

IN THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
[CRIMINAL]**

COMMONWEALTH OF DOMINICA

DOMHCR2022/0013

BETWEEN:

THE STATE

and

A. N.

Before:

The Honourable Thomas W.R. Astaphan, K.C. J [Ag.]

Appearances:

Ms. Daina Matthew, State Attorney assisted by Miss Marie Louise Pierre Louis,
State Attorney for the State
Mr. Wayne Norde for the Accused

.....
2023: May 30, 31

: June 1, 2, 5, 6

: July 19th
.....

JUDGMENT ON SENTENCING

The names of the parties will not be used given the age of the Virtual Complainant and the nature of the allegations made so as to protect the privacy of the VC.

- [1] **ASTAPHAN K.C., J [AG.]:** First of all, I wish to thank State Counsel, Ms. Daina Matthew for her very thorough and helpful Submissions on Sentencing, the quality of which accords with the high standard which the Office of the Director of Public Prosecutions have established and maintained during my assignment to the Commonwealth of Dominica.
- [2] I would also wish to thank Mr. Wayne Norde for his succinct and pointed Submissions on behalf of the convicted person.
- [3] Both submissions and the authorities cited were extremely helpful, and I have considered them in detail in coming to the conclusion in this Judgment.
- [4] As required, they framed their submissions in the context of the **Sentencing Guidelines**, and of the celebrated case of **Desmond Baptiste et al v R**¹. I have also considered both **Baptiste** and the **Guidelines** in this sentencing exercise.
- [5] A.N. was convicted of Indecent Assault by a Jury on the 6th June, 2023. I do not intend to set out the facts upon which the conviction is based because of the nature and sensitivity of the offence, and the age of the V.C. However, they were considered in the course of my consideration of both the **Guidelines** and **Baptiste**.
- [6] Section 13 (1) (a) of the **Sexual Offences Act** provides that a person found guilty of indecent assault is liable to imprisonment for ten years if the offence is committed upon a person under the age of 14 years of age.
- [7] The V.C was 10 years and 364 days old on the date of the commission of the offence, on 24th. September, 2016, for which A.N. was found guilty by the Jury. She turned 11 years of age the next day.

¹ Court Appeal No. 8 of 2003

- [8] **Baptiste** establishes the objects of sentencing as “*Retribution, Deterrence, Prevention and Rehabilitation*” in the context of Society’s expectation on the punishment to be meted out to an offender.
- [9] The **Guidelines** set out the path to the construction of the sentence, in the circumstances of the case in question, which is to be inflicted upon an offender.
- [10] Provided to the Court is a Social Inquiry Report. This document is an essential part of the sentencing process, as will be seen later on in this Judgment.

THE SOCIAL INQUIRY REPORT (“S.I.R”)

- [11] It is established that A.N. is a person of good character who has no prior criminal record. The State and the Defence in their submissions, and the S.I.R. all attest to this.
- [12] The authors of the S.I.R interviewed various persons for the purpose of the S.I.R.
- [13] The V.C herself states that “...*she would not like A.N. to be incarcerated given that he has a wife and daughter to fend for.*”²
- [14] The Mother of the V.C. stated: “..., *she stated that her hope is that A.N. be fined for the offence, so that he can return to the free world to work and provide for his family.*”³
- [15] A cousin of A.N. is quoted as saying “*He noted that the situation is complicated and if A.N. is given a prison sentence his family risks facing economic hardship.*”⁴
- [16] The Pastor of the Church attended by A.N. and his family states:

² (paragraph 8.2.4 of S.I.R)

³ (para. 8.1.2 of S.I.R)

⁴ (para. 8.2.1 of S.I.R)

“He described A.N. as a friendly and responsible individual who works, attends church and cares for his family. According to [the] Pastor the incident came as a surprise to the entire church ...”⁵. He further states: “On the matter of sentencing that it is left to the Honourable Court. However, he highlighted that A.N. is the primary breadwinner for his immediate family in Dominica as well as his extended family in Haiti.”⁶

[17] The S.I.R continues:

“Randomly selected individuals were interviewed in the ... community. From information obtained, A.N. was described as a hard worker who is always about his business. He has no known history of violent behaviours (sic) within the community. Knowledge of the incident came as a shock to many and some are still in denial that he was ever involved. Some Haitian nationals believed if A.N. had truly committed the offence, he would have escaped from the jurisdiction before the trial began.”⁷. (The Court notes that A.N. was on pre-trial bail for an extensive period.)

[18] The wife of A.N. is reported as stating: “...given her state of health, she is unable to lift heavy weight hence she is unemployed... [she] expressed that A.N. would be considered for a non-custodial sentence. She noted that if A.N. is sentenced to serve time in prison, she and her daughter will suffer in Dominica as well as his dependents in Haiti given that she has no alternative to provide for the family.”⁸

[19] I have considered the aggravating and mitigating factors of the offence, of which, as the State submits, there are none.

[20] I have considered the aggravating and mitigating factors of the offender and I agree with the State that there are no aggravating factors, but the good character is a mitigating factor.

[21] I have considered the impact of the offence on the V.C. I have taken into account the fact that the prisoner had no prior criminal record and, on the basis of that, and what is contained in the S.I.R., and the State’s admission, I find that he is a man of good character.

[22] I have considered the level of seriousness of the offence, and the consequences of the offence.

⁵ [para. 8.3.1 of S.I.R]

⁶ (para. 8.3.2 of S.I.R)

⁷ (para. 8.4.1 of S.I.R)

⁸ (paras. 8.1.2 and 8.1.3 of the S.I.R)

- [23] I have considered all the steps and stages of the **Guidelines**, and the **Baptiste** principles, as I am obliged to do.

SENTENCE

- [24] It is the considered opinion of this Court, particularly in light of the unanimous positions of the V.C., her mother, the wife of A.N., his Pastor and members of his community that he not be incarcerated, that this is a case where it would be Just – and the ends of Justice in the **Baptistean** sense, will be served – by the application of section 51(1) of the **Criminal Law and Procedure Act**⁹ which reads as follows:

“51(1) Upon a conviction of any person for an offence whether indictable or summary, under any written law, notwithstanding the absence of any provision in such written law to that effect, the Court shall have a discretion in lieu of or in addition to any imprisonment prescribed, to impose such fine as it thinks fit.”

- [25] In the exercise of that discretion this Court shall, in lieu of the prescribed imprisonment, impose a fine in the sum of E.C.\$6000.00 to be paid within 12 months of the date that this judgment is handed down, failing which A.N. will serve 6 months in prison.

- [26] Given the aforesaid, it is this Court’s judgment that in this particular case, Justice will best be served if A.N. is given an opportunity at redemption. It is my considered view that the Justice of the case warrants an order that no conviction be entered against A.N. He has his second chance in life. There will be no other.

- [27] **IT IS HEREBY ORDERED THAT:**

- i. A.N. pays a fine of E.C.\$6000.00 within 12 months of the date on which this judgment is delivered, failing which he will serve 6 months in prison.
- ii. No conviction be entered against A.N.

⁹ Chapter 12:01 of the Laws of the Commonwealth of Dominica

[28] This is the Judgment on sentencing of this Court.

Thomas W.R. Astaphan, K.C.
High Court Judge

By the Court

Registrar