

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

IN ST CHRISTOPHER CIRCUIT

CASE SKNHCR 2023/0054

REX

V

ANTHONY RANTON

APPEARANCES

Mr Leslie Roberts for the Crown.

Mr Craig Tuckett for the defendant.

2024: MAY 07

SENTENCE

For indecent on assault on severely autistic adult

- 1 **Morley J:** Anthony Ranton aka 'Dave' and 'Dirty Harry' aged 62 (dob 17.02.62) falls to be sentenced on an early plea of guilty on 19.02.24 to indecent assault on TM¹ on 04.06.22 at her home, who is severely autistic, then aged 30, living with her mother SM who cares for her as she cannot live independently.
- 2 Ranton is their neighbour, much trusted, seen as a 'brother'. He had been noticed from time to time standing naked in his window. The assault occurred at about 08.00. SM went to feed the dogs, Ranton came over to ask TM for ice, she got some, and as she offered it he leaned over the verandah banister, reaching around her waist, and with his other hand

¹ The victim will not be named, nor her family members, as she is entitled to anonymity.

pulled down the strap on her dress to reveal her left breast, then sucking on the nipple. She was frightened, she told him to stop, but he sucked again. SM saw what was happening, shouting at Ranton, and hitting him about the head with a potspoon. He ran off, and when arrested later said he had received ice, had no interaction with SM and denied indecent assault. On 15.06.22, when further arrested after more inquiry, he said SM had a problem with him since work on his house had finished, implying SM was making up the allegation.

3 Victim impact statements were made by TM on 20.02.24, SM on 22.02.24, and Latoya Merchant, a care worker, on 26.02.24:

- a. TM has notably childish handwriting, as if aged 3, saying in three lines: *'What Dave did to me was bad, I don't want people touching me anymore, I don't want Dave around, I'm afraid of Dave.'*
- b. SM described the lifelong struggle of looking after TM, and the sense of betrayal that Ranton had touched her, saying she has become even more careful leaving T alone.
- c. Latoya works at 'Ade's Place', dedicated to helping folk with disability, like TM, who *'has a small frame with a hump-back. At times she could be moody...because she is autistic, but she gets along with her peers. Her speech is impaired, she speaks in broken sentences.... After the incident she followed me around more than usual, hooking her arms into mine and grasping my hands very tightly. At one point she said Dave, while touching her breast area and she asked me to call her mum'.*

4 In a social inquiry report dated 28.03.24 by probation officer Lauston Percival, Ranton is described as having a drink problem, living in deplorable conditions, of one room with a door and window, and no water or electricity, and who said of the offence: *'I did what they say I did, they caught me sucking on the young lady breast and that's what I told the judge. We all are humans, and feelings sometimes take over'.*

5 Ranton has previous convictions, though none for indecency:

13.03.89	Larceny	3 months
26.05.89	Burglary	3 years
22.04.97	Insulting language	Fined
20.09.01	Burglary	3 years
08.10.07	Assault on police	
	Offensive weapon	

	Indecent language x 3	Fined, bonded to keep the peace
22.04.08	Cannabis possession	Fined

- 6 It is to be noted Ranton does not accept he was convicted of any offence in 1997 or 2007, and inquiry has revealed now no separate court record, notwithstanding these convictions appear on his certified record of convictions.
- 7 There have been sentencing hearings on 12, 18, 25.04 and 02.05.24, owing to consideration of his previous convictions, which will be discussed more fully below.
- 8 There are sentencing guidelines for indecency, published by the ECSC in November 2021.
- a. On St Kitts & Nevis, indecent assault carries a maximum penalty of 10 years.
 - b. As to step 1 of sentencing procedure, assessing the offence, I find it falls to an extent between categories 1A and 2B, to be characterized as at the highest end of 2B.
 - i. As to ‘consequence’, there is no evidence of TM’s mental age, so I must hesitate to suppose it below 10, though Counsel Tuckett accepts it is below 16, and while the harm is at the higher end of ‘*serious*’, as she has clearly been traumatized, I am not sure it is ‘*severe*’; and
 - ii. As to ‘seriousness’, though a trusted neighbour, Ranton was not entrusted to look after TM, so that he narrowly escapes a finding of ‘*abuse of trust*’, and though there is an ‘*age disparity*’, it is between adults of mature years (notwithstanding TM’s disability), while as a neighbour he was not an ‘*uninvited*’ person on the premises, so in combination, although at the highest end of level B, he does not quite arrive into level A.
 - iii. As highest 2B, noting the aggravating feature TM is obviously vulnerable, I assess the starting point as 45% the maximum, which is the very top of the range for 2B, meaning 4.5 years.
 - c. As to step 2, assessing the offender, I accept remorse, though tempered by early denial, while I also observe Ranton to live in poor conditions while growing elderly, now 62, in combination meriting a reduction of 18 months to 3 years. Further, his previous convictions, being old and not for sexual offending, I find do not increase the sentence, though he is not of good character and so does not have such mitigation to reduce it further; however there will be more to assess concerning the fact he has convictions, as below.

d. As to step 3, credit for plea, the full one-third arises, reducing the sentence to 2 years.

9 The question now arises whether to suspend the sentence of 2 years, which on St Kitts & Nevis is permissible by legislation for sentences under 3 years. This has led to careful consideration of Ranton's previous convictions, in particular that he has twice for burglary served substantial sentences of 3 years, in 1989 and 2001, though the defence argue these spent and it would be unfair to consider them, begging what is the correct approach to indecency on a vulnerable person by a man growing old who has been long in jail twice though long ago before for different offending. During mitigation on 12.04.24, Counsel Tuckett stumbled into an argument the court should not be allowed to consider spent convictions, which owing to time running out, led to further hearing on 18.04.24, whereupon it was clear counsel needed to write out their submissions to garner focus on the effect of the **Criminal Records (Rehabilitation of Offenders) Act cap 3.25**, as amended, ('CRRO'), which is not uncomplicated, so that Counsel Roberts filed for 25.04.24 and Counsel Tuckett caught up for 02.05.24, both filing quality points.

10 Consideration whether to suspend is captured in **Practice Direction 8C of 2019**, which states:

- 1 In certain circumstances, a sentence of imprisonment may be suspended.
- 2 A suspended sentence remains a prison sentence and should not be passed unless a term of imprisonment is warranted. It should not be considered another form of non-custodial penalty like probation or community service.
- 3 Subject to local legislation making it permissible, it should be considered rare to suspend a sentence of more than two years' imprisonment, and rare to suspend for more than two years.
- 4 The court may consider the following non-exhaustive list of factors in exercising its discretion whether to suspend a sentence:
 - a. Can appropriate punishment only be achieved by immediate custody?
 - b. Does the offender present a risk or danger to the public or to the victim?
 - c. Has there been a history of poor compliance with court orders?
 - d. Is there a realistic prospect of rehabilitation?
 - e. If sentencing a person under 21, is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation?
 - f. Is there strong personal mitigation?

- g. What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?

- 11 Considering para 4, weighing suspension, Ranton drinking and standing seen naked about his home does present a degree of 'risk of danger', there is no 'strong personal mitigation' for a man aged 60 indecently assaulting his neighbor who is clearly vulnerable, there are no others impacted by his incarceration, he is over 21, and so the issue pivots on whether there is a history of poor compliance with court orders, a realistic prospect of rehabilitation, and whether the only appropriate punishment is immediate custody.
- 12 Plainly several previous convictions suggest poor compliance with court orders, begging for a man now aged 62, further offending at 60 shows there seems little prospect of rehabilitation.
- 13 The nub of the defence point is the court must ignore the previous convictions, in particular the two burglaries, as spent, or so old it would be unfair to weigh them, so that Ranton should be treated as effectively of good character, meaning he should be treated as not having a history of poor court compliance, thereby encouraging suspension as if sentenced for a first offence, which naturally raises rehabilitation prospect.
- 14 The **CRRO** sets out various sections of note:

Purposes of the Act.

3. (1) The purposes of this Act are to provide for certain criminal offences to be spent and be expunged from the police criminal records if the person becomes a rehabilitated person within the meaning of this Act.

(2) When a person becomes a rehabilitated person as provided by this Act, then the conviction shall be regarded as spent and, subject to some exceptions, shall not form part of the person's criminal history.

Spent convictions.

4. (1) Subject to the provisions of this Act, where a person is convicted of a criminal offence, whether before or after the coming into force of this Act, and that person has not, since his or her conviction, been convicted of any other offence during the relevant rehabilitation period, that person shall be treated as a rehabilitated person in respect of the offence of which he or she was convicted, and the offence shall be treated as spent.

(2) Notwithstanding the provisions of subsection (1), a person referred to in that subsection shall not be treated as a rehabilitated person unless that—

- (a) was the first conviction of that person; and

- (b) person has served or otherwise undergone or complied with any sentence imposed on him or her in respect of that conviction...
- (5) Notwithstanding the provisions of subsection (1), where a person has been convicted of one or more offences for which—
- (a) the combined sentences imposed was imprisonment for a sum total term not exceeding three years; or
 - (b) no custodial sentence was imposed, and has not since the last conviction been convicted of any other offence during the relevant rehabilitation period referred to in section 5,
- that person shall be treated as a rehabilitated person in respect of those offences, and the convictions shall be treated as spent.

Rehabilitation periods.

5. (1) For the purposes of this Act, the rehabilitation period applicable to a sentence specified in column 1 of the First Schedule to this Act is the period specified in column 2 of that Schedule in relation to that sentence.

FIRST SCHEDULE

(Section 5)

REHABILITATION PERIODS

Column 1 Column 2

Sentence Rehabilitation Period

A non-custodial sentence	3 years
A sentence of imprisonment not exceeding 6 months	5 years
A sentence of imprisonment exceeding 6 months but not exceeding 18 months	8 years
A sentence of imprisonment exceeding 18 months but not exceeding 3 years	10 years

Effect of Rehabilitation.

6. (1) Subject to the provisions of this Act, a person who is a rehabilitated person within the meaning of this Act shall be treated, for all purposes in law, as a person who has not committed, been charged with, prosecuted for, convicted of or been sentenced for an offence which was the subject of a conviction.
- (2) Notwithstanding the provisions of any other enactment to the contrary—
- (a) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed, been charged with, prosecuted for, convicted of or sentenced for any offence which was the subject of a spent conviction; and
 - (b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any questions relating to his or her past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

Limitation on rehabilitation under the Act.

7. (1) Nothing in section 6(1) shall affect any of the following, that is to say—...
- (d) any civil or criminal proceedings where justice cannot be done without admitting or requiring evidence relating to a person's spent convictions; and

(2) Nothing in section 6 shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto in any—

(a) criminal proceedings before a court including any appeal or reference in a criminal matter;...

Application for expungement of spent convictions.

10. A person who does not qualify to have his or her conviction deemed as spent pursuant to the provisions of section 4 and expunged under the provisions of this Act, may apply to the Attorney-General to have his or her application considered by the Committee, for such expungement.

Legal status of person whose conviction has been expunged from the records.

17. A rehabilitated person shall, in relation to any expunged conviction, for all purposes in law, be deemed to be a person who has never been charged with, prosecuted for, convicted of or sentenced for, the offence to which that conviction relates.

Regulations.

24. The Minister may generally make Regulations to give effect to the provisions of this Act,

SIXTH SCHEDULE

(Section 24)

CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) REGULATIONS

Expunging a spent record under section 4.

3. (1) A person whose record is spent in accordance with section 4 of the Act shall have his or her record expunged automatically pursuant to section 13(1) of the Act.

(2) A person referred to in sub-regulation (1), shall use the form set out as Form I in Schedule 1 when first applying for a copy of his or her police record after the record is deemed spent.

- 15 The effect of the **CRRO** on analysis is this:
- a. Spent convictions are deemed automatically to be expunged for a rehabilitated person, and a person can apply to police physically to destroy the record, per **s3(1)** and **r3(1)**, using a form per **r3(2)**, while **s10** shows formal application for expungement is only necessary if a conviction is not spent.
 - b. Where a conviction is 'spent', a person becomes a 'rehabilitated person', per **s4(1)**, the effect of which is such a person is to be treated 'for all purposes in law' as not convicted per **s6(1)**, so that such conviction 'shall not form part of the person's criminal history' per **s3(2)**, and shall be treated as if 'never been charged' per **s17**.
 - c. The critical question is, when is a conviction spent.

- i. Per **s5**, there is a rehabilitation period, as above, assuming no further convictions during it after release per **s4(5)(b)**, where for a fine the period is 3 years from the date of conviction, for a sentence of 3 months the period is 5 years from release, and for a sentence of 3 years the equivalent period is 10 years.
- ii. Counsel Tuckett argues the 1989 larceny spent in 1994, the 1989 burglary in 1999, the 2001 burglary in 2011 (though this may be wrong as the time runs from release, not date of conviction, and it is not clear Ranton was released on each conviction date as having served the time), and though he disputes the 1997 and 2007 offences, as at worst fines these were spent by respectively 2000 and 2009, meaning per **s3**, **s4(1)** and **s6** and **s17**, Ranton is to be treated as rehabilitated and thus without conviction, in essence as being of good character.
- iii. However, as pointed out by Counsel Roberts, per **s4(2)(a)**, a person cannot become rehabilitated unless there has been only one conviction, referring to the **CRRO** as a 'one-shot deal' (though this can include multiple offences recorded in court on a single date per **s4(5)(a)**), as the Act explicitly says, '*a person... shall not be treated as a rehabilitated person unless that...was the first conviction...*'
- iv. In answer, Counsel Tuckett points to how the 1989 burglary sentence was spent before the 2001 burglary sentence, also now spent, so that each time a conviction is spent, and therefore cannot be referred to, under the **CRRO** the record is re-set back to zero, so that a new conviction must be deemed a 'first conviction'.
- v. The court observes this argument, though genial, cannot be correct, as the **CRRO** refers to spent convictions, meaning it contemplates convictions do not legally evaporate on being spent, but continue to exist in concept, and therefore the issue is to what use can a spent conviction be put; here, a spent conviction is nevertheless a previous conviction, which for the purposes of the Act means even if spent it may still be counted to see if a subsequent conviction can later be considered spent.
- vi. Put more starkly, this court hesitates to think the Act is designed to work so that a man jailed three times in his life, in sum for 6y3m, is to be treated as having no convictions, though this may be understandable if only ever

convicted once, even of multiple offences on the same date in court, and serving not more than in combination 3 years; the *reductio* is over 40 years a man could be convicted every 10 years, each time sentenced to 3 years, totaling 12 years, and on each occasion required to treated as of good character, which should be nonsense.

- vii. More, it is clear the larceny conviction in 1989 was not spent when the burglary conviction was passed, and if so, under **s4(2)(a)**, neither offence can ever be spent, and therefore nor any that follow.
- viii. Therefore, drawing analysis together, even accepting the court should not rely on the 1997 and 2007 convictions, right from 1989 Ranton was never to benefit from the **CRRO**, which as a one-shot deal he failed from inception, having more than one conviction, with the second being during the rehabilitation period of the first, so that none of his convictions can ever be deemed spent.
- d. Moreover, even if wrong, so the convictions are spent under the **CRRO**, per **s7(1)(d)** and **s7(2)(a)** nevertheless a court may still consider them in '*criminal proceedings where justice cannot be done without admitting....a person's spent convictions...*' and '*nothing in s6 shall prevent the admission... of evidence...relating to a person's previous convictions...in any ...criminal proceedings...*'
 - i. It follows on the plain words of the Act, whatever its intended effect, notwithstanding **s17**, a court passing sentence in criminal proceedings can refer to any and all convictions, whether or not spent.
 - ii. If so, and the discretion persists, Counsel Tuckett urges they are old and it would be unfair to consider them.

16 Counsel Roberts referred to the case of **R v Emerson Delpleshche 2018** reported at SVGHCR2016/0002 & 0016 from St Vincent.

a. At para 53, Henry J opined:

It is important to add that the learning and practice reveals that spent convictions do not impact a sentence adversely. Rather, the Court is enjoined from holding such matters against a convicted person.

- b. There was however no analysis of the local Act, nor of what is a spent conviction, nor how a conviction becomes spent.
- c. Further, as above, here none of the convictions, even if spent, have aggravated the sentence at step 2, instead being neutral.

- d. However, the convictions have formed a basis to assess suspension, which is a different feature of sentencing evaluation.

17 Counsel Tucket referred to **Nigel Brown v the State [2012]** UKPC 2.

- a. At para 25, Lord Kerr addressed how to weigh old and irrelevant previous convictions as to giving a good character direction at trial:

The appellant did not have an unblemished record. He had been convicted of malicious damage of a car in 2000. It appears that he had set the car alight after an argument. He was fined \$12000 and, in default of payment of the fine, ordered to serve eight days' imprisonment. There was a further conviction for possession of marijuana. Notwithstanding these convictions, the Court of Appeal held (in the Board's view, correctly) that he was entitled to a modified character direction. As was held in **R v Gray [2004]** 2 Cr. App. R 30 at para 57, "where a previous conviction can only be regarded as irrelevant or of no significance in relation to the offence charged, [the judge's] discretion [to treat him as being of effective good character] ought to be exercised in favour of ... the defendant ...". See also **Teeluck v State of Trinidad and Tobago [2005]** 1WLR 2421, para 33."

- b. However, the Ranton case is a sentencing exercise, not a jury direction.
- c. The case of *Brown* still refers to the discretion of the judge, giving guidance on its use, rather than finds there is no discretion.
- d. The suggested direction assesses whether to treat the defendant as being of *'effective good character'*, noting the word *'effective'*, which as an expression is not the same as good character simpliciter, meaning the judge must yet weigh the effect of the old convictions, rather than is not allowed to consider them.
- e. And finally, in the Ranton case, on analysis, whether spent or not, the issue is whether to weigh the old convictions as relevant to suspension, not as *'irrelevant or of no significance in relation to the offence charged'*.

18 Turning now to weighing Ranton's previous convictions, in my judgment, this court can and should consider these in its discretion and whether or not spent, which in any event to my mind they are not. These convictions show he knows what it means to transgress the law, having done it several times, with three earlier jail sentences, even though long ago, two being long. He should not be treated as new to court. He is a person who has had poor compliance with court orders and given his age, background and circumstance he is not an immediate prospect for rehabilitation. To borrow the last words in the written submissions of Counsel Roberts, *'...a probable custodial sentence should not be suspended as if the*

Defendant were in the same position of a juvenile or first-time offender.’ Moreover, the right-thinking public would expect someone jailed three times before to go to jail for indecency on so vulnerable a person as TM. In these circumstances in my discretion I will not suspend the sentence.

19 Moreover, notwithstanding the above discussion, even if of good character, in this case there would still be a strong public interest in immediate imprisonment given TM’s vulnerability.

20 Time on remand shall count, being 6 months, though to be calculated fully by the prison.

21 *Obiter*, it appears the purpose of the **CRRO** is to prevent spent convictions being held against a person in other circumstances, like gaining employment, but per **s7**, they can always be contemplated by a court. Further, the court is indebted to both counsel for good analysis on a confusing subject.

22 *Anthony Ranton, please stand up.* For the offence of indecent assault on autistic TM on 04.06.22, to which you pleaded guilty at early opportunity, for the reasons I have explained, the sentence shall be 2 years imprisonment. Time on remand shall count. And you shall be eligible for remission of one-third of your sentence if of good behavior.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

7 May 2024