

IN THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

Case ANUHCR 2015/0072

REGINA

V

AKEEM THOMAS

Appearances:

Ms Rilys Adams, for the Crown.

Mr Lawrence Daniels, for the defendant.

2017: July 25

SENTENCE

- 1 **Morley J:** Akeem Thomas falls to be sentenced following conviction by the jury on 20.06.17 for a single count of unlawful sexual intercourse on 29.12.13 with ZI, then aged 12, being a female under the age of 14, contrary to *s5 Sexual Offences Act, no 9 of 1995 of the laws of Antigua & Barbuda*, for which the maximum sentence is life imprisonment.
- 2 In addition, the court must consider the effect of this sentence for unlawful sexual intercourse on a sentence of probation and compensation for wounding with intent passed on 26.11.16, which I will address later in this judgment.

Unlawful sexual intercourse

- 3 ZI, now 15, from behind a screen gave evidence which was accepted by the jury, and was (slightly edited):

In December 2013, I was 12. I lived in Falmouth, with my mum and grandmother. I know Akeem Thomas. I had not known him long by December 2013. My mum brought him over to do his hair. He became her boyfriend. On 29.12.13, I was home, with no plans for that day. He called my grandmother. He said he was coming for me. We went to KFC. Then we went to his apartment. He left. He said he was coming back. He took a jeep to his cousin. He came back. He started to touch me. He was touching my breasts. I was uncomfortable, because I did not like it. He took off my clothes. I told him I did not want to. He did not stop. He said he would not hurt me. He took my pants off. I started to cry, because he tried to force it into me, it hurt a lot. 'It', was his penis, into my vagina. I got up and went to the bathroom. 'It' did not get in, He tried to move in and out of me. It got in a little bit. I peed in the bathroom. He was right there inside the bathroom. I was angry. My vagina was hurting. I put on my clothes. He tried to wipe me, my vagina, with a cloth. He took me home. We caught the bus. I wanted to kill him. Before we got home, he was telling me a story, that he had assaulted a police officer, it made me feel bad. I was really upset. At home, I went straight to my grandma and told her. I had to go to the police station, that same day, that night. I made a report. I had to go to the doctor. They said I had bruises. I did not give him permission to put his penis in my vagina. He opened my legs. I told him I did not want to. He shook his head. I said no. He said yes. He had a condom, he put it on his penis.

- 4 These are the words in chief of a 15-year-old girl struggling to tell her truthful tale of sexual abuse. At the time of the offence, she was a young 12, there having been less than two months since her birthday. It was put to her during cross-examination, on instructions from Thomas to defence counsel, that what she was describing had not happened.
- 5 I find as a fact that Thomas abused a position of trust created through being the boyfriend of the child's mother, and created excitement in the child about a day out together, involving treats like KFC, but which was a scheme to place her in a compromising position, namely in his flat, where he kept her and at one point locked her in, so that he could force upon her his sexual interest.

- 6 Consent is not an issue where a girl is under 14. The offence on Antigua is committed whether or not there was in fact consent, and it does not matter what age a defendant thinks the child. However, in this case I am sure that Thomas knew ZI was 12, and that there was no consent, the latter seriously aggravating the offence.
- 7 In short, he took ZI away from her family on a false pretext, pretending to be trustworthy as being in a relationship with her mother, planned to force himself on her, knowing she was aged 12, and she submitted tearfully in fear.
- 8 In the PSR of Mr Irvin Henry dated 24.07.17, I note on page 1, that Thomas has apparently seven children with six women, and on page 2 has no formal school qualifications. The author is concerned, as am I, with his sexual lifestyle. He seems predatory and reckless.
- 9 I am told Thomas was three years on remand.
- 10 I have chosen to be guided in constructing the sentence by the UK sentencing guidelines, for the similar offence of 'assault on a child under 13 by penetration', contrary to s6 *Sexual Offences Act 2003* for which the maximum is also life. The guidelines can be found at para SG94 on page 376 of the first supplement to *Blackstones Criminal Practice 2017*.
- 11 As to *harm*, I find the offence is in category 2 as there was in a sense 'abduction', and by warning her he had assaulted a police officer there was a threat of violence not to report him. As to *culpability*, I find the offence is in category A, as there was abuse of trust, a significant degree of planning, and to an extent isolation of the child by leaving her in his flat.
- 12 The *starting point* for this offence in category 2A is therefore 11 years.
- 13 Turning to the *aggravating features*, though I do not find other textbook features in the table at para SG100, I do find in this case the de facto absence of consent, meaning the child was in pain and in tears, to be seriously aggravating. I remind myself that Thomas was not tried for rape. However, I also remind myself that the evidence clearly pointed to how his attention was unwanted. I therefore increase the sentence by three years to 14 years.

- 14 Though Thomas asserted through his counsel to ZI that she was lying about ever having had sexual intercourse with him, I do not find this to be aggravating, as it is part of the trial process, where a disproved defence has been offered. However, such a defence clearly shows no remorse which might otherwise be mitigation. Offenders should be aware that credit for early plea with attendant remorse will place them in a hugely better position than to do as Thomas has done.
- 15 Turning to the *mitigating features*, Thomas was born on 28.07.87, meaning that at the time of the offence he was 26, being far outside ZI's peer group. He was technically of good character at the time of this offence, though on bail for the wounding with intent for which he was sentenced on 26.11.16, to which I will come shortly. There is no other mitigation. Because he was on bail for an offence for which he was later convicted, his good character has only limited effect, and so reduces the sentence by one year, to 13 years.
- 16 There is no discount available for plea as he was convicted by the jury.
- 17 Though sexually reckless, there is insufficient information for me to be sure he is dangerous, in particular as this is only his first recorded sexual offence, so that there will be no increase in the sentence for dangerousness.

The wounding with intent

- 18 Turning to the wounding with intent, on 07.11.12, near Heritage Quay in St John's, Thomas attacked a man named Whitfield Phillip with either a knife or screwdriver, which he brought with him out of a car. There had been earlier animus, and Thomas was upset at being called an 'antiman'. There was a verbal altercation, and on parting there was brief contact between the two men, leading to Thomas stabbing Phillip repeatedly, causing five stab wounds, to his upper back, lower back, right upper chest wall, left shoulder, and left pulmonary thorax, leading to collapse of both lungs, perforation of the diaphragm and stomach, causing the complete collapse of Phillip, who thought he was going to die. Thomas was held on remand for approximately 15 months before getting bail (at which point he later committed the unlawful sexual intercourse).

- 19 Thomas was tried in late 2016 for wounding with intent to murder and convicted of wounding with intent to cause grievous bodily harm. The learned trial judge was not aware he faced the allegation of unlawful sexual intercourse, even though the matter had been indicted.
- 20 Sentence proceeded on the mistaken understanding he faced no other cases. He was ordered to pay \$40000ec compensation, of which \$10000ec was to be paid by 01.01.17, with \$1000ec per month after, and in default of paying as directed, he was to serve three years imprisonment. He was also placed on probation for three years, and if in breach was liable to be resented to five years imprisonment.
- 21 Concerning the compensation, he has only paid \$7500 on 28.12.16, and so is in default.
- 22 Concerning the probation, he has not been in breach. The fact that he will now have to serve a prison sentence for the unlawful sexual intercourse, and therefore cannot complete his probation order, is not a breach by him, and so he cannot be resented to the contemplated five years (which some might say is low in any event). If he could have been, consideration would have to be given to whether the five years and then 13 years should be consecutive, as the unlawful sexual intercourse had been while on bail for the wounding, which is often a reason for passing consecutive sentences, subject to the principle of totality. However, following discussion with counsel, the Bar is agreed that no re-sentence can take place.
- 23 As to being in default of the compensation, counsel are agreed he can be ordered to serve the three years in default, but only concurrently. This is because the period in default is not a separate sentence, and so is ineligible for possible addition to the sentence for the unlawful sexual intercourse. However, it is also ineligible to be served while on remand, and so the 15 months on remand concerning the wounding cannot count toward it.
- 24 This sentencing exercise has become flawed. The reason is that there should never have been a sentence for the wounding in ignorance of the pending unlawful sexual intercourse. This court is frustrated that it cannot contemplate the wounding sentence. The importance of a judge having all information prior to sentence is evident here. In a sense, Thomas will get away with the wounding, for \$7500ec only (with 15 months on remand), though a very serious matter, as he cannot now receive separate punishment.

25 I have further considered that Thomas has spent three years on remand for the unlawful sexual intercourse. There has been discussion about whether I could order that it is not to be taken into account, having the effect of adding to the sentence of 13 years, in order to give some effect to punishing him for the wounding. However, I am of the view this would be a 'device' to get at him, which would be unfair.

26 In sum, for the wounding with intent, he will be ordered to serve three years concurrently in default of having paid the compensation, though the 15 months on remand for the wounding will not count.

Sentence

27 *Akeem Thomas, please stand up.* For the offence of unlawful sexual intercourse, which you inflicted on a 12-year-old girl, the daughter of your girlfriend, in abuse of a position of trust, having created a pretext to take her from her family to your flat, is 13 years imprisonment. For the wounding with intent, I can pass no separate sentence, even though you cannot now complete the probation order. However, you have been in default of paying the compensation, for which it was decreed there should be a period in default of three years in prison, which I order you to serve concurrently. The total period of imprisonment is 13 years imprisonment. Time spent on remand for the unlawful sexual intercourse (being approximately three years) will count, though time spent on remand for the wounding with intent (being approximately 15 months) will not. If of good behavior, you will be eligible for remission of one-third of your sentence.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

25 July 2017