

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 2020/0015

REGINA

V

KAYOY JARRETT

APPEARANCES

Mr Oris Sullivan, the DPP, and Ms Jai Len Williams for the Crown.

Mr Kenroy Hyman for the defendant.

2021: MAY 14

SENTENCE

For unlawful sexual intercourse with daughter of girlfriend, aged 10

- 1 **Morley J:** Kayoy Jarrett aged 30 (dob 03.06.90) falls to be sentenced for having unlawful sexual intercourse with AB¹ in July 2020 when aged 10, being the daughter of his girlfriend. He was convicted on a majority 7:2 by the jury on 07.05.21, following a trial beginning on 19.04.21.
- 2 Jarrett had been in a relationship for about a year, and was trusted with his partner's children, including a son aged 8. There was physical contact with AB through tickling which had been the subject of complaint by AB's father. The evidence was on one occasion he had permission to

¹ The complainant is entitled to anonymity and will not be identified.

take AB to the shop, did so, but then secretly abducted her to his home in Look Out, where he immediately set about sexual intercourse, being away for about a half hour. AB was willing though her consent is irrelevant, and reported she was 'sexed hard', feeling a pain in her belly, and later there was 'burn' when she went to the toilet. Jarrett told he loved her and not to tell her mother. In two police interviews on 30.08.20 and 27.09.20, and then confirmed to the jury, she reported Jarrett had put his penis in her vagina. The event was discovered when on 28.08.20 her uncle seized her phone and found her in sexually explicit conversation with Jarrett on whatsapp, asking to have more sex and for a picture of his penis, while he asked for a picture of her vagina which she tried to send though the image was too dark to see. On medical examination the day the phone was seized her hymen was found broken. Jarrett denied the event, making limited comment to police, pretending he thought himself in whatsapp with her mother, and did not give evidence, arguing at trial through counsel he had never taken AB to the shop alone, about which her mother had made contradictory statements. The trial was unusual in that cross-examination of AB was via an intermediary, with pre-written questions, about which there has been an earlier ruling.

- 3 Jarrett from Jamaica has no previous convictions. Extensive court opportunity to observe AB, who was withdrawn, extremely quiet, and appeared obviously a prepubescent child, has meant no victim impact assessment has been thought needed. No pre-sentence report was sought, also not needed in light of the obvious seriousness of the offence.
- 4 Sentencing as a hearing began on 13.05.21, and Jarrett's mother on Jamaica, Ms Desrine Jarrett, 56, appeared on zoom, surrounded by family, in much emotion, to tell of his virtues. He has been a responsible man, her only son, sickly as a child, later excelling at sport in track & field, quiet, a Sunday school participant, a model citizen, leaving school at 17, always in work, helping her financially, particularly with medical bills, her having open heart surgery in November 2020, which is a condition exacerbated by his conviction, her fainting on learning of it. He has a son aged 12 on Jamaica, by Latona, who wants to be a doctor or lawyer, also supported by him financially, \$600ec monthly, and with whom has been often in contact, and who tearfully cannot understand why there has been no normal contact in the last nine months (not knowing his father in custody). Jarrett came to Montserrat in 2012, has been working in the public service in sports,

- has two further children by Danika, aged 5 and 3, whom he also supports with \$600ec monthly, settling bills and school fees. Jarrett's sister Aneka Crossley also on Jamaica spoke, again with much feeling, describing how he supported her daughter when she broke her foot, as her only brother he is her 'everything', and she would put her 'neck on the gallows' for him, pleading for leniency. Sentence was then delayed to today, 14.05.21, in part to absorb the information offered and reduce remarks to writing, and also to allow emotions to calm.
- 5 From all the court has heard about Jarrett, who has been a responsible member of his family, it is evident he has acted wholly out of character.
- 6 In mitigation, Counsel Hyman made various points.
- a. It was offered there was still remorse; however this seems inconsistent with pursuing a trial, though it can be said Jarrett did not give evidence to argue the child had lied.
 - b. It was argued he had cooperated with the investigation; however this seems inconsistent with not revealing his phone pin to inspect what history he had of correspondence with AB.
 - c. It was cautioned the complaint by AB's father about the tickling may be merely a relationship jealousy; however he turned out right.
 - d. It was suggested the psychological harm suffered by AB ought to be the subject of expert evidence, and if arising appears not caused by the sexual encounter, but instead by the intense adult scrutiny which followed, and therefore should not be a feature of the offence; however, such scrutiny, if the operable cause of harm, is predictable to an offender and a natural consequence of the offence, concerning a child aged 10, meaning it is equally relevant to sentencing, while it is clear within the sentencing guidelines evidence of psychological harm can come from the victim, without need for expertise, and common sensibly this can include observing her demeanour and court interaction, as occurred here.
- 7 The maximum sentence on Montserrat for unlawful sexual intercourse with a child under 13, often said to be 'aggravated usi' is only 14 years, though is usually life elsewhere within the ECSC². On 14.04.21 a *Goodyear* indication of sentence was sought, in which the sentence on plea at the first opportunity was assessed as 8 years, and it was further said, to calculate the correct period of imprisonment, exceptionally the sentencing guidelines would not be followed.

² Eastern Caribbean Supreme Court.

- 8 Under the sentencing guidelines, updated on 12.04.21, for aggravated *usi* this case would have been in category 2A: in 'consequence category 2' as there has been serious psychological harm, evident in how the child presented, without need of expert report; and at 'seriousness level A' for as many as five reasons, namely breach of trust, significant disparity in age, a degree of grooming through tickling, steps taken to prevent reporting, and abduction. Such would lead to a starting point of 40% of the maximum, and with a range of up to 55%, meaning in years a starting point of about 6 years, with a range up to 8 years. In my judgment, this is simply too low for aggravated *usi* with a child aged 10, likely to scandalise the public, and through this judgment would encourage a change in the legislation on Montserrat to increase the maximum as elsewhere to life imprisonment.
- 9 If the maximum was life, notionally assessed as 30 years, then if under the guidelines the starting point would be about 12 years, with a range up to 16 years, which would be more appropriate.
- 10 In such an appropriate circumstance, exceptionally as I judge here, it is permissible to step outside the guidelines. Accordingly, I approach the sentence as follows, as arose at the *Goodyear* indication. Still mindful the maximum is only 14 years, I assess the starting point as 10 years, but aggravated by the number of reasons it is in 'level A', being five, so that it increases within the range to 12.5 years. For good character I reduce the sentence six months to 12 years. Further in light of the evidence of his strong sense of family responsibility offered through his mother and sister, not available during the *Goodyear* assessment, there will be a further reduction of one year to 11 years. There is no credit available for plea.
- 11 Counsel Hyman argues the guidelines for aggravated *usi* specifically contemplate that a victim may be under 10 and that various ECSC jurisdictions have differing maxima, meaning it cannot be right to step outside them. This is a good point, forcefully made, to which the answer is simply they do not fit this case. The framework of a maximum of 14 years is capable of dealing with this offending, only just, and only if the guidelines are not applied, which may otherwise raise public scandal, thereby undermining the guidelines generally, which would be a most undesirable outcome. The guidelines are not legislation, but guidance, almost always to be followed. It is clear derogation can occur exceptionally. The exception is I assess community outrage would

- ensue if the sentence in its name was any less; 11 years after trial for sex with a child aged 10, tempered by judicial reasoning, is the very least the public may tolerate.
- 12 The sentence will therefore be 11 years, where the maximum is 14. I would not pass the maximum as notionally there may always be a worse case, for example an even younger child.
- 13 Obiter, I make the observation, notwithstanding she was apparently willing, which led to the perhaps over-cautious charge of aggravated use, nevertheless, given her age, being 10, and from observing her withdrawn manner and interaction with adults, it seems unarguable she wholly lacked capacity to consent to any form of sexual activity, by reason of gross immaturity, and not merely because below 16, so that this is a case which might more properly have been tried as rape, for which the maximum is life, and for which the sentence might therefore have been longer.
- 14 *Kayoy Jarrett, please stand up.* For unlawful sexual intercourse when you were 30 in July 2020 with AB when 10, the daughter of your girlfriend, the sentence following trial is 11 years imprisonment, the maximum available being only 14 years. Time on remand will count. You will be eligible for remission of one-third of your sentence if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

14 May 2021