

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

Criminal No. BVIHCR 2016/0015

BETWEEN:

THE QUEEN

Applicant

-AND-

STEVEN WALTERS

Defendant

Appearances: Ms. Leslie-Ann Faulkner, Senior Crown Counsel, Ms. Melissa A. Brewley, Crown Counsel and Ms. Shanel Taylor, Crown Counsel for the Crown
Mr. Patrick Thompson and Ms. Reynella Rawlins, Counsel for the Defendant

2018: November 19th – 23rd, 26th
2019: January 14th, February 22nd

JUDGMENT ON SENTENCING

- [1] **Smith J:** Steven Walter hereinafter referred to as “the Defendant” was convicted by a jury on one count of incest contrary to section 122 (1) of the Criminal Code, 1997 of the Laws of the Virgin Islands on 26th November 2018. The jury division was 8:1 and the matter was adjourned for the plea in mitigation and further adjourned to 22nd February 2019 on the request of Defence Counsel.
- [2] The trial lasted one week and the Crown called five (5) witnesses while the Defendant called two (2) witnesses and opted to give sworn testimony. The Defendant is the biological father of Stephanie Walters; aged fifteen (15) at the time of the incident, hereinafter referred to as (“the Complainant”). The Defendant is not married to the Complainant’s mother. The Complainant has other siblings of which she is the eldest.

The Facts

- [3] The Complainant is the biological daughter of the Defendant. On 15th December 2015, the Complainant left her home in Jost Van Dyke and travelled via ferry to Tortola, where she was to spend the night with her aunt and attend a wedding the next day.
- [4] The Defendant picked her up from the ferry dock in West End in the evening and took her on a 'pub crawl' of bars before taking her home having consumed large amounts of alcohol during the evening. Upon arrival at the Defendant's apartment in Sea Cows Bay, the Complainant proceeded to take a shower and retired to bed.
- [5] The Defendant then entered the bedroom, kissed her on her cheek, then on her mouth pushing his tongue inside. He then climbed on top of his daughter, pulled down her pajamas and proceeded to have sexual intercourse with her against her will ejaculating inside of the Complainant's vagina.
- [6] Her evidence at trial was that she had tried to push the Defendant off and said "daddy stop" but to no avail. The Complainant thereafter went into the bathroom where she was followed by the Defendant who told her not to tell anyone especially her mother.
- [7] The Defendant later left the apartment when his then girlfriend arrived and the Complainant sought help by knocking on several doors in the apartment block. She eventually knocked on a door which was opened by retired police officer Mr. Allan Seales. The Complainant recounted her ordeal to Mr. Seales and his wife and the police were called.
- [8] The Complainant was escorted to the Peebles Hospital where she was medically examined by Dr. Frett. The Defendant was subsequently arrested and charged.

The Offence

- [9] Section 122(1) of the Criminal Code provides that:
"A man who has sexual intercourse with a woman whom he knows to be his daughter commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years."

Impact on the Complainant

- [10] No Victim Impact Statement was obtained from the Complainant; however a statement was recorded from her mother Mrs. Atena Frett-Richards. In her statement, Mrs. Frett-Richards indicated that the incident had affected her, as well as her daughter the Complainant. She stated that in the early days after the incident she observed the Complainant crying and being irritable towards her sister. She went further to say that her daughter the Complainant had forgiven her father the Defendant and had tried to move on with her life but at times she spiraled "*back into the depressed self again*". Significantly she says that she was having difficulty providing for the Complainant financially as the Defendant had ceased to provide assistance since the incident.
- [11] In addition to the statement of the mother, there was a report from psychiatrist Dr. Jardine Davies Torno, dated 7th December 2018. The report was commissioned as a result of a referral from the Social Development Department. In that report, the doctor noted that the Complainant had developed a condition called Post Traumatic Stress Disorder' as a consequence of the abuse suffered. The doctor went on to say that the traumatic experience suffered by the Complainant affected her behaviour in school and that she has exhibited anger outbursts.

Defendant's Personal Circumstances and Plea in Mitigation

- [12] Defence Counsel submitted to the Court in her oral and written submissions that the Defendant is a Virgin Islands Belonger aged forty-three (43) and married to Shanda Walters. He is the father of three children aged eighteen (18), eighteen (18) and six (6). The Defendant had been employed to the Government of the Virgin Islands in the Treasury Department for almost twenty five years (25) and also to the Road Town Wholesale on a part-time basis. Counsel also indicated that the Defendant suffers from alcohol addiction and that his problems with alcohol began at an early age.
- [13] The Defendant presented letters from three (3) character witnesses. The letter from Mrs. Alivern Smith-Harrigan stated that she had known the Defendant since childhood and that they were neighbours. She indicated that the Defendant she knew was kind hearted and friendly and someone who was always there for her especially when her mother passed away. She said that

he is known to be a hardworking public servant, someone who had made a mistake but who remained a valued friend to her.

- [14] The second character reference letter came from Marlene Mercer, the Defendant's former supervisor. She indicated that they worked together at the Government's Treasury department and she found him to be dependable, honest and caring. She also said that he had a good attendance record and was by far one of the most popular officers with the customers. Outside of the work place she indicated that they met and would assist each other with their children. She concluded with saying that she found the Defendant to have a high level of integrity and commitment on the job.
- [15] The final character reference came from a Mr. Michael Bassue. Mr. Bassue stated that he had known the Defendant for over thirty five (35) years in a personal capacity and that that the Defendant was like a brother to him as well as being the godfather to his children.

The Authorities

- [16] The Court is grateful to both the Crown and Defence Counsel for the authorities submitted for consideration. The first case that the Court will consider is **The Queen vs. Derek Knights**¹ case. In that case, the Defendant was sentenced to six (6) years for three counts of incest which lasted an extensive time. The Defendant entered a plea of guilty thus sparing his daughter the trauma of reliving the encounters at trial.
- [17] The second case that the Court was urged to consider was the unreported case of **The Queen vs. Frandi Thomas**². In that case, the Defendant was the stepfather of the Complainant who was fifteen (15) at the time of the commencement of the abuse. The offending was continuous and occurred over a span of three (3) years. He was sentenced to six (6) years and seven (7) months for incest. In both of the aforementioned cases, the duration and frequency of the abuse distinguished them from the case at bar and would have counted as an aggravating factor.

¹ Criminal Case No. 003/2014

² Criminal Appeal No. 16 of 2016 (unreported)

[18] The Court also considered the case of **R vs. Clive McVane**³ which does not specifically deal with incest, however the Defendant was sentenced to seven (7) years for sexual intercourse with a female aged fourteen (14) years old. The sentence was imposed after the Defendant entered a guilty plea. The Complainant was his step daughter and had become pregnant as a result of the assault. Similarly, custodial sentences in the range of seven (7) years have been imposed in cases such as **David Ramsey vs. The Queen**⁴ and **David Jobe vs. R**⁵. In the former case the Court of Appeal affirmed a sentence of seven (7) years for a father who was convicted after trial of incest with his eleven (11) year old biological daughter and in the latter case the Court of Appeal quashed the conviction of the appellant who had been sentenced to a concurrent term of eight (8) years imprisonment. The Court notes that in both cases the Defendants were found guilty after trials.

The Sentence

Aggravating and Mitigating Factors

[19] Chief Justice Sir Denys Byron (as he then was) in the case of **Winston Joseph vs. The Queen**⁶ stated at paragraph 17 that: *"the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors. The sentence must not only identify the presence of aggravating and mitigating factors but must embark upon an evaluative process. The aggravating and mitigating factors must be weighed. If the aggravating factors are outweighed by the mitigating factors, the tendency must be towards a lower sentence. Where the mitigating factors are outweighed by the aggravating factors, the sentence must tend to go higher"*.

[20] The Crown has set out the **Aggravating Factors** as being:

- a) The incest was committed without the use of protective barrier risking pregnancy and/or a sexually transmitted disease
- b) The Complainant was bribed not to say anything especially to her mother
- c) Psychological effect of the Complainant

³ Criminal Case No. 0215/2010 (SLU)

⁴ Criminal Appeal No. 5 of 2004

⁵ Criminal Appeal No. 23 of 2003

⁶ Criminal Appeal No. 4 of 2000

- d) The age of the Complainant (15) compared with that of the Defendant when the incest commenced and
- e) Breach of trust

Mitigating Factors

- a) No previous convictions

[21] Counsel for the Defendant set forth the following in her plea of mitigation:

Aggravating Factors

- a) The psychological impact of the incident on the Complainant

Mitigating Factors

- a) The Defendant has no previous convictions
- b) The defendant is a man of good character
- c) The offence was committed under the influence of alcohol
- d) The offence was an isolated incident

[22] Defence Counsel accepted that the offending of the Defendant was serious and warranted a custodial sentence but took issue with the Crown's analysis of the aggravating factors. It was their view that there was no bribery involved in this matter and that no reward was provided to the Complainant to secure her silence. While the Court agrees that there was no evidence of a bribe in the strict sense of the word, the Complainant's evidence at trial was that "after her father had sexual intercourse with her, she went into the bathroom. He came and took her out and told her not to say anything, especially to her mother". This fact that this conversation never took place was not put to the Complainant under cross examination and therefore remains on the record as unchallenged.

[23] The factor of age disparity relied on by the Crown was also taken issue with by Defence Counsel. Ms. Rawlins in her submission at paragraph 13 stated that "*the age of disparity does not make the offence more serious since he (the defendant) is her father, a significant age disparity must exist for him to be the father of the virtual complainant. This does not make the offence any more serious than it clearly is. The impact of the offence on the virtual complainant more than*

adequately addresses these matters and a Court should be cautious about adding up aggravating factors simply to register the seriousness of the offence”.

- [24] Ellis J dealt with this issue in her usual succinct and eloquent style in the case of **The Queen vs. Derek Knights**⁷. She said in that case at paragraph 16:

“Having been bourne into his family, the Virtual Complainant was entrusted into the defendants care and he owed her a responsibility to care and protect her. Even if the Court accepts Counsel’s submission in respect to the offence there is no doubt that these are relevant aggravating factors in respect of the other offences on the indictment”.

- [25] In the **Knight** case, the Defendant was charged on a six (6) counts indictment for three (3) counts of incest and three (3) counts of indecent assault. Ellis J dealt with the age disparity and the breach of trust as being aggravating factors of the offence.

- [26] The issue of the Defendant's lack of convictions and his being of good character are one and the same thing and will not be treated as two separate mitigating factors. That, in my view would be double counting.

- [27] It is now settled law that the individual circumstances of the offender are a relevant and important factor in determining the appropriate sentence. In that vein I have considered the personal circumstances of the Defendant and the plea in mitigation offered on his behalf.

- [28] Having taken into account the authorities before the Court and the submissions from both sides the Court finds the following:

Aggravating factors relating to the offence

- a) The breach of trust and age disparity between the Defendant and the Complainant
- b) The violation of the Complainant’s anatomy
- c) The psychological harm (as observed by the Complainant’s mother) to the Complainant and corroborated by Dr. Torno in his report.
- d) The Defendant had unprotected sex with the Complainant and ejaculated inside her putting her at risk of pregnancy or/and sexually transmitted diseases

⁷ BVIHCR 003/2014 page 5

Mitigating factors relating to the offence

The Court could not identify any mitigating factors in relation to the offence.

[29] **Aggravating factors relating to the Defendant**

- a) The Defendant has shown a complete lack of remorse

Mitigating factors relating to the Defendant

- a) No previous convictions
- b) Defendant has a problem with alcohol

[30] In performing the sentencing exercise, I have in mind the cardinal principles of sentencing as set out in the case of **Desmond Baptiste et al vs. R⁸**:

- a) **Punishment:-** The objective here is to reflect society's abhorrence of criminal conduct especially of this type of offence. For a father to indulge in sexual intercourse with his child calls for the sentence to be severe and must send a message to society in this regard;
- b) **Deterrence:-** This is aimed at not only deterring the particular offender from committing further offences but also to deter like-minded people from engaging in similar deviant behavior;
- c) **Prevention:-** This is aimed at protecting society from the particular offender from offending against the law by incarcerating him;
- d) **Rehabilitation:-** Here, the Court considers whether the offender is capable of rehabilitation and reintegration into society as a contributing member of society. The Court is concerned to shape the sentence in a way that assists in achieving this objective. In this case however the Court is of the view that much needs to be done by the Defendant in terms of being accountable for his actions. It is hoped that adequate counseling will assist him in reaching this goal.

[31] All of these aims may not necessarily be met in any one case but the task of the Court is to consider which of these will be best served by the sentence to be passed on an individual offender and the Court has sought to do this.

⁸ Crim. App. No. 8 of 2008 (SVG)

- [32] The Court is guided by the draft sentencing guidelines of the Eastern Caribbean Supreme Court and notes that albeit there is an absence of a Victim Impact Statement the statement of the mother Ms. Frett should not be ignored or disregarded as it gives an indication of the harm visited upon the Complainant. The Court is further guided by the case of **Aguillera vs. The State 2015 (Trinidad Criminal Appeals Cases 5, 6, 7, 8 of 2015)**⁹. Accordingly, having assessed the gravity of the aggravating factors and the mitigating factors, the Court finds that this offence falls squarely into category three of the guidelines in terms of seriousness. I have determined that a custodial sentence is presumptively appropriate with a starting point of eight (8) years.
- [33] In considering the mitigating and aggravating factors, the Court finds that the aggravating factors outweigh the mitigating factors when taken as a whole. Therefore, the Court will only further adjust the sentence downwards to take into account the facts that the Defendant is a first time offender and has an alcohol problem. The sentence will not be further adjusted downwards, save and except for taking into account the Defendant's three (3) months in custody. In this regard the Court has sought to arrive at a sentence that meets the aims of punishment and deterrence while leaving the door open for rehabilitation and eventual reintegration as a productive member of society. However, the Court is very concerned about the Defendant's apparent lack of remorse.
- [34] Incest is considered by the lawmakers in this Territory as a very serious crime. It is a detestable offence which desecrates the sanctity of the home and which normally attracts a custodial sentence as deterrence and denunciation of the offender's conduct will usually be important for sentencing purposes.
- [35] The Court is of the view that a custodial sentence is warranted.
- [36] The Defendant is therefore sentenced to seven (7) years in prison. The Court has been advised that the Defendant has been in custody since the date of conviction of 26th November 2018. The Defendant is therefore entitled to be credited for the time spent in custody and as such the Court orders that his sentence commences from the date he was convicted.

⁹ Republic of Trinidad and Tobago, Criminal Appeals Crim. App. Nos. 5, 6, 7, 8 of 2015

- [37] The Court considers this offence to be despicable and heinous resulting in the tearing apart of a family and harm to the Complainant. Part of a father's role and responsibility is to protect and care for his daughter not defile and abuse as this Defendant has done.
- [38] The Court orders that the Complainant receives psychological intervention from a suitably qualified practitioner over such intervals as may be determined by the said practitioner.
- [39] The Court also orders that the Defendant receives counseling for sexual offenders and for his alcohol related issues as he is a good candidate for rehabilitation.

Ann-Marie Smith
High Court Judge

