

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

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

CASE NO: ANUHCR: 2020/0089

BETWEEN:

THE QUEEN

V

SEBASTIAN CHARLES

APPEARANCES:

Ms. Rilys Adams, Counsel for the Crown

Mr. Andrew O’Kola, Counsel for the Defendant (Amicus)

2021: May 12th, 14th;
June 5th

SENTENCING DECISION

Background and Facts:

- [1] **WILLIAMS J.:** The Defendant, Sebastian Charles, at his arraignment on 12th May, 2021 pleaded guilty to two Counts of Sexual Intercourse with a Female Under the Age of Fourteen, contrary to Section 5(1) of the **Sexual Offences Act** No. 9 of 1995 of the Laws of Antigua and Barbuda. The matter was adjourned to the 14th May, 2020 to permit the Crown to return and present the facts of the case. On the return date, (Friday 13th May, 2021), following the presentation of the facts by the Crown, Mr. Charles maintained his guilty plea; he was assisted, pro bono, by Counsel Mr. Andrew O’Kola.
- [2] The offences for which the Defendant pleaded guilty occurred in Codrington Village, Barbuda on the 12th July, 2019 and the 28th August, 2019. The Virtual Complaint in both matters was the same minor, aged 13 years at the time. (The Virtual Complainants name is being withheld)

- [3] Mr. Charles and the Virtual Complainant are cousins. At the time of the offences, he lived in close proximity to the Virtual Complainant. The Defendant shared premises with his sister and his niece; he lived in one section of the house while his sister and niece occupied the other section of the house. The Virtual Complainant frequented the premises where the Defendant lived; she often obtained assistance from the Defendant's niece in completing school assignments.
- [4] The first incident occurred about two weeks after the Virtual Complainant's thirteenth birthday. The Virtual Complainant as well as the Defendant's niece was in his section of the house doing a school assignment. When this was finished, the Defendant's niece returned to the section of the house she occupied with her mother. Mr. Charles stopped the Virtual Complainant as she was leaving. The Defendant fondled the Virtual Complainant's breasts; she asked him to stop, but he did not. He took her into his bedroom and proceeded to undress her and then have sex with her. He was wearing a condom at the time.
- [5] The Virtual Complainant went home afterwards. She did not say anything to anyone about what transpired. She was scared to tell her mother.
- [6] On 28th August, 2019 the Virtual Complaint went to visit the Defendant's niece. While passing the Defendant's room, the Virtual Complainant heard a voice that she recognized; it was the voice of one of her friends. The Virtual Complainant went into the bedroom and she noticed her friend on the bed with the Defendant watching a movie. The Virtual Complainant remained in the room, seated on a beach chair. They were then joined by the Defendant's niece. When the movie ended, the other two young ladies exited the room. The Defendant then reminded the Virtual Complainant that she owed him, because he had allowed her to use his phone to make a phone call. He then started fondling her and she said to him that he was her cousin. The Defendant undressed the Virtual Complainant and had sex with her.
- [7] After the sexual intercourse, the Virtual Complainant said to the Defendant that she was never coming back to his part of the house again because of what happened. She went home. She did not say anything to anybody about what transpired.
- [8] On 26th October 2019, the Virtual Complainant's mother left Barbuda for Antigua, leaving the Virtual Complainant, her sister and brother in the house. About 3:00 a.m. on 27th October, the Virtual Complainant's brother heard a sound in the house and he went to investigate. He found the Defendant, Mr. Charles, dressed in all black stooping down next to a chair that was close to the curtain that was at the entrance to the room where the Virtual Complainant slept.
- [9] The Defendant when questioned as to the reasons for his presence in the house, claimed that he was sent to collect some DVD's. The police were summoned. The Virtual Complainant then reported the encounters of July and August. Mr. Charles denied to the police that he had sex with the Virtual Complainant.

Defendant's Mitigation

- [10] Mr. O'Kola urged that leniency be extended to the Defendant. Counsel enumerated what he considered to be the aggravating features of the case, but submitted that the Defendant, aged 33 (at

the time of the offences), possessed some redeeming value. Mr. O’Kola went on to note that in balancing the public’s interest against that of the Defendant that there were two principal things to consider. The first was that rehabilitation, which is a principal aspect of sentencing, was not available in the present prison system as there were no programmes at the prison to allow for rehabilitation.

- [11] The other principal submission from Mr. O’Kola was that in sentencing the Defendant, one ought to follow the practice used by Morley J, in **The Queen v Elton Charles** (ANUHCR 2017/0025) in which he gave a discount of 25% of the sentence because of the conditions at the prison, which were deemed by the judge to be rudimentary. Mr. O’Kola noted that Smith J in **The Queen v Corey Mills** (ANUHCR 2018/004) also spoke of a deduction because of the conditions at the prison.

- [12] Morley J in **Elton Charles** said:

“21. As I have observed when passing sentence for murder on **Errol Barnes** on 08.06.17, on **Steve Urling** on 24.07.17 and on **Meryl Chiddick** on 15.04.19, I have visited the prison on Antigua, having done so annually, now three times in Decembers 2016, 2017, and 2018. The prison staff do excellent work in very difficult circumstances. The prison is called ‘1735’, as that is when it was ground first used for custody. The facilities appear to date back to the 19th Century, more in keeping with 150 years ago, rather than the 21st Century. Facilities are rudimentary. The prison is overcrowded. Remandees are often twelve to a cell with only six beds, allowed out often but only for about six hours a day. Convicted prisoners in another sections of the prison are in small cells and allowed out only during daylight hours, (oddly for longer than the remandees who are unconvicted, innocent until proven guilty). In the overcrowding, there is potential for the spread of disease. There is an outside bank of toilets into a pit under corrugated iron, about 30m from the kitchens. During lockdown, urination and defecation are into plastic buckets, lacking any privacy and requiring morning slopping out. I consider these conditions to be far more difficult than in a UK prison for which there minimum terms have been calculated, and consequently there should be a further reduction in the minimum term here to allow for the fact it is to be served in far harsher conditions.

“22. I assess these harsher conditions merit a reduction form a UK sentence of roughly, though not mathematically precisely, one-quarter, which for this case will mean 12 years so that the minimum term of 48 years to be served in ‘1735’, is to be reduced [to] 36 years.”

- [13] Smith J in **Corey Mills** looked first at the mitigating factors:

“[34] This will bring the figure to thirty three (33) years. This figure will be adjusted downwards to take into account the mitigating factors...

“[35] The downward adjustment will be by five (5) years. A further (2) years will be deducted to take into account the deplorable conditions at the local prison. This will bring the sentence to twenty six (26) years.”

- [14] Ms. Adams on behalf of the Crown said that she was not in a position to assist with regard to whether or not there were any rehabilitation programmes available to prison inmates.

Crown's Response

- [15] On the issue of the discount that was given to **Charles and Mills**, Counsel for the Crown submitted that those cases were different, in that the Defendants in those cases were being sentenced in relation to murder, while the offences for which the Defendant in the present case was being sentenced were all unlawful sexual intercourse. In Counsel's view the matter of any discount for the conditions at the prison was something for the executive.

Principles of Sentencing

- [16] The principles of sentencing are outlined in the consolidated judgment of **Desmond Baptiste v The Queen** Saint Vincent and the Grenadines Criminal Appeal No: 8 of 2003. The four identified headings are: retribution, deterrence, prevention and rehabilitation. The importance or significance of any of the factors may vary from case to case. Not all of the factors need to be present in every case.
- [17] As far as retribution goes, the Court must express the public's disgust with offences such as this. Children belong to a vulnerable group who must be protected.
- [18] Deterrence if both general and specific. Given the incidence and prevalence of these types of offences, a strong signal needs to be sent to would-be offenders that there are serious consequences for such conduct. Of the eighteen new matters listed for arraignment on the 12th May, 2021 twelve of them had to do with sexual offences, the majority being sexual intercourse with minors. As far as specific deterrence is concerned, it is noted that the Defendant on the 18th October, 2017 was sentenced on two counts of sexual intercourse with a girl under the age of sixteen. He was sentenced to fifteen months in prison, which amounted to the time spent on remand.
- [19] Prevention has to do with protecting society from persons who persist in high rates of criminality. While the Defendant does not have an absolutely horrendous record, he has interacted with the criminal justice system on a number of occasions.
- I. In 2010, he was convicted of two separate charges of breaking and larceny and another for possession of ammunition. He was placed on probation; given two months to pay a fine of \$4,250.00 or six months in prison; and fined \$1,000.00 to be paid in six weeks or three months in prison.
 - II. In 2011 he was again convicted of breaking and larceny and sentenced to six months in prison. The breach of probation was also enforced.
 - III. In 2013 he was convicted of breaking and larceny. This time he was sentenced to one year in prison.
 - IV. In 2014 he was convicted of larceny. He was fined \$500.00 forthwith and placed on a bond.
 - V. In 2015 he was convicted of two charges of house breaking and larceny and ordered to pay \$250.00 compensation in five weeks, in default six months in prison. He was

also placed on one year's probation. He was convicted, reprimanded and discharged on one of the charges.

VI. In 2017 he was convicted of two counts of sexual intercourse with a female under the age of sixteen and was sentenced jointly to fifteen months in prison, which amounted to time served.

[20] Rehabilitation is usually one of the most important aspects of sentencing, since there ought to be programmes and activities to assist in the reformation of persons and to equip them with the necessary skills to return to society and productive individuals. Counsel for the Defendant from the bar table contended that there are no such programmes available at the prison in St. Johns; and the Crown was not in a position to say whether or not that was so.

Sentencing Guidelines

[21] Section 5(1) of the **Sexual Offences Act** provides that a person convicted of sexual intercourse with a minor is liable on conviction to imprisonment for life. The **Sentencing Guidelines of the Eastern Caribbean States** points out that for the purpose of calculating the starting point, where the legislation provides for life imprisonment it is to be treated as thirty years.

[22] The first thing to be done is to assess the seriousness of the offence and its consequences by reference to the harm caused. The Defendant sought to make the point that he did not apply force to the Virtual Complainant. There was no evidence of extreme psychological or physical harm to the Virtual Complainant. What was apparent from the facts, which was accepted by the Defendant, the Virtual Complainant sought to remind him that he was her cousin. Also, the Virtual Complainant's words to the Defendant after the second incident that she would never come back to his part of the house again because of what happened, points to her troubled state of mind. The Defendant's tactic of detaining the Virtual Complainant and telling her that she owed him because he allowed her to use his phone to make a phone call is clearly the application of pressure and psychological force on a young person. She was afraid to report the incident to her mother. These factors would place the offence in Category 2 – High.

[23] The seriousness level is considered to be Level A (High) when one considers a number of factors. The Defendant was related to the Virtual Complainant. He lived right next door. The Defendant therefore was in a position of trust in relation to the Virtual Complainant. One has to also look at the significant disparity in age: the Virtual Complainant had just turned thirteen years old; he was 33 years old, or twenty years older than her or looked at another way, more than twice her age.

Calculation of the Sentence

[24] Considering that this is a Category 2 offence with a high (Level A) seriousness, the starting point for this matter is 13 years, 6 months, that is 45% of the maximum sentence.

[25] It is noted that there is a paucity of mitigating factors.

- [26] The principal aggravating factor to be considered at this stage is that the Defendant was released from prison less than two years before these matters, for committing two counts of sexual intercourse with a female under the age of sixteen. Now he has pleaded guilty to sexual intercourse with a girl who is even younger than the teenager in the previous matters. The fact that he is a recidivist would have the effect of pushing the sentence up by two-and-a-half years. That would take it up to sixteen years.
- [27] The Defendant is being sentenced for more than one act of unlawful sexual intercourse on a minor. The fact that it was two separate offence has to be factored in. There has to be a marginal increase to give effect to the totality of the Defendant's offending. A further two-and-a-half years is therefore added, taking the figure up to eighteen and a half years.
- [28] Although the Defendant initially denied to the authorities that he had sex with the Virtual Complainant, he freely and voluntarily pleaded guilty at his arraignment. He is therefore entitled to a generous credit for doing so. The **Guidelines** provide for a reduction of one-third to be given for a guilty plea entered at the earliest practicable opportunity. The Defendant will therefore be given the full one-third discount from the eighteen and a half years, which would amount to six years and two months, leaving a term of twelve years and four months.
- [29] The time that the Defendant spent on remand must also be accounted for. The Defendant was first detained by the police on Sunday the 27th of October, 2019. He pleaded guilty on the 12th May, 2021. The eighteen months and sixteen days that he spent on remand has to be accounted for.
- [30] I have not yielded to Mr. O'Kola's request to apply a further discount for the alleged poor conditions at the prisons. I refrained from doing so first of all because I do not think that I have had the benefit of full and complete submissions on the point. Secondly, when considering the antecedent record of the Defendant who has been in and out of the prison on multiple occasions since his first incarceration on the 20th June, 2011 for two consecutive six month periods. He was again imprisoned on the 8th May, 2013 for one year. Then by the time he was sentenced on the 18th October, 2017 to two concurrent terms of fifteen months, it turned out to be time served. Prison is not an environment that the Defendant is unfamiliar with neither does it appear as though the conditions there are so revolting that the Defendant does not want to be there or is making serious efforts to avoid imprisonment.

Sentence

- [31] Sebastian Charles, for the two counts of Sexual Intercourse With a Female Under the Age of Fourteen, that you pleaded guilty to, you are sentenced to ten years and eight months with effect from the 12th May, 2021.

Colin Williams
High Court Judge

By the Court

Registrar

