

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

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

CASE NUMBER: ANUHCR 2020/0066

BETWEEN:

THE KING

and

KAISER LAKE

Appearances:

Ms. Shannon Gittens-Jones, Counsel for the Crown

Ms. Watisa Rose and Ms. Siobhan Leandro, Counsel for the Defendant amicus

2023: February 17th

SENTENCING REMARKS

Background

- [1] **SMITH, J.:** To protect the identity of the complainant, she will be referred to as “X” throughout this ruling. On 25th November, 2022 a jury was empaneled and the trial in the matter against the defendant commenced. Before the Court was an indictment containing a count of rape and the alternative count of sexual intercourse with a female under the age of sixteen. Following the evidence of the parents of the complainant, the doctor and the evidence in chief of the mobile forensic examiner, the defendant changed his plea to guilty to the second count on the indictment.

Facts

- [2] In March, 2019 “X” was 14 years old; her date of birth being 25th April, 2004. She was well acquainted with the defendant as he was a family friend and her father’s former co-worker and employee. He frequented the family home from since she was about 4 or 5 years old. During the testimony of the parents, the Court learnt that the defendant had been hired by Mr. Brookes after he lost his job at the airport and he had been employed with him for approximately 10 years.

- [3] One day in November 2018, sometime after 2:30 pm, the complainant was home alone when the defendant came to the home and entered her room. He told her that he knew about a boy that she liked. She confided in him about the relationship with this boy.
- [4] On 1st January, 2019 her parents had a party and the defendant attended as guest. Sometime between 8:30 pm and 9:00 pm, the defendant went into the kitchen where “X” was washing dishes and told her he needed to speak to her. A few minutes later, he went to speak to her and was inquiring about her relationship with the boy trying to find out if he came by the house. He told her he was making the inquiries as he was just looking out for her.
- [5] Sometime in March 2019, the complainant’s father picked her up from school with the defendant in the vehicle. They stopped on Old Parham Road and the father exited the vehicle leaving the two alone. The complainant received a message on her phone and the defendant asked her where she got the phone from and she informed him it was from the same young man. He once again asked if the young man would visit her at home and this time she confirmed that he did. The defendant then asked for her number but her father returned so she didn’t give it to him.
- [6] Sometime later in March, the defendant was back at the complainant’s home and he asked her to assist him in taking something inside the house. When she went outside he told her that he wanted her to “pump him off” and he would “suck her up”. She asked if that is what he had called her for and he said “no”. He indicated that he wanted her number but he got tempted. She gave him the number and went back inside.
- [7] About two days later, she received a call from the defendant and they talked. Later on 20th March, 2019 sometime after 9pm, the defendant was again at the home of the complainant and she asked him if he could pick up the young man she was interested in and bring him to the house. He said okay but she would have to do something for him first. She asked what it was and he said she can give him a blow job but she refused then he suggested a hand job and she agreed. He told her to meet him outside in five minutes and she did so by a container close to her house. When she arrived by the container, the defendant had unbuckled his pants and instead of the hand job that he initially suggested, he proceeded to have sexual intercourse with her. After this incident, he continued to send her sexually explicit messages detailing sexual acts he would wish to perform on her. It was at the point of the reading of these messages that the defendant changed his plea to guilty.
- [8] Further, It was these messages that were discovered on her phone on 13th April, 2019 that led her parents to the discovery that the defendant had sexual relations with their daughter. The Court recalls the evidence of the parents that when they called the defendant after the discovery that he was crying and said he was sorry and was asking for their forgiveness. A report was made to the police on 15th April, 2019.
- [9] The defendant was taken into custody on 7th May, 2019 and he refused to give a statement on the advice of counsel and similarly on 8th May, 2019 he refused to participate in an interview. He was subsequently arrested and charged.

The Law

- [10] The offence of sexual intercourse with a female under the age of sixteen is governed by section 6 (1) of the **Sexual Offences Act, 1995**. It provides a maximum sentence of ten (10) years imprisonment.

Sentencing Guidelines

- [11] The Court is guided by the Sentencing Guidelines of the Eastern Caribbean Supreme Court 2019 for sexual offences re-issued on 8th November, 2021.

Construction of the Sentence

- [12] The Court will consider the first stage of the sentencing. In this stage the Court will have regard to the consequences of the offence by assessing the harm caused. In this case, there was significant psychological harm as evidenced by the fact that this incident caused the complainant distress resulting in her crying a lot, missing her classes and school. Her parents had to eventually seek counselling for her.
- [13] The counselors report has to be examined in some detail. The counselor evaluated "X" over a period of seven sessions using 4 assessment mechanisms. At the conclusion of the 7 sessions the counselor opined that the offence was a *"traumatic experience which led to a decline in her mental health. Changes in her ability to process and conceptual events were noted along with her loss of appetite and interest in activities"*. The Counselor went on further to opine that she diagnosed "X" with clinical depression and that the depression was a *"direct result of the rape by her father's co- worker"* She noted also that "X" had a diminished self-esteem especially noting that "X" felt *"ugly and disgusted with herself"*. She found that there was *"a strong feeling of sadness which contributed to her lack of motivation to presently engage in activities"*. Taking all of this into account the Court finds that this offence is to be placed into Category 2-High.

Second Stage

- [14] The Court now moves on to the second stage which is to consider the seriousness of the offence by assessing the culpability of the offender. The Court is of the view that this offence falls into Level A – High as there was an abuse of a position of trust – the defendant was treated like a family member and was viewed as an older brother by "X" and the other family members. Significantly there was a 15 year age difference between the parties.
- [15] Further, the Court finds that there was a certain degree of planning as the defendant started gathering information about "X's" relationship with this other young man and eventually used him as bait to have his way with her. It is also clear that it was an opportunistic offence. He found out

that she had a boyfriend and he used this information as leverage to have sexual intercourse with her.

- [16] Based on these two stages, the appropriate starting point based on the grid is 40% of the maximum sentence and this equates to 4 years with a range between 2 1/2 years and 5 1/2. The Court will use the higher starting point based upon the extreme trauma occasioned to the complainant by the offender. The figure can be toggled upwards and downwards with the application of the aggravating and mitigating factors.

Aggravating/Mitigating Factors

- [17] The Court finds two mitigating factors in relation to the offender. One is that he is of previous good character. This mitigating factor, based on the learning in the case of **Desmond Baptiste v The Queen** Criminal Appeal No.8 of 2003, carries very little weight due to the serious nature of the offence. The Court also notes that it is entirely possible for a person to have no previous convictions and not be a person of good character. The Court will take off 3 months for his previous good character from the figure to bring it to 5 years.
- [18] The other mitigating factor is that he is the father of 3 minor children. Two of the children are with his former partner and the other from a former relationship. The Court will take off a further 3 months for this factor.

Mitigation and Character Witnesses

- [19] The defendant called 6 character witnesses all of whom sang his praises and expressed shock at the offending and the fact that he had entered a plea of guilty to the offence. It became clear to the Court that these witnesses were not in full possession of the facts of the offending especially the incriminating text messages sent from his phone to the complainant.
- [20] The first witness to be called was Ms. Kalisa Lake. She said that she and the defendant had once dated and that she found him to be a good person. She said she did not know him to be "*demanding nor assertive*" and that he was a good friend, partner and father. Under cross examination she admitted that she was unaware of the lewd and sexual messages her friend the defendant had sent to the complainant.
- [21] The next witness was Ms. Joanne Massiah who indicated that she had known the defendant for over 27 years and that his mother worked for her. She said she was well acquainted with his family and had mentored him throughout his life. She knew that the defendant's father played little or no part in his life and that she had interceded with the father to be "*more present*" in his life. She said she did not know the defendant to be violent or aggressive and that he has tried to be a good father to his children. She was aware that some men in the community had stepped into the father

figure role for the defendant. Under cross examination she too expressed shock about the offence and shock about his guilty plea.

- [22] Mr. Osbert Josiah said he knew the defendant as a hard worker and a reliable student. In recent the witness said the defendant would guide the younger children and keep them on the straight and narrow. He said that they defendant and he became reacquainted when he went to work at his home. He indicated that he found the defendant to be generous, courteous and kind. He said he made many donations to children but didn't want his actions publicized. He also told the court that he was impressed by the fact that the defendant was one of the first persons to take the "Sputnik" vaccine. He also said that he was in disbelief when he heard about the incident.
- [23] The witness Mr. Curtis Brown indicated to the Court that he had worked with the defendant at the airport. He said when he was hired by Airport Services in 2008 he became acquainted with the defendant. He said that he was courteous and helpful. He expressed shock when the offence came to light.
- [24] Ms. Yvonne Williams the aunt of the defendant said she has known him since he was a little boy. She said that he had never been rude to her and was always polite. She said when he was in high school he would come around and make sure she and her family were doing well. She also said he would bring his children around when he began to have them. She said they had a very good relationship.
- [25] The final witness was his current partner and mother of his last two children Verlan Hunt of Bolans Village. She told the Court that the defendant is the father of her 2 children aged 1 and 3 years. She said she found it strange that the father of the complainant was telling all and sundry about the incident and that the spreading of the story resulted in the defendant being denied employment. She opined that the father of the complainant spreading of the "story" was harmful to his daughter and served no useful purpose. In relation to the defendant she said she did not know him to be that kind of person. Under cross examination she said she was not privy to the content of the WhatsApp messages the defendant had sent to the complainant. She said they were still together and that he had spoken to her about the incident and that he regretted the situation that he found himself in.
- [26] The Court will now consider the Aggravating Factors of the offence.

Prevalence

- [27] While the Court is not currently seized with scientific data in relation to the prevalence of these matters, the Court can safely take judicial notice of the amount of similar matters that are coming before this Court on a daily, weekly and monthly basis. Therefore, the Court can rightly treat this prevalence as an aggravating factor in the circumstances.

- [28] The Court in considering prevalence will a) record society's abhorrence of the act and b) serve as a deterrent both to the defendant and those who might be minded to imitate him. Offences of a sexual nature are far too prevalent in this small jurisdiction and it is time that the Courts send out the signal that even the mere act of touching women particularly young girls will be met with stiff custodial sentences.
- [29] The Court found also the following to be Aggravating Factors of the Offence to be:-
- The sexual intercourse was unprotected
 - Age disparity between the parties which was 15 years
 - Breach of trust
- [30] The Court will now consider the Aggravating Factors of the Offender and finds them to be:-
- Lack of remorse
- [31] The defendant has displayed a complete lack of remorse and has continued his attack on the complainant and her family despite his guilty plea. He has shown no concern for the complainant and her family who treated him well and as part of their family. He has only shown concern about himself and his image. In addressing the Court before sentencing he spoke about having to sleep in a cell, the treatment of the police officers, his lack of showering facilities and the poor quality of the police food. He has emphatically denied the commission of the offence and therefore, he has not taken any responsibility for the injury done to "X". No doubt, this has caused her even greater pain. These are features in aggravation for the offender.
- [32] In taking into account the aggravating factors the 5 year figure will move up to 8 years.

Guilty Plea

- [33] The defendant is entitled to a discount of 1/3 of his sentence if his plea is entered at the first available opportunity. There was no early guilty plea in this case as the defendant pleaded not guilty at his arraignment on 24th June, 2020 and there were 10 further adjournments in the matter thereafter with the defendant being present on all occasions.
- [34] As said above, it is well established that a defendant who enters a guilty plea is entitled to a discount. The earlier the plea, the greater the likelihood that the defendant will receive the full discount. Conversely, a plea of guilty late in the proceedings or "at the door of the Court" may not yield much of a discount. In deciding the amount of the discount or if any discount at all to be applied the Court must take into account the following matters:-
- a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and

b) The circumstances in which the indication was given¹.

- [35] See **Desmond Baptiste et al v The Queen** [Criminal Appeal No.8 of 2003] at paragraph 28; **Hollington and Emmens v R** (1986) 82 Cr. App. R. 281. The principle was also stated succinctly in **Okee and West v R** [1998] 2 Cr. App. R. (S) 199 where it was held that:

It was vital that offenders should know if they pleaded guilty their sentences would be discounted, and that they should see the discount. It was likewise right that those who delayed their pleas until the last moment should know that the discount would be substantially and visibly reduced from that which they would have otherwise earned.

- [36] In this case, the defendant entered his plea after 4 of the 6 prosecution witnesses had given their evidence. Cpl. Owen Rigby had not completed his evidence and was about to read into the record the sexually explicit WhatsApp messages that the defendant sent to the complainant when the defendant changed his plea.
- [37] To the defendant's credit was that he spared the complainant the further trauma of having to repeat the details of the commission of the offence. Had his plea come after her testimony, the Court could properly award no discount. However, in this case, the Court will consider a discount of 6 months as being appropriate. The defendant is hereby sentenced to 7 years and 6 months.

Conclusion

- [38] The statements made by the defendant in the probation report concerning his trial are quite unfortunate and distasteful given all the accommodations that were made for him from the time of his arraignment up until the completion of his trial. He was granted numerous adjournments to retain counsel which he failed to do and then was provided with two counsel from the Legal Aid and Advice Center to conduct his cross examination of the complainant but who went beyond that duty and assisted him with the other witnesses. Also, the Court allowed the defendant to remain on bail pending sentencing which is unusual after a conviction for these types of serious matters.
- [39] The defendant attempted to deceive the probation officer by proclaiming his innocence and alleging mistreatment during his trial. However, this Court accepts that his guilty plea was a voluntary one after examination of the affidavit provided to the Court. In recent years there have been defendants who plead guilty but when faced with the possibility of imprisonment change their positions in the probation report. They then assert at that stage that they are innocent and some

¹ This being a rule of practice rather than a rule of law. See also the EASTERN CARIBBEAN SUPREME COURT (SENTENCING GUIDELINES) RULES 2019 -PRACTICE DIRECTION 8A NO. 1 OF 2019 -GENERAL SENTENCING PRINCIPLES provides that "an early guilty plea is in the public interest and should attract credit of one-third. It is the duty of defence counsel to tell an offender about this. In addition, an offender should be told it by the court on first appearance. A late plea of guilty will usually attract significantly less credit. Reasons must be given if the court decides to give no or reduced credit."

make false allegations against counsel to include that they were not properly advised or that they entered their pleas under duress. As such, some attorneys have begun to make a written record signed by the defendant to demonstrate that the guilty plea was a well informed and voluntary decision as was properly done in this case.

[40] The Court views this defendant as highly manipulative. He continues to paint himself as the victim and blames the complainant and her family for his deviant behaviour. The Court is of the view that he would benefit from intense psychiatric or/and psychological counseling and treatment in order to assist in his rehabilitation.

[41] Finally I am very grateful to the Counselor Ms. Walsh. Her assessment of "X" and the proposed treatment plan for her was in depth and helpful to the Court. The Court is also grateful to the probation officer Mr. James, acting DPP Mrs. Gittens for her fulsome submissions in the sentencing brief and Counsel from the Legal Aid and Advice Centre who assisted the defendant in his cross examination of "X" and her parents.

Ann-Marie Smith
High Court Judge