

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. SLUCRD2015/1859, 1898, 1901

BETWEEN:

THE QUEEN

Complainant

-v-

AKIVA FRANCIS

Defendant

Appearances:

Mr. Stephen Brette for Crown
Mr. Kerron Bruney for the Crown

DECISION ON SENTENCING
October 17th 2017

Sentence— Rape committed in course of Burglary — Sentencing Guidelines –Aggravating and Mitigating Factors. Appropriate starting point in cases of rape committed in course of burglary.

- [1] **Taylor –Alexander J.**, The Defendant was indicted, on two counts of rape and a count of burglary occurring on the 2nd of November 2015. At arraignment the Defendant pleaded guilty to a single count of rape and to burglary. The second count of rape was withdrawn by the Crown.

The Facts Supporting the Indictment

- [2] The Virtual Complaint was a 16-year-old student attending a tertiary level learning institution in Saint Lucia. She lived in an apartment at Reduit Orchard which she shared with a roommate. On

the night of the 2nd of November 2015, the Virtual Complainant and her roommate were in their apartment

when the Defendant and two others entered through an unlocked door. They obscured their appearance by tying tee shirts around their faces. They brandished a gun and a knife. The gun was immediately pointed at the face of the victims. They were tied up, robbed and were raped. The Defendant is to be sentenced for the rape of one of the victims, and for aggravated burglary.

Plea in Mitigation

- [3] The Defendant addressed the court personally, and expressed remorse for the offence committed. His Attorney, Mr. Bruney, asked the court to consider the Defendant's youth, his previous clean record and his strong family background, all of which he suggests, makes the Defendant a prime candidate for a lenient sentence with emphasis on rehabilitation. The Defendant admitted his guilt from arrest, and he cooperated with the police from the outset. He has therefore saved judicial time and has obviated the need for trial. Mr. Bruney highlighted the following as factors to mitigate against the likely penalty that may be handed down by the jaws of justice: —

- (i) The Defendant has no previous convictions;
- (ii) His youth
- (iii) He is deeply remorseful;
- (iv) He took advantage of the Early Guilty Plea Scheme.

The Pre-Sentence Report

- [4] The Defendant is a first-time offender, who was aged 18 at the time of the offence. He is the second of three children born to his single mother. He is a high school dropout. The Defendant has recently rekindled a relationship with his estranged father who has been absent from his life from age five, and who lives in the United States. Investigations in the community reveal that the Defendant is not known to be a trouble maker. He is referred to as a quiet and soft-spoken individual who spends most of his time indoors and is known to always be with his family. The Defendant states that he is asthmatic and admits being a frequent user of marijuana. He expressed

sorrow to the probation officer, for the pain and suffering he has caused the Virtual Complainant. He expressed a desire to complete his secondary school education.

The Victim Impact Statement

- [5] The Virtual Complainant stated that being raped was the worst thing that had ever happened to her. The ordeal was unpleasant and unforgettable. She said she was violated in the comfort of her own home, and she was made to feel helpless, useless and disgusting. She said she was not only robbed of her personal belongings but of her dignity. She states that for weeks after the incident she felt uncomfortable in crowds, especially amongst males. Standing in line at a crowded supermarket became unbearable for her. She was not able to run errands for her mother without feeling like everybody knew how she had been violated.
- [6] Although the Virtual Complainant has seemingly moved on with her life, psychologically she says, her life has changed forever. Her emotions are no longer intact. She is triggered by the tiniest things that makes her burst into tears. She has had to resort to counselling to help her cope with her erratic emotions. She states that she suffers with anxiety attacks and has fears of walking outside alone, the fear of black males walking in groups terrifies her. She is trying to move on and to live her life but there are times when certain smells and words trigger her, and her mind goes right back to the night that changed her life forever. Her heart, she says, continues to be filled with hurt and hatred.
- [7] The Virtual Complainant felt unable to remain in the small community of St. Lucia and was forced to relocated to the United States. The home where the incident happened, belonged to her family and was sold, there being no desire to hold on to the asset that now held only bitter memories.

The Law and Principles on Sentencing

- [8] The offences of Rape and Aggravated Burglary are governed under sections 123 and 208 respectively of the Criminal Code, Cap 3.01 of the Revised Laws of Saint Lucia. The Code

prescribes a maximum penalty of life imprisonment for persons convicted of Rape and Aggravated Burglary.

- [9] Judicial discretion is preserved under Section 1097 of the Criminal Code which acknowledges the ability of the court to sentence an offender to a term not exceeding the statutory maximum provided that the sentence is commensurate with the seriousness of the offence or the combination of offences and where the offence is of a violent or sexual nature, as is in the opinion of the court, necessary to protect the public from serious harm from the offender.
- [10] Our Court of Appeal in **R v Winston Joseph and Others** Saint Lucia Criminal Appeals Nos. 4, 7 & 8 of 2000, re-issued 21 October 2001, fixed sentencing guidelines in matters of sexual offences so that by an application of the guideline, a court can achieve a degree of consistency which commends itself as rational and just. Ultimately the sentence imposed must involve a comprehensive analysis of the peculiar facts and circumstances and the pre-sentence reports.¹
- [11] Additionally our Court of Appeal in **Desmond Baptiste v The Queen** Crim App No. 8 of 2003 has adopted the four classical aims of sentencing stated by Lawton LJ in **R v Sargeant** 60 Cr. App. R. 74 at 77. to which a sentencing court must apply its mind. These are retribution, deterrence, prevention and rehabilitation. The facts and circumstances of this case dictate that retribution, general deterrence and rehabilitation are to be prioritised. This includes on the one hand, the age of and impact on the Virtual Complainant; the frequency with which crimes of burglary and rape appear on the court docket and in quarterly criminal division reports and on the other hand, the age of the Defendant.

Starting point

- [12] I have accepted the following as the aggravating and mitigating factors: —

Aggravating factors

¹ See also the dicta of Davidson Baptiste JA in **Roger Naitram v Regina** 2006/005,006,008 who cautioned against a mechanist approach that can result in sentences that are unjust.

- i. The victim suffered physically and psychologically from the sexual assault;
- ii. Violence was used to commit the offence;
- iii. The Virtual Complainant was very young. She was 16 years old.
- iv. The prevalence of both the offences of Burglary and of Rape

Mitigating factors

- i. The Defendant's early guilty plea. He confessed at the outset of the investigation;
- ii. The Defendant's remorse;
- iii. The Defendants is a first-time offender;
- iv. The Defendants age he is still a teenager

[13] I applied a starting point of 10 years for the offence of rape, as recommended in the guidelines for sexual offences, I, find no basis in his case, to use a different starting point. For the offence of aggravated burglary, I have used a starting point of 8 years. The Defendant gave a very early intimation of guilt and assisted the Police with investigations for which he is credited with a 1/3 discount on sentence. I have also considered the Defendant's youth; the fact that he had no previous convictions, for which I have further discounted his sentence.

[14] It is to be noted that the other two persons, with whom this Defendant perpetrated the vile act, Kareem Francis and Jumanie Lionel were earlier sentenced and each received sentences of 7 years on each offence of rape and 5 years for the offence of Burglary which sentences were to be served partially concurrently. In this case, I sentence this Defendant to 5 years for the offence of rape and 3 years for the Burglary which sentences are to be served concurrently. The difference in the sentences pronounced are justified by the difference in age between Akiva Francis(the Defendant) and Kareem Francis on the one hand and the previous criminal record of Jumanie Lionel on the other hand.

[15] I further order that Akiva Francis is to be enrolled in the education program at the Bordelais Correctional Facility. He is to undergo drug rehabilitation and is to undergo anger management counselling.

V. Georgis Taylor-Alexander
High Court Judge