

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER & NEVIS

SAINT CHRISTOPHER CIRCUIT

CASE SKBHCR 2022/0018 & 2023/0005

REX

V

ASHLEY HARRIS

APPEARANCES

Mr Tessaun Vasquez for the Crown.

Mr Vaughan Henderson for the defendant.

2023: MAY 15

SENTENCE

For stranger rape of two schoolgirls, aged 13 and 16, on separate occasions

1 **Morley J.** Ashley Harris, aged 44 (dob 07.05.79), without previous conviction, falls to be sentenced on early pleas of guilty for two separate rapes, of IH aged 16, attacked on a rustic footpath in the early evening of 11.02.20, and of VS¹ aged 13, snatched from the street into an abandoned house in the morning of 30.11.20.

2 As to the more detailed facts:

a. Concerning IH, petite, on 11.02.20 she was in school uniform going home from Basseterre High School on a footpath shortcut, amid bushes and foliage. It was 7.30pm

¹ The girls (and therefore their families) will not be identified as they are entitled to anonymity.

and dark. Harris approached from behind, grabbed her around the neck, choking her, he threatened to kill her if she screamed, and pulled her into bushes, throwing her to the ground. He was wearing a mask and had a grey shirt ready, which he used to cover her face, removing her underwear, and forced sexual intercourse on her, she did not know for how long. After he ran off, she made immediate complaint to her mother, and police, who swabbed a semen stain on her tights. As Harris had no police history, his dna was not on file, and as IH had not seen her attacker's face, the case went cold.

- b. Concerning VS, petite, on 30.11.20 she was in school uniform at 11.30am walking to school. Cctv captured Harris following her, with a cap, covering his face with a black cloth. He is observed in broad daylight to grab her from behind and pull her swiftly to a nearby abandoned building. When grabbing her, he was masked, and choked her, she tried to scream, he threatened to kill her, he placed the black cloth over her head, he told her to lie down and he removed her underwear. He then inflicted sexual intercourse on her for she thinks about 5 mins on her back, 5 mins kneeling, and 5 mins on her side, at which point she moved and he punched her in the stomach. Telling her to stay as he would be watching her, he then made off, and on cctv can be seen shielding his face with the cloth. VS waited, and then reported to her school immediately what had happened. She was medically examined, with vaginal swab taken. Good police work meant an officer identified Harris from the cctv, from knowing folk locally, and he was arrested on 13.01.21. He gave a dna sample, denying rape of VS, though identifying himself on some of the cctv.
- c. In the UK, forensic scientists at Cellmark, internationally well-respected, compared his dna with the swabs from IH and VS, producing a match for his semen on 05.03.21, and at different times he was charged with both rapes.
- d. The allegation concerning IH proceeded separately through the magistrates' court to become indictment 2023/0005, to which he pleaded on 21.04.23, catching up, having pleaded guilty on 08.11.22 to indictment 2022/0018, being the allegation concerning VS. A social inquiry report was filed on 09.01.23, the case was opened and mitigated on 11.05.23, and sentence has been adjourned for written remarks to today, 15.05.23.

- 3 The social enquiry report of probation officer Troy Watson, running to 9 pages, shows Harris to be a quiet personality, much abused as a child by his alcoholic father, a brother hanged

himself before his eyes, his mother left, and he dropped out of school at 14 when he was living with no parental supervision. Though his background most unhappy, nevertheless he has two daughters, and will have known of their teenage vulnerability, begging how could he behave so with the daughters of others. He has expressed meaningful remorse (tempered though as he did this twice), thinks he deserves death as punishment, he cannot explain to himself how he was thinking, insists he is in good mental health, no psychological report is sought by his counsel, and he cannot forgive himself, saying from each girl he has taken something which cannot be restored and the memories of what he did will hurt each for life.

- 4 Concerning moving victim impact statements, it is clear what happened to each girl also greatly impacted their parents.
- a. IH, now 19, reported how she was fearful of contracting an std, has become very sheltered, no longer much socializing, is distrustful of males, cries regularly when left alone, suffered nightmares, her school grades dropped from being in the 90s, has received counselling at significant cost, and wants him hanged, saying *'he had taken away my dignity and my confidence'*.
 - b. Her mother DH reported how her daughter went from being bubbly to withdrawn, at night would wake screaming, needed reassurance what had happened was not her fault, would have 'meltdowns' at school, being uncertain the rapist might be among her classmates, and as her parent is angry she cannot take away her daughter's pain, adding *'he has stripped away my daughter's pride and dignity and left her feeling she was worthless'*.
 - c. VS, now 16, reported fear of an std, constantly locking doors and windows, she has lost most of her friends as she no longer socializes as she used to, she is constantly looking over her shoulder, suffered nightmares, fears walking by herself, at school constantly can see where it happened, her grades have suffered, she feels what happened is her fault, she lost 10% of her bodyweight, has been in therapy, and she is angry how some are wholly insensitive to how she feels.
 - d. Her mother KL reported how at first she thought there must be some mistake: *'VS was vibrant, happy, graceful and gentle and now she has lost a piece of her; all I saw was a broken and shattered little girl; I will feel guilty I was not there when she needed me the most; that was the longest most dreadful day of my life; when she cried, we all cried, we didn't know what to do but we tried to stay strong for her, it was hard and is still hard; I decided to see a therapist because I needed help for myself, I am more cautious, more*

protective of VS, I worry more about my children; the world seems more cruel and scarier than before; to this day I am either very angry or in tears from all the hate I have for the defendant' and she implores the government to create a detailed rehabilitation program to reduce recidivism to build a safer federation. She cannot forgive him.

- e. Her father WS reported the crime heinous and unforgivable, he is close to his daughters though lives off-island, saying *'there are few things as precious as a daughter and this criminal who raped my daughter took away a very special part of her, VS suffered tremendously and became very distant, I am so angry about this incident'*, which was hugely multiplied in its effect of him by being unable to travel to VS due to covid.

5 Overall:

- a. Mitigating, is no previous convictions, a degree of remorse, and pleas of guilty, meaning in addition neither girl has to relive the ordeal by giving evidence in court; and yet,
- b. Of the pleas, they are in the context Harris had faced reliable scientific analysis his semen was found on or in each girl, which arguably made it inevitable he would be convicted, meaning his pleas can be seen in the context he is being realistic, seeking to reduce his sentence and best mitigate his disgraceful offending; while further,
- c. Aggravating, is this is two wholly separate stranger rapes, being among the worst of the offence, by a predatory man in his 40s, of vulnerable petite girls, each in school uniform, one 16, the other 13, one in broad daylight, each pursued, grabbed from behind, deliberately, with calculation, choked, threatened with death, VS was punched in her stomach, the man being masked, prepared, his hiding his face from cctv, with a cloth ready to cover their faces, causing striking psychological impact not just to each girl but to their family.

Constructing the sentence

6 On St Kitts, the maximum sentence for rape is life imprisonment. Since November 2021, there have been guidelines for sentencing in rape cases published by the Eastern Caribbean Supreme Court (ECSC) to be applied through its nine member states, requiring each sentence address six steps.

7 Concerning IH:

- a. As to step 1, considering the offence, in my judgment it falls within category 1A, being the worst. It is 'level of seriousness A' owing to threat of violence to prevent her screaming to report what was happening, disparity of age, and there was significant planning in that he pursued her in a mask and had a cloth ready to cover her head. It is 'category of consequence 1' owing to significant psychological harm to IH, spread across her family too, significant use of force, and significant degradation in being choked, threatened, and thrown to the floor, in combination elevating to the highest category. Category 1A has a starting point of 75% of the maximum. The sentencing guidelines treat life as notionally 30 years, so 75% is 22.5 years. Adjusting within the range, I add 3 years for IH being in school uniform and petite, obviously a minor, making 25.5 years.
- b. As to step 2, considering the offender, his remorse and absence of convictions merits a reduction of 1.5yrs to 24 years.
- c. As to step 3, considering his plea, this entitles him to a reduction of one-third, meaning to 16 years.

8 Concerning VS,

- a. As to step 1, considering the offence, in my judgment, again, it falls within category 1A. It is 'level of seriousness A' owing to threat of violence to prevent her screaming to report what was happening, disparity of age, and there was significant planning in that he pursued her in a mask, had a cloth ready to cover her head, and pulled her into a building he knew abandoned at the point he grabbed her. It is 'category of consequence 1' owing to significant psychological harm to VS, spread across her family too, significant use of force, and significant degradation in being choked, threatened, and thrown to the floor, in addition placed in three different positions for intercourse, in combination elevating to the highest category. Category 1A has a starting point of 75%, meaning 22.5 years. Adjusting within the range, I add 4.5 years for VS being in school uniform and petite, obviously a minor, and in her case only 13, notably being underage, and also his punching her in the stomach, making 27 years.
- b. As to step 2, considering the offender, his remorse and absence of convictions merits a reduction of 1.5yrs to 25.5 years.
- c. As to step 3, considering his plea, this entitles him to a reduction of one-third, meaning to 17 years.

9 I turn now to step 4, which requires an assessment of whether Harris is dangerous, totality of sentence, consecutive sentencing, and consideration of a life sentence.

- a. Concerning dangerousness, the rape of VS 9 months after the rape of IH, this time in broad daylight, as an emboldening predatory course of conduct, shows him to be 'dangerous', in the sense it is evident from his behaviour there is '*a significant risk of serious harm to members of the public by the commission of further serious offences*', namely further rapes, meriting a protracted sentence as contemplated in **para 13 of Practice Direction 7A of 2019** which has established overarching principles of sentencing. Indeed, the daylight snatch alone arguably shows it, even if a lone offence. Because he is dangerous, I increase his sentence by 4 years to 21 years.
- b. As the offences were 'on separate occasions' in time and place, in principle they can attract consecutive sentencing, per **para 5.3 of Practice Direction 7A** supra. This would mean adding 16 years to 21 years, making a sentence of 37 years.
- c. 37 years is more than a notional 30 years reflecting a life sentence, begging whether a life sentence should therefore be passed.
- d. However, a life sentence strictly means the court's order is Harris should spend the rest of his life in jail, unless he might be fortunate one day to be released on licence, on review of his behaviour and character, always subject to recall thereafter.
 - i. But there is no 'licence' provision in legislation on St Kitts & Nevis, and there is no parole board, to assemble and review his circumstance after serving perhaps a minimum term, as there would be in the UK and elsewhere in the Commonwealth, even locally, including on neighbouring Montserrat.
 - ii. There is the 'prerogative of mercy' enshrined under **s66 of the St Kitts & Nevis Constitution**, allowing pardons and remission of sentences by the Governor-General on ministerial advice, but this is not the same, and does not address licencing, but ending a sentence. This means here sentencing legislation instead contemplates 'life would mean life', subject to haphazard and possible later mercy.
 - iii. Further, the ECSC sentencing guidelines anticipate a life sentence will mean 'whole life', as can be seen in the analysis of how to sentence for murder in

Practice Direction 3 of 2021, so that the guidelines expect any sentence short of a whole life sentence ought to be a determinative sentence.

- iv. It has been said by the Crown in other cases the High Court on St Kitts & Nevis has set a minimum term with a view for the court then to review the sentence the many years later, but this seems to set up the court as the parole board, without legislative authority, and there would still be no formal authority for release on licence, bearing in mind the court's original order has been to imprison for life, later being varied by likely a different judge, begging whether a later judge can properly adjust the order of an earlier one. In sum, the format suggested is for the court ad hoc to be making up sentencing practice, which in my judgement is not appropriate.
- e. Obiter, the government may wish to consider it ought to have a *'Parole and Licencing Act'*, to give structure to the rehabilitative review of life sentences after minimum terms, to allow release on licence, setting out the test for release and the test for recall. This may echo some of what the mother of VS has called for, namely a more structured approach to rehabilitation, and as exists elsewhere, near and far. Further, research shows at one point there has been on St Kitts in circulation a **draft criminal code, as cap 128**, but it has not been enacted, and at proposed **ss104-106**, there is explicit consideration of how parole may arise, begging can there please be some formal structure enacted.
- f. Finally when contemplating a life sentence, separately considering Harris has pleaded guilty, accepting culpability, sparing the girls the ordeal of giving evidence, having no earlier convictions, I consider he has successfully placed himself outside it, where as above life would mean life, not a minimum term, therefore requiring instead a determinative sentence; if he had been convicted by a jury of the two rapes, or even one (with the other a plea), then a life sentence might have followed. But a life sentence would be the maximum I can pass, when a guilty plea, here two pleas, strongly posits the maximum is no longer applicable.
- g. For the reasons discussed I will therefore not pass a sentence of imprisonment for life.

- h. As to consecutiveness, making 37 years, I must now consider the totality of the sentence.
 - i. There is a strong case just adding the two sentences together becomes too long, being a figure associated with murder sentences after trial, yet where here there have been pleas and for different offending.
 - ii. Further, the conditions in jail on St Kitts are difficult; there are many in large communal cells, like dormitories, overcrowded, and bathroom facilities are basic, so that many years in jail will be more arduous than elsewhere.
 - iii. In all the circumstances, as a matter of totality, after much reflection I consider the overall sentence more appropriately to be 4 years less, being a total of 33 years.
- i. To this end, I will adjust the sentences to reflect a total of 33 years, by making them consecutive, but deducting concerning VS the 4 years for dangerousness, being therefore 16 years for IH and 17 years consecutive for VS, the protracted sentence for dangerousness being carried by the totality.

10 As to step 5, time on remand will count, to be calculated by the prison, Harris having been in custody since 13.01.21.

11 As to step 6, ancillary orders, in this case there are none.

12 Having constructed the sentence formally, it may be weighed from a different viewpoint for the defence to assess the effect of Harris' plea to the rape of IH, over which he hesitated, entered on 21.04.23, when the case finally caught up with VS. At one point in the morning he pleaded not guilty, but then changed his position, pleading guilty later after lengthy conference with Counsel Henderson at the back of the court. It may help him to understand:

- a. If he had been convicted by the jury of the rape of IH, in combination with his earlier plea on 08.11.22 to the rape of VS, he would likely have attracted a life sentence, 'life meaning life' on St Kitts, subject only to the vagaries of mercy;
- b. Considering the calculation of the sentence concerning VS, on his plea, attracting 21 years up to step 4 reviewing dangerousness, the effect of his plea concerning IH has been to add 12 years, not 24 as up to step 2 after trial with no credit for plea, which would likely have been the very minimum after jury conviction;

- c. In sum, in a sense his later plea concerning IH has added 12 years, avoiding after trial 24 years, or more probably a life sentence.
- 13 Sentencing is not a science, but a matter of judgment, with experience, consideration of guidelines, and knowledge of sentencing in other cases. Not everyone will agree with its outcome. Here, the families may think the sentence too little and the defendant too much. If of good behaviour, Harris can expect remission of one-third of his sentence of 33 years, meaning he will serve 22 years in jail. He has avoided a life sentence because he pleaded guilty, and because St Kitts legislation has no parole board; however, I can add I would likely have contemplated a minimum term of 22 years if passing a life sentence on these pleas had the legislation formally allowed a minimum term before consideration of parole.
- 14 Before I pass sentence formally, I wish to say to the girls, IH and VS, what happened to you was not your fault, you are wholly blameless, a very bad man attacked you, you did nothing to make him choose either of you, and you have each been exceedingly brave in coming forward and reporting your ordeal. It is very much the court's hope you and your families will heal over time and find some measure of peace in your having been there to support each other.
- 15 *Ashley Harris, please stand up.* For the rape of two school girls, IH, 16, and VS, 13, to which you pleaded, thereby avoiding a life sentence, the overall sentence shall be 33 years' imprisonment, being constructed as 16 years for raping IH, and 17 years for raping VS, adjusted to reflect totality, to run consecutively. Time on remand will count and you will be eligible for remission of one-third of your sentence if of good behaviour, namely after you have served at least 22 years in jail. Go now with the jailer.

The Hon. Mr. Justice IC Morley KC

High Court Judge

15 May 202