

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

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

CASE NO: SVGHCR 2022/0001

BETWEEN:

THE KING

and

A. M.

Appearances:

Ms. Maria Jackson-Richards, Counsel for the Crown
Mr. A. M., Self-Represented Defendant

**2024: January 19th, 22nd, 23rd, 24th
February 29th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag.]:** For the purposes of this decision, the defendant will be referred to by his initials, due to the familial connection between he and the complainant. To do otherwise, could lead to the identification of the complainant, which is to be avoided, owing to the nature of the charges. The defendant was charged with attempted unlawful sexual intercourse with a girl under the age of thirteen, and two counts of unlawful sexual intercourse with a girl under the age of thirteen. On 19th January 2024, the defendant was arraigned. He entered not guilty pleas to each count. With the exception of court appointed defence counsel for the purpose of cross examination of the complainant, the defendant was self-represented. It is lamentable that legal aid is not available in this jurisdiction for indigent defendants, save and

except for those charged with capital offences. However, with penalties for offences such as those in this case being life imprisonment upon conviction, the jeopardy for persons charged, is significant. It would be hoped, therefore, that legal aid was available. Unfortunately, at this point in time, it is not. Nevertheless, the learned Carl Williams, court appointed defence counsel for the purpose of the cross examination of the complainant, kindly went beyond that remit, to assist the defendant with a legal issue raised by an application made by Crown counsel to read in evidence, and to assist the defendant in presenting his testimony. The court expresses its gratitude to defence counsel Williams for that assistance.

- [2] Following a trial with a jury, the defendant was found guilty on all counts. A Social Inquiry Report was sought by Crown counsel, and supported by defence counsel. The defendant was remanded into custody following his convictions. The Social Inquiry Report was filed on 23rd February 2024. A Victim Impact Statement, dated 27th February 2024 from the mother of the complainant, and a Victim Impact Statement, dated 28th February 2024 from the complainant, were filed on 28th February 2024. Written submissions were filed by Crown counsel on 28th February 2024. Oral submissions were received on 29th February 2024, and the matter now proceeds to sentencing.

The Facts

- [3] The child complainant is the niece of the defendant. At all material times, they resided together with other family members at Magum Sandy Bay. The dwelling house belonged to the mother of the defendant, who was also the grandmother of the complainant. The complainant was born on 25th July 2008. At the time of the incidents, she was between the age of 10 and 11 years. The defendant was born on 1st November 2000. At the time of the incidents, he was between the age of 18 and 19 years.

- [4] The first incident occurred while the complainant was in grade 5 at the Sandy Bay Government School. One afternoon in 2018, she came home from school, and greeted her uncle, the defendant, who was playing an electronic game. He had a cast on one arm, caused by an accident that occurred in October 2018. The complainant proceeded to take a bath, dry herself with a towel, and move to her grandmother's room, while still wearing the towel, in order to select clothes that were kept there. The defendant entered the room and pushed her back on to the bed. He jammed the cast on his arm against her throat. He forced her legs open, while she struggled to keep them closed. The complainant said that he "nearly" pushed his penis into her vagina, but was interrupted when the complainant's grandmother was heard to call out to a neighbour outside of the house. The defendant let her go and left the room, saying nothing.
- [5] The second incident occurred one evening in 2018, while the complainant was still attending the Sandy Bay Government School. She was at home, doing puzzles in a book on her bed. She became tired, and pushed the book under her pillow, when the defendant entered the room. She knew it was him because the light from the TV in the other room, cast an illumination. She also recognized the smell of what she described as "weed" on him. She asked what he wanted. The defendant proceeded to place a pillow over her head and lay on top of her. She was face down on her stomach. He pulled down her pants and underwear, and pushed his penis inside her vagina. The complainant screamed "Stop," "No," "Don't do it," "I don't want it." But the defendant continued. He eventually came off her, removed the pillow, and stopped. The complainant cried herself to sleep. She got up to go to the bathroom, and after wiping herself, she saw a yellowish substance on the toilet paper she had used. The defendant slept on her bed that night. At one point, her grandmother entered the room, and asked the defendant why he was sleeping there. The defendant got up, retrieved his mattress, which was stored in the room, and left. He ordinarily slept on a mattress in the living room.
- [6] The third incident occurred in 2020. It happened during the night. The defendant entered the complainant's bedroom, pulled down her pants, and put his penis in her

vagina. She began to cry, and tried to make him stop. He did not. After he finished, he pulled up her pants and underwear, and left. No condom was used by the defendant in any of these encounters.

[7] Some time after the last incident, the complainant was doing revisions at school. She drew a vagina and a penis on her desk. This was seen by her teacher, who then took her to the principal. The complainant's grandmother, who worked in the school kitchen, was notified. The complainant was taken home. Her mother then contacted her by telephone, whereupon the complainant told her mother about what the defendant had done to her.

[8] The police were notified by the complainant's mother, and an investigation began. The complainant was examined by a medical doctor, and witness statements were obtained.

[9] Dr. Alberto Douglas examined the complainant on 2nd July 2020. He noted there were no lacerations, and no abrasions in the genital area. No hymen was present. The findings, in particular, the absence of a hymen, were consistent with vaginal penetration by a penis. However, he could not say when that penetration may have occurred.

[10] The defendant was arrested, and on 3rd July 2020, he gave a statement to police under caution. The statement was audio video recorded. The defendant denied the allegations against him entirely. He maintained that nothing of a sexual nature ever occurred between he and the complainant. The defendant also testified at his trial, and again denied all of the allegations made against him. That position was, however, not accepted by the jury, and he was convicted on all counts.

[11] The Social Inquiry Report was prepared by Case Worker, Angelique Foster. It confirms that the defendant is 23 years of age. He is in good health. By way of education, he completed form 4, before dropping out of school. He has worked in the construction field with his father, and was so employed before his incarceration on these charges. He has no prior criminal record.

- [12] The defendant was interviewed for the purpose of the report. He was calm and cooperative. The parents of the defendant separated when he was a youth. He had little contact with his father, remaining with his mother.
- [13] When asked about these offences, the defendant indicated that he did not do anything to the complainant. He denied the charges, and all allegations of sexual abuse. The report refers to these comments, indicating that, although the defendant was found guilty after trial, he did not acknowledge any wrongdoing, took no responsibility for his actions, and expressed no remorse. The court is careful, however, to note that while genuine remorse is a mitigating factor, a lack of remorse cannot be construed as an aggravating factor. At best, it is neutral, and in this case, that is how the court classifies the defendant's comments.
- [14] The father of the defendant, confirmed that the defendant often worked with him in his construction business. He stated that he was shocked to learn of the allegations made against his son.
- [15] The mother of the defendant, described her son as a quiet, reserved young man. She has a close relationship with him. She too was shocked to learn of the allegations made against her son. The complainant never said anything to her about what happened.
- [16] The sister of the defendant, advised that she had an "on and off" relationship with her brother. She described him as quiet and reserved, keeping to himself. She found it difficult to believe that the defendant would do the things he was convicted of.
- [17] It is clear from these interviews that the defendant has strong family support.
- [18] Prison authorities indicated that the defendant was well behaved, and gave them no trouble while incarcerated.
- [19] Interviews were conducted with members of the Sandy Bay community. The defendant was described as introverted. He kept to himself. He was further described

as mannerly, respectful, quiet, and reserved. Local people advised that they were shocked and appalled to learn of these incidents.

[20] The complainant is now 15 years old. She was between the age of 10 and 11 years at the time of the incidents. She told the author of the Social Inquiry Report that, although close to her grandmother, she was always too scared to say anything to her about what was happening. It was all too frightening for the complainant, although she was eventually able to confide in her mother. The impact these incidents have had upon the complainant has been enormous. Her life has been negatively affected. She felt like she was never going to be herself again. She was fearful of being judged by others, for coming forward and disclosing what had happened to her. She is grateful for the support of her mother and stepfather. She feels better, and is moving on with her life. She is much happier, and gives thanks to everyone who has supported her throughout this ordeal.

[21] The Victim Impact Statement of the complainant indicates that, although she would like to forget, she can remember every detail of the abuse she suffered. That includes feelings of pain, and an inability to breathe. She has been affected mentally and socially. She lost her appetite, became sickly, and her grades suffered at school. She became aggressive, distancing herself from family and friends. She was angry, tearful, and withdrawn. Her personality changed completely. She has not spoken to her grandmother since she disclosed what happened to her. She feels responsible for the breakdown in the relationship between her mother and her grandmother.

[22] The mother of the complainant stated to the author of the report that she was shocked and sickened by what her daughter told her had happened. She blamed herself, feeling that she had failed to protect her child. She now feels immensely protective of all her children. The situation has driven a wedge between her, and her parents and siblings. Relationships have broken down, and communication has ceased. When she reported the matter to the police, negative comments were made against her. She is grateful for the support of her husband, and has even reached a point where she is able to forgive the defendant.

- [23] The Victim Impact Statement of the complainant's mother indicates that she noticed changes in the behaviour of the complainant, which led to questions, and eventually disclosure. She immediately blamed herself, and her health began to suffer. The impact was so great, she said it "broke" both herself and the complainant. She arranged for and financed counselling for the complainant. All communication with her mother and some of her siblings stopped, even her relationship with her husband changed. She describes herself as being paranoid and suspicious, choosing to keep her children close to her.
- [24] All of this illustrates how families can be torn apart when crimes of this nature occur. The ramifications of behaviour like that displayed by the defendant, can be long-lasting, wide ranging and destructive, on many levels.

The Position of the Parties

- [25] Learned Crown counsel provided an overview of the facts, before referring to the principles of sentencing. She submits that, in this case, the principles of retribution, deterrence and rehabilitation are uppermost. Crown counsel referred the court to the Sentencing Guidelines effective 12th April 2021, specifically, Unlawful Sexual Intercourse with a Person Under Sixteen. Helpful though this is, the court prefers to utilize the Sentencing Guidelines effective 8th November 2021, specifically, Aggravated Unlawful Sexual Intercourse - Unlawful Sexual Intercourse with a Person Under the Age of Thirteen.
- [26] In applying the guidelines to the facts, Crown counsel submits that an appropriate starting point for the count of attempted unlawful sexual intercourse, is 6 years, with an adjustment upward or downward to reflect the aggravating and mitigating factors for both the offender and the offence. For counts two and three, unlawful sexual intercourse, Crown counsel submits that a starting point of 12 years is appropriate, with an upward or downward adjustment to reflect the aggravating and mitigating factors for both the offender and the offence.

- [27] Crown counsel submits that an aggravating factor the court should consider, is the prevalence of the offence in this community. However, in that regard, the Court refers to **Practice Direction 8A No. 1 of 2019**, which holds that judicial notice can be taken of local circumstances, if appropriate. If it affects the sentence, then reasons must be given. Prevalence must, however, be established. The Court can receive evidence from local police, prosecutors, probation officers or other appropriate persons. Therefore, without any such evidence having been tendered in this case, the Court declines to take judicial notice of the prevalence, if any, of this type of offence.
- [28] Learned Crown counsel submits that for each of the three counts, the court should take into account the mitigating factor of no violence having been used. With respect, the court must disagree. The facts in this case reveal the use of a medical cast on the arm of the defendant to apply force to the complainant, the use of a pillow to press down upon her head, and force used to pry open her legs. All of that is evidence of violence. It may be further said that, in cases where one person attempts to, or actually has, sexual relations with another person, without their consent, and against their will, an element of violence inherently exists.
- [29] Crown counsel points out that the defendant is not entitled to any sentencing discount that he might have been granted by way of plea, as of course, he was convicted after a trial. While asking the court to consider consecutive sentences, Crown counsel reminds the court of the totality principle, with sentences being just and appropriate to the level of criminality, but not exceeding what is necessary.
- [30] 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 6 months and 14 days pre-conviction, and 1 month and 6 days, post-conviction, for a total of 7 months and 20 days. He should receive credit for that, and he will.
- [31] In order to assist the court further, Crown counsel provided four unreported cases from this jurisdiction. The sentences in those cases of sexual intercourse with a female under the age of thirteen, ranged from 13 years to 29 years, based on a

variety of different facts. However, the court notes that the effect of the Sentencing Guidelines has been to supersede old case law on previous sentences. Such cases may therefore be of interest, and at times helpful, but they are no longer automatically persuasive or binding.

- [32] The unrepresented defendant addressed the court, and asked for leniency.

The Law

- [33] Under **s. 124** of the **Criminal Code**¹, any person who has sexual intercourse with a girl under the age of thirteen, is guilty of an offence, and liable upon conviction to imprisonment for life. The offence, contrary to **s. 315(1)** of the **Criminal Code**, is simply the attempt section, and refers back to the offence of unlawful sexual intercourse with a girl under the age of thirteen, with the same penalty.

- [34] 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.

¹ CAP 171

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

- [35] 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 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.
- [36] All of this has been considered by this court in formulating an appropriate sentence in this case.

Analysis

- [37] Having received and carefully reviewed the written and oral submissions of Crown counsel, and the brief oral submissions of the defendant, as well as the Social Inquiry Report, and the Victim Impact Statements, what follows is the sentencing decision in this case.
- [38] This was a crime of sexual violence, perpetrated by an adult male on a female child. It occurred in her own home. A place where children should feel safe and secure. Our children are our most precious resource. They are to be protected and nurtured within our community. The defendant is the uncle of the complainant. He was a trusted member of the young complainant's family. By committing these odious crimes against her, he breached that trust. Such behaviour must be denounced in the strongest possible terms. Those who would seek to harm a child must be dealt with severely. A message of deterrence must be sent out, that such behaviour will not be tolerated, and will result in incarceration.
- [39] The conduct of the defendant resulted in misery and embarrassment for the complainant, and her family. The complainant's life has been hugely impacted. She

⁵ [2015] 3 S.C.R. 1089, 2015 SCC 64

has been psychologically scarred. This is confirmed in the complainant's interview for the Social Inquiry Report, her evidence at trial, and her Victim Impact Statement, as well as the interview of her mother, and her mother's Victim Impact Statement.

[40] In describing the sentence that should be imposed upon offenders who sexually abuse young children, the court in the case of **R. v D. (D.)**⁶ stated that, where the defendant was prepared to prey upon an innocent child, to satisfy his sexual cravings, his conduct was reprehensible, and it must be condemned in the strongest of terms. The harm occasioned by the defendant and others like him, 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. The court affirmed that when offenders sexually abuse innocent children, they must expect to receive a lengthy period of incarceration. 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. That is the message that must be sent to offenders in any society wishing to safeguard and protect its children.

[41] 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 Aggravated Unlawful Sexual Intercourse – Unlawful Sexual Intercourse with a Person Under the Age of Thirteen. Such a case requires an assessment of the seriousness of the offence and its consequences, by reference to the harm caused. 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 complainant was between the age of 10 and 11 years, at the relevant times. In her

⁶ 2002 58 O.R. (3d) 788 (C.A.)

evidence, the complainant confirmed that the incidents had changed her. She was no longer the same person she once was. She suffered emotional damage. She is no longer the happy, fun, and energetic person she used to be. She required counselling. It is therefore clear that she suffered serious psychological harm as a result of these incidents. Moreover, she was exposed to significant use of force. The defendant used a cast on his arm to pin her down by the throat, and at other times, placed a pillow over her head, while pressing down. Such pressure was obviously suffocating, and clearly designed to muffle her cries for help. Physical force, in general, was a factor in all of the defendant's attacks upon her, in order to drive her into submission, and achieve his goals. The court therefore finds the appropriate classification to be Consequence Category 2 – High.

[42] 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 familial relationship. The defendant was the uncle of the complainant. There was also a significant disparity in age of 8 years. Each of the incidents, as already noted, were characterized by violence directed towards the complainant by the defendant. All of this leads to a finding that the appropriate category of Seriousness is Level A – High.

[43] 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 40%, or a range of 25% - 55%. 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 45% or 13.5 years.

[44] Having established a starting point of 13.5 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 complainant as being particularly vulnerable, since she was attacked by the defendant in her own home, in her own bedroom. Further, with the exception of the attempted offence, it is clear from the

evidence that ejaculation occurred. These aggravating factors serve to increase the sentence by 2 years to 15.5 years. The court can find no mitigating factors for the offence. The sentence therefore remains at 15.5 years.

[45] 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. As to mitigating factors, the court notes the defendant's good character. He has no previous criminal record. These are his first convictions, although they are extremely serious. He was a young man when he committed these offences. He is still a young man of 23 years. His youth and lack of maturity at the time of the offences must be taken into account. The sentence is therefore reduced by 1.5 years to 14 years.

[46] The defendant exercised his right to a trial, and put the Crown to the proof of its case. That is his absolute right. No credit can therefore be given for a guilty plea. The defendant must, however, receive credit for time served on remand. The days that the defendant has spent on remand, in custody, will automatically count towards his sentence. The court has been advised that the defendant spent a total of 7 months and 20 days in custody, before being sentenced today. The defendant will receive credit for that. This reduces the sentence by 7 months and 20 days.

[47] The court has examined the facts of these offences, along with the characteristics of the defendant, and is satisfied that the sentence of 14 years is applicable to each of the three 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 counts 1 and 2 were bracketed as taking place in a three-month span in 2018, the court is satisfied that those sentences should be served concurrently. There is a clear nexus and a degree of contemporaneity. However, when considering count 3, as taking place in a six-month span in 2020, two years later, the court finds no such connection. Although it involves the same parties at the same location, it is a completely separate offence, occurring at a much different time from the other counts. Therefore, the

sentence of 14 years for count 3, is to be served consecutively. This increases the total sentence to 28 years.

[48] This is a case of a series of violent and intrusive sexual offences, perpetrated by an adult male uncle upon his young female niece. She was a child. He was an adult. It occurred in her own home, in her own bedroom, in her own bed. A child's innocence and youth were taken by the defendant. Despite the lack of any previous criminal record for the defendant, and his young age, 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.

[49] 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 28 years is the least sentence that can be imposed to mark the extent of offending. The court has also considered the totality principle, which requires a court that sentences an offender to consecutive sentences, to ensure that the total sentence does not exceed the offender's overall culpability. The sentence, 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.

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

[51] **Count 1:** For the crime of attempted sexual intercourse with a girl under the age of thirteen, to a period of imprisonment for 14 years.

[52] **Count 2:** For the crime of unlawful sexual intercourse with a girl under the age of thirteen, to a period of imprisonment for 14 years. The sentences for counts 1 and 2 are to be served concurrently.

[53] **Count 3:** For the crime of unlawful sexual intercourse with a girl under the age of thirteen, to a period of imprisonment for 14 years. The sentence for count 3 is to be served consecutively to counts 1 and 2, making a total sentence of 28 years.

[54] 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 7 months and 20 days.

Richard G. Floyd
High Court Judge [Ag]

BY THE COURT

REGISTRAR