

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. ANUHCR 2019/0079

BETWEEN:

THE KING

and

LEROY CAMPBELL

Appearances:

Mr. Curtis Cornelius, Counsel for the Crown

Mr. Hugh Marshall¹, Counsel for the Defendant

2022: October 3rd, 11th;
December 5th, 13th;
2023: January 23rd.

SENTENCING REMARKS

Background

[1] **SMITH, J.:** The defendant was indicted for one count of indecent assault contrary to section 14 (1) and two counts of serious indecency contrary to section 15 (1) (a) of the **Sexual Offences Act No. 9 of 1995 of the Laws of Antigua & Barbuda** respectively. The trial by jury commenced on 3rd October, 2022 and he was found guilty of all three counts on 11th October, 2022. He was remanded into custody for sentencing pending the preparation of a Pre-Sentence Report. When the matter was called up on 5th December, 2022 his new counsel Mr. Hugh Marshall requested further time to fully examine the presentence report. The matter was further adjourned to 13th December, 2022 when a further adjourned was requested by Defence Counsel. The matter was further adjourned to 20th January, 2023. On that date learned Counsel was absent with no explanation and the matter was again adjourned to 23rd January, 2023 for sentencing.

Brief Facts

[2] The complainant "XY"² aged 15 years old boarded the defendant's bus on 6th December, 2022. It

¹ Mr. Wendel Alexander represented the defendant at trial.

was the usual practice that her parents would collect her and take her home but on this day they were busy and so she made her way to the bus station. She boarded the defendant's bus and sat in the seat behind the driver (the defendant). He started a conversation with her which eventually took on an inappropriate tone. He asked her if she knew that he liked her, if he could kiss her, if she has ever had "bud". He drove to Robert's Construction Company where he collected a letter and then on to a secluded area where he kissed her on the lips. He then told her to lie down and he licked her vagina. He then took out his penis and pushed it into her mouth. After the assault he drove to a super mart and bought her a pineapple drink which she did not drink. He was seen on the CTV camera of the supermarket entering and leaving the store with the drink. He took the complainant home and drove off. When the complainant entered her home her mother observed her eyes to be "pale" and that she immediately burst into tears. The complainant's father was summoned and they made a report to the police.

Sentence

- [3] The maximum sentence for Indecent Assault contrary to 14 (1) of the **Sexual Offences Act 1995** is five (5) years imprisonment and for Serious Indecency contrary to section 15 (1) (a) of the aforementioned **Act** is ten (10) years.

Construction of the Sentence

- [4] The first step in constructing a sentence is to establish a starting point of the offence. An indecency case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. In adhering to the Sentencing Guidelines the Court must establish the starting point for the offence within the relevant range noting that there are four stages within Step 1.
- [5] The first stage is to consider the consequences by assessing the harm caused by the offence. In doing so the Court must carry out an assessment of the evidence marshaled at trial. The evidence was that the defendant took the complainant in his bus and sexually assaulted her after asking her for a kiss and then kissing her on her mouth. After the assault the defendant asked her if she wanted a drink and he took her to a shop where he purchased a pineapple soda which she did not drink.
- [6] The Court finds that the matter falls within consequences category 2 - High as the complainant was under 16 years of age for both offences.
- [7] The second stage that the Court is to consider is the seriousness and this will be done by assessing the culpability of the offender. For the offence of serious indecency the Court finds that this falls within Level A seriousness as there was penetration of the mouth by the penis and

² To save the complainant's identity she will be referred to as XY

there was significant disparity of age as the “XY” was fifteen (15) at the time and the defendant was forty-nine (49).

[8] The third stage, having determined the category of harm and level of seriousness, is to find the starting point by consulting the grid as provided by the Sentencing Guidelines.

[9] For the offence of serious indecency the starting point is 45% of ten years (4 years and 5 months with a range of 30% to 60%. (3 years to 6 years). The serious indecency counts involved (Count two) the defendant putting his mouth on the vagina of “XY” and licking it. Count three involved serious indecency where the defendant put his penis into the “XY’s” mouth and ejaculated therein.

[10] An indecency case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. The Court notes that in assessing seriousness, this should include reference to the culpability of the offender.

[11] Therefore for counts two and three (serious indecency) the Court finds an appropriate starting point to be 4 years and 5 months. The figure will be adjusted upwards to take into account the following aggravating factors of the offence namely:-

(a) There was ejaculation into the mouth of the complainant

(b) There was a breach of trust as the complainant had known the defendant from she was a small child attending primary school and he was a friend of the family. The father of “XY” testified that the defendant would transport her to school when she was in kindergarten.

[12] The figure will therefore climb to 6 years and 5 months.

[13] In relation to the indecent assault count the Court finds there were no aggravating factors and in relation to the mitigating factors to the offence the Court found there were none.

[14] The Court therefore moves to step two of the sentencing guidelines which requires the Court to adjust the figure upwards or downwards for the aggravating or mitigating factors in relation to the offender.

Aggravating Factors

[15] There were no aggravating factors to the offender.

Mitigating Factors

[16] The defendant is of good character but it should be noted the more serious the offence the less weight the Court is obliged to attach to it. The case of **Desmond Baptiste v The Queen** High

Court Criminal Appeal No. 8 of 2003 further elaborates on this point – *“as to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance. In **Turner v The Queen** ((1975) 61 Crim. App. Rep.67 at page 9) a case of armed robbery, Lord Lane, CJ stated that “the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity”. Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature.”*

- [17] This Court is of the considered view that this matter is of a very serious nature and so places very little weight on his previous good character. The defendant will therefore only benefit from a discount of 5 months for his previous good character. This will bring the figure to 6 years. I will now assess the harm suffered by “XY” and the mitigation put forward by the defendant’s Counsel.

Mitigation

- [18] When Counsel for the defendant appeared on 23rd January 2023, he submitted in his plea of mitigation that the defendant was a man of good character, he had played an important role in society and that the offence for which he had been convicted was completely out of character. Counsel also urged the Court to take into account that the defendant maintained his innocence notwithstanding the verdict of the jury. He pointed out that the defendant being the father of a 6 year old child was a responsible parent and that any incarceration would have an adverse effect on that child. Counsel also drew the Court’s attention to the current age of the “XY” saying “she is now an adult living the life of an adult”. The Court noted Counsel’s submissions and is grateful for his remarks. The Court has already taken note of the defendant’s good character and how much weight to be attached to it.

Probation Report

- [19] The probation report was very helpful to the Court and shed light on the defendant’s personality and his relationships with the mothers of his children and community members. The Court is grateful to the Senior Probation Officer Mr. Alvin Jarvis for the in depth report. The Court found the most unfortunate detail in the report was the fact that the defendant expressed no remorse or consideration for the complainant and her family. Interestingly however the author of the report revealed that the defendant started a relationship with the mother of his 4th child while she was aged 14. That child was born when the mother was only fifteen years old. There was a mixed reaction from the defendant’s fellow bus drivers and members of the community. The senior members of the Optimist Club described the defendant as being generous, helpful and caring. They indicated that his contributions to their organization were appreciated.

Counselor's Report

- [20] "XY" was being seen by a pastor/counselor but the counseling did not last very long, three months to be exact. However the sessions did shed some light onto the state of mind and harm the incident caused to her. The counselor indicated that the complainant *"exhibited great deal of stress, which opinion caused her much uneasiness, fear and intimidation. To her everybody is the same"*. The counselor observed that during sessions *"she would shake her feet, and bit (sic) her nails many times particularly when the issue of the assault was mentioned"*. The counselor went on to observe that *"coping with the situation has (sic) caused some unfortunate and uncomfortable moments, even in interacting with others. In that when certain issues relating to similar situations where other people are able to share their experience, she would be most uncomfortable and never wished to engage in such conversation"*. It is therefore apparent to this Court that "XY" has suffered and continues to suffer emotional harm which manifests itself in hostility, unease and fear. There are also feelings of regret illustrated by her telling the counselor that *"she wished she had never taken his bus"*. **The Victim Impact Statement** contained in the probation report prepared by Senior Probation Officer Mr. Alvin Jarvis indicated that her academic performance had suffered plummeting from an "a" student to barely passing grades, as a result of the case before the Court and that she had attempted suicide.
- [21] Having considered the harm to the complainant which the Court deems to be serious, the 6 years will be toggled upwards to 7 years in prison. On counts two and three, serious indecency on the indictment the defendant is sentenced to 7 years in prison both sentences to run concurrently.
- [22] I turn now to the first count on the indictment which is the indecent assault which as I said earlier involved the defendant kissing the complainant on her mouth. For this offence I find the starting point to be 45% of five years which is two (2) years and four months. I will follow the same procedure as I did for count two and three on the Indictment. For the offence of indecent assault the Court finds that it falls within level A as there was significant disparity of age. As already noted "XY" at the time of the offence was 15 and the defendant was 49. There are no mitigating factors save for the fact that the defendant has no previous convictions. His complete lack of remorse has to be taken into account as well as the dire harm experienced by the complainant. For this count the defendant is sentenced to 18 months in prison. This sentence on count one will run concurrently with counts two and three. His sentence will take effect from the date he first went into custody on 12th October, 2022.
- [23] Finally I wish to indicate that bus drivers in the country of Antigua and Barbuda are to be on notice that their despicable conduct of preying on the young and vulnerable will not be tolerated. The bus drivers of this country are to perform a service, that services is to transport persons from point A to B not to groom and abuse their passengers for their own sexual gratification. I am ordering the defendant undergo counseling and rehabilitation treatment for sex offenders while he is incarcerated.

Ann-Marie Smith
High Court Judge