

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

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

CASE NUMBER: ANUHCR 2020/0020-21

BETWEEN:

THE QUEEN

V

OLIVER LOOBY

2020: October 21st
November 3rd, 13th, 27th
December 4th, 10th

Appearances:

Mrs. Shannon Gittens, Counsel for the Crown
Mr. Michael Archibald, Counsel for the Defendant

JUDGMENT ON SENTENCING

Background

- [1] **SMITH, J.:** On 22nd June, 2020 the defendant, Oliver Looby entered a plea of guilty to three counts of sexual intercourse with a female under the age of sixteen. A presentence report was ordered and prepared

Facts

- [2] The complainant, "TS" was a 14 year old 2nd Form student in February of 2019 at the time.. She is the last of her mother's eight children, born on 25th November, 2004.
- [3] One day she was walking home from school when the defendant, then aged 52, pulled up alongside her and started a conversation which ended with them exchanging numbers.

- [4] The defendant called "TS" that night and she agreed to meet him the next day. They spoke during the meeting that day and according to the complainant it was similar to the conversation they had on the phone.
- [5] A few weeks later the defendant asked "TS" to have sexual intercourse with him and she agreed. On 21st February, 2019 the defendant picked "TS" up after school and took her to an area near the St. John's Pentecostal Church and had sexual intercourse with her in his vehicle. It was the complainant's first time having sex and when she started bleeding, the defendant gave her a rag and water which he had in his vehicle and she cleaned herself up. He then took her home and gave her \$20.
- [6] On 14th March, 2019, the defendant once again picked up "TS" from school and took her to his apartment at Cedar Grove. There he had sexual intercourse with her on a bed in one of the rooms. She then cleaned up herself and he took her home and gave her \$100.
- [7] The complainant's mother reported that she noticed from February her daughter was spending a lot of time on her mobile phone. She was not alarmed as she thought she was speaking to school friends. However, in May, her son drew her attention to the fact that "TS" would be on the phone late at night so she questioned her. "TS" then told her about the defendant and about them engaging in sexual intercourse. Shortly after this conversation Mr. Looby called "TS" and her mother took the phone and spoke to him. According to her she cursed him and told him that he was wicked as "TS" was a little school girl and she could be his daughter. He made no reply and hung up the phone. She then scolded her daughter and forbade her from having any further contact with the defendant.
- [8] At school, "TS" told her friend, another 14 year old about her interactions with Mr. Looby. That friend being shocked by the revelation encouraged "TS" to make a report at the Special Victims Unit of the Police Force and followed her there to make the report on 14th May, 2019.
- [9] The police commenced their investigations and on 20th June, 2019, the defendant was taken into custody and was questioned under caution. There he stated that he knows the girl and she always "talks rude things to him" and they also talk about school. He also stated that whenever she called him he would say that he's busy and she would be upset about that.
- [10] In his interview he denied having sexual intercourse with her and taking her to his home. He, however, admitted picking her up and giving her money and knowing that she was a school child as he had seen her in uniform.
- [11] He was arrested and charged and subsequently granted bail on 5th July, 2019. His bail conditions included that he was to have no direct or indirect contact with "TS".
- [12] On 20th July, 2019, "TS" missed a call from a strange number. It was a male voice who identified himself as the defendant's cousin.. The defendant then came on the phone and told "TS" not to say

anything in court about what happened between the two of them and he would give her anything she wanted and that he was even willing to pay her mother.

- [13] On Wednesday 24th July, 2019 “TS” received a call from the same number and it was the defendant yet again. He told her where to meet him a short distance from her home. He picked her up in his vehicle and he was in a company of another male. He dropped the man off and took her into a bushy area in the vicinity of Runaway beach and Sandals hotel and had sexual intercourse with her in the vehicle.
- [14] The man who was in the vehicle that day was a friend of the defendants who gave a statement to the police. He confirmed that the defendant used his phone on several occasions to contact “TS” who he described as a “young girl”. He explained that on the 24th July, 2019 when he picked up the complainant that she referred to him as “Uncle Oliver”. He then dropped him off on the road and went in the direction of Runaway Beach. He said he waited for him about twenty five minutes and when he failed to return he started walking. However, when he got close to Sandals hotel he saw the defendant with “TS”. He was picked up and they then went to drop off “TS”.
- [15] On 12th August, 2019, the complainant made another report concerning the defendant and three days later the police picked her up in the vehicle with the defendant. He attempted to flee but was apprehended and was taken into custody along with the complainant. The police also picked up Mr. Looby’s cousin, who had been in the vehicle on 24th July, 2019. While the two of them were in custody at the St. John’s Police Station, the defendant told him not to tell the police anything about him and the girl at the beach but his cousin responded that he had already done so.
- [16] The defendant was interviewed by the police on 16th August, 2019 and he acknowledged that he was on bail for offences concerning the complainant and that his bail conditions included that he was not to contact her and “if he saw her, he was to walk on the other side of the street.” He once again denied having sexual intercourse with the complainant and maintained that she was lying on him.

The Law

- [17] The offence of sexual intercourse with a female under the age of sixteen is governed by Section 6 (1) of the **Sexual Offences Act, 1995**. It provides a maximum sentence of **ten (10) years imprisonment**.

Sentencing Guidelines

- [18] The Eastern Caribbean Supreme Court Guidelines have set out how matters of this nature are to be approached:-

First Stage

1. The first count on the indictment falls into Category 1 as there was exceptional harm occasioned to the complainant. The Court observed that there was extreme

degradation/humiliation present in the offence in the first count. In that offence, the defendant, a mature man took the complainant who is a strange child to him in his vehicle on an off road a short distance from a main public road in broad daylight. He took her virginity and thereafter gave her \$20 and a cloth which he had in the vehicle to clean herself off.

2. The offence in the second count falls into category 3 as none of the factors listed in the guidelines under category 1 and 2 are present in that offence.
3. The third count is considered as category 2 as that offence also occurred in the defendant's car in some bushes.

Second Stage

4. In this stage, the offences in all three counts fall into Level A as being exceptional in terms of seriousness. This is attributed to the age disparity of the defendant and the complainant of 38 years.
5. Based on these two stages, the offence in **count 1** is in category 1 A where the starting point is **6 ½ years**. In relation to **count 2** where he took the complainant to his home, that offence is categorized as 3A with a starting point of **2 years**.
6. Another factor present in **count 2** is that that the defendant was grooming the complainant with his phone calls and the gifting of money after the intercourse.
7. **Count 3** which also occurred in his car in some bushes is classified as a 2A category with a starting point of **4.5 years**. This is due to significant degradation being present because of the location and the fact that it was in his car.
8. Additionally in this count, there is the evidence of the continued grooming and enticement with the payment of \$100 after he had concluded the intercourse.

Victim Impact Statement

- [19] A Victim Impact Statement was obtained from the victim with members of her family also being interviewed. Her father was interviewed and his comments revealed that since the incident his daughter had become withdrawn especially after the arrest of the defendant and whenever he tried to discuss the matter with her.
- [20] The mother of the victim was also interviewed. Her observations of "TS" and the changes in her demeanor after the incident were that "she became angry over trivial matters and she appeared at times to be very distracted when someone is trying to get her attention." The mother said that she

and the victim have maintained a close relationship and that she had not observed any other behavioral changes in the victim.

- [21] Ms. Nakita Williams who is a social worker worked with the victim soon after the defendant was arrested and she said that at the beginning of the counseling program, “TS” was observed to be “rebellious and angry”. This behaviour was marked particularly after the arrest of the defendant. The social worker however indicated that due to counseling and positive re-enforcement, the victim’s grades had improved as well and her behaviour.
- [22] The victim “TS” was also interviewed. She described the incident in detail saying that the first time the defendant had unlawful sexual intercourse with her she was 14 years old and that she bled from her vagina. The report unfortunately failed to explore **HOW** (my emphasis) the abuse had affected the complainant and so a further expanded report was ordered by the Court and received along with the complainant’s school reports.
- [23] In the expanded report dated 1st December, 2020 it was indicated that the victim was now in 4th Form at a high school and that she enjoys listening to music and watching television. She also stated that the offence committed by the defendant had negatively affected her life and that after he was arrested she came to understand that what Mr. Looby did to her was wrong. She further indicated that the incident had negatively affected the relationship with her father and one of her relatives who would make disparaging remarks about her as a result of what had occurred with the defendant. This made her feel angry and aggressive towards this relative.
- [24] In relation to her academic performance, it was gleaned from the school reports presented to the Court that there was a decline in her grades round about the time of the incident and the arrest of the defendant. The grades improved in 2020 and the victim attributed this to the help and support received from the social worker Ms. Nakita Williams. Finally, the report concludes that the victim has suffered as a result of the abuse occasioned on her by the defendant. The report states that the victim has suffered a roller coaster of emotions ranging from “feelings of guilt, confusion, depression and anger”. The report ends with the observation that “the offence has further impacted her relationships with her family”.

The Pre-Sentence Report and Mitigation

- [25] A pre-sentence report was ordered by the Court and delivered on 13th October 2020. The author of the report was Mrs. Weston Williams. The report dealt with the defendant’s early life, at the time of the offence the defendant was aged 52. He told the author of the report that his early life was difficult and that he was raised in a strict household. He further indicated that the family was poverty stricken and that he had to abandon his secondary school education in order to seek employment to assist the family financially. He worked as a self-employed joiner making furniture. His previous clients were interviewed and they described the defendant as a person who had a good relationship with his coworkers and expressed surprise at the defendant’s offending. The defendant’s sister was also interviewed and she expressed similar views about her brother and expressed the view that the offending was out of character for him.

[26] Members of the community described the defendant as being “hard working, reserved and unsociable”. They too expressed shock at the nature of the offence and expressed the view that the offending was out of character for Mr. Looby.

[27] It was revealed that the defendant has no previous convictions.

Aggravating and Mitigating Factors as put forward by The Crown

[28] The Crown put forward the following aggravating and mitigating factors and Defence Counsel had no issue with them.

Aggravating Factors

[29] The aggravating factors in relation to the offences are:

- i) It was multiple instances of intercourse/abuse on the complainant.
- ii) These offences were committed in the daytime which demonstrates a lack of regard for the public.
- iii) On two of these occasions, he picked her up in her school uniform and took her away for his immoral purposes.

[30] The aggravating factors in relation to the offender, as it relates to the third count:

- i) The offence was committed while he was on bail for the same offence in relation to the same complainant.
- ii) He persisted in his actions even after her mother had told him her age and that she could be his child.
- iii) He attempted to persuade her not to pursue the court matter with the offer of more money.
- iv) He also attempted to persuade his friend from assisting the police in their investigation of the offence in the last count.

Mitigating Factors

[31] There are no mitigating factors in relation to these offences and the sole mitigating factor in relation to the offender is that he has no previous convictions.

[32] The Court agrees with the aggravating and mitigating factors as put forward by the Crown but will add an aggravating factor of grooming to the offence as it is clear from the facts that the defendant plied the young complainant with money (the first time was \$20 and the second time was \$100) and told her not to tell anyone about what had occurred.

- [33] The Court notes the fact that the complainant was a virgin at the time of the commission of the first count on the Indictment. **The Queen vs Andre Penn¹** case is instructive here as although in that case there was a high level of perversion it also set out that there are various stages of grooming.
- [34] This Court is of the opinion that the conduct here falls into the category of low level grooming and is an aggravating factor of the offence. The aggravating factors as found by the Court in relation to the offence for completeness are set out as follows:-
- i) It was multiple instances of intercourse/abuse on the complainant.
 - ii) These offences were committed in the daytime which demonstrated a lack of regard for the public.
 - iii) On two of these occasions, he picked her up in her school uniform and took her away for his immoral purposes.
 - iv) The complainant stated that she was a virgin at the time
 - v) The offence incorporated low level grooming
 - vi) The complainant has suffered psychologically, her grades have fallen and her familial relationships have been fractured.
- [35] The Court finds only two mitigating factors and that is that the defendant entered an early guilty plea and is of previous good character.

Construction of the Sentence

- [36] Having gone through the sentencing guideline steps the Court finds the following:-
1. For **Count one** the starting point will be 6 ½ years. As the aggravating factors outweigh the mitigating factors, the 6 ½ years will be adjusted upwards by 6 years and adjusted downwards by two years which brings the figure to 10 years. The defendant is entitled to a 1/3 reduction for his guilty plea which will bring the figure back to 6 years and 6 months.
 2. The defendant has been in custody since 2019 and so the sentence will take effect from the first date he entered custody.
 3. For **Count two** the starting point will be 4 years and will be adjusted upwards to take into account the fact that the defendant took the complainant to his house. The Court is also of the view that this Count had an aspect of low level grooming. This will be adjusted upwards by 3 years to take into account the aggravating factors and down wards to reflect the defendant's early guilty plea and the fact that he has no previous convictions. This will bring the figure to 5 years. The 1/3 credit will bring the figure to 47 months or 3 years and 9 months.

¹ BVIHCR2009/0031

4. The Court finds the starting point for **Count three** to the 6 1/2 years also. When adjusted upwards and downwards the sentence will be the same as that of Count one which is 6 1/2 years. The discount for the early guilty plea will bring the sentence to back to 6 years and 6 months.
5. All sentences are to run concurrently.
6. Finally the Court wishes to remind the defendant and all other men who think that young girls (and boys) for that matter, are easy pickings that these young children are off limits.

[37] The law is there to protect them. The sentences imposed in this matter are, as submitted by the prosecution in their sentencing brief, to be viewed as a deterrent both general and definitely specifically in relation to the defendant.

[38] Mr. Looby, through his conduct has demonstrated a predisposition for committing these types of offence. His conduct can be described as reckless and obsessive. As the facts disclose the defendant drove up to an unwitting child and commenced grooming her for his own sexual purposes and then rewarded her with paltry sums of money. He then went on to breach his bail conditions and had sex with the child again.

[39] As already stated, in matters of this nature a custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last, but not means least, to protect members of the community, in particular young boys and girls.

[40] Mr. Looby your mealy mouthed, insincere apology that you offered on the last occasion that you were here will not assist this child in rebuilding her life and her relationships with her family.

[41] I recommend that you undergo counseling and sex offender treatment as part of the rehabilitation process while you are incarcerated.

[42] It would also be beneficial for the victim to continue counseling and therapy with the Department of Family and Social Services as she has clearly benefited from their interventions.

Ann-Marie Smith
High Court
Judge