

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CRIMINAL JURISDICTION

A.D. 2018

Case No. SVGHCR2016/0002 &
SVGHCR2016/0016

THE QUEEN

AND

EMERSON DELPLESCHE

Appearances:

Ms. Sejilla Mc Dowall Director of Public Prosecutions (Ag.), with her Ms. Tammika McKenzie for the Crown.

Mr. Ronald Marks for the defendant.

2018: Dec. 17

JUDGMENT ON SENTENCING

BACKGROUND

- [1] **Henry, J.:** Mr. Emerson Delplesche was convicted of 4 offences after a four week trial¹. He is before the court for sentencing in respect of one count respectively of rape and abduction and two counts of assault occasioning actual bodily harm. The offences all relate to his estranged wife Mrs. Nadine Delplesche and occurred respectively between 15th and 18th October 2014 and on December 13, 2014. Mrs. Delplesche filed for a divorce and had the *decree nisi* granted. When the trial commenced it had not been made absolute.

¹ Spanning the period September 26th 2018 through October 31st 2018.

- [2] Mrs. Delplesche is a school teacher. She is 35 years old. She was employed at the St. Joseph's Convent School during the 2013/2014 academic year and at the St. Vincent Grammar School during the 2014/2015 school year. Mr. Delplesche is 39 years old. His stated occupation is farming and trading in goods to other countries. Before their marriage and for some time after, they lived together at Welcome, in an apartment constructed by Mr. Delplesche adjoining his mother's house.
- [3] In or around October or November 2013, they moved to Belair to an apartment rented from Mrs. Rebecca Findlay. Unhappy differences developed between them and in or about May 2014 Mr. Delplesche moved back to his apartment in Welcome. Omar remained at Belair with his mother. Mr. Delplesche claimed that he and Mrs. Delplesche maintained an amicable and intimate relationship in which they continued normal marital relations including sexual intercourse. Mrs. Delplesche denied this.
- [4] She acknowledged that on several occasions Mr. Delplesche showed up uninvited and stayed at her apartment without her permission, although she ordered him to leave each time. She maintained that he was not welcome at her apartment after he left in May 2014. She testified that she never gave him access to the apartment, she did not invite him there and prior to the commission of the offences he had been ordered by the police never to return.

Assault occasioning actual bodily harm – October 16 2014

- [5] On the afternoon of 16th October 2014, Mrs. Delplesche was at her landlady's residence speaking with her when she saw Mr. Delplesche at the gate with another male. He asked her to go for a ride with him and she refused. He asked that Omar be permitted to go for a ride with him and again she refused. She told him that Omar had homework to do and had not yet had his dinner. Despite her objections Mr. Delplesche left with Omar.
- [6] He returned around 8.00 p.m. with Omar. As he was about to leave, Omar ran to the gate and told him that he wanted to go for another ride. They left together once more. Mrs. Delplesche fell asleep waiting for them to return. They got back after 11.20 that night. Omar was sleeping by then. Mrs. Delplesche went to the door and took him from his father. She was about to close the door when

Mr. Delplesche jammed it with his foot, forced past her and entered the apartment. He ignored her repeated requests that he leave.

- [7] Mrs. Delplesche took Omar to his bedroom, jammed the door with three suitcases to secure it and began attending to Omar. She heard a loud noise and looked up to see Mr. Delplesche in the doorway. He was dressed only in a green plaid boxer. He demanded to see her cell phone. At first she resisted him but relented when she noticed that he had her kitchen knife tucked into his boxer. She handed over her phone due to fear.
- [8] Mr. Delplesche asked her who man she 'does be chatting with' and how many times she has had sex with him. He then grabbed her by the neck and dragged her to a corridor outside the bedroom. He pulled the knife from his waist and continued to ask her who the man was and how many men she had while she was overseas. He brought the knife down to stab her in her head. She grabbed onto the blade. He began beating her to get her to let it go. They wrestled from the corridor to the living room. Mr. Delplesche made several attempts to stab her but she would not let go of the knife. During the struggle, she received several cuts on her hands from the knife.
- [9] Mrs. Delplesche tried to go through the front door but Mr. Delplesche grabbed her and slammed her into the floor thereby preventing her escape. She tried to get away by running into the bathroom. Mr. Delplesche kicked off the door before she could lock it and dragged her back to the living room. She pleaded with him for her life. He told her that he was going to kill her. She asked him to consider Omar and he replied with an expletive. He told her he was going to kill her and himself and the only thing that would make him change his mind is if she allowed him to check her messages.
- [10] She relented. He read her messages and afterwards began beating her with his hands and kicking her. She reported the incident to the police the next day and was examined by Dr. Michael Goodluck who confirmed that there were fresh cuts on her hands.
- [11] Mr. Delplesche admitted that he had the knife over Mrs. Delplesche's head and that she held onto it with both hands. He also acknowledged that he brought down the knife over her head and demanded the truth. He accepted that he could have just had a conversation with her about what

happened, and added '**but sometimes we snap as human beings.**' He reasoned that you can push to a certain extent in an argument and do very strange things.

Victim Impact Statement

- [12] Mrs. Delplesche filed² a Victim Impact Statement in which she stated that she has been traumatized physically, emotionally and psychologically. She indicated that the damage sustained has created an everyday struggle for her since then. She averred that the injuries caused physical and emotional pain as they healed. She recounted that even after they healed, she could not look at her hands without seeing the cuts.
- [13] She indicated that she developed eating and sleeping disorders, lost a lot of weight and has had difficulty sleeping. She stated that her son Omar has also been negatively affected. She indicated that they are both struggling immensely to stay in control in spite of what Mr. Delplesche has done.

Social Inquiry Report

- [14] Probation Officer/Case Worker Ms. Fayon Ambris provided a Social Inquiry report in respect of Mr. Delplesche. Ms. Ambris interviewed several persons familiar with Mr. Delplesche, including Minister of Religion Rev. Frederick. She also spoke with Mr. Delplesche who she described as cooperative and respectful. She outlined that Mr. Delplesche is one of 6 siblings raised by their mother. He has two daughters aged 18, 17 and a son aged 9 (Omar). He ended secondary education at third form. He is however literate and possesses good oral skills. He has no debilitating medical conditions.
- [15] Mr. Delplesche described himself to Ms. Ambris as 'a young and productive man who is always seeking to generate an income and always striving for betterment in life; ... family oriented and supportive of my children.' He admitted to her that he made some mistakes in the past and must be allowed to amend his ways. He expressed remorse to her and asked that he be given a second chance. He told her that he is willing to participate in counseling.

² On 27th November 2018.

- [16] Ms. Ambris received mixed responses about Mr. Delplesche, from persons in his community of Welcome Village. She reported that some expressed hesitancy in proffering views about his personality and conduct. They reportedly used expressions such as 'Me, you want me get into trouble!'; 'He is very cool and deadly'; and 'he is very nice but seem to have an anger problem and another side to him.'
- [17] His former teacher Mr. Huggins described him as a very sociable, friendly and affable individual who is fun-loving, not inclined to engage in acts of violence and a very enterprising and hard-working young man. He could not recall any negative incidents in which Mr. Delplesche was involved as a young man. One Ms. Cain considered him to be hard working and pleasant but expressed concerns about reports that he was abusive towards women. Another former teacher described him as pleasant but noted that he sometimes carried pent-up feelings.
- [18] Reverend Dr. George Frederick remarked to Ms. Ambris that Mr. Delplesche possessed excellent work ethics, was reliable and trustworthy. He recalled that Mr. Delplesche demonstrated positive traits while in his employ. He expressed concern that Mr. Delplesche had developed a drinking problem and was physically abusive towards women.
- [19] Mr. Delplesche's mother, Ms. Irene Delplesche described her son as hard-working, friendly, a positive thinker, kind, caring, very jovial and someone who likes to share with others and to make peace. She did not disclose any negative attributes of his.
- [20] The Prison Superintendent described Mr. Delplesche as confrontational and someone who is considered a significant threat to the institution's safety. He stated that Mr. Delplesche had breached the Prison Rules by having a cellphone in his possession. He considered Mr. Delplesche to be a candidate for rehabilitation if he engages in introspection, acknowledges his errors and is receptive to professional intervention.
- [21] Ms. Ambris opined that Mr. Delplesche's conviction demonstrates some levels of aggression which (based on social learning) could be traced to past experiences, rewards associated with past or

present aggression; attitudes and values that shape his thoughts regarding appropriateness and the potential effects of such conduct. She noted that Mr. Delplesche voiced that he felt abused by Mrs. Delplesche whom he claimed used her higher educational status to alienate him.

[22] Ms. Ambris opined that even though she did not get to interview Mrs. Delplesche, it can be surmised that situational factors may have arisen between them which gave rise to feelings of superiority and inferiority which led to contemptuous outcomes. She also concluded that there were some emotional ties between Mr. and Mrs. Delplesche which were inappropriately managed during situations of conflict. She observed that Mr. Delplesche displayed a blatant disregard for the court when he refused to obey the protection orders. She remarked that the convictions are for 'dreadful offences' which cannot be treated favourably.

[23] Ms. Ambris suggested that the court should consider that:

1. the criminal records indicate that Mr. Delplesche possesses some aggressive tendencies which could be altered with appropriate treatment modalities;
2. several factors of a personal and situational nature may have contributed to the current situation;
3. Mr. Delplesche has expressed remorse for his actions and is a candidate for rehabilitation; and
4. Criminality is a disease which must be afforded essential multi-modal treatment models to produce consequential change.

Submissions by Director of Public Prosecutions (Acting)

[24] The learned Director of Public Prosecutions (Ag.) ('DPP') Ms. Mc Dowall submitted that the Court should be guided by the UK Sentencing Guidelines on assault occasioning actual bodily harm. She argued that there are a number of aggravating factors:

1. location of the offence – in a private home;
2. Time of the offence – at night;
3. On-going effect upon the victim;
4. Presence the minor child in the house (albeit out of sight and hearing of the place of the interaction);
5. Domestic violence context;

6. Offence committed while the accused was on bail for another offence³;
7. Abuse of power and/or position – estranged husband; and
8. Exploitation of contact arrangements with a child, to commit an offence.

[25] The learned DPP acknowledged that Mr. Delplesche has expressed remorse. She submitted that the cases of **Gary John v The Commissioner of Police**⁴, **R. v Tapper (Corbett Berquin)**⁵ and **Preben Lyttle v The Commissioner of Police**⁶ are instructive and should be considered and applied.

Submissions by learned counsel Mr. Ronald Marks

- [26] On Mr. Delplesche's behalf, learned Counsel Mr. Ronald Marks submitted that Mr. Delplesche was no stranger to the virtual complainant. He argued that Mr. Delplesche was clearly obsessively in love with Mrs. Delplesche and this manifested itself in a very unpleasant way.
- [27] Mr. Delplesche expressed remorse. He asked for a second chance and said that he is a young productive man who wants to get his life together and move on. He expressed the desire to get back on the job market and assist his daughters, his mother and family. He stated that since being remanded he has of his own volition come to grips certain issues. He gave the impression that he has realized some improvement in his own approach to life. He asserted that he wanted to turn his mistake into something worthwhile, having gone past the negativity from the relationship. He claimed to be a new Emerson Delplesche.
- [28] Mr. Delplesche's 16 year old daughter Kaydeana Riffin told the court that she believes that her father deserves a second chance. She described him as a caring, hard-working person who would go out of his way to do something for those he loves.

³ Rape and Assault occasioning actual bodily harm allegedly committed on October 13th 2014.

⁴ SVGMCRAP2014/002213 in which the Court of Appeal reduced a sentence of 9 months following a guilty plea, to time served.

⁵ [2001] EWCA Crim. 2237 in which the appellant with a blemished criminal record, pleaded guilty to beating his girlfriend who sustained a black eye and some bruises; and had his sentence reduced from 3 years imprisonment to two years.

⁶ SVGMCRAP2014/0008 in which the appellant with 8 previous convictions pleaded guilty to one count of assault occasioning actual bodily harm; and expressed no remorse; had his sentence of 2 years imprisonment affirmed by the Court of Appeal.

Calculating Sentence

[29] Assault occasioning actual bodily harm is a crime in Saint Vincent and the Grenadines, contrary to section 193 of the Criminal Code⁷. A conviction for that offence is punishable by a maximum penalty of 5 years imprisonment. The law states:

‘Any person who commits an assault causing actually bodily harm is guilty of an offence and liable to imprisonment for five years.’

[30] The facts of the assault are particularly loathsome. Mr. Delplesche violated the sanctity of his wife’s home and proceeded to attack her in a horrendous fashion with a kitchen knife which he aimed at her head while she was on the floor in front of him and while their son was in the next room sleeping. There is no excuse for such conduct.

[31] Mr. Delplesche’s statement that human beings ‘sometimes snap’ and ‘do very strange things if pushed to a certain extent in an argument’, appears to be an attempt to justify his conduct. It demonstrates that he encountered difficulty reigning in his emotions in the absence of provocation or an attack. The court’s sentence must reflect its and the community’s disapproval of such conduct. In arriving at a fair and appropriate sentence the Court must consider the retributive, deterrent, punitive and rehabilitative principles of sentencing.

[32] I remind myself also that Mr. Delplesche has expressed remorse and a willingness to undergo counseling. I have regard to the representations made by both counsel, Mrs. Delplesche and Ms. Ambris. I note and endorse the Prison Superintendent’s and Ms. Ambris’ observations that Mr. Delplesche can benefit from rehabilitative measures including counseling. Mr. Delplesche’s and his daughter’s representations are also taken into account in arriving at a just sentence. I am optimistic that with professional help Mr. Delplesche can overcome his difficulties in managing his emotions and reactions in interpersonal relationships and contribute positively to his society.

[33] The assault on Mrs. Delplesche was perpetrated with a knife in her own home where she should have felt safe from attack, particularly from her husband and the father of her child. It was a vicious attack but does not fall into the category of the most depraved assaults. In light of the foregoing circumstances, I am of the view that the starting point for arriving at a just sentence is 3 years. I

⁷ Cap. 171 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009.

accept the aggravating factors identified by both counsel. I note however, that there is an overlap in respect of the domestic violence abuse of power indicia. Those will be treated as one factor in keeping with practice.

[34] The aggravating factors relating to the offence are use of a knife in the commission of the offence; trespass at the virtual complainant's house; location and time of the offence; the domestic violence context; and impact on the victim. In light of the multiplicity of those factors, I adjust the sentence upwards by 1 year to 4 years. There are no mitigating factors in relation to the offence.

[35] In relation to the offender, the one aggravating factor is that Mr. Delplesche committed the offence while on bail in respect of another charge. I therefore adjust the sentence upwards by 6 months to 4 ½ years. The mitigating factors in relation to Mr. Delplesche are his remorse and the absence of active antecedents. I therefore adjust the sentence downwards by 1 year to 3 ½ years. Mr. Delplesche has served 2 years and 11 months and 3 days on remand. This must be deducted. The deduction results in a remaining period of 7 months. No further adjustment is merited. For the offence of assault on Nadine Delplesche between 15th and 18th October 2014, the sentence of 7 months imprisonment is imposed.

Rape

[36] The incident on or about 16th October 2014 did not end with the assault on Mrs. Delplesche. After beating and kicking her, Mr. Delplesche told her that her body needed to be purified. He then took her into the empty bedroom and took off her clothes. She asked him to permit her to get some water and he did so. She went to the kitchen and he followed her. Mrs. Delplesche noticed that the knife the accused was using earlier was lying on the floor and she asked him to let her throw it outside. He told her that she could throw it away because he had a gun in his knapsack if she did not co-operate.

[37] She took the knife up and threw it into some bushes outside. Mr. Delplesche was next to her at that time. She then went and sat on the sofa and began to cry. Mr. Delplesche sat next to her and asked her to make love to him. She refused. He forced himself on her, forcefully inserted his penis into her vagina and raped her. He ignored her pleas for him to stop. After about 5 minutes he

ejaculated on her stomach. He then took her hand and led her to the bathroom where he showered himself and bathed her.

[38] Afterwards, Mrs. Delplesche went into the bedroom where Omar was sleeping and got into the bed with him. Mr. Delplesche followed her and lay on the other side of their son. They stayed awake until sunrise. Mr. Delplesche told Mrs. Delplesche that if she thought of calling the police he would end her life before they got a chance to enter the apartment. He left early the next morning.

[39] Before Mrs. Delplesche could dress her son and herself, Mr. Delplesche returned and insisted that she go with him. She refused but he threatened that if she did not go he would continue what he started the previous night. He took her to work at the Grammar School. She then went to the Calliaqua Police station where she made a report. Later that day, she was examined by Dr. Michael Goodluck. Mr. Delplesche maintained throughout the trial that the sexual intercourse was consensual.

Victim Impact Statement

[40] In her Victim Impact Statement, Mrs. Delplesche stated that the rape left her in a state of total hurt, confusion, shame and anger, and on a slow and painful path to recovery. She said that she experienced different degrees of anguish and pain during the incident. She indicated that she felt stripped of her rights, pride, hope and ability to cope; and became depressed. She stated that she has experienced bouts of isolation and has for four years disassociated herself from men and any semblance of a relationship. She claimed that she also started developing trust issues.

Submissions by Director of Public Prosecutions

[41] The learned DPP submitted that the decision in the consolidated Saint Lucian cases of **Winston Joseph v The Queen, Benedict Charles v The Queen and Glenroy Sean Victor v The Queen**⁸ has been consistently applied in sexual offence cases as it offers notional sentences and important factors that assist in the sentencing exercise. Learned counsel Mr. Marks agreed. In respect of the **Victor** case, the appellant appealed against a 30 year sentence for rape of a co-worker.

⁸ SLUHCRA2000/4, SLUHCRA2000/7 and SLUHCRA2000/8.

[42] He had entered a guilty plea, had no prior convictions, did not use excessive violence, cooperated fully with the police and indicated that he was labouring under the impression that the complainant would have consented. The Court of Appeal found that there were no aggravating features and commuted the sentence to 5 years imprisonment. The learned DPP submitted that the benchmark established in that case is very transposable because Saint Lucia has a similar statutory maximum sentence for rape. Learned counsel Mr. Marks agreed with her.

[43] The learned DPP argued that there are several aggravating features in this case:

1. Mr. Delplesche occupied a position of trust in relation to Mrs. Delplesche, in that he was legally married to her and once occupied premises where the offence took place; and that the offence occurred in a domestic violence context;
2. the use of violence or threats of violence by Mr. Delplesche, including the use of a knife to frighten Mrs. Delplesche;
3. forced entry into the victim's home;
4. the psychological trauma experienced by Mrs. Delplesche, as described in her Victim Impact Statement;
5. Mr. Delplesche's previous spent convictions;
6. ejaculation;
7. Mrs. Delplesche's particular vulnerability due to the emotional toll of grief arising from the recent death of her terminally ill sister; and
8. the prevalence of the offence.

[44] The learned DPP submitted that the mitigating factors are that Mr. Delplesche has no previous conviction for rape, a spent conviction and the remorse expressed. She argued that the mitigating factors are not very substantial in numeracy or weight. She submitted for the Court's consideration recent decisions⁹ from the High Court in Saint Vincent and the Grenadines where sentences of 15 years and 29 years 8 months were imposed for the offence of rape, based on the application of draft sentencing guidelines being prepared by the Eastern Caribbean Supreme Court.

⁹ In R v George Washington Mc Donald No 49/14 and R v Eugene Noel No. 25/12 ((one count of rape and 6 counts of rape respectively).

[45] The learned DPP highlighted dicta pronounced by Lord Lane in the English case of **R v Christopher Milberry**¹⁰ where he stated:

‘Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence.... A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasise public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last but by no means least, to protect women The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case.’

[46] Learned counsel Ms. Mc Dowall contended that the court should impose a maximum sentence of not less than 15 years imprisonment. In this regard, she submitted that the Court should adopt an approach similar to the Courts in:

1. **The Queen v Elwin Lansiquot**¹¹ where a sentence of 15 years imprisonment was imposed. The defendant in that case changed his plea after the trial had started. He admitted that he raped his girlfriend’s friend on a sightseeing tour in hilly terrain; threatened to chop off both of their heads; physically assaulted the complainant; performed oral sex on her; raped her; masturbated and insisted that they continue the hike. They were rescued the following day by villagers who had been searching for them.
2. **The Queen v Coleman Baptiste**¹² where the defendant was sentenced to 8 years imprisonment after pleading guilty to rape which attracted a maximum penalty of 15 years imprisonment. The virtual complainant in that case was lured to the beach by the defendant, who pulled a knife on her and threatened to cut her throat, following which he had sex with her several times. The complainant received cuts to her face and finger and bite marks to her hand. She was able to get the knife from the defendant and run naked into the street, where she was rescued.

¹⁰ (2003) 2 Cr. App. R. (S) 142, (CA).

¹¹ SLUHCR2010/00128.

¹² GDAHCR2012/0118 (The case heading incorrectly contains the civil identifier ‘HCV’).

3. **The Queen v Derek Cort**¹³ in which the trial judge applied the benchmark established in the **Winston Joseph case** and sentenced the defendant to 10 years imprisonment following a trial. In that case, the defendant and the virtual complainant had been involved in an intimate relationship but the virtual complainant seemed to have moved on to another relationship. The defendant entered her home and attacked her with a knife. During the struggle, she received a laceration to her hand, was punched in the face and dragged to her bedroom. She was violated vaginally and anally. The defendant raped her again before leaving and threatened to kill her if she reported it. The virtual complainant spoke to the physical psychological and economic impact of the rape encounter on her life. She explained that the relationship was abusive and during its currency she was not allowed to speak to men or her life would be a 'living hell'.
4. **AG v R**¹⁴ from the Royal Court of Samedì (Channel Islands - dependency of the Crown) involving rape of an estranged wife by her husband. The Defendant was sentenced to 6 years imprisonment.

Submissions by learned counsel Mr. Ronald Marks

- [47] Learned counsel Mr. Marks acknowledged that the learned DPP had identified and cited legal authorities on which he also relies, including references to the UK Sentencing Guidelines. He argued that there was no gratuitous violence and no great divergence between the Delplesches as to what transpired. Learned counsel Mr. Marks contended that the act was not motivated by hate or vengeance but rather misguided love, coupled with jealousy, pain and heartache.

Calculating Sentence

- [48] Section 123 of the Criminal Code⁷ provides a maximum term of life imprisonment for rape. The relevant portion of that section states:

‘(1) A man who rapes a woman is guilty of an offence and liable to imprisonment for life.’

¹³ BVIHCR2009/002010.

¹⁴ [2014] JRC 19711.

- [49] The maximum term of imprisonment stipulated by Parliament signifies the serious nature of this offence and the abhorrence which it attracts from the society. Its effects run deep and are lasting unless appropriate counseling is received by the victim. The Court must take these matters into consideration when fixing a sentence for rape. It must also have regard to the principles of sentencing and any sentencing guidelines. The **Winston Joseph case** is the leading authority which guides the Court in this regard.
- [50] The Court of Appeal in that case indicated that for rape committed on an adult without aggravating or mitigating features, a figure of 8 years should be taken as the starting point in a contested case. The Court of Appeal opined that at the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls. Such an individual was described as a person who 'represents a more than ordinary danger and (for whom) a sentence of 15 years to life or more may be appropriate.' The Court of Appeal stated that the 'actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors.'
- [51] Mr. Delplesche falls somewhere between those polarities. Having regard to the circumstances of this case including the aggravating and mitigating factors I consider the starting point in this case to be 13 years. The learned DPP has identified the aggravating factors relating to the offender, namely: violence, including the use of a knife in the commission of the crime; his uninvited presence at Mrs. Delplesche's residence; domestic violence elements including abuse of power; and the physical and psychological impact on the victim. Having regard to those factors, I adjust the sentence upwards by 3 years to 16 years. There are no mitigating factors in relation to the offence.
- [52] The sole aggravating factor in relation to the offender is that he committed the offence while on bail. I therefore increase the period to 17 years. The learned DPP's characterization of previous convictions as aggravating is not endorsed by the court. The mitigating factors in relation to Mr. Delplesche are the absence of antecedents and his remorse. I therefore adjust the sentence downwards by 1 year to 16 years. Mr. Delplesche has served 2 years and 11 months and 3 days

on remand. This must be deducted. The adjustment results in a period of 13 years and 1 month. For rape of Nadine Delplesche between 15th and 18th October 2014, the sentence is imprisonment for 13 years and 1 month.

- [53] It is important to add that the learning and practice reveals that spent convictions do not impact a sentence adversely. Rather, the Court is enjoined from holding such matters against a convicted person. I have taken that approach in this case, throughout. The Learned DPP's reference to prevalence of the offence was not supported by statistics or other empirical data. It was therefore not taken into account.

Assault occasioning actual bodily harm – December 13th 2014

- [54] Mrs. Delplesche and Mr. Delplesche made an arrangement for him to collect Omar from her on the afternoon of December 14th 2014. The agreement was that she would take Omar to the bus stop and deliver him to the father who was expected to be travelling on a minivan along the bus route. Mr. Delplesche did not show up at the agreed time so Mrs. Delplesche returned home with Omar. While there, she discovered that Mr. Delplesche was waiting nearby to her residence so she sent Omar to meet him.

- [55] She decided against going into her apartment and went instead and stood among some males who were in front of her gate. Mr. Delplesche approached her, grabbed her arm and told her that he wanted to speak with her. She pulled away from him and told him she did not want to speak with him. He began shouting at her, grabbed her and attempted to throw her over a low level wall bordering a nearby playing field. Persons in the area tried to separate them and told him to leave her alone. He persisted in pursuing her and assaulting her, causing abrasions to both of her forearms and bruises to her cervical spine. The learned DPP made identical submissions to those made in relation to the assault conviction considered earlier.

Victim Impact Statement

- [56] Mrs. Delplesche stated that the December 13th assault affected her son tremendously and this exacerbated her distress. She reported that Omar became extremely timid and has become very cautious at home. He now reportedly worries about her safety and has become very protective of

her. She considers this to be a gravely unfair responsibility and emotional burden for him to carry. She stated that he stopped sleeping in his room and would stay awake until she goes to bed. She indicated that the rest of her family has also been adversely affected, including her mother who lost a daughter in October 2014.

- [57] Mrs. Delplesche claimed that she has flashbacks and has become very edgy and fearful. She claimed that she has been diagnosed with migraine for the very first time in her life. She said that her medical condition has resulted in additional financial expenses for medication. She indicated due to security concerns arising from the attack, that she moved from the Belair residence following the assault on December 13th 2014.

Submissions by learned counsel Mr. Ronald Marks

- [58] Learned Counsel Mr. Ronald Marks submitted that although the offences were committed on different days, they were a continuation of some disagreement between the Delplesches. He argued that the injuries sustained by Mrs. Delplesche were minor.

Calculating Sentence

- [59] The assault on December 13th 2014 was unprovoked. Mr. Delplesche denied attacking Mrs. Delplesche and accused her of slapping him. His conduct was prolonged and violent. It is exacerbated by the fact that he chose to attack Mrs. Delplesche in their son's presence and in full view of other members of the public. It is self-evident that he was out of control and beyond reason. His behavior on that day is a sad commentary on his powers of restraint. He is likely to benefit from anger management sessions. I hope such can be arranged and that he will avail himself of such an opportunity.
- [60] I adopt a starting point of 2 years from which to calculate a fair and proportionate sentence. The aggravating factors relating to the offence are the unprovoked nature of the attack; the abuse of power and domestic violence component; the impact on the victim and Omar. In light of the multiplicity of those factors, I adjust the sentence upwards by 1 year to 3 years. There are no mitigating factors in relation to the offence.
- [61] As regards Mr. Delplesche, the court finds that there is no aggravating factor. The mitigating factors in relation to him are the absence of antecedents. I therefore adjust the sentence downwards by 1

year to 2 years. Mr. Delplesche 2 years, 11 months and 3 days on remand must be deducted. No further adjustment can be accommodated. The sentence for assault of Nadine Delplesche on December 13th 2014 is to time served on remand.

Abduction

[62] Mrs. Delplesche recounted at the trial that she ran into her landlady's house to escape from Mr. Delplesche's attack. He was undeterred and pursued her into a bedroom in the house, held her by the hand and dragged her back into the public road against her will. He was convicted of abduction in relation to that incident.

Submissions by the Learned DPP

[63] The learned DPP submitted that there is no established sentencing benchmark for abduction. She argued that the court may arrive at a sentence by weighing the referenced aggravating features and mitigating factors as they apply to this offence. She invited the Court to consider the decisions in:

1. **Myron Brazel v The Queen**¹⁵ in which the appellant pleaded guilty to abduction and was sentenced to imprisonment for 4 years and 9 months, which on appeal was reduced to 4 years imprisonment. Myron Brazel was indicted for abducting Itesha Coombs, a girl under 15 years from the Ministerial Building in Kingstown, to the back of the British American building.
2. **Gibson Blake v DPP**¹⁶ in which the appellant pleaded guilty and received a sentence of 2 years imprisonment which was affirmed on appeal. The appellant had antecedents.

Submissions by learned counsel Mr. Marks

[64] Learned counsel Mr. Marks submitted that the abduction was not prolonged. He contended that the second incident on December 13th 2014 was not so distinct from the major charge of rape that the court should punish them separately.

[65] Abduction is an offence contrary to section 199 of the Criminal Code⁷. Section 199 provides that:

¹⁵ SVGHCRA2008/0016.

¹⁶ SKBHCRA2011/0015.

'Any person who by force, compels, or by any deceitful means induces, any person to go from any place is said to abduct that person and is guilty of an offence and liable, unless some other punishment is provided, to imprisonment for 5 years.'

[66] The aggravating and mitigating features of this offence are the same as for the offence of assault occasioning actual bodily harm which Mr. Delplesche committed on the same day. In view of the circumstances, I apply 2 years as the starting point. I adjust the figure upwards by 1 year (to 3 years) for the aggravating features; and reduce it by 6 months for the mitigating features. This leaves a period of 2 ½ years. Mr. Delplesche's 2 years 11 months and 3 days on remand must be taken into account. No further adjustment can be achieved. For the offence of abduction the sentence is to time served on remand.

SENTENCE

[67] I sentence Emerson Delplesche:

1. For the offence of abduction of Nadine Delplesche on December 13th 2014, to time served on remand.
2. For the offence of assault occasioning actual bodily harm to Nadine Delplesche on December 13th 2014, to time served on remand.
3. For rape of Nadine Delplesche between 15th and 18th October 2014, to 13 years and 1 month imprisonment.
4. For the offence of assault occasioning actual bodily harm to Nadine Delplesche between 15th and 18th October 2014, to 7 months imprisonment.
5. The terms of imprisonment are to run concurrently.

[68] The learned DPP provided very comprehensive and helpful written submissions for which I am grateful. Learned counsel Mr. Marks also assisted the court with oral submissions. The learned DPP's industry in providing the court with an advanced hard copy and an electronic copy of the

written submissions facilitated the expeditious conclusion of the sentencing hearing on a same day basis. I take this opportunity to express gratitude to both counsels.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar