

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

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

CASE NO: SVGHCR 2022/0053

BETWEEN:

THE KING

and

D. B.

Appearances:

Mr. Richie Maitland, Counsel for the Crown

Mr. Carl Williams, Court-Appointed Counsel for the Defendant

**2024: February 28th
March 1st, 26th**

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. The defendant is the uncle of the complainant, and the brother of the complainant's mother. 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 buggery. On 28th February 2024, the defendant was arraigned. He entered a not guilty plea, but was unrepresented. An order was made appointing Mr. Carl Williams as counsel for the purpose of cross examination of the defendant.
- [2] When the case returned to court on 1st March 2024, the defendant, having had an opportunity to consult with counsel, indicated a desire to change his plea. He was

arraigned again, and entered a guilty plea. Since the defendant had been placed in the hands of the jury, it was necessary to instruct the jury to return a verdict of guilty, owing to the change of plea. This was done, and a finding of guilt was recorded. The learned Carl Williams, court appointed defence counsel, kindly indicated that he would assist the defendant at his sentencing hearing. This is not the first time that defence counsel Williams has gone beyond the terms of his remit, and once again, the court expresses its gratitude to him for his assistance.

- [3] A Social Inquiry Report was sought by Crown counsel, and supported by defence counsel. The defendant was remanded into custody. The Social Inquiry Report was filed on 18th March 2024. A Victim Impact Statement, was filed on 22nd March 2024. Written submissions were filed by Crown counsel on 22nd March 2024. Oral submissions were received on 26th March 2024, and the matter now proceeds to sentencing.

The Facts

- [4] The child complainant is the niece of the defendant. From time to time, the defendant resided with the complainant, her siblings, and her mother, in their residence in Glen. He resided there in December 2020, when this incident occurred. That night, the defendant came home late, and was let in by the complainant's mother. He slept in the same room as the complainant and her brother. However, the defendant had his own bed. The complainant, who was 11 years old, was asleep. She was awakened when she felt contact with her anal area. That part of her body felt "slimy." She saw the defendant jump up and off of her, and stand in a corner of the room. He said nothing. She noticed her tights were halfway down. They had not been like that when she went to sleep. The complainant later told police that she felt the defendant's penis in the area of her bottom.
- [5] The complainant was able to see the face of the defendant because light from the living room was cast into the bedroom. She immediately went to her mother's

bedroom, knocked on the door, and entered. She told her mother what had just happened to her. Her mother did not believe her at first, but summoned the defendant. The complainant's mother felt what was described as a "slimy" substance on the complainant's bottom. When questioned, the defendant at first denied doing anything to the complainant, but eventually admitted interfering with her. Specifically, that he had placed his penis in the area of the child's bottom. It was some time after midnight when the complainant disclosed to her mother what had happened.

- [6] The next day, the complainant was taken to the police station by her mother, and a report was made. The complainant was later sent for a medical examination. The defendant moved out of the residence shortly thereafter.
- [7] Police commenced their investigation on 16th December 2020. Witness statements were obtained, and the scene was photographed. The defendant was taken into custody on 17th December 2020, and interviewed the next day. After receiving his rights to counsel, and having been cautioned, the defendant told police that there was a possibility that he had placed his penis at the complainant's buttocks, but he was intoxicated at the time. He was charged accordingly.
- [8] The Social Inquiry Report was prepared by Case Worker, Porsia Haywood Cottle. It confirms that the defendant is 34 years of age, born on 6th March 1990. His mother emigrated to St. Lucia when he was 4 years old, and his father passed away when the defendant was 6 years old. He therefore lived with family members in a variety of communities and arrangements when growing up. He has 9 siblings and no children of his own.
- [9] The defendant is in generally good health, but has been diagnosed with epilepsy. He told the author of the report that he drinks alcohol occasionally. By way of education, the defendant completed primary school to Senior 2. Unfortunately, he has significant challenges with reading and writing.

- [10] The defendant has worked at different jobs, but has mainly been employed as a laborer and painter. He has generated some personal savings. The defendant attends church, and has friends in the Glen area. He plays steel pan in a local orchestra. He appears to have a strong social network. The defendant has no criminal record.
- [11] Prison officials described the defendant as a very good inmate, who follows directions, and is obedient.
- [12] When asked about this incident, the defendant told the author of the report that he regrets pleading guilty, and takes no responsibility for the offence. He did not commit the crime.
- [13] Interviews were conducted with the defendant's sister, and with members of the Glen community. The defendant was described variously as industrious, kind hearted, hardworking, respectful, and not a trouble maker. All were surprised to learn about the role the defendant played in this offence. However, many people also spoke of the defendant's serious alcohol addiction. He was described as a totally different person when he consumes alcohol. Some attributed his alcohol abuse to trauma experienced as a child, including the loss of his parents.
- [14] Graphic descriptions of the defendant's addiction were given. When heavily intoxicated he sometimes slept in gutters and in the public roadway, even in the rain. Alcohol consumption has caused the defendant to vomit and defecate upon himself. At times, it got so bad that he was asked to move out of one residence. Although many could not believe the defendant committed the offence, some said if he did, it would have been under the influence of alcohol. That, of course, corresponds to the statement that the defendant gave to police.
- [15] The victim was interviewed by the report's author. She is now 14 years old, with a date of birth of 14th November 2009. She has never had the benefit of any counseling since this incident. Not surprisingly, she advised that she felt uncomfortable sleeping in the same room where it happened. She was therefore

quite happy when she moved out of her mother's house, and now feels much better. The victim said that the defendant is her uncle, and what he did to her was wrong. However, to her great credit, the young victim stated that she does not hate the defendant, and has forgiven him. As the report's author points out, the victim's ability to forgive her uncle, despite the harm he has caused, reflects a maturity and understanding that belies her years, but does not diminish the need for justice.

[16] The Victim Impact Statement indicates the victim does not like to discuss what happened, because it is upsetting to her. She was shocked that her uncle did this to her. She has had trouble sleeping, and never again slept in the room where this incident happened.

[17] The victim states that she has not been supported by her family. She has been accused of lying about the incident. Her grandmother is no longer speaking to her. The victim feels that the stigma attached to her is unfair.

[18] The court is troubled to note that the young victim states that she now understands why people who are victims of crime may hesitate to come forward. The court is disappointed that, rather than being supported and encouraged, this victim is adrift and estranged from members of her family. It illustrates the enormous impact that crimes of sexual violence can have upon victims and their families.

[19] The victim stated that her home became an unpleasant place for her, and was not a safe space. She now resides at a neighbour's house, where she is comfortable and at peace.

The Position of the Parties

[20] Learned Crown counsel provided an overview of the facts, before indicating that the Sentencing Guidelines for the Eastern Caribbean Supreme Court do not deal with the offence of buggery (or attempted buggery). To assist the court, case law was provided for this offence. This confirmed that aggravating and mitigating factors must be considered, and given the appropriate weight.

- [21] Crown counsel submits that there is no differentiation between buggery and attempted buggery in so far as the sentences are concerned.
- [22] In this case, Crown counsel submits that case law may be examined, and a starting point of five years would be appropriate.
- [23] Crown counsel submits that aggravating factors of the offence include the position of trust the defendant held, the age of the victim at the time, the disparity in age between the victim and the defendant, the offence being committed in the presence of another person (a child), the use of alcohol by the defendant, the psychological harm suffered by the victim, and the prevalence of the offence.
- [24] However, in regard to prevalence, 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.
- [25] Learned Crown counsel submits that there are no mitigating factors of the offence.
- [26] Crown counsel submits that there are no aggravating factors of the offender. There is, however, a mitigating factor, which is the lack of any previous criminal record.
- [27] Crown counsel submits the defendant is not entitled to a one third discount in light of his guilty plea, because it was not entered at the earliest practicable opportunity. Resources were expended to prepare the matter for trial. The court notes, however, that until trial commenced, the defendant was not represented. It was not until he had the benefit of such representation, that he reconsidered his position and changed his plea. In a jurisdiction with limited legal aid, and accused persons often appearing without the benefit of advice from counsel, the court is inclined to grant some leeway in that regard. The court also takes into account the fact that a plea in

a case such as this, spares a young complainant the arduous task of testifying at trial.

- [28] Crown counsel submits that credit should be given for time spent on remand. In this case, that equates to 1 month, and 7 days
- [29] Learned defence counsel submits that the defendant should receive the benefit of the full one third discount for pleading guilty. He points out that the defendant was unrepresented in the matter until trial was about to commence. He may not have fully understood the ramifications of a guilty plea, and once he did, he made a decision to accept responsibility.
- [30] Defence counsel submits that the court should consider the fact that the defendant is a first offender as a mitigating factor. He is a contributing member of his community, as the Social Inquiry Report points out.
- [31] Defence counsel submits that the appropriate starting point for this offence is five years, and asks the court to impose a sentence at the lower end of the scale, if it is unable to consider a suspended sentence. He respectfully asks the court to temper justice with mercy.

The Law

- [32] Under **s. 146** of the **Criminal Code**¹, any person who commits buggery with any other person, is guilty of an offence, and liable upon conviction to imprisonment for ten years. The offence, contrary to **s. 315(1)** of the **Criminal Code**, is simply the attempt section, and refers back to the substantive offence of buggery, with the same penalty.
- [33] 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

¹ CAP 171

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.

[34] The 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.

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

Analysis

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

[37] This was a sexual crime perpetrated by an adult male on a female child. It occurred in her own home, a place where children should feel safe and secure. This court has

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

stated previously that 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 therefore a trusted member of the family. By committing this crime, he breached that trust. Such behaviour cannot be countenanced, and 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.

[38] The conduct of the defendant resulted in pain, sadness, and embarrassment for the complainant. The complainant's life has been affected, and she now lives away from her family. She has been damaged psychologically. This is confirmed in the complainant's interview for the Social Inquiry Report, and her Victim Impact Statement.

[39] In describing the sentence that should be imposed upon offenders who sexually abuse young children, this court has previously referred to comments found in the case of **R. v D. (D.)**⁶. Where a defendant is prepared to prey upon an innocent child, to satisfy his sexual cravings, his conduct is 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. Deterrence must be the upper most consideration in sentences for such crimes. That is the message that must be sent to offenders in any society wishing to safeguard and protect its children.

[40] 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 Indecency. The court is satisfied that this section may be applied to the offence of buggery or

⁶ 2002 58 O.R. (3d) 788 (C.A.)

attempted buggery. 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 victim is under the age of 16 years. The court therefore finds the appropriate classification to be Consequence Category 2 – High.

- [41] 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 20 years. All of this leads to a finding that the appropriate category of Seriousness is Level A – High.
- [42] 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 45%, or a range of 30% - 60%. The court has determined the appropriate starting point to be 50% or 5 years.
- [43] Having established a starting point of 5 years, the court must consider aggravating and mitigating factors for the offence, and adjust the number upwards or downwards, as necessary. It is apparent from the facts, that ejaculation occurred. Further, there was another child in the room at the time. Those are aggravating factors that increase the sentence by 1 year to 6 years. The court can find no mitigating factors for the offence. The sentence therefore remains at 6 years.
- [44] 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.

This is his first conviction. The sentence is therefore reduced by .5 year to 5.5 years.

[45] 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 was unrepresented for most of the duration of this case. Once counsel was appointed, the defendant quickly indicated a change in position, and a guilty plea was entered. Furthermore, it must be noted that the guilty plea spared a young victim from having to endure the difficulties of a trial, and giving evidence about a very unpleasant incident. The court recognizes all of that, and therefore grants a one third reduction in sentence. This reduces the sentence by 22 months, to 44 months, or 3 years and 8 months.

[46] The defendant must also 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 1 month and 17 days in custody, before being sentenced today. The defendant will receive credit for that. This reduces the sentence to 3 years 6 months and 13 days.

[47] This is a case of a sexual offence, committed by an adult male uncle upon his young female niece. It occurred in her own home. A child's private and personal space was invaded. Were it not for the fact that this was an attempted crime, and more importantly, the victim was saved from the hardships of testifying, by a guilty plea, the sentence would have been much higher.

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

[49] For the crime of attempted buggery, to a period of imprisonment for 3 years and 8 months.

[50] Taking into account the time the defendant has served on remand, and giving him full credit for that, the total sentence is reduced to 3 years, 6 months, and 13 days from today's date.

Richard G. Floyd
High Court Judge [Ag]

BY THE COURT

REGISTRAR