

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCRAP2019/0017

GARFIELD CLEMENT

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Esco Henry

Justice of Appeal

The Hon. Mde. Vivian Georgis Taylor-Alexander

Justice of Appeal [Ag.]

The Hon. Mde. Cadie St. Rose-Albertini

Justice of Appeal [Ag.]

Appearances:

Mr. Jerry Edwin for the Appellant

Mr. Howard Pinnock for the Respondent

2025: July 9;

Criminal Appeal - Sentence Appeal - Sexual Offences - Whether the sentence was manifestly excessive - Whether the learned judge applied the correct sentencing principles - Whether proper weight was given to aggravating and mitigating factors - Whether the starting point was reasonable and supported by the evidence - Whether the discount for the guilty plea was correctly applied - Whether the totality principle was properly considered - Whether consecutive sentences were appropriate - Whether the sentence is wrong in principle or plainly unjust.

REASONS FOR DECISION

- [1] **TAYLOR-ALEXANDER JA [AG.]:** On 9th July 2025, this Court heard the appeal of Garfield Clement (“the appellant”), who challenged the sentence imposed by the learned judge in the court below following his pleas of guilty to an eight-count indictment involving sexual offences committed against a minor, and subsequently, against the same victim as a young person. The appeal was allowed in part, and reasons were reserved. We now provide those reasons.

The Relevant Background

- [2] The appellant was arrested and charged on 9th April 2018 with several offences of unlawful sexual intercourse contrary to the **Criminal Code (as amended) of Grenada**¹ (“the Code”). On 10th January 2019, he was indicted on eight counts. Counts 1 to 3 involved alleged sexual intercourse with the victim who was a female under the age of thirteen, contrary to section 180(1) of the Code. Counts 4 to 8 alleged sexual intercourse with the victim, a female between the ages of thirteen and sixteen, contrary to section 181(1) of the Code.
- [3] The background facts are taken from the sentencing hearing submissions of the appellant where before the lower court it was presented that the victim was born on the 28th of April, 2002. She knew the appellant very well because for approximately five years he was involved in a personal relationship with the victim's older sister. The victim, her sister, brother and their parents all lived together. The appellant was in the habit of visiting and sleeping at the home. The victim shared a room with her younger brother; he slept on the bed while she slept on the floor. Her sister and the appellant slept in a separate room. The evidence of each of the eight counts contained in the indictment, is that the victim was awoken during the night by the appellant touching her. The two never really exchanged any words. The appellant would undress the victim and have sexual intercourse with her. On each occasion he did not use a condom. Also, each time he had sexual intercourse with her, he did

¹ Criminal Code Cap 72A (Laws of Grenada, as amended).

not ejaculate inside her except on the 5th and the 10th days of April 2017² and also on the 28th of July 2017.³

[4] The victim stated that she tried resisting but was unsuccessful because he was much stronger than her. She did not say anything because she was afraid but made a note on a calendar of each occasion that the appellant had sex with her. On the 25th of August 2017 the victim's mother made an enquiry of her about her menstruation, and during the conversation the victim told her mother that the appellant had been having unprotected sex with her. The matter was reported to the police. The victim became pregnant and conceived a child as a result thereof.⁴

[5] On 29th March 2019, the appellant was arraigned and pleaded guilty to all eight counts on the indictment. On 28th June 2019 the learned judge imposed the following sentences:

- (i) Count 1 (sexual intercourse with a female under the age of thirteen, contrary to section 180(1) of the Code): sixteen years and eleven months' imprisonment;
- (ii) Counts 2 and 3 (sexual intercourse with a female under the age of thirteen, contrary to section 180(1) of the Code): eleven years and four months' imprisonment on each count;
- (iii) Counts 4 to 8 (sexual intercourse with a female between the ages of thirteen and sixteen, contrary to section 181(1) of the Code): five years and seven months' imprisonment on each count.
- (iv) The sentences for Counts 1 to 3 were ordered to run concurrently, as were the sentences for Counts 4 to 8. However, the concurrent terms for Counts 1 to 3 were ordered to run consecutive to the concurrent terms for Counts 4 to 8.

² Transcript of Proceedings filed 5th February 2025, pp 25, line 5 through 20.

³ Transcript of Proceedings filed 5th February 2025, pp 25-26, line 25 through 1.

⁴ Transcript of Proceedings filed 5th February 2025, pp 22, line 1 to 10.

- [6] The effective sentence imposed was therefore twenty-two years and six months' imprisonment. For context, the statutory maximum penalty for sexual intercourse with a female under thirteen is thirty years, while for sexual intercourse with a female aged thirteen to sixteen is fifteen years.
- [7] The appellant appealed on the grounds that the sentence was manifestly excessive and that the learned judge failed to give proper consideration to his guilty plea. In support of this contention, he argued that:
- (i) the starting point adopted was inappropriate;
 - (ii) the discount given by the learned judge for the guilty plea was insufficient;
 - (iii) section 80(1) of the Code was not or was otherwise misapplied; and
 - (iv) the totality principle was not observed.
- [8] I propose to address each of these issues in turn.

The Starting Point

- [9] The appellant submits that the learned judge erred in classifying Count 1 on the indictment as falling within consequence category 1 and as a level A seriousness offence according to the **Eastern Caribbean Sentencing Guidelines for the offence of Unlawful Sexual Intercourse ("USI Guideline")**. This classification he submits produced a starting point of twenty-two years and six months, equating to seventy-five percent of the statutory maximum penalty of life imprisonment which for the purposes of sentencing equates to thirty years.
- [10] The appellant submits that a more appropriate notional sentence for Count 1 is fifteen years' imprisonment. He contends that the facts and circumstances of the case align more closely with a consequence category 2 classification under the **USI Guideline**, involving significant psychological harm and degradation, rather than a Consequence category 1 classification, which is reserved for cases involving exceptional features such as extreme harm and degradation. Accordingly, if Count 1 were properly classified as a consequence category 2, level A seriousness

offence, the appropriate starting point would be fifteen years, rather than twenty-two years and six months. Applying the standard one-third reduction for an early guilty plea, the notional sentence would have been reduced to ten years' imprisonment.

- [11] He argues that, under the **USI Guidelines**, consequence category 1 offences require aggravating factors such as: extreme psychological or physical harm, typically supported by victim evidence; extreme degradation; use of a firearm or other weapon; use of extreme force; or a combination of category 2 factors that together elevate the offence to category 1. A category 1 classification may also be justified where the victim is particularly vulnerable, for example, a child under ten or an adult over sixty-five.
- [12] The appellant maintains that the facts of count 1 align more closely with consequence category 2, rendering the twenty-two years and six-month starting point unduly high. He contends that a category 2 classification would support a starting point of fifteen years, with the consequent reduction for his early guilty plea.
- [13] The respondent submits that the learned judge did not purport to apply the structured methodology articulated in **Winston Joseph et al v The Queen**,⁵ a pre-guidelines decision of the Court which provided guidance on sentencing in sexual offences and envisaged the identification of a notional starting point followed by adjustments for aggravating and mitigating factors. Rather, the Crown contends that the sentence of twenty-two years and six months' imprisonment imposed on Count 1 was the product of a holistic evaluation of the relevant aggravating and mitigating circumstances, undertaken without express reference to a notional starting point.
- [14] The respondent also submits that the appellant criticises the learned judge's exercise of discretion by reference to the **USI Guidelines** promulgated on 1st September 2020, over a year after the sentence was imposed. The respondent correctly submits that it is impermissible to assess the correctness of the learned

⁵ SLUHCRA2000/0004.

judge's reasoning by reference to guidelines that were not in force at the time of sentencing. In **Akim Monah v The Queen**⁶, Blenman JA said at paragraph 46 that subsequently issued sentencing guidelines cannot be employed to impugn a sentencing decision made prior to their promulgation. She said:

"It is not appropriate to utilise the new Sentencing Guidelines in order to determine whether the judge committed an error of principle. While the new Sentencing Guidelines are very comprehensive and conduce to uniformity in sentencing, they cannot be applied to test whether a judge erred in principle in sentencing an appellant long before the date of their promulgation."

- [15] Accordingly, this Court has already determined that the sentencing guidelines issued by the Eastern Caribbean Supreme Court are neither applicable, nor appropriate for assessing the correctness of a sentencing judge's approach where the sentence was imposed prior to the promulgation of those guidelines.

Approach to Determining the Notional Sentence Prior to the Guidelines

- [16] The approach to determining a notional sentence has differed across jurisdictions. In Jamaica, that court's approach is illustrated in **Meisha Clement v R**⁷, a case cited by the Respondent. At paragraph 29 of the judgment, Morrison JA, President of the Court of Appeal of Jamaica, stated as follows:

"In arriving at the appropriate starting point in each case, the sentencing judge must take into account and seek to reflect the intrinsic seriousness of the particular offence."

- [17] In that case, the court also derived valuable guidance from section 143(1) of the **UK Criminal Justice Act 2003**. Although the court expressly acknowledged that the provision was not binding in Jamaica, it nevertheless regarded it as a concise and helpful articulation of the principal factors relevant to assessing the seriousness of an offence. Those factors included the offender's culpability in the commission of

⁶ GDAHCRAP2021/0015.

⁷ [2016] JMCA Crim 26.

the offence, and the harm caused by the offender, whether actual, intended, or harm that was reasonably foreseeable.

[18] In **Aguillera and others v State**⁸, The Court of Appeal of Trinidad and Tobago found that:

The 'starting point' in sentencing was the sentence which was appropriate when aggravating and mitigating factors relative to the offending were taken into account, but which excluded any aggravating and mitigating factors relative to the offender. The Court stated that in determining what constitutes an appropriate starting point, a strictly mathematical approach cannot be countenanced, rather, the overall sentencing structure should, in general, reflect the following considerations: (i) The calculation of the starting point, which should take into account the aggravating and mitigating factors of the offence only; those are the objective circumstances which related to the gravity of the offence itself and which assist in gauging its seriousness. (ii) An appropriate upward or downward adjustment of the starting point, if applicable, which took into account the aggravating and mitigating factors relative to the offender.

[19] Closer to home, this Court, in **Winston Joseph v The Queen**,⁹ explained the exercise that a Judge should undertake in arriving at the notional sentence. Sir Dennis Byron said at paragraph 17 that:

"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors... A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors, then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher."

⁸ (2016) 89 WIR 451.

⁹ SLUHCRA2000/0004.

[20] In **Sheldon Bain v The Queen**,¹⁰ Thom JA offered the following approach at paragraph 80:

"The first stage of the process is to identify a starting point or what is often referred to as a 'notional sentence.' This is established by the court conducting an evaluation of the aggravating and mitigating factors of the offence."

[21] Notwithstanding differences in formulation and emphasis across jurisdictions, these authorities reveal a substantial convergence in principle. Each suggests that the determination of a notional sentence is an evaluative exercise, involving primarily in an assessment of the intrinsic seriousness of the offence, viewed through the objective circumstances of the offending.

[22] The learned judge's determination of the appropriate sentence, as reflected in the trial transcript, demonstrates a careful and structured evaluative exercise. She identified the relevant sentencing objectives, including general and specific deterrence, rehabilitation, and retribution, and undertook a detailed assessment of the seriousness of the offence. In doing so, she placed significant weight on multiple aggravating factors, including the marked age disparity between the appellant and the victim, the appellant's prior criminal history particularly a recent serious drug offence, the breach of trust arising from his familial and domestic relationship with the victim, and the prolonged and sustained nature of the offending over a four-year period.

[23] The learned judge further considered the profound and lasting harm caused to the victim, including the emotional and psychological trauma suffered by a child of her age, the resulting pregnancy and birth of a child, and the enduring familial disruption occasioned by the abuse. She also noted the appellant's attempt to deflect responsibility and his lack of genuine remorse. In assessing mitigation, the learned judge took account of the appellant's guilty plea, expressions of remorse, character references, and evidence of family reconciliation, but afforded these factors limited

¹⁰ GDAHCRA2016/0007.

weight in light of his previous failures at rehabilitation and the overarching need to protect vulnerable children. She concluded that the aggravating features of the offence substantially outweighed the mitigating factors, thereby justifying a starting point driven toward the upper end of the sentencing range.

[24] I accept the respondent's submission that, although the learned judge did not explicitly employ the methodology outlined in **Winston Joseph et al v The Queen**,¹¹ her approach nonetheless amounted to a holistic and principled evaluation of the relevant aggravating and mitigating factors. While she did not identify an explicit notional starting point, the learned judge carefully assessed the intrinsic seriousness of the offence, including the gravity of the harm caused and the appellant's culpability. In doing so, she properly took into account the legislative amendments which significantly increased the maximum penalty for sexual intercourse with children, thereby reflecting Parliament's heightened concern for the protection of minors and the seriousness with which such offences are now regarded.

[25] In its submissions, the respondent meticulously traced the evolution of sentencing in sexual offence cases involving children and young persons in Grenada, comparing the sentences in **Carvel Francis v The Queen**,¹² **Kenny Cadoo v The Queen**¹³ and **Terry Noel v The Queen**,¹⁴ to the sentence rendered in the present case. Both **Carvel Francis** and **Terry Noel** were cases decided before the legislative amendment increasing the penalty in sexual offence cases and **Kenny Cadoo** involved sexual offences with victims who were older than the victim in Count 1 on the indictment. Accordingly, these cases cannot be regarded as reliable indicators of appropriate sentencing precedent.

¹¹ SLUHCRA2000/0004.

¹² GDAHCRA2016/0011.

¹³ GDAHCRA2016/0016.

¹⁴ GDAHCRA2016/0012.

[26] In **Shaunlee Fahie v The Director of Public Prosecutions**,¹⁵ this Court affirmed that, absent an express statutory prescription, the imposition of sentence is a matter within the sentencing court's discretion. Accordingly, it is well established that an appellate court will only intervene in a sentence where a sentence: (1) is not legally justified; (2) is based on an incorrect factual foundation; (3) the court has taken into account an improper factor; or (4) the sentence is wrong in principle or manifestly excessive. None of these grounds are engaged in the present case. There is accordingly no basis upon which to disturb either the learned trial judge's analysis or the sentence imposed on Count 1 of the indictment.

The Discount for the Guilty Plea

[27] The learned judge applied a one-fourth discount, declining to grant the standard one-third reduction sought for the defendant's guilty pleas entered at arraignment. In justifying her decision, the learned judge referenced sections 115, 119, and 125 of **the Code**. Under this framework, a defendant may enter a guilty plea before a magistrate in an indictable matter, after which the case is transferred to the High Court for sentencing. The learned judge concluded that, because the plea was entered at arraignment rather than at the earliest statutory opportunity, the defendant was not entitled to the full one-third discount and accordingly received only a one-fourth reduction.

[28] The appellant submits that the learned judge erred in concluding that he did not enter his guilty plea at the first available opportunity. He contends that he had consented to a paper committal and entered his plea at his first appearance before the High Court. Accordingly, he submits that the appropriate discount should have been one-third and not one-quarter.

[29] The respondent submits that although sections 115 to 125 of **the Code** provide for a procedure allowing for a guilty plea to be entered before a magistrate in indictable

¹⁵ BVIHCRA 2008/0003.

matters, such a procedure has not been in practical use for at least the past 15 years. The respondent concurs with the appellant that the proceedings commenced by way of paper committal under Section 3 of the **Criminal Procedure (Preliminary Inquiries) Act**,¹⁶ which does not provide for an early indication of a guilty plea before the committing magistrate. It is accepted by both parties that the defendant entered his guilty pleas at the first available opportunity before the High Court.

[30] In **Desmond Baptiste et al v The Queen**¹⁷ this Court relying on **R v Paul Edward Buffrey**¹⁸ acknowledged the prevailing practice in England of awarding a reduction in sentence for a guilty plea. Chief Justice Byron observed at paragraph 28:

“In England a plea of guilty normally attracts a significant, approximately a one-third, reduction of the sentence. There are sound public policy reasons for this. The criminal justice system benefits from genuine guilty pleas. Such pleas spare the judge, the jury, and witnesses the stress and rigours of a full trial. The State saves both time and money... In our view, our courts should adopt a similar approach. Clearly, the earlier the defendant pleads guilty, the greater the likelihood that he will receive the full discount permissible. Conversely, a plea of guilty late in the proceedings may not yield much of a discount. The discount should be applied not to the maximum sentence possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea.”

[31] This was affirmed by this court recently in **Akim Monah v The Queen**¹⁹ where Blenman JA at paragraph 52 said “It is an established principle that the usual discount that is given on early guilty plea is one third.”

[32] I accept the respondent’s submission that, while a departure from this principle is permissible, it must be supported by clear and cogent reasons. The justification given by the learned judge was clearly misconceived as the appellant came before the High Court by way of a paper committal and the arraignment hearing was his first appearance before the court. Accordingly, the court’s finding that the appellant

¹⁶ Cap. 35 of 1978.

¹⁷ SVGHCRA2003/0008.

¹⁸ (1993) 14 Cr. App. R (S).

¹⁹ GDAHCRA2021/0015.

was not entitled to the full one-third discount is set aside. A discount of one-third shall be applied, consistent with established sentencing principles and the agreed position of the parties.

Application of Section 80 of the Code

[33] Section 80 (1) of the Code provides as follows:

“Cases where one act constitutes several crimes, or where several acts are done in execution of one criminal purpose 80. With respect to cases where one act constitutes several crimes, or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, that is to say— (1) where a person does several acts against or in respect of one person or thing, each of which acts is a crime, but the whole of which acts are done in execution of the same design, and, in the opinion of the Court before which the person is tried, form one continuous transaction, the person may be punished for the whole of such acts as one crime or for any one or several of such acts as one crime, and all the acts may be taken into consideration in awarding punishment, but he or she shall not be liable to separate punishments as for several crimes.”

[34] The appellant submits that the learned judge erred in imposing consecutive sentences in respect of the offences charged in Counts 1 to 3, committed when the victim was under the age of 13, and the offences charged in Counts 4 to 8, committed when the victim was between the ages of 13 and 16. It is contended that the offences constituted several acts against the same victim, allegedly carried out in execution of the same design and forming one continuous transaction and accordingly section 80(1) of **the Code** applied, which in these circumstances required the imposition of concurrent sentences. Alternatively, it is submitted that had the learned judge adverted to section 80(1), a proper consideration would inevitably have led her to conclude that it applied. The appellant argues that the Order directing that the sentences on Counts 4 to 8 be served consecutively to those on Counts 1 to 3 was contrary to section 80(1) of **the Code**.

[35] The respondent, however, submits that section 80(1) affords no assistance to the appellant. The offences to which the appellant pleaded guilty were committed over

an extended period of approximately four years, at different stages of the complainant's childhood and adolescence, and were separated by significant intervals of time. In those circumstances, the respondent argues that the offences cannot properly be characterised as forming "one continuous transaction" within the meaning of section 80(1). Rather, they comprise a series of distinct and discrete sexual offences.

- [36] Emphasising the ordinary meaning of the term "continuous," the respondent submits that section 80(1) is engaged only where multiple criminal acts are unbroken, uninterrupted, and carried out as part of a single criminal episode. Given the temporal separation and evolving circumstances of the offences in this case, the respondent contends that the learned judge was entitled to treat them as separate criminal transactions and to impose consecutive sentences accordingly.

Discussion

- [37] The central question arising on this ground of appeal is whether section 80(1) of **the Code** fell to be applied in the sentencing of the appellant, with the consequence that the learned judge was precluded from ordering that the sentences be served consecutively, notwithstanding that the offences were committed against the same complainant over a number of years. The appellant's argument proceeds on the footing that, on the evidence before the court, the offences constituted "one continuous transaction" within the meaning of the section, and that the learned judge either failed to give proper consideration to the provision or misdirected herself as to its application. This issue turns on the construction and interpretation of the phrase "one continuous transaction" as it appears in section 80(1) of **the Code**.
- [38] There is, regrettably, a paucity of authority directly addressing the meaning of the phrase "one continuous transaction" in the specific context of section 80(1) of **the Code**. In the absence of clear guidance from our court, it is appropriate to have regard to decisions from other Commonwealth jurisdictions in which courts have considered comparable statutory language or analogous sentencing principles, and

from which useful guidance may be derived. In **George Morara Bosire v Republic**²⁰, the Court of Appeal of Kenya undertook a careful examination of the expression “same transaction” and approved the following formulation:

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by the relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

- [39] Further guidance may be derived from the **Singapore Bench and Sentencing Practice Guides**, which articulate a “One-Transaction Principle” applicable to the sentencing of multiple offences. Under that principle, offences committed in the course of a single transaction will ordinarily attract concurrent sentences. In determining whether offences properly fall within the same transaction, the court is enjoined to have regard to such considerations as proximity of time and place, continuity of action, and continuity of purpose or design.
- [40] The **Totality Guidelines** issued by our court provides that where an offender is convicted of multiple offences tried together: (i) if more than one offence is committed in the course of the same transaction, or arises out of the same incident or factual matrix, the general rule is that the sentences should run concurrently; and (ii) where the offences are of a similar nature and are committed over a short period of time against the same victim, the imposition of concurrent sentences will ordinarily be appropriate.
- [41] The expression “one continuous transaction” is not to be approached with undue rigidity. It calls for a practical, fact-sensitive assessment, guided by common sense and directed to the justice of the case. The authorities indicate that proximity of time, place, conduct and purpose are important considerations. They are not, however, conclusive or exhaustive. It requires a court to determine whether, taken together and in their proper context, the acts complained of form a single, continuous course

²⁰ [2021] KEHC 4755 (KLR) (Kenya).

of criminal conduct. The mere presence of a common complainant, or even a common general criminal intent, is not, without more, sufficient to conclude that offences form part of a continuous transaction. A court must be satisfied that the offences are so linked in time, place, purpose and execution that they properly form part of a single, uninterrupted course of conduct.

[42] In this case and while the offences were committed against the same complainant and were similar in character, the evidence discloses that they were not committed in close temporal proximity. On the contrary, they occurred over a number of years and at materially distinct stages of the victim's childhood and adolescence. That temporal separation is significant. Each episode represented a completed and independent violation, not merely a continuation of an uninterrupted course of conduct. Further, and importantly, the offences straddled different statutory provisions first when the complainant was under 13 years of age, and thereafter when she was over 13 years old. The legislative demarcation acknowledges the discrete character of the offending and militates against their treatment in this case as one continuous transaction.

[43] The sentencing discretion exercised by the learned judge in directing that the sentences imposed on Counts 4 to 8 run consecutively to those imposed on Counts 1 to 3 has not been shown to be vitiated by error of principle, nor to be plainly wrong. In the circumstances, there is no proper basis upon which this Court may interfere. The appeal on this ground is accordingly dismissed, and the Order directing that the sentences on Counts 4 to 8 be served consecutively to those on Counts 1 to 3 is affirmed.

The Totality Principle

[44] In considering whether the overall sentence imposed was just and proportionate, the learned judge began by restating the individual sentences imposed on each group of counts, namely:

- (i) Count 1: sixteen (16) years and eleven (11) months;

- (ii) Counts 2 and 3: eleven (11) years and four (4) months;
- (iii) Counts 4, 5 and 6: five (5) years and seven (7) months; and
- (iv) Counts 7 and 8: five (5) years and seven (7) months.

[45] Having reiterated those sentences, the learned judge indicated that she would proceed to consider the totality principle. She relied on **The Queen v Adams**,²¹ in which the Nova Scotia Court of Appeal in Canada explained that the totality principle is a particular manifestation of the overarching requirement of proportionality in sentencing, that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. In the context of consecutive sentences, that requirement finds its practical expression through the application of totality. The learned judge accepted that the totality principle requires a sentencing judge who orders consecutive sentences for multiple offences to ensure that the cumulative sentence does not exceed the offender's overall culpability.

[46] The learned judge also referred to the commentary of D.A. Thomas in *Principles of Sentencing*, where the author explains that the effect of the totality principle is to require a sentencer, having imposed a series of sentences properly calculated in relation to each offence and properly ordered to run consecutively, to review the aggregate sentence and determine whether it remains just and proportionate.

[47] Further, the learned judge cited and considered **Postiglione v The Queen**,²² a case from the High Court of Australia where Kirby J, speaking in the context of the parity and totality principles, described sentencing as a staged evaluative process. A sentencing judge must first arrive at an appropriate sentence by reference to the statutory maximum and the objective criminality of the offending. Adjustments are then made for factors personal or special to the offender. Importantly, the judge must then stand back and review the product of those calculations to determine whether the resulting sentence requires further adjustment because it offends the

²¹ (P.F.) (2010), 291 N.S.R.(2d) 206 (CA); 922 A.P.R. 206.

²² [1997] HCA 26, (Australia).

parity principle or the totality principle, by producing an outcome that is not just and proportionate when the offender's criminality is considered as a whole. She acknowledged that where there is a multiplicity of counts, the principal consideration for the court is whether the overall sentence is just and proportionate, and that this consideration she found also informs the decision whether sentences should run concurrently or consecutively.

[48] The learned judge then turned to the Sexual Offences Definitive Guidelines of the United Kingdom, which recognises that in cases involving multiple sexual offences of particular severity, such as a sustained campaign of rape, sentences of twenty (20) years or more may be appropriate.

[49] Having regard to these principles and authorities, she concluded that the offender's conduct was perpetrated against the same victim over a four-year period and ceased only when the victim became pregnant. Considering both the duration of the offending and the nature of the offences, including the fact that some offences related to a child under the age of thirteen, while others concerned a young person between the ages of thirteen and sixteen, she determined that it was just and appropriate for some of the sentences to run concurrently and others consecutively.

Discussion

[50] When sentencing for multiple offences, the totality principle requires the court to stand back and consider the aggregate sentence to ensure that it properly reflects the offender's overall culpability. The cumulative term must be just and proportionate, and must not be so excessive as to become unduly punitive.²³ The principle of totality although expressed differently across territories has the same import namely that where an offender is sentenced for multiple offences, whether the sentences are imposed consecutively or concurrently, a judge who comes to

²³ R. v Place [2024] EWCA Crim 1538.

sentence is required to ensure that the cumulative sentence does not exceed the offender's overall culpability.

- [51] Even where each individual sentence is properly calibrated to the gravity of the offence and lawfully ordered to run consecutively, the sentencing judge is required to stand back and review the aggregate sentence, the central inquiry is whether the overall punishment is just and proportionate, with the totality of the offending conduct. That principle recognises that sentencing is not an arithmetical exercise; it is an evaluative one.
- [52] This is also reflected, for comparative purposes only, in the ECSC 2025 Sentencing Guidelines on Totality, which emphasise the overriding requirement that the overall sentence must reflect all the offending behaviour; be just and proportionate and not exceed what is necessary to reflect the totality of the offending.
- [53] The Guidelines prescribe a structured approach: first, determining the appropriate sentence for each offence; secondly, deciding whether sentences should run concurrently or consecutively; thirdly, testing the overall sentence against the requirement of proportionality; and finally, explaining how the sentence is structured in a manner readily understood by all concerned.
- [54] While the learned judge clearly and correctly articulated the principle of totality, her reasoning discloses weaknesses in its practical application. The learned judge placed predominant emphasis on the seriousness and duration of the offending without analysis of whether the cumulative sentence ultimately imposed exceeded what was proportionate to the offender's overall culpability. The mere fact that some sentences were ordered to run concurrently and others consecutively does not, of itself, demonstrate compliance with the totality principle as articulated by the learned judge herself. There was no clear articulation as to why the final aggregate sentence represents a just and proportionate response to the overall offending. The absence of a final "look back" analysis, as envisaged in *Postiglione*, the case reference by

the learned judge herself, conveys the impression that the cumulative sentence was arrived at by the mechanical addition of sentences rather than a principled application of totality as an aspect of proportionality.

- [55] Notwithstanding these deficiencies, I am not persuaded that a proper application of the totality principle would have produced a materially different outcome. The appellant was an adult occupying a position of trust, being in an intimate relationship with the victim's sister. The abuse persisted over a prolonged period, escalated in seriousness, and resulted in pregnancy, thereby irrevocably altering the course of the complainant's life and imposing upon her the responsibilities of motherhood while still a child. The aggravating features of the offending were overwhelming, while mitigation was largely confined to the guilty plea. In these circumstances, the aggregate sentence cannot be said to exceed the appellant's overall culpability. Accordingly, despite the shortcomings in the learned judge's articulation of the final review, there is no basis upon which this Court may properly interfere on grounds of proportionality, and the appeal on this ground is dismissed.

Disposition

- [56] The appeal is allowed in part. The learned judge's decision to afford a discount of one-fourth for the early guilty plea is set aside. In its stead, a discount of one-third is applied.
- [57] Accordingly, the sentences are varied as follows:
- (1) Count 1: for the offence of sexual intercourse with a person under the age of 13, contrary to section 181(1) of the Criminal Code, as enacted by section 19 of the Criminal Code (Amendment) Act No. 29 of 2012, the sentence of sixteen (16) years and eleven (11) months is reduced to fifteen (15) years' imprisonment.
 - (2) Counts 2 and 3: for the same offence under section 181(1), the sentence of eleven (11) years and four (4) months' imprisonment on

each count is reduced to ten (10) years' imprisonment on each count.

- (3) Counts 4, 5 and 6: for the offences of sexual intercourse with a person between the ages of 13 to 16 years contrary to Section 181 of the Criminal Code, as enacted by section 19 of the Criminal Code (Amendment) Act No. 29 of 2012, the sentence of five (5) years and seven (7) months' imprisonment on each count is reduced to five (5) years' imprisonment on each count.
- (4) Counts 7 and 8: for the same offence under section 181, the sentence of five (5) years and seven (7) months' imprisonment on each count is reduced to five (5) years' imprisonment on each count.
- (5) The sentences imposed on Counts 1, 2 and 3 shall run concurrently.
- (6) The sentences imposed on Counts 4, 5, 6, 7 and 8 shall run concurrently.
- (7) The sentences on Counts 1, 2 and 3 shall run consecutively to the sentences on Counts 4, 5, 6, 7 and 8.

[58] Save as herein varied, the Order of the learned judge is affirmed.

I concur.
Esco Henry
Justice of Appeal

I concur.
Cadie St. Rose-Albertini
Justice of Appeal [Ag.]

By the Court

Chief Registrar