

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

**CASE NOS.: GDAHCR2015/0032
 GDAHCR2015/0036
 GDAHCR2015/0039**

BETWEEN:

REGINA

V

KENNY CADOO

Appearances:

Mr. Peter David for the Accused
Ms. Crisan Greenidge for the Crown

Written reason delivered on:

2017: March 7

Criminal Law – Sentencing – Offences against the Person – Sexual Offences – Rape – Sexual Assault – Young Victims – Sentence – Aggravating and Mitigating Factors – Guilty Plea – Discount for Guilty Plea – Principles of sentencing – Sentencing court to embark on evaluation process - Approach to sentencing guidelines - Commercial concerns – Prevalence of offending.

SENTENCING JUDGMENT

[1] **AZIZ, J.:** On the 22nd March 2016, the accused Kenny Cadoo was re-arraigned on two indictments and pleaded guilty to Count 1 on 2015/0032, and Counts 1, 2, 3, and 5 on 2015/0036 and 2015/0039, which was a joinder indictment. The offences were all of a sexual nature including Rape and Sexual Intercourse. Both

victims were young girls between the ages of 14 and 15 at the time that the offences took place. For the purposes of anonymity I shall refer to the girls as VC1 and VC2 in respect of indictment 2015/0032 and 0036 & 0039 respectively.

Summary of Facts Pertaining to VC1 & VC2

VC1

- [2] On an evening in April 2013 VC1 went home after school and was alone. She started doing her homework whereupon the accused came into the house and started watching television. At a point during that evening, the exact time unknown, the accused went into her bedroom and sat on the bed beside her. The accused asked her to be his girlfriend, to which she said no. The accused pushed her back onto the bed and climbed on top of her, at this time VC1 started pushing him away and told him to get off. The accused lay on top of her, managed to take off her clothes and had sex with her. The accused after raping VC1 again asked why she didn't want to be his girlfriend and she replied that she did not know. The accused then threatened to kill her if she told anyone and as a result of this VC1 was hurt and afraid.
- [3] In July 2014, the accused again went to the home of VC1 to do something for VC1's mother. VC1's mother left home and the accused remained. In the house was VC1 sisters and 10-month old brother. VC1 sent her sisters to bathe and her 10-month old brother was on her bed. The accused entered her room and pushed VC1 onto the bed, and started to kiss her, she was resisting and the accused covered her mouth. The accused then pulled her panty away and had sex with her while she was attempting to tell him to get off her. After this was done the accused put his clothes back on and went back into the living room to watch TV. VC1 later called her cousin Brian Jeremiah and told him what had happened.

VC2

- [4] The accused and VC2 are related, they are cousins. On Friday 9th August 2013, VC2 spoke to the accused and told him that she was not feeling well. He invited her to come to his church so that they could talk about it. She did so and attended a church in Crochu. VC2 told the accused that she was not feeling well. She was pregnant. The accused told VC2 to come to his home so that he could give her something to drink in case she was pregnant. VC2 did go to the accused's home, and while she was there, the accused came up from behind her and had sex with her. He, a short while later, pushed her down onto a couch and had sex with her for a second time.
- [5] Once the accused had finished having sex with her, they had something to eat, whereupon the accused requested that VC2 sit on his lap, when she replied no, he proceeded to curse her and she then complied. The accused then proceeded to have sex with her for a third time.
- [6] On the 6th July 2013 the accused picked up VC2, after getting permission to take her to a crusade in Corinth. During the journey the accused told VC2 that they were not going to the crusade but that they were going to make out. VC2 started to protest and quarrel with the accused, who got angry and told VC2 that he would pay her \$40.00 to have sex with him. VC2 stated that she would not. The accused then proceeded to call her unpleasant names such as "Ass". The accused pulled over the vehicle and stopped in Maulty, where he proceeded to kiss her on her mouth. The accused then drove the vehicle to a deserted area in La Sagesse. The accused got into the back of the vehicle and requested VC2 to join him, she refused but upon being asked a second time she joined him. The accused started to kiss VC2 and remove her bra, when she told the accused no, he pushed her down onto the seat and removed her skirt and panty and had sex with her. VC2 protested and kept asking the accused to stop, which he did not heed. The accused later confessed to having ejaculated inside of VC2. He then

drove her to church, told her that he loved her, and after the crusade the accused dropped her and others home.

[7] On a day in September 2013, around minutes to 3:00 p.m. whilst VC2 was standing by St. David's Police Station, she saw the accused. The accused indicated that he would give her a ride to church, so she got into the vehicle and went. As they were getting closer to the church, the accused indicated that he didn't want her to get out of the van, and that he wanted to have sex with her again. VC2 indicated that she did not want to have sex with him, so the accused then locked the doors. VC2 pleaded with him to allow her to leave to see if there was anyone inside of the church, the accused agreed to let her go, but made her leave her bag inside of his vehicle. VC2 went into the church and returned but the accused did not want to give her bag back, so VC2 went into the vehicle, whereupon the accused locked the doors and drove off to where the first offence took place. VC2 complained and protested but the accused removed her underwear, leaving her only in her school uniform and had sex with her; once he was finished he dropped her back to the church.

[8] On the 2nd November 2013, VC2 spoke to the accused and told him that she was pregnant, to which he replied that they had to do something about it. On the 6th November 2013, the accused took VC2 to a doctor where she found out that she was 13 weeks pregnant. The accused then convinced VC2 to have an abortion. VC2 complained to her friends about the sexual assault and a report was made to the police.

Arrest

[9] On Wednesday 4th December 2013, DC #464 Milawn Frank, a member of the Royal Grenada Police Force detained the accused at St. David's Police Station in connection with reports made by VC2. The accused was informed as to the reasons for his detention, and his rights were read and explained to him. On the

5th December 2013, the accused was cautioned and questioned in the presence and hearing of Sergeant #773 Francis. At the end of the interview, DC Milawn Frank cautioned and charged the accused with the offence of having sexual intercourse with a female between the ages of 13 and 16.

- [10] On Friday 25th July 2014, W/DCpl #137 Nancy Joseph from the Royal Grenada Police Force, attached to the CID Grenville, went on enquiries to Grand Bacolet, St Andrew's to the home of the accused. He was at home, and she identified herself as a police officer, informed him of the report made, detained and took him to the police station. The accused had complained about being struck on the head by Ms. Yvette Cadoo. At the police station, an interview was conducted and the accused chose not to answer any questions. He was formally cautioned and charged with Rape.

Submissions by the Crown

- [11] The submissions on the part of the Prosecution highlighted the salient facts of the case and within doing so also highlighted the aggravating features of the case. It was clear that there were a number of those aggravating features, which will be referred to later on. The Prosecution highlighted the following:
- a. That the accused man was older than VC1 and VC2, in fact quite a lot older.
 - b. The accused and VC1 and VC2 were related, they were cousins.
 - c. The accused man was in a position of trust, and that at least one of the victims, VC2, depended on the accused for advice and support.
 - d. At the time of some of the sexual attacks there were others present including young children, including a 10- month old child.
 - e. The accused man used a level of physical force, including threats of violence.
 - f. One of the offences took place whilst the accused was on bail.

- g. The victims were vulnerable and subjected to mental and emotional torment as opposed to threats of violence.
- h. There was also an element of false detention, although for a very short period.

Prosecution Counsel also quite properly referred the Court to the salient features contained within the Social Inquiry Report and, importantly, the section entitled Victim Impact Statement, which in summary indicated that VC1 was 15, and did not wish to speak to the probation officer as she did not wish to be bothered with the memories of the incident. This is clearly an indication of the mental and psychological stress and trauma that is suffered by victims of this type of offending, and is an aggravating feature.

- [12] In relation to VC2, after setting out her account within the Social Inquiry Report under the above-mentioned heading, VC2 stated clearly that she now has to live with this pain and embarrassment for the rest of her life and she sometimes cries when thinking about it. VC2 also stated that she was seeking justice for what had been done to her.

Submissions in Mitigation

- [13] Defence Counsel was relatively brief and there is virtue in brevity. He submitted that he was asking for leniency on behalf of the accused who had thrown himself at the mercy of the Court. Furthermore, Counsel submitted that the accused did not waste the Court's time by having a trial, and as a result prevented VC1 and VC2 from having to relive the trauma and experiences that they were subjected to all over again. Counsel made his mitigation forcefully, complying with his duty to his client and moreover to the Court by putting forward all that could have been said on his client's behalf.

- [14] Counsel submitted that the accused man was well known within the community and he attended church, was a strong and caring man and had a family with those values. He further submitted that there was one main aggravating feature which was the disparity in the ages of the victims and the accused, an argument that the Court did not think was a strong one as it was one of many aggravating features and neither was the argument in relation to the voluntariness of a relationship between the accused and VC1 & VC2 a strong point, but one made strongly. The Court accepts that the accused pleaded guilty early on, and that shows an acceptance of responsibility for the offending by the accused but also an acceptance of responsibility to the wider public. This was an expression of genuine remorse.
- [15] Defence Counsel also referred the Court to the salient features within the Social Inquiry Report, and submitted that the accused was a man of 32 years of age, who was well mannered and cooperative with the preparation of the report. The Social Inquiry Report indicated that community members described the accused as very humble, loving, generous, helpful, committed and respectful. His family and neighbours described the accused with warmth and respect, and credited him for being a very positive person, one going so far as to say that this behavior was “out of character” and that “Ken is the most respectful young man in the community”. The Court also heard evidence that had been written by a character witness ‘Elder Felix’ from the church in Crochu, who indicated that the accused was a good and helpful person who respected others and also looked after his (the accused) family. The Court has also been informed that the accused is progressing within the prison environment and making the best of this time by engaging in activities to better himself. This can only be to his credit as the accused will have to adapt and reintegrate into society and become a productive member within his community and for his country.

Court Considerations

[16] Sexual Offences are considered to be serious and violent offences, carried out against women and young girls in today's society. These girls had to go through an ordeal and experience that no woman or girl should ever have to. This type of offending is intrusive and soul destroying in the most serious way. This type of offending causes physical and psychological trauma. Any accused's actions, deliberate and intentional will, have caused their victims to suffer for a very long time, if not for the rest of their lives. The Court must take into account the manner in which the offences were committed, and in the instant case they were quite serious.

In **R v Roberts (Hugh)**¹ Lord Lane CJ, stated:

"Rape is always a serious crime. Other than in wholly exceptionally 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 no means least, to protect women. The length of the sentence will depend on the circumstances."

[17] I would certainly stress that Rape and Sexual offences in general almost always involves some form of disgraceful exercise of threat, humiliation, and physical power over a victim. This is degradation of the victim's human personality. Let me say that I have also borne in mind the pivotal principles in relation to sentencing. Those are:

1. Prevention
2. Rehabilitation
3. Deterrence and
4. Retribution

¹ [1982] 1 WLR 133

- [18] These principles as stated above in a number of notable cases including **R v Camillus Paris**² where the learned judge quoted from **R v Sargeant**³ in which Lawton L.J. emphasized that:

“Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.”

- [19] The Court has also considered the dicta in **Winston Joseph et al**⁴, where Byron CJ listed some of the aggravating and mitigating principles, but which was a non-exhaustive list. It was stated at paragraph 17 that the actual sentence imposed will depend upon the existence and evaluation of the aggravating and mitigating factors. “It is not enough for the court merely to identify the presence of the aggravating and mitigating factors when sentencing. 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.”

- [20] There are guidelines for sentencing judges, but again it has always been said that sentencing is not a science but an art. In the case of **Roger Naitram et al v The Queen**⁵ it was stated:

“Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating

² BVIHCR2010/0014 at [20]

³ 60 Cr. App. R. 74

⁴ St Vincent and the Grenadines, High Court Criminal Appeal No 8 of 2003

⁵ HCRAP2006/005, HCRAP2006/006 and HCRAP2006/008 [Antigua and Barbuda] CA. Judgment delivered on 15 December 2010, per Baptiste J.A.

and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish the reason for so departing.”

- [21] In **R v Ali Sunussi**, the guidelines are not to be applied in a mechanistic way or to be too over refined⁶ depending on the particular offence. In other words, the sentencing judge must do their best to ensure that the punishment is tailored to fit the crime.

General Aggravating and Mitigating Factors

- [22] There is a list of aggravating and mitigating factors which have been cited in a number of earlier authorities that deal with sexual offending. This list of factors both aggravating and mitigating have also been set out the in UK Sentencing Guidelines, which took effect on 1st April 2014. Some of those aggravating factors include:

- ❖ Ages of the victims
- ❖ Psychological and Physical harm
- ❖ Degradation and humiliation caused to a victim
- ❖ Victim becoming pregnant
- ❖ Detention within their home or personal space
- ❖ Actual and Threats of Violence
- ❖ Infringement of socially acceptable standards
- ❖ Abuse of trust or position

⁶ [2016] EWCA Crim. 38 at para. [28]

- ❖ Timing of the offence
- ❖ Location of the offence
- ❖ Others present, especially children
- ❖ Weapon present
- ❖ Any steps taken to prevent the reporting of the incident and/or preventing the victim from receiving assistance from the police or supporting the prosecution
- ❖ Offence committed whilst on bail.

Some of the mitigating factors include:

- ❖ Age of Offender at time of commission of the offence
- ❖ Early Guilty Plea
- ❖ No previous convictions or no relevant or related previous convictions
- ❖ Remorse
- ❖ Mental Disorder, Learning difficulties especially where related to the offending

[23] In the case of **Winston Joseph** it was stated by Byron CJ that for offences of unlawful carnal knowledge of a female under thirteen years of age which carries a maximum sentence of life imprisonment in Saint Lucia that:

“Starting at a minimum where a girl is not far from her 13th birthday and there are no aggravating factors at 8 years and going upwards. It scarcely needs to be said that the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases.”

Rape

[24] In Grenada the maximum sentence that the court can impose for Rape is a sentence of 30 years imprisonment. Section 19 of the Criminal Code (Amendment) Act 2012, states:

“19. Section 177 to 183C of the Criminal Code is repealed and the following sections are substituted:

“RAPE AND SIMILAR OFFENCES

Rape

177 (1) A person commits the offence of rape if:-

- (a) He or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs, of another person;
- (b) The other person does not consent to the penetration; or
- (c) He or she does not believe that the other person consents to such penetration or is reckless as to whether the other person consents or not.

(2) A person guilty of the offence of rape under sub-section (1) is liable on conviction on indictment to a term of imprisonment not exceeding thirty years.

(3) A spouse who is guilty of the offence of rape is liable on conviction on indictment to a term of imprisonment not exceeding fourteen years.”

[25] I have considered the case of **The Queen v Andre Penn**⁷ in which the Learned Judge stated “*our courts in the dispensation of justice must approach these*

⁷ BVIHCR2009/0031

matters with a sense of consistency.” I am of the view that the starting point in this jurisdiction for rape where the offences of this nature are prevalent and widespread should be a term of imprisonment of eight (8) years, and increase as the age of the victim decreases. This is a starting point that should be considered for all offenders irrespective of plea or previous convictions.

[26] In a case of particular gravity, which reflects more than one of the aggravating features, in that case there is room for an upward adjustment of the starting point, before considering the aggravating and mitigating features of the particular case.

[27] It is important to remember, however, the advice in **R v Molloy**⁸ that sentencers should not view starting points as fixed tariffs for rape cases. In **R v Millberry** and others⁹ the English Court of Appeal approved the recommendations of the Sentencing Panel but emphasised that guidelines can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach.

[28] It is important to stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Guideline judgments are intended to assist the judge to arrive at the current sentence but they do not purport to identify the correct sentence. Doing so is the task of the trial judge.

Having Sexual Intercourse with a female of 14 years of age.

[29] The accused has also pleaded guilty to three counts of having sexual intercourse with VC2. The short facts have already been recited above. I have kept very closely in mind the principles enunciated by Byron CJ, and also the aggravating and mitigating factors, not all that have been listed earlier but many factors are

⁸ [1997] NIJB 241

⁹ [2002] 2 All ER 939

present as far as aggravating circumstances. It should be stated for clarity that the same or similar principles relating to the offence of rape also apply to this offence of having sexual intercourse with a female. In relation to the offences of having sexual intercourse, the female VC2 was 14 years old. VC2 was pregnant and went to the accused for help. In this regard the accused abused his position of trust, as she relied on the accused to assist her and he instead took advantage of VC2 and had sexual intercourse with her on two occasions, within a short space of time.

[30] This is a case that is disturbing in many ways, as it involved the rape and having sexual intercourse with young women, and those who relied on the accused for some form of assistance and guidance. The accused man was calculating and deliberate in his course of conduct perpetrated against VC1 and VC2.

[31] It is my firm view that many of the aggravating features identified above are present in this case, with whom offences have been committed against VC1 and VC2. Firstly, these girls were young, the accused Mr. Cadoo, was at least 16 years their senior. Secondly, the accused was a relative of both girls; he was their cousin and therefore a person in a position of trust. VC2 spoke to him and explained that she was pregnant, and he asked her to visit and indicated that he would assist her, and would give her something to drink. In fact what he did was to pounce on VC2 and have sexual intercourse with her.

This type of behavior is not socially acceptable; at least one of the young girls looked for some assistance; this type of breach of trust cause physical and psychological harm to girls and injures the community as a whole. This behavior not only destroys family, but the community at large. Thirdly, the accused was on bail when he committed one of the offences; this is clearly and aggravating circumstance, and must be marked in circumstances such as these by a custodial sentence.

[32] The accused is a man of previous good character, and has pleaded guilty relatively early, and in the normal circumstances would be entitled to credit for his plea. The Court also has at times to take into account commercial concerns whilst ensuring that justice is done and seen to be done for all the relevant parties. This is because one of the principles of sentencing, among others, is rehabilitation, and one day this accused, like many others, will be living back in society and have to live within socially acceptable standards, and furthermore, there is a duty to ensure that any accused is suitably rehabilitated through the means that are available to do so, so that community can live in harmony and progress, for the betterment of all people. One question that has been posed in the past but still relevant is what useful purpose will be served by the imposition of a lengthy custodial sentence. The offender will and must be punished but consideration must be given in the appropriate case to the other principles of sentencing.

[33] In Grenada, crimes of this type are prevalent. Reference has been made to **R v Marco Bondzie** [2016] EWCA Crim. 552, where it is stated from the UK's perspective that:

“The Sentencing Guidelines Council's guideline on Overarching Principles: Seriousness provides as follows:

"1.38 The seriousness of an individual case should be judged on its own dimensions of harm and culpability rather than as part of a collective social harm. It is legitimate for the overall approach to sentencing levels for particular offences to be guided by their cumulative effect. However, it would be wrong to further penalise individual offenders by increasing sentence length for committing an individual offence of that type.

1.39 There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence

sentencing levels. The pivotal issue in such cases will be the harm being caused to the community. It is essential that sentencers both have supporting evidence from an external source (for example the local Criminal Justice Board) to justify claims that a particular crime is prevalent in their area and are satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

The guidance then continues:

"The key factor in determining whether sentencing levels should be enhanced in response to prevalence will be the level of harm being caused in the locality. Enhanced sentences should be exceptional and in response to exceptional circumstances. Sentencers must sentence within the sentencing guidelines once the prevalence has been addressed."

Although the Court has not heard evidence from a professional body or authority which is the proper course¹⁰ it is clear that the Court's time is taken up predominantly with sexual offences as is evidenced by the weekly court list. There are many committed on young women, and many of school-going age. Society must be made to understand that this type of offending, involving the sexual defiling of women and girls must come to an end and must end now. This behavior ought not and cannot be further tolerated as it harms women in today's society. A message must be sent out through the courts, that rape, sexual assault, sexual abuse in any manner will not be tolerated, and the appropriate custodial sentence will be meted out to anyone who commits these types of crime.

¹⁰ R v Bondzie

Sentence

[34] The Court has considered all of the factors surrounding the offence and the offender, listened closely to the submissions made. There must necessarily be a balancing exercise done to ensure justice for all parties concerned. This is a case in which there is no other option for the court but to impose an immediate custodial sentence. The principles of totality and proportionality have also been applied in determining the sentence.

[35] The delay in entering the guilty pleas, was not a deliberate tactic on the part of the accused and by the pleas, it has prevented the victims of coming to court to relive the trauma that they have suffered, and also saved time and expense of a trial, otherwise the credit I allow for his plea which is the full 1/3 would have been less. I am also reducing your sentence by 12 months for the delay caused awaiting sentence in this individual case, whereby you pleaded almost 4 months ago.

[36] I therefore sentence you KENNY CADOO as follows:

1. Count 1 (0032/2015) – Rape on VC1 – 7 years imprisonment
2. Count 1 (0036&0039/2015) – Having Sexual Intercourse with VC2 a 14 year old – 3 years imprisonment
3. Count 2 (0036&0039/2015) – 3 years imprisonment
4. Count 3 (0036&0039/2015) – 3 years imprisonment
5. Count 5 (0036&0039/2015) – 3 years imprisonment

[37] The full time spent on remand will be taken into account. The sentence in 0036&0039/2015 shall be concurrent to one another, but consecutive to 0032/2015.

[38] For clarity the sentence that Mr. Cadoo will serve is one of 10 years imprisonment, minus the time on remand (1 year 11 months and 06 days).

[39] Furthermore you are to engage with the social and probation services and attend an enhanced thinking skills or such like course for a period of 12 months. You must also attend any courses recommended to deal with addressing sexual offending behavior for a period of 12 months. If you breach this part of the sentence, then in default you will be liable to serve a term of imprisonment of 12 months consecutive to the term of imprisonment imposed.

Shiraz Aziz
High Court Judge