

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO. 14 OF 2022

REX

and

J. G.

Appearances: Ms. Patrice Hickson, Senior Crown Counsel for the Crown
Mr. Michael Maduro, Counsel for the Defendant

2023: February 10

JUDGMENT ON SENTENCING

“Yet I shall temper so Justice with mercy, as may illustrate most Them fully satisfy’d, and thee appease.”

— [John Milton](#)

In this case both the Virtual Complainant and the Accused were Minors at the time of the events giving rise to this case and, therefore their initials only will be used in this Judgment so as to preserve their privacy.

[1] **Thomas W.R. Astaphan, K.C., J. (Ag.):** The Accused, J. G. has written a letter of remorse to the Court in which he seeks the mercy of this Court. Why did he do so?

THE FACTUAL BACKGROUND (edited for the purposes outlined both above and below)

[2] J. G. had, on 17th. January, 2023, before this Court, pleaded guilty to Count 2 on a two-count Indictment filed by the Honourable Director of Public Prosecutions for these Virgin Islands, Ms. Tiffany Scatliffe, on 20th September, 2022, and not guilty to Count 1 thereon. In the circumstances,

The Crown, represented by Learned Crown Counsel Ms. Patrice Hickson then withdrew Count 1 to which J.G. had pleaded not guilty.

- [2.1] The Count to which he pleaded guilty was “Using A Computer For Child Abuse Material, contrary to section 14(2) of the Computer Misuse and Cybercrime Act, 2019 (as amended) of the Laws of these Virgin Islands.”
- [2.2] The Particulars of the Count which he accepted are that sometime between 1st January, 2017, and 12th November, 2020, he used a cellular phone to disseminate material that visually depicted the V.C., a Minor, engaged in (my words) explicit conduct best left to consenting adults, and never to be disseminated by anyone (perhaps even with the express consent of the actor therein.).
- [2.3] Save for what is said heretofore, I will not further discuss the facts of this case which predicated the charge; there is no need to do so for the purposes of this Judgment, and I will not risk the identities of the parties being discernible from anything contained herein.
- [2.4] The Crown asserted that at the time of the dissemination of that material the Virtual Complainant was 12 years old (she is now 18 years old), and the accused was 13 years old – he is now 20 years old (see Accused’s submissions paragraph 12)
- [2.5] They both were children. They were consanguineously related.
- [2.6] On Monday, 23rd November, 2020, at 11:00 a.m. a female Police officer received a report about the said disseminated material. The V.C.’s mother was interviewed. The mother informed that female Police Officer, who was the Investigating Officer (“I.O”), of the identity of the persons who had sent the material to her, the Mother.
- [2.7] On 25th November, 2020, at 2:09 p.m., the I.O. interviewed the V.C. in the presence of her Mother.
- [2.8] On 22nd March, 2021, a Search Warrant was obtained by the Police to search the cellular phone, and electronic data belonging to the Accused. The Police searched an iPad belonging to the Accused after he had informed them that the cellular phone he previously had was destroyed the week before. The iPad was devoid of anything of interest to the investigation.

- [2.9] At the conclusion of the Police investigation, the Accused was charged, and he was before this Court ultimo, when he entered the aforesaid Plea.

THE SENTENCING CONSIDERATIONS

- [3] I am, as a matter of Law, guided by the main objectives of sentencing set out in the seminal case of **Desmond Baptiste, et. Al. v R. Crim. App. No. 8 of 2008 (SVG)**, as enunciated by Sir Charles Michael Denis Byron, Chief Justice (as he then was).

- (i) These objectives are Retribution; Deterrence; Prevention and Rehabilitation.
- (ii) These objectives are aimed, respectively, at “in recognition that punishment is intended to reflect society’s and the legislature’s abhorrence of the offence and the offender”; “to deter potential offenders and the offender himself from recidivism;”... “preventing the offender through incarceration from offending against the Law and thus protect society”; and, “assisting the offender to reform his ways so as to become a contributing member of society.”
- (iii) There are no Sentencing Guidelines promulgated by the Eastern Caribbean Supreme Court in respect of this offence, so that I shall be guided by **Baptiste**.

AGGRAVATING FACTORS

- [4.0] The Crown submits that there are two highlighted aggravating factors: (i) the seriousness of the offence, and (ii) the V.C.’s tender age at the time of the offence.
- [4.1] The Accused has not identified any aggravating factors.

MITIGATING FACTORS

- [5.0] The Crown had identified four mitigating factors: (i) the accused has no prior convictions for any offence; (ii) this infraction appears to be an isolated incident; (iii) prior to this incident the Accused was of good character; and, (iv) at the time of the commission of the subject offence, the Accused was himself a child of 13 years of age.
- [5.1] The Crown further submits that credit should be accorded the Accused for his guilty plea, and to give credit for any remand time incurred by the Accused.

- [5.2] The Accused puts forth as mitigating factors four points: (i) the Accused's early guilty plea; (ii) the age of the Accused at the time of the commission of the offence; (iii) no previous convictions and, (iv) the Accused has expressed remorse and contrition for his action.

"He that is without sin among you, let him first cast a stone at her" John 8:7, The Holy Bible

- [5.3] The above quoted invitation of Jesus, The Christ, highlights a major concept of Christian ethics, namely; that because one has the power to do something does not mean that that something is the best, and only option.
- [5.4] It further reminds us all of our human frailties; our inevitable journey into sin, however transient a journey it is, and the fundamental truth that Redemption is always available to us, notwithstanding that we have crossed to the dark side.
- [5.5] He is telling us that, when we are cogitating on the punishment to be meted out for a sin, or an offence, we must engage, not only the strict letter of the Law, but we must also seek the humanity within us, and the power of forgiveness before we condemn the subject of our attention. We must first see ourselves.
- [5.6] We are here sentencing a young man of 20 years of age, who committed the infraction for which he stands before the Court, at the tender age of 13 years.
- [5.7] He was charged like any adult would have been charged, in strict compliance with the Statute creating this fairly recently contrived criminal offence, even though he was a child.
- [5.8] No account of his age at the time of the commission of the offence seems to have been taken when the charging decisions were made. He was not dealt with as the child that he was at the time – perhaps because these Virgin Islands do not have the Statutory basis to deal with children differently from adults? In any event, although he was a mere child when he committed the offence, he was dealt with as if he was an adult. Perhaps it might be helpful if in the future the Police and Welfare Department seek the sage advice of the Director of Public Prosecutions before charging a minor for a criminal offence.
- [5.9] Whom amongst us is without sin?

- [5.10] Must this young man be criminalized for this one infraction, committed at the age of 13 years old while in the throes of transition into adolescence? Is he not entitled to a second chance at Life, if the circumstances warrant it, so that Justice be done?
- [5.11] Well, the answer is to be found in the words of the **Eastern Caribbean Supreme Court's Practice Direction SD (No. 4 of 2019) Sentencing Principles Concerning Persons Below 18**, where, at paragraph 5 it says that as a general principle of sentencing, it is important to avoid "criminalizing" children and young persons unnecessarily - (which I take to mean that, if the circumstances exist where the child or young person should not be criminalized, he or she is not to be criminalized).
- [5.12] Let us now examine the Reference Letters and Letter of Apology submitted by two upstanding Citizens of these Virgin Islands, and by the Accused himself.
- [5.13] There is the letter from the Honourable Alvera Maduro-Caines. She states that she has known the Accused for his entire life. That he is an ambitious young man who is trying to obtain a University degree, and to start his own car business. That he is a very polite, respectful and well mannered. That he has a potentially bright future. This, from a Member of the House of Assembly of the Virgin Islands. In essence, what the Honourable Member for the Sixth Electoral District is saying that it is her considered opinion that this young man is worthy of a chance in life; that he is different now to that what he was as a thirteen-year old child. This Member, prima facie, represents the views of her District, if not for all the Virgin Islands Community. I must therefore consider her plea in that Public context, as well as in her personal context.
- [5.14] There is the letter from Ms. Marsha Penn. She is the Deputy Principal of Elmore Stoutt High School in Road Town, Tortola. She says that she has witnessed his academic growth, and his maturation. That he developed a maturity and focus and excelled at Night School. That he is making strides forward.
- [5.15] Then, there is the letter from the Accused himself. He says this:
"I ... apologize to ... for disseminating or sharing the [item which predicated the offence]. I was young and immature, and since then I would have grown and matured tremendously to appreciate the harm, pain and suffering I have caused [the V.C.] and [the V.C's] family by my unlawful actions.

I know that I cannot undo my actions, but I am sorry for all who were negatively impacted. I accept full responsibility and ask this Honourable Court to show me mercy.

I also apologize to the Court for this matter taking up judicial time and to my mother and grandmother who would have stood with me throughout this ordeal.

Once again, I sincerely apologize to all involve (sic) and do hope in time that I can be forgiven.

Yours faithfully

[signed by the Accused]"

[5.16] The Virtual Complainant was a child of 12 years of age. This is Aggravating.

[5.17] It is beyond doubt that what the Accused did was, to put it kindly, quite irresponsible and reckless. But, he was also a child, of 13 years of age.

[5.18] The offence did not involve any type of physical trespass upon the person of the V.C.

[5.19] On the submissions of the Crown, and those of the Accused, the Accused has had no prior entanglement with the Law.

[5.20] Again with concurrency, he was a minor when this event occurred.

[5.21] It was an isolated incident.

[5.22] He was of previous good character.

[5.23] He has exhibited remorse and contrition; (see his letter above).

[5.24] He has grown and matured: (see the two letters of his referees above).

[5.25] He has started his own car wash business, "The Wash and Shine".

[5.26] He passed five subjects at the High School Certification level: English Language, Mathematics, Integrated Science, Social Studies and Computer Studies.

[5.27] He has always loved sports and athletics and is currently being heavily scouted by various colleges and universities in the United States of America to pursue a collegiate Track and Field Scholarship.

[5.28] He has represented these Virgin Islands in Track and Field events, both here and overseas.

[5.29] He is also an active member of a regionally competitive basketball team in the United States Virgin Islands.

[5.30] He has pleaded guilty at the first opportunity.

SENTENCE

[6] Upon the foregoing, I find that the Accused has shown all the hallmarks of remorse and contrition.

[6.1] He has shown that he has rehabilitated himself.

[6.2] He acknowledges the wrong he did, and, importantly, recognizes that that wrong had serious impact on other persons, including the V.C., her family, and his family. As we say in these West Indies, he has owned up to his wrong, and he has shown that he regrets his action and is sorry for doing it.

[6.3] I have been shown no Victim Impact Statement, so I do not have before me for consideration the V.C.'s point of view of the offence and/or the offender, as well as the impact upon her of the offence. While I can well imagine what that would be, I cannot speculate as to what it is in fact.

[6.4] At all times I bear in mind that the V.C. was a very young child of 12 years old at the time of the commission of the offence.

[6.5] I consider that the offence involved no physical trespass upon the person of the child-victim.

[6.6] I consider that at the time of the offence the Accused was a mere child of 13 years.

[6.7] I find beyond any doubt, that the Mitigating circumstances far outweigh the Aggravating circumstances in this case.

[6.8] In all the circumstances, this Court finds that a custodial sentence is not warranted.

[6.9] Further, I am of the considered opinion that good reasons exist for not recording a conviction, having regard to the character, antecedents, and age of the Accused at the time of the offence.

[6.10] **Wherefore:**

(i) I fine the Accused the sum of USD \$100.00 to be paid in seven days, in default of which he will serve seven days in prison;

(ii) It is ordered that no conviction be recorded, all pursuant to section 38(a) of the Criminal Justice (Alternative Sentencing) Act of these Virgin Islands.

(iii) There will be no stones cast in this case. Justice is tempered.

[6.11] That is the Order of the Court.

**Thomas W. R. Astaphan K.C.
High Court Judge (Ag.)**

By the Court

Registrar