

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTserrat

CASE MNIHCR 2019/0008

THE QUEEN

V

DAVID BRANDT



APPEARANCES

Ms. Anesta Weekes QC with Mr. Oris Sullivan for the Crown.

Mr David Brandt the defendant in person.

2021: JULY 19

SENTENCE

- 1 **John J (AG):** On 30th June 2021 following a trial before a judge and jury the defendant David Brandt an attorney-at-law was found guilty by a 7-2 majority verdict of sexual exploitation of persons under the age of 18 and perverting the course of justice. The trial lasted 5 weeks.
- 2 The indictment preferred by the Director of Public Prosecutions (DPP) on 25th May 2021 contained eight (8) counts namely:
 - i. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(d) of the Penal Code, Cap 4.02 (as amended by SRO 7 of 2010)

- ii. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(a) of the Penal Code, Cap 4.02 (as amended)
- iii. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(a) of the Penal Code, Cap 4.02 (as amended)
- iv. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(d) of the Penal Code, Cap 4.02 (as amended)
- v. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(a) of the Penal Code, Cap 4.02 (as amended)
- vi. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(a) of the Penal Code, Cap 4.02 (as amended)
- vii. Dealing in people under 18 for Sexual Exploitation contrary to section 141(1)(a) of the Penal Code Cap 4.02 (as amended)
- viii. Doing an act tending and intended to pervert the course of Public Justice contrary to Common Law.

3 **Summary of factual background**

Between the period October 2010 through June 2016, the defendant engaged in sexual activities with girls under the age of 18 (13-17 years old). Such activities included oral and vaginal sex in the defendant's law office as well as requesting of them and receiving still and moving images of some of the young girls' breasts and genitalia. He also entered deals with some of the girls to bring other young girls for him to engage in sexual relations with them. The defendant paid some of the girls in cash and sometimes by western union money transfers. Between January 2018 and June 2018 the defendant, while on bail, instructed one of the victims not to speak to the police about the impending criminal trial and transferred money to her through a third party. This was a clear breach of one of the bail conditions imposed on him.

Sentencing Objectives

- 4 The courts have always maintained that the most difficult and controversial area for the trial judge is fitting the punishment to the crime committed. Yet, all Judges would agree that sentencing is perhaps the most difficult area of their work in the criminal courts and this difficulty is not made any easier when Judges have a wide discretion available to them. A compendium of Sentencing Guidelines of the Eastern Caribbean Supreme Court for Sexual Offences was re-

issued in April 2021. It deals with a range of sexual offences but does not address sexual exploitation of persons under eighteen years of age.

The court will nevertheless follow the steps set out in the Sentencing Guideline of the Eastern Caribbean Supreme Court with each relevant step being identified to the offender before sentence is passed.

The first step will be the establishment of the starting point for the offence. In order to arrive at a starting point the seriousness of the offence and the harm to the victims by the offence are paramount. The second stage is to assess the seriousness of the offence by reference to several factors example disparity of age, abuse of position of trust, significant degree of planning including grooming or enticement. Having considered the level of seriousness the court must now find an appropriate starting point. Once the starting point has been established the court will go to the next stage which is considering aggravating and mitigating factors of the offence and adjust upwards or downwards as the case may be. The court will always give credit for any time served on remand.

- 5 With those factors uppermost in mind I now consider some general principles. In the case of **Desmond Baptiste and Others v The Queen Crim. App. No. 8 of 2003**. Byron CJ (as he then was) referred to the Sentencing Act in Australia which espouses comprehensive and useful goals that sentencing is supposed to fulfill. Section 5(1) of the Act sets out the only purposes for which a sentence may be imposed are:

- i. to punish the offender to an extent and in a manner which is just in all the circumstances; or
- ii. to deter the offender or other persons from committing offences of the same or a similar character; or
- iii. to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or
- iv. to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or
- v. to protect the community from the offender; or
- vi. a combination of two or more of those purposes."

6 In the same case Byron CJ said at paragraph 29:

"As to the fact that the offender was committing the 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 the circumstance."

7 The learned Chief Justice then referred to **Turner v The Queen (1975) 61 Crim App Rep. 67 at page 91**, a case of armed robbery, where Lord Lane, CJ stated;

"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."

8 A good starting point in addressing the general principles of sentencing is the dictum of Lawton L.J. in **R v Sargeant 60 Crim App R 74 at 77** where he said:

"Society through the courts must show its abhorrence of particular types of crimes. They do not have to reflect public opinion but must not disregard it. The only way the courts can show this is by the sentences they pass".

The classical principles of sentencing can be summed up in four words: **retribution, deterrence, prevention and rehabilitation** and it is the duty of the court upon which the responsibility lies to pass sentence to have regard to these four principles. This can only be achieved by applying the principles to the facts of the case to see which of them has greatest importance in the case in which the sentencing is being carried out.

- **Retribution:** This is where the penalty imposed is in response to the offence and reflects society's outrage towards the offence committed.
- **Deterrence:** (Both general and specific) With the general deterrence the penalty is imposed in order to deter other persons in the general society and to promote social order. Specific deterrence on the other hand is designed to prevent the particular offender from repeating the crime in the future.

- **Rehabilitation:** This principle suggests that a sentence should assist in rehabilitating the offender so that he can cease to be a threat to society and in turn play a positive role in the future.
- **Prevention:** The aim here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some, however, never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are, however, more suitable for repeat offenders.

9 It is now generally accepted that a plea of guilty attracts a significant reduction in the sentence to be imposed, usually one-third of the sentence. As Byron C.J said in **Desmond Baptiste v The Queen** (supra) at paragraph 28:

"There are sound public policy reasons for this. The criminal justice system benefits from genuine guilty pleas. Such pleas spare the judge, the jury and witnesses the stress and rigours of a full trial. The state saves both time and money."

Having said that the court wants to make it abundantly clear that it is the constitutional right of an accused person to plead not guilty if he so wishes and he will not be penalized further if at the end of the day the jury returns a verdict of guilty.

10 **Matters for consideration for an appropriate sentence in this case**

- i. The offences are of a serious nature. They involve sexual exploitation of young girls between the ages 13 – 15
- ii. Offences of this nature usually result in long term emotional and psychological harm to the victim.
- iii. The defendant at the time of the commission of these offences was already in his late 60s - 70s.
- iv. He once held one of the highest Public Offices in the island. He was the Chief Minister of Montserrat from 1997 – 2001. Additionally, he has been a practicing Attorney-at-law for a period in excess of forty years. He is also a Notary Public in Montserrat, an Office to which the recipient is appointed by the Chief Justice.

11 Perverting the course of justice:

By their verdict the jury accepted the evidence of the Crown's witness that the defendant used SH as the conduit to get to one of the witnesses in the case and to advise that witness not to speak to the police. He paid both SH and the witness. The defendant's actions can only have been to prevent the potential witness from testifying against him in his impending trial. It is a common law offence and there is no fixed penalty.

12 Mitigation Plea by the defendant

In his written plea in mitigation the defendant advanced the following

- i. There was no violence involved in the crime. There was also no physical contact with persons with the exception of GO.
- ii. I deeply regret that I engaged in the activities in which I have been convicted and apologize to all the virtual complainants and undertake that in the future, I will not engage in those, similar acts or any criminal activity whatsoever.
- iii. I have never been engaged in any criminal activity before this.
- iv. The offence of sexual exploitation is new and not prevalent. I am actually the first person to have been tried for this offence.
- v. Three of the complainants did not testify that they knew I was a Chief Minister.
- vi. The virtual complainants who lived in the Dominican Republic testified that they knew I was a lawyer. Moreover, it was third parties who approached me about them.
- vii. There is no evidence of psychological or physical injury suffered by any of the virtual complainants.
- viii. I spent several months (12 months) on remand at Her Majesty's prison.

13 Social Inquiry Report

A report was requested from Social Services Department concerning the defendant. The Probation Officer who prepared the report interviewed several persons including the defendant. The thrust of the defendant's interview with the Probation Officer was that he did not believe that

the offences he committed were sexual offences. He further said that he was entrapped. He also said that he was in a relationship with a young woman between the age of 16 – 18 years old and when it ended she began telephoning him and pestering him for money and she told him that she had a girl for him. He said that it was as a result of the several telephone calls from his estranged girl friend that he contacted the other victims. He described his behaviour as "having fallen into temptation". He denied having penetrative sex with any of the girls or any physical sexual contact. He admitted that the telephone calls he made were of a sexual nature.

14 In the report the defendant expressed remorse for his actions and that it was never his intention to cause harm to any of the victims. He said that on reflection, and in the future, he would conduct himself more appropriately and would ensure that he distances himself from such like behaviour.

15 He also said that he has accepted full responsibility for his actions and admitted that being an older person, he should have known better. He stressed that his former position as Chief Minister of Montserrat was in no way used to influence the girls and some of the victims were unaware that he once held such Public Office.

16 His Health:

According to the report, the defendant has a number of on-going health issues for one of which he had surgery six years ago. That surgery he said was unsuccessful and continues to cause him pain and discomfort. Additionally, he has had surgery on both knees about eight years ago and one knee continues to cause him pain and discomfort. He uses a walking-frame to assist with his mobility. He is on medication for diabetes, high blood pressure and on aspirin as a form of blood thinner.

17 Education:

The report said he attended St. George's Primary School and was a high performer. He went on to secondary school which he traversed barefooted over a five mile distance each day.

18 Employment:

According to the report, he began his working career as a Customs Officer, a position he held for five years during which time he pursued studies and gained several certificates. He secured a Canadian Scholarship which would have enabled him to study in the United Kingdom. However he chose to study at the University of the West Indies where he obtained his Bachelor of Laws Degree (LLB) and then went on to obtain his Legal Education Certificate (LEC). While at Law school he gained a scholarship which enabled him to pursue studies towards his Masters of Law (LLM). The report went on to say that he has built a practice in Montserrat and has been admitted to the Bar in Antigua and Barbuda. He indicated to the Probation Officer that as a result of the charges preferred against him he was denied the opportunity previously extended to him to be a Queen's Counsel, an honour bestowed upon a lawyer in recognition of his excellence in advocacy. An Honorary doctorate from the University of the West Indies was equally withdrawn as a result of the charges preferred against him.

19 Achievements:

The report stated that the defendant was in politics for 21 years. During that time, he was never defeated in any election where he stood as a candidate between 1983 until his retirement from politics in 2001. He used this to illustrate that he was a popular and well-liked politician. His greatest achievement in politics, he said, was when he became the Chief Minister of Montserrat. During that period, he was instrumental in influencing a reluctant UK Secretary of State responsible for the United Kingdom Department for International Development to provide additional housing aid for the people of Montserrat following the volcanic crisis.

He also listed as an achievement his success in getting funding for a distance-learning course at the University of West Indies Montserrat Campus. Additionally, he has represented Montserrat at the international level in cricket and served as the Vice President of the Leeward Islands Cricket Association. It was while in that position that he persuaded the South African Test Team to visit Montserrat to play in 2001.

20 Financial Situation:

According to the report, his license to practice law was withdrawn three years ago. That, he said, has had a devastating effect on his finances. He has had to draw on his saving which are now

almost depleted. His wife's income is small. He has no assets save and except the matrimonial home which is jointly owned by him and his wife. He has a few shares in the Bank of Montserrat.

21 His Family Life

He is married and has three adult children and eight grandchildren who all live abroad. His Children through the Probation Officer have all expressed a desire that a non-custodial sentence be imposed upon him having regard to his poor health and the impact incarceration will have upon him. His wife has described him as a God-fearing man of strong character. They have been married for fifty years. He has been supportive father and a member of the Anglican church and attends church regularly. She too has expressed concerns about a custodial sentence being imposed upon him. She pleads forgiveness for her husband.

22 Views from Community Members

- Professor Howard Fergus spoke highly of the defendant. He said that he has always been a civic minded citizen who used his office as Chief Minister to secure funds from the British Government to rebuild a section of the local University.
- Ms. Agnes Riley has known the defendant's family for more than twenty years. She described the defendant as honest and excellent at helping people. She referred to him as a good politician who was a good representative for the people of Montserrat.
- John Wilson – Businessman. Mr. Wilson has known the defendant since school days. He said that as a young man the defendant displayed the sort of grit, determination and ambition that marked him out for something higher. He concluded by saying that his dear friend needs psychological help. He too has pleaded for mercy for the defendant.
- Mr. Warren Cassell an Attorney-at-law has lived next door to the defendant in Olveston for the past 32 years. He described the defendant as a success oriented man who is extremely kind and loves to see people progress in life and that that passion might be as a consequence of the defendant coming from a humble background. Mr. Cassell said that he is aware that the defendant has assisted many persons on the island with legal

problems 'Pro Bono'. He said that he too has spoken to the defendant who deeply regrets the consequences of his actions.

- Retired Bishop Abraham Riley of the Pentecostal Church. He has known the defendant for 50 years. He said that as a politician he was always very visible and accessible and participated in community events.

23 Risk Assessment:

According to the Probation Officer the defendant during the interview did not say that he accepted responsibility for his actions: he did express a willingness to participate in therapy and expressed remorse for his behaviour.

24 The Crown's input on Sentencing

- i. The Crown has accepted the absence of guidelines for sexual exploitation in this region and has invited the court to draw upon the guidelines from the United Kingdom under the authority of section 12 of the Evidence Act Cap 02.08. Section 12 of the Evidence Act addresses admissibility of evidence and not admissibility of guidelines for sentencing of persons for sexual exploitation. I did not consider them very helpful in this sentencing exercise.
- ii. Culpability: Crown has submitted that a community puts its trust in all qualified lawyers that they will uphold the law so that all members of that community are safe. Parents of children under age 18 are entitled to put their trust in lawyers not to carry out acts of sexual exploitation (in breach of a legal statute) upon vulnerable children.
- iii. Aggravating features of the defendant's criminal conduct: The Crown has submitted that the court should take into account the number of victims, the overlap of victims and the overall time span when sexual exploitation took place for the counts on the indictment.
- iv. The Crown further submitted that all the victims should be classified as "vulnerable", due to their need for money, lack of maturity and strength of character to resist a persistent person such as the defendant proved to be.
- v. The Crown also invited the court to take into account the effect of the defendant's conduct upon the victims in counts 2 to 7.

- vi. SH was visibly upset in the ABE interview and a break was required before she was able to continue the police interview. She was asked how she felt about the sexual activity with the defendant. She said she felt like a "whore".

25 Aggravating feature under the guidelines

- i. Two examples within the WhatsApp messages relating to the victim NV, demonstrated that the defendant knew that his actions were against the law. The following messages were sent by the defendant to MV **"...Tell she go in the bathroom open she legs and take a picture of she pussy and send it to me if she serious. Tell she delete it when she finish. Tell she do it now."** **"...let she call me or send me message and delete it."**

26 The Crown further submitted that court should take into account the following matters showing the manner in which the defendant operated with all the victims;

- ii. Use of persistent aggressive language to get what he wanted: NM is a good example. In the WhatsApp communication with the defendant she asked for money. She tried to ignore the defendant's request for sexual activity by telling him of her plan to study – plan to go England. The defendant told her he wanted to have sex without a condom – she refused and told him she did not want unprotected sex. The defendant ignored her responses and repeated his request for unprotected sex.
- iii. The defendant then persisted in requesting a photo stating *"send it now"*. The defendant wanted NM to find him *"a beautiful young girl to fuck"*. NM ignored the request by telling him, *"me have 2 subject and pursuing my math right now"*. The defendant continued his request that she find someone for him.
- iv. The defendant went on to ask for oral sex and allow him to ejaculate in her mouth. She responded *"that is nasty"*. The defendant continued his request for him to ejaculation in her vagina, and she said *"not me..."* Eventually she was persuaded by the defendant to send him a photo of her vagina. The Crown said that that was a perfect example of how the defendant found it easy to persuade, cajole his victims, sometimes by sheer repetition and a bullying attitude to get what he wanted.

- v. The communications with MV to obtain NV were relentless, repetitive and demanding in an over-bearing aggressive manner spanning a period of some 9 months

27 **Perverting the Course of Justice – Common Law**

As indicated earlier this is a common law offence. The Prosecution has brought to the court's attention a few legal authorities and the principle set out therein in relation to the offence which has been described as a very serious offence which undermines the administration of justice.

28 **My Analysis:**

The offences for which the defendant have been found guilty are of a serious nature. Although there was no evidence of the prevalence of the offence it is nevertheless an offence now known to the law with the aim of protecting young girls from sexual exploitation.

- 29 Whether the victims were aware that the defendant once held office as a Chief Minister is irrelevant. The defendant has said in his plea in mitigation that it was a third party who approached him about the girls. That in no way takes away from the seriousness of the offence.

- 30 While there is no evidence of psychological or physical injury suffered by any of the vulnerable witnesses, the court can take notice that victims of sexual abuse are likely to experience a range of short or long term effects.

- 31 In determining the starting point for the offence of sexual exploitation it is necessary that the court looks at each count.

- i. Count 2 related to NV who was 13 years of age at the time. The defendant requested of her photos of her naked body and genitalia. They were sent to him. A good starting point for this count is eight (8) years imprisonment.
- ii. Count 3: The defendant asked MV to send him pictures of CR's genitalia and also of herself performing oral sex on CR. He further agreed to send money to CR if MV conducted oral sex on CR. The starting point for this count will be nine (9) years imprisonment.

- iii. Count 4 related to NM a person under the age of 18. The defendant's behaviour here was of utmost gravity and showed his lack of respect for pregnancy and the victim's reluctance to have sex with him. I will place a starting point of nine (9) years imprisonment.
- iv. Count 5 related to asking MV about having sex with GO, purchasing items and goods including a mobile phone for GO. Arranging credit at a store for her. A starting point of seven (7) years imprisonment.
- v. Count 6 related to sexual activity with SH where the defendant told her that if she treated him good, he will treat her good. Additionally, he invited her to his office on numerous occasions to have vaginal sex and oral sex. On those occasions, he would give her money. I will place a starting point of nine (9) years imprisonment.
- vi. Count 7: During the period October 2013 – June 2016, the defendant asked S.H to take and transmit to him still images and a single moving image of her genitalia. A starting point of seven (7) years imprisonment.

32 **Perverting the court of justice:**

I have considered and gained useful guidance from the following cases,

- i. **R v Snow [2008] EWCA Crim 580**, where at paragraph 5 the court said “...*Perverting the course of justice is invariably a grave matter because it strikes at the root of the criminal justice system...*” As was noted by the court in **R v Mitchell [2003] 1 CR. APP.R (S) 97**, important factors going to the seriousness of the particular offence are – the length of time during which the deception continues, the nature of the deception and the success of the deception.”
- ii. In **R v David Robert Phelps [2017] EWCA Crim. 2403** The accused was a Police Officer, a detective. In delivering the judgment and imposing a custodial sentence the decision of the Court of Appeal in **R v Evans-Keady [2014] 1 Cr. App R (S) 66** was referenced where the court opined:

“Conspiring to pervert the course of justice is treated seriously by the courts. That is hardly surprising. As the Attorney General’s Reference (No. 35 of 2009) (R v Binstead) [2010] 1 Cr App R (S) 61 shows the offence ‘undermines the very system of criminal justice’. It is

especially serious when the defendant is a serving police officer. Someone who is supposed to be upholding the law is undermining it instead."

- iii. In **R v James David Flinders [2021] EWCA Crim 846**, the principle to be extracted is set out at paragraph 11, that is to say:

"It is wholly in accordance with sentencing principles that sentences for offences of attempting to pervert the course of justice are imposed consecutively to sentences on other offences, especially when the other offences are, as here, the reason for the attempt to pervert the course of justice."

- 33 In view of the several aggravating factors in counts 2 – 7, the court will increase the sentences by 18 months. The defendant cannot benefit from the mitigating factors in his plea of mitigation as the reasons set out therein strongly suggest why he ought not to have committed the offences. The aggravating factors in this case far outweigh any of the mitigating factors save that the defendant has had a hitherto clean record. Accordingly, I will reduce the sentence on each count by 9 months.

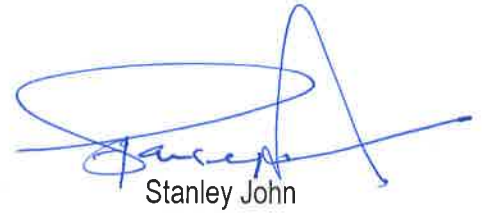
34 Conclusion:

This court hopes that the sentences imposed in this case are a strong message to the society in general and specifically to those persons in whom the public places trust that no one is above the law. The courts of this country will continue to show its abhorrence to such offences by the sentences imposed.

Accordingly, the following are the sentences in this case:

- Count 2: 8 years + 18 months – 9 months
- Count 3: 9 years + 18 months – 9 months
- Count 4: 9 years + 18 months – 9 months
- Count 5: 7 years + 18 months – 9 months
- Count 6: 9 years + 18 months – 9 months
- Count 7: 7 years + 18 months – 9 months

- 34 Perverting the course of justice strikes at the very root of criminal justice system. The defendant is one of the most senior lawyers on this island and his actions warrant severe punishment and a strong message to the society. For this offence, he will serve a term of fifteen (15) years imprisonment. Whilst there is precedent for this sentence to run consecutively to the other offences, the sentence will run concurrently as the offence is so closely connected with the other offences. Accordingly, the defendant will serve a term of 15 years imprisonment less the time spent on remand.

A handwritten signature in blue ink, appearing to read 'Stanley John', with a large, stylized loop at the end.

High Court Judge (AG)