

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2014/0067

BETWEEN:

THE QUEEN

Claimant/Applicant

and

HAYDEN PHILLIP

Defendant/Respondent

APPEARANCES:

Ms. Crisan Greenidge for the Applicant

2020: July 8

DECISION

- [1] **CHARLES-CLARKE, J.:** The defendant Hayden Phillip was convicted on Monday 18th November 2019 for the offences of i) rape contrary to section 177(i) of the Criminal Code Cap. 72A Vol. 4 of the 2010 Continuous Revised Edition of the Laws of Grenada as enacted by Section 19 of the Criminal Code (Amendment) Act 2012; ii) unlawful entry for the purpose of committing an indictable offence, to wit rape, contrary to section 295 of the Criminal Code Chapter 72A Vol.4 of the 2010 Continuous Revised Edition of the Laws of Grenada as enacted by section 59 of the Criminal Code (Amendment) Act 2012; iii) stealing from the dwelling house of Lystra Antoine one blackberry bold cellular phone valued at \$500.00, the property of Rogel Cox, contrary to Section 275(b) of the Criminal Code Cap 72A Vol.4 of the 2010 Continuous Revised Edition of the Laws of Grenada as enacted by Section 45 of Criminal Code (Amendment) Act 2012; iv) robbery with violence by

stealing one blackberry bold cellular phone valued at \$543.38 ECC the property of Joleen Cox contrary to section 276 (2) of the Criminal Code as enacted by Section 47 of the Criminal Code (Amendment) Act 2012. Upon conviction the court ordered a social enquiry report and a psychiatric report on behalf of the defendant. A sentencing hearing was held on 26th May 2020. He is now before this court for sentence.

[2] The prosecution's case was that on Wednesday the 5th day of March 2014 the defendant entered the dwelling house of Lystra Antoine and gained entry into the bedroom of J C who was Sleeping on her bed at about 3:00 am. She was awakened by a male person lying on top of her with a knife to her throat demanding sex. She refused. The person made her get off from the bed and began choking her and boxing her. He made her remove her clothes and made her lay down on the floor and proceeded to have sexual intercourse with her. All the time he had a knife to her throat. He kept telling her she will go to the police and that he was going to kill her. She was crying, telling him 'No' she will not. The person also took her cell phone from her while being armed with the knife. He used the light of the cell phone to shine his way around the room searching through her dresser and her bag. At one point he rested the knife down and she took it and flung it away and ran out of the room screaming for her mother. She was able to recognise the defendant whom she knew before, from the light of the cell phone.

[3] After the incident it was discovered that another cell phone belonging to R C the virtual complainant's niece was missing from the house. She had placed it on the space saver in the living room the night before. A few days later when the defendant was arrested the police saw him throw away an object which they retrieved and which was later identified by the PIN number by R C, as the cell phone she had left on the space saver.

- [4] The defendant who was unrepresented maintained his innocence throughout the trial. He denied that he was at the home of Lystra Antoine on the night of the incident and gave an unsworn statement from the dock stating that he was at the Grand Anse Beach at the time of the incident.
- [5] During the sentencing hearing the defendant challenged parts of the social enquiry report. As a result he was given an opportunity to question the probation officer who compiled the report. The probation officer explained that he conducted two interview sessions with the defendant at Her Majesty's Prison over two days. The last interview lasted about three hours and he recorded what the defendant told him. The probation officer indicated that after the interviews he read the notes over to the defendant who signed them. He also sought and received permission from the defendant to visit the area where the defendant grew up and speak to persons in the community based on their interactions and knowledge of the defendant. The report therefore reflects the direct words of the defendant in quotation marks and a summary of what persons in the community told him as well as the probation officer's opinion and assessment. The defendant questioned the probation officer extensively about the contents of the report. I believe the probation officer that what he attributes to the defendant is what the defendant said to him. However except for what was said by the defendant's brother, I will not take account of the negative things said about the defendant by persons in the community as the defendant disputes most of it and he did not have the opportunity to question these persons nor was he given an opportunity to comment on these negative statements. Neither was it established how well they knew the defendant or whether they had first-hand knowledge of what they said about him.
- [6] The social enquiry report revealed that the defendant had a chaotic and dysfunctional childhood characterised by the loss of his mother at the early age of six years. Thereafter he had an unstable upbringing. He lived with his father and grandmother for a brief period. He described the time at his father as 'hell' as a result of the abuse he suffered from his father, his step sisters and brothers. He

also lived at the Father Mulligan Home until he was eighteen years of age. However he recalls the early years spent with his mother as being loving, joyful and filled with laughter. The defendant admitted to being a user of alcohol from age twelve and marijuana from age fifteen. He believes that neither of these substances have caused him any problems.

- [7] An insight into the defendant's familial relations was given by his brother Nicholas Phillip who stated that they once shared a good relationship but that is no longer the case. He believes that the defendant suffers from anger management issues. The defendant himself informed the probation officer that he gets angry at times and would speak out when he felt he was wronged.
- [8] Members of the community had mixed views about the defendant. Some described him as sociable, helpful, intelligent and respectful while some had negative things to say about him. As indicated earlier no weight will be given to the negative comments.
- [9] The defendant received a secondary school education which he did not complete since according to him he was incarcerated. He claims to have worked at a few restaurants and also at Ace Hardware. However the social welfare officer was unable to confirm this.
- [10] The defendant who is 36 years of age has previous convictions including robbery and indecent assault. The defendant has denied committing the offences for which he was convicted. He is of the view that saying sorry for something he did not do is against his conscience.
- [11] In his plea in mitigation the defendant informed the court that he has one child aged eighteen years who resides in Puerto Rico with her mother. He has sisters who live in Grenada although he had limited visits from them. The defendant asked the court to consider his time spent on remand in computing his sentence.

The Psychiatric Report

- [12] The psychiatric report was prepared by Dr Arelys Francia Vasconcelos of Mount Gay Psychaitric Hospital. It revealed that the defendant does not have a history of mental illness. His immediate short term and long term memory as well as his passive and active memory and his thought origin and course were normal. As regards his cognitive function he was able to follow the line of questioning and was logical and direct in his responses. His intelligence could be in the normal range or a little below. Judgement was normal and insight was adequate. His mood was normal although he sometimes felt anxious and fearful. Regarding his current situation his mood was flat and apathetic. During the interview he appeared calm and cooperative. His motor activity was between normal range. He did not have suicidal or homicidal ideas. He recognised he has difficult relationships with other persons and has no friends. He was not found to be a violent or aggressive person. The report concluded that he was free of psychotic symptoms at the time of the examination.
- [13] The defendant was diagnosed as having unspecified personality disorder. The psychiatric report states at p.: "According with (sic) the Diagnostic and Statistical Mental Manual V, (DSM V) - this is an enduring pattern of inner experience and behaviour that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment".

The Law

- [14] In passing sentence I am guided by the classical principles of sentencing laid down in **R v Sargeant** and restated by Byron CJ in **Desmond Baptiste et al v R**¹ namely:

¹ SVG Crim App No.8 of 2008

i) **Retribution** – in recognition that punishment is intended to reflect society's abhorrence of the offence and the offender; ii) **Deterrence** – to deter potential offenders and the offender himself from recidivism; iii) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of society; and iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a member of society.

- [15] In this case I believe the principles of deterrence, prevention and rehabilitation are applicable. I will consider the seriousness of the offence and look at the mitigating factors relative to the offence and the offender. I will also take account of the prevalence of these offences, and the peculiar circumstances of this case. I have also taken account of the defendant's antecedents, the relevant parts of the social enquiry report and the psychiatric report. I do not find the defendant to be suffering with any mental illness or disorder that would impact his sentence.

Constructing the Sentence

- [16] In constructing the sentence I will adopt the steps set out in the Eastern Caribbean Supreme Court Sentencing Guidelines Practice Direction 8B No. 2 of 2019. I will also consider the Draft Guidelines of the Eastern Caribbean Supreme Court for Sexual Offences, Theft and Robbery.

The offence of Rape

- [17] Firstly, I will consider the seriousness of this offence by looking at the harm done and culpability of the defendant. The virtual complainant (JC) who is now twenty-six years old was nineteen years at the time of the incident. The evidence is that during the assault the defendant boxed and choked her. As a result of the incident she was left with bruises on the outer part of her vagina. JC stated in her victim impact statement that she was terrified when she awoke to a knife at her throat with someone over her demanding sex. She described the incident as traumatic and as a result she became a different individual. The incident negatively impacted

both herself and her family. As a result of the incident she felt worthless and developed low self-esteem. She was unable to trust men and looked at them differently. After the incident she cried for many days and feared the defendant would return to kill her. She was unable to go to work for one month and was mentally disturbed. For many weeks she did not sleep at her mother's home and her family became insecure about their home. She received some counselling and people also offered encouraging words to her. She now feels safe knowing the defendant is in prison. Accordingly I consider the level of harm to be at category 2 and therefore high.

- [18] Next I will consider the degree of culpability of the defendant. Although the defendant denied committing these offences JC gave evidence that she recognized the defendant as her assailant as she was able to see him from the light of the cell phone during the incident which lasted for about 45 minutes. Moreover when he was arrested by the police the defendant was seen to throw away an object which was immediately retrieved by the police and later identified by RC by the PIN number as her cell phone which she had placed in the living room at her grandmother Lystra Antoine's home before she went to bed that night. The defendant forced himself upon the virtual complainant whilst she was asleep and demanded sex from her. He was armed with a knife and threatened to kill her if she reported him to the police. That was the evidence which the jury accepted. They rejected the defendant's denial that he committed these offences and that he was elsewhere at the time of commission of these offences. Accordingly I place the level of culpability at category 1 of the guidelines.
- [19] Therefore, I find the seriousness of the offence to be at a high to exceptional level. The maximum penalty for this offence is thirty years imprisonment. I will therefore begin with a starting point of 15 years.
- [20] Next I will look at the aggravating factors relative to the offence of rape. I find the following aggravating factors:

i) the manner of commission of the offence - the defendant used force by placing a knife to the virtual complainant's throat, he also choked and boxed her and pushed her to the floor;

ii) the home invasion - offence was committed at night when the virtual complainant was asleep in her bed where she was supposed to feel safe;

iii) the defendant engaged in unprotected sex with the virtual complainant.

I would therefore add three years bringing the sentence to 18 years.

[21] There are no mitigating factors relative to the offence.

[22] The aggravating factors relative to the offender are:

i) the defendant is not someone of good character and has an extensive criminal record dating to July 2002. He has a conviction for the offence of indecent assault in 2013, and possession of an offensive weapon in 2011 which is relevant to the offence of rape. As stated earlier I will attach little weight to the negative comments made by members of the community about the defendant as he has challenged their statements which have not been confirmed or verified. Instead I will rely on the record of antecedents of the defendant dating back ten years which the defendant has admitted.

ii) the defendant has not accepted responsibility for the offence and has shown no remorse. However it should be noted that he maintains his innocence.

Accordingly his sentence will be increased by two years making it 20 years.

[23] The only mitigating factor relative to the defendant is his unstable and dysfunctional childhood. He will be given a discount of two years thereby reducing the sentence to 18 years.

Unlawful Entry

- [24] Firstly, I will consider the seriousness of this offence by looking at the harm done and the culpability of the defendant.
- [25] The virtual complainant became very fearful after the incident. For many weeks afterward she did not sleep at her mother's home and her family no longer felt secure in their home. I therefore find the level of harm to be high.
- [26] With regards to culpability the evidence is that the defendant gained entry into the bedroom of the virtual complainant during the night when she was asleep in her bed. I believe there was some degree of planning by the defendant in the commission of this offence. Although there is no indication of how he gained entry into the house but the evidence is that he was familiar with the premises as he often went there to play with the virtual complainant's sister and would be given food to eat by her mother. So he must have been lying in wait to enter the house without breaking in or being detected. Despite the defendant's denial that he committed this offence, the evidence accepted by the jury is that the virtual complainant recognized him as someone whom she knew before. I therefore find the degree of culpability to be high.
- [27] Accordingly, I find the seriousness of the offence to be high. The offence of unlawful entry into a dwelling house for the purpose of committing a felony carries a maximum penalty of ten years imprisonment. I will therefore begin with a starting point of (6) years imprisonment.
- [28] I do not find any aggravating factors relative to this offence. There was no evidence of forced entry or broken or damaged doors or windows. Nor are there any mitigating factors that would cause any adjustment to the sentence.

- [29] I do not find any aggravating factors relative to the defendant for this offence. The mitigating factors relative to the defendant is his unstable and dysfunctional childhood. However this has already been considered for the offence of rape therefore it will not be considered for this offence. Accordingly the sentence shall remain at six (6) years imprisonment.

Stealing from dwelling house

- [30] In considering the seriousness of the offence I will look at the value of the item stolen which was a blackberry cell phone valued at EC\$500.00 and therefore of low value. No other harm was suffered by the virtual complainant as a result of this offence. I therefore find the harm done falls within the lesser category 4.
- [31] In considering the culpability of the defendant, he was recognized by JC as the person who broke and entered her mother's house. In addition the object which the defendant was seen to throw away and which was recovered when he was apprehended by the police was identified by RC as her cell phone which she had placed in her grandmother's home. I find the degree of culpability to be at the medium level.
- [32] Therefore the level of seriousness of the offence is at the medium level. The maximum sentence for stealing from dwelling house is twenty years. I will begin with a starting point of eight years.
- [33] There are no aggravating factors relative to this offence or the offender with respect to this offence. Accordingly there will be no adjustments and the sentence will remain at eight years.

Robbery with violence

- [34] With regards to the offence of robbery with violence, I will first consider the harm done to the virtual complainant. Although the virtual complainant did not sustain any physical injury related to the robbery she was traumatized by the incident. The incident caused some emotional distress to the virtual complainant already outlined for the offence of rape. At the time the defendant took away the virtual complainant's cell phone he was armed with a knife and he threatened to kill her. This must have instilled terror in her. Accordingly I find the harm suffered to be high and therefore falls under category 1.
- [35] In considering the culpability of the defendant I will take into account the fact that he was recognized by the virtual complainant as the one who took her cell phone from her and was using it while searching her room that night. She was able to recognize him by the light from the phone. I therefore find the culpability to be high and at level A seriousness.
- [36] I consider the level of seriousness in this case to be high. This offence carries a maximum penalty of thirty years. I will therefore begin with a starting point of ten years.
- [37] The aggravating factors relative to the offence are:- i) the threats made to the virtual complainant that he would kill her if she informed the police; and ii) the use of a knife in the commission of the offence; I will increase the sentence by two years making it ten (12) years.
- [38] The only mitigating factor relative to the offence is that the item was not of high value. I will therefore reduce the sentence by one year making it nine (11) years.

- [39] The aggravating factors relative to the offender are the former convictions for robbery (2002) and possession of an offensive weapon (2011). However the defendant disputes that he had a conviction for robbery as reflected by the record of antecedents and the court record. Given that this offence is more than ten years old this will not result in an increase in the sentence.
- [40] The only mitigating factor relative to the offender is his chaotic and dysfunctional childhood. However as this factor has already been considered for the offence of rape no adjustment will be made for this offence. Accordingly the sentence will remain at eleven (11) years.
- [41] Finally, I will consider the overall sentence in keeping with the principle of totality and in accordance with PD 8A No. 1 of 2019 of the Eastern Caribbean Supreme Court. I will impose a sentence which reflects the total criminality but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behavior. I have taken into consideration the fact that the maximum penalty which could be imposed for any of these offences is thirty years, and that the cumulative maximum sentence for these three offences is ninety years. The cumulative sentence passed by this court for these four offences amounts to forty three years. Taking into consideration the fact that these offences arose from the same incident, in accordance with the Sentencing Guidelines I will make an order for the sentences to run concurrently with each other.
- [42] Next I will deduct the time spent on remand which is four (4) years, three months and two weeks.

Hayden Phillip please stand up the sentence of this court is as follows:

- i) for the offence of rape you are sentenced to eighteen (18) years imprisonment;

- ii) for the offence of unlawful entry into dwelling house for the purpose of committing a felony to wit rape you are sentenced to six (6) years imprisonment;
- iii) for the offence of stealing from dwelling house you are sentenced to eight (8) years imprisonment;
- iv) for the offence of robbery with violence you are sentenced to eleven (11) years imprisonment.
- v) The sentences shall run concurrently with each other and shall take effect from today's date.
- vi) Deducting the time spent on remand your term of imprisonment shall be thirteen years and 8 months commencing today.
- vii) During your incarceration you shall receive counselling and psychotherapy and or psychological intervention if required and participate in the rehabilitation programmes at HMP.

Victoria Charles-Clarke
High Court Judge

By the Court


Registrar
Registrar Supreme
Court Grenada

