where she consumed alcohol. She was not, however, intoxicated. They eventually returned to the Plaza Bar some time after 11:00 PM, where the complainant met up with her cousin and the cousin’s boyfriend.
- [4] At the Plaza Bar, the complainant consumed some alcohol, and ate some food. She eventually left, and began walking home alone. She communicated with several people, including her cousin, on WhatsApp as she walked. The last message she received was at 1:20 AM on Sunday, 24th July 2022. She moved out of range of the street lights, and was about to use her cell phone light to guide her, when she felt a hand grab her throat and choke her. She was pushed over an embankment, and fell into some long grass. While on her back, she began to fight with the person who still gripped her throat. When the person came over her, she was shocked to recognize the defendant. Although it was dark, his face was so close to hers, that she was able to see him clearly. She also recognized his voice when he spoke.
- [5] The defendant was on top of the complainant, wearing only underpants. She addressed the defendant, identifying herself, and asking what he was doing. The defendant replied that he wanted sex. The complainant reminded him they were family, but the defendant only squeezed her throat, and repeated his desire for sex. The defendant then tore off the complainant’s skirt. She was unable to scream as the defendant kept his hand on her throat, choking her.

- [6] The defendant eventually let go of the complainant's throat, removed her under garment, and digitally penetrated her, before forcing intercourse upon her. It lasted for several minutes. When it stopped, the defendant again choked the complainant. His body weight was crushing down upon her. She told him to get off, and the defendant replied that he knew he was going to be locked up, so he would have to kill her. The complainant attempted to reason with him, speaking of her children, and saying that no one need know what had happened.
- [7] The defendant spoke of anal intercourse, which the complainant tried to talk him out of. The defendant then pulled the complainant to her feet, and turned her around. He forced intercourse upon her from behind. This continued for several minutes. When it ended, the complainant reached for her torn skirt to cover herself, but the defendant threw it away. She was forced on to her back again, and the defendant said he wanted to "breed with her," but she must say the baby was someone else's. The complainant was afraid that the defendant would kill her, so she continued to talk to him, and reason with him. She said she would not go to the police. They could leave and go to his father's house.
- [8] The defendant retrieved the complainant's phone, and allowed her to use the light. She located her skirt and tied it around herself. She had only one shoe, but was able to climb up the embankment. The defendant picked up his own clothing, which was nearby, and together they walked to his father's house. Once there, the defendant forced the complainant to lie down on the steps, and again had intercourse with her. That lasted for about a minute, after which the complainant got up and asked to go home. But she was roughly pushed backwards on to the step by the defendant, who again forced intercourse upon her. That also lasted for about a minute. The complainant was finally able to push the defendant off of her, get up, and again ask to go home. The defendant grabbed her shoulders and said, "So, is lock up tomorrow?" The complainant moved away from the defendant, and struck her foot on an object close by. She pretended to have injured her foot, and needed to go home.

- [9] The complainant said she needed to text her cousin, to advise her that she had reached home safely, otherwise her cousin would worry. The defendant returned her phone, and allowed the complainant to send a text. But he watched closely, to see what was written. The defendant then accompanied the complainant to her house. Once there, the defendant left her, and simply walked away. The complainant went into her house, and immediately bathed. Exhausted, she went to bed and slept. Her ordeal was finally over.
- [10] The next morning, the complainant assessed her injuries. One toe nail and one finger nail were almost torn off. Her left hand and right foot were causing her pain. She had cuts, scrapes, and bruises on her back and forearms. Her skirt had been torn and damaged. She told a friend, her cousin, and her mother, what had happened to her. She then walked to the nearest police station. Strangely, while on the way, she passed the defendant, who asked her if it was “lock up” now for him. The complainant did not reply. She continued on, and made a report to police. An investigation was commenced.
- [11] The complainant was taken to the local hospital for a medical examination on 24th July 2022. The report from that examination indicated the complainant suffered abrasions and scratches to her extremities, in particular, both right arms. She also suffered bruising and abrasions to her back and right shoulder. The loss of the nail from one finger on her left hand, and one toe on her left foot, was noted.
- [12] The next day, the complainant led police to the location of the incidents. Photographs and measurements were taken. Photographs were also taken of the complainant's injuries. She advised that she did not smell any alcohol on the defendant, and although he had not appeared intoxicated at the time, she believed that he was.
- [13] The defendant was arrested on 5th August 2022. The next day, police executed a search warrant at the residence of the defendant's father. Outside the premises, by the steps where the complainant had said some of the incidents occurred, police recovered a woman's shoe. It was subsequently identified by the complainant as belonging to her.

- [14] On 6th August 2022, a police interview was conducted with the defendant. He was given his rights to counsel and cautioned. During the course of the interview, the defendant admitted to pushing the complainant over an embankment, tearing off her skirt, and having forced, non-consensual, sexual intercourse with her.
- [15] The complainant was spoken to for the purposes of the production of the Social Inquiry Report. She also provided a Victim Impact Statement. She is 32 years old. She hopes that the defendant will reflect on what he has done, and will make positive changes in his life. When she was attacked by the defendant, she thought he must be intoxicated. When he told her she would be killed after he raped her, images of her children appeared before her, and she knew that she must cooperate, in order to save her own life. Her ordeal lasted for hours. She experienced a range of feelings, including terror, confusion, disbelief, shame, embarrassment and disgust. She was held down, choked and sexually assaulted. The affect this has had upon her, is obviously enormous.
- [16] All of this illustrates how victims and their families can be seriously affected by crimes of sexual violence. It is remarkable that this complainant had the presence of mind and the ability to think and act in the manner that she did, while undergoing these unspeakable horrors at the hands of the defendant. Had she not been able to do that, a different outcome altogether might have occurred. She is to be commended for her courage. She then took another brave step by going to police, and reporting what had happened to her. Not all women who are victims of sexual violence are able to bring themselves to report the matter to police, and allow the criminal justice system to take its course. This complainant is indeed an impressive young woman.
- [17] The Social Inquiry Report was prepared by Case Worker, Angelique Foster. The defendant is 28 years old, with a date of birth of 12th December 1995. He has nine siblings, and grew up in a single parent household, having little contact with his father. He is in generally good health. Academically, the defendant completed grade six before leaving school. He smokes and drinks alcohol on a recreational basis.

- [18] By way of employment, the defendant has worked in the construction field, and sold fruit in his home community of Chauncey. He has a criminal record, including a conviction for indecent assault.
- [19] Although cooperative in the preparation of the report, the defendant did not answer all questions put to him by the case worker. He declined to discuss this incident but noted that prison was unpleasant and difficult. He stated that he was sorry for what he had done to the victim.
- [20] The defendant's sister stated that she was not surprised when she heard about this incident. She described the defendant as someone who drinks alcohol to excess, and when intoxicated, he behaves badly and is difficult to control.
- [21] Prison authorities reported that, although the defendant was willing to work, he was very aggressive, fought with other inmates, and got into trouble.
- [22] Members of the Chauncey community described the defendant as generally quiet, but when under the effects of alcohol, he becomes aggressive, troublesome and combative. It was suspected that he might have mental health issues.

The Position of the Parties

- [23] Learned Crown counsel provided an overview of the facts, before referring to the principles of sentencing. This includes retribution, deterrence, prevention, and rehabilitation.
- [24] Cases were submitted confirming the serious nature of the crime of rape and the need for a custodial sentence.
- [25] Crown counsel emphasized the extreme psychological harm suffered by the complainant, her extreme degradation and humiliation, and the extreme force used by the defendant against her.

- [26] Crown counsel submits there was a breach of trust owing to the family relationship between the defendant and the complainant. However, the court finds that abuse of a position of trust in a sentencing context generally refers to relationships between adults and children. Although it will depend on all of the factual circumstances relevant to the characterization of the relationship, its purpose is to protect young persons who are vulnerable and weak, in relation to an accused. Merely being a known and recognized family member, particularly where both parties are adults, as in this case, does not rise to that level.
- [27] Crown counsel also points to the abduction and prolonged detention of the complainant, the repeated rape of the complainant, and the violence and threats of violence aimed at preventing the complainant from reporting the matter to police, as being factors for consideration.
- [28] In applying the guidelines to the facts, Crown counsel submits that an appropriate starting point for the charge of rape is 22 years, with an adjustment upward or downward to reflect the aggravating and mitigating factors for both the offender and the offence.
- [29] Crown counsel submits that an aggravating factor the court should consider, is the prevalence and escalation of serious sexual offences in St. Vincent and the Grenadines. To substantiate this, reference is made to a report from the Royal St. Vincent and the Grenadines Police Force comparing offences reported in 2022 with 2021, and reviewing criminal offences over the last six years. Reference was also made to an online news article dated 29th January 2024, wherein Acting Commissioner of Police Enville Williams, lamented the increase in crimes of a sexual nature.
- [30] Learned Crown counsel submits that the court should take into account the entry on the criminal record of the defendant for indecent assault in 2022, as an aggravating factor.

- [31] Crown counsel points out that the defendant is entitled to a sentencing discount of one third, by way of his guilty plea. He should receive credit for that, as well as for time spent on remand, and he certainly will.
- [32] For the count of assault causing bodily harm, Crown counsel submits the court should consider the severe psychological harm suffered by the complainant, the significant degradation and humiliation she suffered, the fact that this violence arose in the course of another offence, the abduction of the complainant, and the violence and threats of violence that she experienced. When the sentencing grid is consulted, Crown counsel submits that a starting point of 3 years and 3 months is found.
- [33] Crown counsel submits that the same aggravating factors found in the rape counts apply to this count, although no material, is submitted to substantiate the submission that there is a high prevalence of this offence in St. Vincent and the Grenadines.
- [34] Crown counsel urges the court to give credit to the defendant for his guilty plea and time spent on remand for this count as well.
- [35] With regard to the count of damage to property, Crown counsel referred the court to two cases and the sentences imposed, for guidance.
- [36] The defendant was given the opportunity to address the court prior to sentencing, but advised that he had nothing to add and nothing to say.

The Law

- [37] Under **s. 123** of the **Criminal Code**¹, any man who rapes a woman, is guilty of an offence, and is liable upon conviction to imprisonment for life. Under **s. 193**, any person who commits assault causing actual bodily harm is liable to imprisonment for

¹ CAP 171

five years. Under **s. 267 (1) and (4)**, any person who damages or destroys property is liable to imprisonment for ten years.

[38] Sentencing in criminal cases involves several considerations in order to reach an appropriate penalty. Sentencing goals include retribution or punishment, deterrence, both specific to the offender, and generally to others who would contemplate such a crime, prevention, and rehabilitation. They are confirmed in the well-known cases of **R. v Sargent**², **Desmond Baptiste et al v The Queen**³, and **Renaldo Anderson Alleyne v The Queen**⁴. Sentencing courts seek to promote respect for the law and an orderly society. They 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. This is confirmed in the sentencing guidelines of the Eastern Caribbean Supreme Court.

[39] The general sentencing process was described by the court in the case of **R. v Lacasse**⁵. Each crime is committed in unique 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.

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

Analysis

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

- [41] Having received and carefully reviewed the written and oral submissions of Crown counsel, and the oral submissions of the defendant, as well as the Social Inquiry Report, and the Victim Impact Statement, what follows is the sentencing decision in this case.
- [42] This was a brutal, sexually violent crime, perpetrated by an adult male on an adult female, who was not only known to him, but was related to him. It occurred in darkness, in a deserted area, when the victim was making her way home, after a night out with friends. She was ambushed, knocked to the ground, and repeatedly assaulted sexually. The victim, quite understandably, feared for her life. It was an intrusive and demeaning encounter. The behaviour of the defendant was shocking, and cannot be countenanced. It must be denounced in the strongest possible terms. A message of deterrence must be sent out, that such behaviour will not be tolerated, and will result in incarceration.
- [43] The conduct of the defendant resulted in pain and trauma, for the victim. Her life has been significantly affected. In addition to her physical injuries, she has been damaged psychologically. This is clearly demonstrated in the victim's interview for the Social Inquiry Report, and her Victim Impact Statement.
- [44] Sexual violence, including rape, has become an increasing concern in St. Vincent and the Grenadines. Such crimes can have serious long-term physical, economic and emotional consequences for victims, their families, and for society more broadly. The consequences for victims include risk for sexually transmitted infections, injuries, depression, flashbacks and post-traumatic stress disorders, blame, guilt, and shame. Victims can be affected in the short and long term, often manifesting with low self-esteem, having difficulty forming and sustaining relationships, and struggling with addictions. Deterrence must therefore be the upper most consideration in sentences for such crimes.

- [45] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Sexual Offences, Re-Issue 8th November 2021**, using the category heading of Rape. A rape case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this 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 is to consider consequence by assessing the harm caused by the offence. This will include an assessment of the evidence. In this case, there can be no doubt that there was serious psychological harm and some physical harm done to the victim. The court is satisfied that there was also significant degradation and humiliation caused to the victim. The court therefore finds the appropriate classification to be Consequence - Category 2 - High.
- [46] The second stage is to assess the seriousness of the offence by reference to a non-exhaustive list of factors to establish the culpability of the offender. Levels of seriousness may be demonstrated in several ways. In this case, although there was no abduction of the victim, per se, she was certainly detained, held back, and her movements restricted and directed. This was a sustained incident with prolonged detention of the victim. All of this leads to a finding that the appropriate category is Seriousness - Level A - High.
- [47] Having determined the levels of consequence and seriousness, the starting point is found by consulting the sentencing guidelines grid. Where the maximum sentence is life imprisonment, the guidelines indicate that, for the purposes of the calculation, it is to be treated as 30 years. This leads to a starting point of 50%, or a range of 35% - 65%. The court has determined the appropriate starting point to be 60% or 18 years.
- [48] Having established a starting point of 18 years, the court must consider aggravating and mitigating factors for the offence, and adjust the number upwards or downwards, as necessary. The complainant believed the defendant to be intoxicated at the time, and although it is unclear whether ejaculation took place, there was repeated sexual intercourse. Those aggravating factors increase the sentence by 1 year to 19 years.

The court can find no mitigating factors for the offence. The sentence therefore remains at 19 years.

[49] The court must next consider aggravating and mitigating factors pertaining to the offender, and adjust the sentencing figure accordingly. In this case, the court notes that the defendant has a criminal record with a relevant entry for indecent assault. This serves to increase the sentence by 1 year to 20 years. As to mitigating factors, the description by the case worker in the Social Inquiry Report of the offender apologizing to the victim for what he had done, does not rise to a level of genuine remorse, given the level of degradation, humiliation and sexual violence that the victim was subjected to. The sentence therefore remains at 20 years or 240 months.

[50] Credit must be given to the defendant for his guilty plea. Although it was not entered as early as it might have been, it is clear that the defendant has been unrepresented for the duration of this case. Furthermore, it must be noted that the guilty plea spared the victim from having to endure the severe emotional and mental distress of giving evidence at trial. The court recognizes all of that, and therefore grants a one third reduction in sentence. This reduces the sentence by 80 months, to 160 months, or 13 years and 4 months.

[51] The defendant must also receive credit for time served on remand. The days that the defendant has spent in custody, will automatically count towards his sentence. The court has been advised that the defendant was arrested and detained on 5th August 2022. He therefore has spent a total of 1 year, 9 months and 18 days in custody before being sentenced today. The defendant will full receive credit for that, in reducing his total sentence.

[52] Counts 2, 3 and 4 also involve the crime of rape. The sentencing process is therefore identical to count 1. Following the same sentencing calculations, the court is satisfied that the same sentence of 13 years and 4 months should apply. Given the number of counts in this case, the court bears in mind the totality principle, in order to pass a sentence that reflects the total criminality but which is just and proportionate, so that

the sentence does not exceed what is necessary to reflect the overall offending behaviour. Further, the court is satisfied that this night of horror for the victim constituted one continuous transaction. The offences are of a similar nature and were committed over a short period of time against the same victim. The sentences for counts 2, 3 and 4 will be served concurrently to each other, and concurrently to the sentence in count 1.

- [53] The fifth count is assault causing actual bodily harm. Directions in sentencing for that offence are found in the Guidelines under the heading, Unlawful Violence Without Intent to Cause Really Serious Harm. The first step in constructing a sentence is to establish the starting point for the offence. 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. 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. This will include an assessment of the evidence. In this case, the physical harm had no long-term impact, unlike the psychological harm. However, the psychological harm was caused by the sexual offences, not this offence. The Consequence is therefore Category 3 - Lesser.
- [54] The second stage involves the consideration of seriousness by assessing the culpability of the offender. In this case, violence arose in the course of other offences, being the sexual offences. There was additional violence, being the sexual violence, and threats of violence. All of this places the matter into Seriousness Level A - High.
- [55] Having determined the consequence and level of seriousness, the starting point is found by consulting the grid, and results in a starting point of 45% with a range of 30% - 60%. The court is satisfied that the appropriate starting point is 45% or 2.3 years.
- [56] 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 court can find no aggravating nor mitigating factors for the offence, and the sentence remains at 2.3 years.

- [57] The court next adjusts the figure within the range for the aggravating and mitigating factors affecting the offender. In this case, the court notes that the defendant has a criminal record with entries for violent offences. This serves to increase the sentence by .7 years. No mitigating factors for the offender are noted, with the issue of remorse referred to already above. The sentence therefore increases to 3 years.
- [58] Credit shall be given for the guilty plea, as referred to in the previous four counts, and a reduction of one-third is therefore granted. This serves to reduce the sentence by 1 year to 2 years.
- [59] As in the first four counts of rape, and for the reasons already noted, the court is satisfied that the sentence for this count should be served concurrently to the sentences for the previous four counts. This was an ongoing, uninterrupted transaction. Time spent on remand will be deducted from the total sentence imposed.
- [60] The last count is damage to property. Directions for sentencing for that offence are not specifically found in the Guidelines of the Eastern Caribbean Supreme Court. However, the court finds that the directions found under the heading for offences of dishonesty (property offences), and the Sentencing Guidelines promulgated by the Sentencing Council for courts in England and Wales, are of assistance. The first step in constructing the sentence is to establish the starting point for the offence. This 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. This will include an assessment of the evidence. In this case, the item damaged was not of significant sentimental or monetary value, and its loss caused no great inconvenience to the victim. The Consequence is therefore Category 4 - Lesser.

- [61] The second stage is to consider seriousness by assessing the culpability of the offender. In this case, the damage was caused in the course of threats, violence and the use of force. This places the matter into Seriousness Level A - High.
- [62] Having determined the consequence and the level of seriousness, the starting point is found by consulting the grid. In this case, the starting point is found to be 10% with a range of non-custodial to 20%. The court finds the appropriate starting point to be 10% or 1 year.
- [63] Having determined the starting point, the court considers a list of aggravating and mitigating factors of the offence, and adjusts upwards or downwards as required. In this case, the defendant was motivated by an intention to carry out another offence, that being rape, and he caused harm to the victim and her property while doing so. This aggravating factor serves to increase the sentence by .5 year to 1.5 years. The court finds no mitigating factors relating to the offence.
- [64] The sentencing figure is then adjusted within the range for the aggravating and mitigating factors affecting the offender. In this case, the court finds no aggravating nor mitigating factors relating to the offender, and the sentence remains at 1.5 years.
- [65] Credit shall be given for the guilty plea. A reduction in sentence of one-third is therefore provided. This serves to reduce the sentence to 1 year.
- [66] As in all of the previous counts, and for the reasons already noted, the court is satisfied that the sentence for this count should be served concurrently to the sentences for the previous five counts. This was an ongoing, uninterrupted transaction. Time spent on remand will be deducted from the total sentence imposed
- [67] For all of these reasons, the defendant is hereby sentenced as follows:
- [68] **Count 1:** For the crime of rape, to a term of imprisonment for 13 years and 4 months.

- [69] **Count 2:** For the crime of rape, to a term of imprisonment for 13 years and 4 months.
The sentence for count 2 is to be served concurrently to the sentence for count 1.
- [70] **Count 3:** For the crime of rape, to a term of imprisonment for 13 years and 4 months.
The sentence for count 3 is to be served concurrently to the sentence for counts 1 and 2.
- [71] **Count 4:** For the crime of rape, to a term of imprisonment for 13 years and 4 months.
The sentence for count 4 is to be served concurrently to the sentence for counts 1, 2 and 3.
- [72] **Count 5:** For the crime of assault causing actual bodily harm, to a term of imprisonment for 2 years. The sentence for count 5 is to be served concurrently to the sentence for counts 1, 2, 3 and 4.
- [73] **Count 6:** For the crime of damage to property, to a term of imprisonment for 1 year.
The sentence for count 6 is to be served concurrently to the sentence for counts 1, 2, 3, 4, and 5.
- [74] 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 to 11 years, 6 months and 12 days as of today's date.

Richard G. Floyd
High Court Judge [Ag]

BY THE COURT

REGISTRAR