

IN THE EASTERN CARRIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2020/0075

REGINA

V

CLEOFOSTER JOHN

APPEARANCES

Ms Rilys Adams for the Crown.

Mr Michael Archibald for the defendant.

2020: OCTOBER 9

SENTENCE

For unlawful sexual intercourse when 54 with girl aged 15

- 1 **Morley J:** Cleofoster John aged 55 (dob 08.02.65) falls to be sentenced for two counts of unlawful sexual intercourse when 54 with TB¹ when 15 in his home on 14.06.19 and 25.06.19, to which he pleaded guilty at the first practical opportunity on 28.07.20.
- 2 TB had run away from home and developed a 'crack' habit. In the early 1990s, John had had a crack habit too, and understanding her plight, to help her had let her stay in his home, where he fed her and gave her money as needed. He had known TB for some years and was aware of her age. In June 2019, eventually consensual sexual relations occurred, with a condom,

¹ TB will remain unidentified as required if a victim of a sexual offence.

- though TB was underage, being under 16, so that her consent was irrelevant. Her mother found her at John's home on 29.07.19, where he fully cooperated with police inquiry, admitting to intercourse.
- 3 John has previous convictions between 1989 and 1992, when for larceny as an addict he received two sentences of imprisonment, respectfully for 12 months and 18 months, which do not aggravate this offending as they are so old and different.
 - 4 In a helpful presentence report of 25.09.20 prepared by Ms C Marsha James-Pharaoh:
 - a. John is described as successfully overcoming his crack habit, a scrap metal dealer, hardworking, with 18 years in the Antigua Defence Force.
 - b. John's sister Erica John (who in support was in court with her daughter Amayra Greenaway, and other sister Fitzerlyn John) described him as 'quiet and 'a very hard worker'.
 - c. His friend Marisha Yearwood described him as a 'nice person' who is 'trustworthy'.
 - d. TB reported 'the incident has not caused her any negative impact', and she hopes to become a lawyer.
 - e. TB's mother FH reported her struggles with TB's drug-taking, TB's stay for three months in rehab at Marina House in Barbados, which had made a 'positive difference', how cooperative John had been, and her hopes for her daughter.
 - 5 When the sentence was listed on 08.10.20, John's neighbour Edson Thomas of Green Bay gave evidence of how he had known John for 20 years, and this offending was a surprise, seeming out of character, in a community where John has friends and is known to work hard.
 - 6 Counsel Archibald defending draws attention to the early plea, remorse, and points out John was trying to help TB and their relations grew close, rather than grooming her, or exploiting her addiction in order to have sex, which the Crown do not gainsay.
 - 7 Sentence has been adjourned overnight to reduce the court's remarks to writing.

Constructing the sentence

- 8 On Antigua & Barbuda, the maximum for unlawful sexual intercourse (usi) contrary to **s6 Sexual Offences Act no.9 of 1995**, where a girl is 14 or 15, is 10 years.
- 9 Being guided by the sentencing guidelines for usi issued by the ECSC in September 2019, for step 1, being the circumstance of the offence, I assess the starting point is category 3A, meaning 20% of the maximum, being two years, with a range of 5-35%. The reason it is in 'consequence' category 3 is category 1 and 2 factors are not present, and at 'seriousness' level A is because there is disparity of age. Here the age difference is very great, plus there is aggravation as TB is 'particularly vulnerable' due to being an addict, and there was ejaculation (though with a condom), and so I adjust with the starting point upwards by nine months to 33 months.
- 10 Turning to step 2, being the circumstance of the offender, accepting the offending was out of character, and finding no relevant convictions, I adjust it down by six months, to 27 months.
- 11 Turning to step 3, considering plea, there is full credit of one-third for the plea of guilty as it was early, reducing the sentence to 18 months.
- 12 Turning to step 4, considering totality, there are two counts, but as the offending is part of the same event, namely an inappropriate relationship evolving, rather than while on bail, or concerning different girls, or a second offence on notice for the first, it is not appropriate to pass consecutive sentences, so that on each offence the sentence should be the same but concurrent.
- 13 Given John was 54, even if a suspended sentence was permissible, suspension would not be appropriate, as he knew he was having sex with an underage girl and at his age could be expected to control his sexual interest. Further, probation would not be appropriate as he does not require it to understand his actions illegal.
- 14 Turning to step 5, time on remand shall count.

- 15 Turning to step 6, concerning subsidiary orders, none are appropriate.
- 16 In recent decisions, notably in **R v JG 2020** ANUHCR 2020/0006 and **R v Theodore Horsford 2020** ANUHCR 2020/0024², this court has made observations inter alia about sentencing for usi, which are cases always of public interest. It merits repeating, for wider dissemination to the public, that men must be on notice to learn the age of a sexual partner. This is particularly so if 21 or over, because if underage, under the sentencing guidelines ‘disparity of age’ will routinely place cases into custodial terms. In addition, following the decision on 03.07.20 of the Court of Appeal in **DPP v Shane Williams 2020** ANUHCRA 2018/0011, there is on Antigua no power to suspend sentences, for example of two years or less as can arise on other islands, so that jail will now almost always follow.
- 17 In short, folk need to know the guidelines expect underage sex mostly means going to prison.
- 18 *Cleofoster John, please stand up.* For the offences of unlawful sexual intercourse with TB on 14.06.19 and 25.06.19, when she was 15 and you 54, to which you pleaded guilty early, cooperating fully with police, the sentence on each count is 18 months imprisonment, to run concurrently. Time spent on remand shall count. You will be eligible for automatic remission after serving two-thirds of your sentence if of good behaviour. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

9 October 2020

² See the ECSC website at <https://www.eccourts.org/category/judgments/>