

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA**

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

CASE NO: DOMHCR2022/001

BETWEEN:

THE STATE

and

FRANK JOSEPH LAURENT

Appearances:

Ms. Sherma Dalrymple, Director of Public Prosecutions and

Ms. Daina Matthew, Counsel for the State

Mr. Julien Prevost and Mr. Joshua Francis, Counsel for the Defendant

**2023: January 16th, 17th, 18th, 19th
20th, 23rd, 24th, 25th
March 24th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J.:** The defendant, Frank Joseph Laurent, was originally charged with rape and indecent assault. On 25th January 2023, following a trial with a jury, during which the complainant and the defendant both testified, the defendant was acquitted of rape but convicted of indecent assault. A Social Inquiry Report was sought by counsel for the defendant, and counsel for the State. The case was adjourned to 24th March 2023 for sentence. The Social Inquiry Report was filed on 22nd February 2023. Written submissions were filed by State counsel on 17th March 2023. On the day of sentencing,

counsel for the defendant sought an adjournment and an extension of time to file written submissions. However, given that almost two months had passed since conviction, and the court had made an order clearly defining the dates for the filing of submissions, that request was denied. Defence counsel made fulsome oral submissions on 24th March 2023. Counsel for the State relied upon her written submissions. The matter now proceeds to sentencing.

The Facts

- [2] The defendant and the complainant were neighbours, residing in Sineku, in the parish of St. David. On 18th September 2018, the complainant was home alone. She took a bath. Afterwards, she heard her dog barking. She wrapped herself in a towel, wearing only panties, and looked out a window. She saw the defendant standing outside her house. She went to the door, and the defendant asked her if her mother had any dasheen for sale. When the complainant replied that she was not sure, the defendant pulled the door open, entered the house, and pushed the complainant on to the bed. She tried to get up, but he pushed her down. He pulled at her bath towel, while she tried to hold it in place. He had his hand on her chest, such that she could not breathe properly. The defendant touched her breasts, her bottom, and her vagina. The incident lasted for three to four minutes, following which, the defendant left and returned to his residence. Afterwards, the complainant felt sad and depressed. She told her boyfriend, with whom she was living at the time, when he got home from work. She went with her boyfriend to her mother's home on 22nd September 2018, and told her mother what had happened. She reported it to the police on 23rd September 2018.

- [3] The defendant was arrested on 4th October 2018. Under police caution, he admitted that he had gone to the complainant's house to enquire about dasheen, but he denied entering her home, and he denied the allegations.
- [4] The defendant was born on 5th October 1953. On the day of the incident, the defendant was age 64, and the complainant was age 18. They had known each other for about two to three years.
- [5] A Social Inquiry Report was prepared by Welfare Officer Baron and Chief Welfare Officer Giddings-Stedman. The defendant is now age 69 years. His education included attending primary and secondary schools. He grew up in a stable family setting. Although presently unemployed, the defendant has worked in construction, farming, and artistic design. He has nine children and has been married for 35 years. He describes himself as a good Christian, active in his community by way of volunteer work, and playing music in his church. The defendant maintains his innocence in this matter.
- [6] The defendant's wife and children expressed surprise at his criminal charges. Such behaviour is described as being out of character for him. Despite this conviction, the defendant continues to have the support of his family.
- [7] Community members also expressed surprise at the situation the defendant finds himself in. He is described as being well known as a Christian, family-focused individual, active in volunteer work.
- [8] The complainant is now age 22 years. She was surprised and hurt by the behaviour of the defendant in this incident. As one might expect, it has had a lasting impact upon her. She continues to live in fear for her safety, especially as she alleges that she has been the

subject of threats from a relative of the defendant. The incident has tarnished her reputation, and affected her relationships with others. Emotionally, she is frequently sad, angry, and upset.

- [9] The complainant's mother and common law partner confirmed the impact this offence has had upon her. She is a changed young woman. She is often angry, fearful, distant, and withdrawn.
- [10] The impact this incident has had upon the complainant is clearly described in the Social Inquiry Report. The emotional trauma that she suffered continues. While examining the facts, the court has noted in this case and others, that local police make use of something known as a "confrontation" in their investigations. This procedure involves the police inviting both the complainant and the defendant to attend the same location, often the alleged crime scene. Once there, the police ask the complainant to repeat her allegations in the presence of the defendant. The defendant is then, while under caution, asked what he has to say in response to that.
- [11] The court finds this method of investigation to be quite surprising. If the intention of the police and other agencies is to encourage the reporting of serious crime, particularly crimes of domestic violence and sexual assault, treating complainants in this fashion, would seem contrary to that end. If complainants are placed in the presence of their alleged abuser, and asked to repeat their allegations, the extreme discomfort that would impose upon them would appear obvious. Leaving aside the curious decision of the police to generate multiple statements from the complainant, the procedure appears to demonstrate a complete lack of empathy for the circumstances of the complainant, and a lack of understanding of the dynamics of power and control in situations of domestic and sexual abuse. It would therefore not be surprising if, knowing that

she would be subjected to such distressing treatment, a complainant might think twice about making a police report in the first place.

- [12] Such a method of investigation was employed in this case. It is to be hoped that, in this day and age, the Commonwealth of Dominica Police Force would revisit this policy, and consider whether it remains a viable and appropriate approach to criminal investigations, particularly for crimes of this nature.

The Position of the Parties

- [13] Learned counsel for the State submits that the complainant suffered serious psychological harm and trauma, and lives in fear. Reference was made to the Social Inquiry Report. State counsel submits that the defendant abused a position of trust that existed between he and the complainant. This arises, it is submitted, because the defendant was a neighbour and family friend. However, the court struggles with that characterization in this case, since there was no position of authority established and the complainant was an adult at the time of the offence. There is no doubt, of course, that the defendant was well known to the complainant. State counsel urges the court to consider the matter to be exceptional and high, in consequence and seriousness, when applying the sentencing guidelines.

- [14] By way of aggravating factors, State counsel urges the court to consider the fact that the defendant has shown no remorse, and continues to assert his innocence. However, remorse is not actually an enumerated aggravating factor in the sentencing guidelines section pertaining to the offender. While genuine remorse is a mitigating factor, a lack of remorse cannot be construed as an aggravating factor. At best, it is neutral. State counsel points out that the good character of the defendant is a mitigating factor.

- [15] State counsel submits that an appropriate sentence of 4 years, less time spent on remand, would become a sentence of 3 years, 10 months and 2 days. Authorities were tendered in support of the submissions.
- [16] Learned defence counsel reminded the court of the age of the defendant. He has achieved the age of 69 years without generating any criminal record. He is a man of good character. The Social Inquiry Report was referred to. The defendant has been married for 35 years and has 8 children. He is close to his family and enjoys their continued support. The defendant has many skills and abilities. He is an educated man. Counsel for the defendant described him as a cultural icon, well known and well liked in his community. He is also a skilled sportsman, active in the game of cricket.
- [17] Defence counsel submits that the defendant was cooperative with the police during their investigation, and again with the authors of the Social Inquiry Report. With reference to the sentencing guidelines, counsel for the defendant submits that there is no evidence by way of medical reports or otherwise, that indicate that the complainant suffered psychological or physical harm to any degree. Although the court notes that the sentencing guidelines indicate such information can come from the victim.
- [18] Defence counsel also submits that the court should disregard the references in the Social Inquiry Report from the complainant that she was the subject of threats from the defendant after the incident, and more recently by a relative of the defendant, because no confirmation of that by way of police report or otherwise, was provided. Similarly, the court should disregard the comment from the complainant that her reputation has been tarnished, because no one

in the community provided confirmation of that. However, regardless of whether there is confirmation of these comments by the complainant, the court accepts that the complainant has indeed been deeply impacted emotionally and psychologically by this incident.

[19] Counsel for the defendant urged the court to place the matter into consequence Category 3 – significant and, despite acknowledging that there was disparity in age between the parties, and there was forced or uninvited entry to the victim’s home, seriousness Level B – Medium, should be applied. He also submits that there was no contact with any genitals that would apply to the higher seriousness Level – A. Therefore, Defence counsel submits that the appropriate starting point for sentence is non-custodial.

[20] Counsel for the defendant submits that there are no aggravating factors for the court to consider, and interestingly, takes the position that no force was used in this offence. By way of mitigation, he correctly submits that the good character of the defendant should be considered. Defence counsel submits that the time spent on remand will deter the defendant, and that such a short, sharp period of incarceration is a sufficient sentence. When released, the defendant will rely upon the strength and assistance of his church community to help him with any rehabilitation that he may require. For all of these reasons, defence counsel submits that a suspended sentence and time served, is the appropriate disposition in this case.

The Law

- [21] Under **s. 13 (1) c)** of the **Sexual Offences Act**¹, upon conviction for indecent assault of a person who is sixteen years of age or more, the penalty is imprisonment for up to five years.
- [22] 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 refers to the principles of punishment, deterrence, and rehabilitation. Sentencing seeks to promote respect for the law and an orderly society. A sentencing court will 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.
- [23] The case of **R. v Parranto**⁵ describes sentencing as one of the most delicate stages of the criminal justice process. Sentencing requires judges to consider and balance a range of factors. While the process is governed by clearly defined objectives, it remains a discretionary exercise for courts in balancing all the relevant factors, in order to achieve the purposes of sentencing. The goal in every case is a fair, fit, and principled sanction. Sentencing is approached on an individual, case-by-case basis. The court must determine

¹ CHAP 10:36

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

⁵ [2021] SCC 46

which objectives of sentencing merit greater weight, and evaluate the importance of mitigating or aggravating factors to best reflect the circumstances of each case.

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

Analysis

- [25] Having received and carefully reviewed the written and oral submissions of counsel for both parties, as well as the Social Inquiry Report, what follows is the sentencing decision in this case. This was a crime of sexual violence, perpetrated by a much older male upon a young adult female, in her own home. The sexual integrity of the complainant was grossly violated. The carnal nature of the assault was obvious. In this type of crime, the court will take into account the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all of the surrounding circumstances, including threats and use of force. All of this is relevant to sentencing for offences of this nature.

- [26] When a person commits a sexual offence, the act is an indignity to the victim's person, both physically and mentally. It leaves a stain that cannot ever be removed. As the learned Justice Hariprashad-Charles stated at **para 27** in the case of **R. v Camillus Paris**⁶:

Indecent assault is largely a non-penetrative sexual offence but no less despicable on that account. In the words of Lord Griffiths: "...although the offence of indecent assault may vary greatly in its gravity from an unauthorized teenage sexual groping at one end of the scale to a near rape at the other, it is

⁶ BVIHCR 2010/0014

⁷ R. v Court [1988] 2 All ER 223 at C

in any circumstances a nasty, unpleasant offence”⁷... Although indecent assault is less serious than rape, the latter carrying a (greater) penalty...it does not make indecent assault any less traumatic to the victim.

- [27] 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. An indecency 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 will consider consequence by assessing the harm caused by the offence. This will include a review of the evidence. Significant force was used by the defendant in the course of the offence, pushing the complainant down and fondling her. The Social Inquiry Report confirms the serious and ongoing psychological harm caused to the complainant. The court therefore finds the appropriate classification to be Category 2 – High.
- [28] The second stage will consider seriousness by assessing the culpability of the offender. Levels of seriousness may be demonstrated in several ways, and in this case, are found to include contact with the genitals of the complainant, the use of physical violence, forced uninvited entry into the complainant’s home, and a significant disparity in age between the defendant and the complainant of 46 years. This leads to a determination of the appropriate category to be Level A – High.

- [29] Having determined the consequence and level of 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%. In this case, the court has determined the appropriate starting point to be 45% or 27 months.
- [30] Having established a starting point of 27 months, the court must consider aggravating and mitigating factors of the offence, and adjust the number upwards or downwards as necessary, taking care not to double-count factors considered in stages 1 and 2. In this case, the court can find no relevant factors not already noted above, and the sentence remains at 27 months.
- [31] The court must next consider aggravating and mitigating factors pertaining to the offender, and adjust the figure within that range. In this case, the court can find no aggravating factors. In mitigation, the court notes the defendant's good character. He has no previous criminal record. Good character is, however, a less relevant consideration for serious offences with aggravating factors, of which this case is one. The defendant pushed his way into the young complainant's home while she was alone, and touched her in an inappropriate and sexual manner. The behaviour was reprehensible, and the complainant continues to suffer from the emotional affects. The good character consideration will therefore serve to only reduce the sentence by 1 month, to 26 months.
- [32] No credit is available to the defendant for a guilty plea, as this was a conviction after trial. However, the defendant must receive credit for time spent on remand. The defendant testified that he spent a total of 5 days in custody before being released on bail. Since his remand into custody following his conviction, he has served a further 59

days. The defendant will therefore receive credit in the amount of 2 months. This reduces the sentence to 24 months.

[33] For all of these reasons, the defendant, Frank Joseph Laurent, is hereby sentenced to a period of 26 months for the crime of indecent assault. Taking into account the time he has served on remand, and giving him full credit for that, the sentence imposed is reduced to 24 months, as of today's date.

Richard G. Floyd
High Court Judge

BY THE COURT

REGISTRAR