

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASES ANUHCR 2020/0002 AND 0015

REGINA

V

CROSSWELL FISHER

APPEARANCES

Mr Cedric Dyer for the Crown.

Mr Wendel Robinson for the defendant.

2021: MARCH 30

SENTENCE

For unlawful sexual intercourse, and separate serious indecency, with girls aged 15

- 1 **Morley J:** Crosswell Fisher aged 41 (dob 23.04.79) falls to be sentenced for two sexual offences concerning underage girls¹, to which he pleaded guilty on 29.01.21, namely (case 15/20) when 39 unlawful sexual intercourse with KJ in July 2018 when 15, and (case 2/20) when 39 serious indecency with EG (dob 13.10.03), by digital penetration, on 13.01.19 when 15. The maximum sentence for either offence is 10 years.

¹ The girls will not be identified as they are entitled to anonymity.

- 2 Pretending he was 22, Fisher met KJ on Facebook on 03.06.18, and at his home in All Saints in July 2018 developed a regular sexual relationship for a time from when she was 15, so that his plea to unlawful sexual intercourse is to a specimen count reflecting once a week interactions. He also encouraged her to send him naked photos. Though he denied it at first, he did finally admit the offending in police interview. He was arrested on 30.05.19 for a different offence on KJ, not pursued, so it may be noted the unlawful sexual intercourse was not initially her complaint.
- 3 On 12.01.19 EG made arrangements to stay with her aunt, and asked for a ride from Fisher, saying he could take her to his home in All Saints, where there was then consensual sexual activity, though by reason of her age EG's consent is irrelevant. EG's mother learned of it as a result of a medical inquiry, and so in February 2019 the police were alerted, though not by EG. In police interview, Fisher admitted to digital penetration.
- 4 Fisher has been in custody since 30.05.19, meaning 22 months, from when there was allegation, as above, he had committed a separate offence on KJ on 29.05.19, which would have been while on bail for the offence on EG, hence his remand, though the allegation was not pursued. This has meant, by his pleas, when resolving the two separate indictments, it is clear neither pleaded offence was while on bail for the other.
- 5 There has been a long history to matters, where Fisher first appeared before me at the High Court on 19.06.20, but represented by counsel not on island, with travel difficulties during covid. There was also a wait for the EG allegation committed up from the Magistrates in January 2021 to join the KJ allegation committed up in June 2020. Eventually his representation changed to Counsel Robinson on 23.11.20, who took time carefully to negotiate the above pleas, so that when offered on 29.01.21 they can be treated as being at the first practicable opportunity.
- 6 In his presentence report from Probation Officer Desiree Williams, dated 23.03.21, Fisher is reported as being of good character, a Jamaican national, with four teenage children back home, quiet, remorseful, and a one-time able footballer. Concerning victim impact, KJ now 18 reports continuing upset at his actions, while now 17 EG reported none, nor ever had any. By his plea the court understands at the time Fisher knew both girls were underage.

- 7 There are ECSC sentencing guidelines for these offences.
- 8 Turning to the unlawful sexual intercourse, in my judgment the offence falls within category 2A, by reason of the 'significant psychological impact', placing it in category 2, while the 'significant disparity of age', being 24 years, places it at level A. This means I assess the starting point as being 40% of the maximum, or 4 years, increased to 5 years by reason of the regularity of the intercourse. Considering his good character and remorse, supported by admissions, there can be a reduction of 9 months, from 60 months to 51 months. Taking into account further the harsh conditions of prison lockdown due to covid, supported as mitigation by **R v Manning (AG ref) 2020 EWCA 592**, meriting up to 25% reduction in the UK, when on Antigua there is 23hr lockup in harsher conditions, I consider in this case there can be a reduction of 12 months, from 51 months to 39 months. The plea being at the first practicable opportunity merits a further reduction of one-third from 39 months to 26 months.
- 9 Turning to the serious indecency, in my judgment the offence falls within category 2A, being in category 2 owing to EG being under 16, and at level A owing to the disparity of age, meaning I choose a starting point of 40% of the maximum, or 4 years. Considering his good character and remorse, supported by admissions, there can be a reduction of 9 months, from 48 months to 39 months, with a reduction of 9 months owing to covid conditions, from 39 months to 30 months. The plea being at the first practicable opportunity merits a further reduction of one-third from 30 months to 20 months.
- 10 These offences were on two separate underage girls, at different times, and I see no reason they should not be consecutive. However, considering next the principle of totality, at step 4 of the sentencing guidelines, I consider it overmuch simply to add them together, 26 plus 20, to total 46 months, where the behaviour is of a pattern in the same timeframe, six months apart, neither offence being on bail for the other. Recalling the least impact was reported concerning the serious indecency, so I adjust that sentence for totality from 20 months to 13 months, to be added consecutively to the 26 months for the unlawful sexual intercourse, making a total of 39 months, being 3 ¼ years.

- 11 *Crosswell Fisher, attending by zoom from prison, please listen carefully to your sentence.* For the reasons explained, following your pleas of guilty at the first practicable opportunity, for the specimen offence of unlawful sexual intercourse in July 2018 with KJ, then 15 when you were 39, the sentence in covid times will be 26 months imprisonment, and the sentence for serious indecency, by digital penetration, on 13.01.19 of EG then 15 when you were 39, adjusted for totality will be 13 months imprisonment, consecutively, making a total of 39 months imprisonment, being 3 ¼ years. Noting you have been on remand since 30.05.19, being 22 months, time on remand will count, to be calculated by the prison. You will be entitled to automatic release as remission if of good behaviour, after serving two-thirds, meaning 26 months, suggesting you may have another 4 months to serve. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

30 March 2021