

IN THE HIGH COURT OF JUSTICE ON ANTIGUA & BARBUDA

EASTERN CARIBBEAN SUPREME COURT

ANUHCR 2016/0019

REGINA

V

VERNON CLARKE

APPEARANCES:

Ms Rilys Adams for the Queen

Mr. Ralph Francis for the Defendant

2017 February 3

SENTENCE

For rape

- 1 **Morley J:** Vernon Clarke falls to be sentenced on a plea of guilty on 13.12.16 to raping his neighbor on Barbuda, AF, aged 65, in her home on 03.10.13, and stealing EC\$440 from her.
- 2 At 02.30 on 03.10.13, under the influence of drink and drugs, he entered her home through the kitchen and accosted her in the living room, demanding money or he would kill her. He choked her with his hand, and pushed her to where her wallet was near the sofa in the living room, and then still choking her, forced her to her bedroom where her youngest son with mental disability was in the bed. He emptied her wallet, took the money, being EC\$440, and '*come take off your panty, take off your panty, a wife me want*', still choking her, and said lie down there, meaning on the bed beside her son. She was ordered to take off her clothes, which she did and he

undressed and penetrated her. She told him to stop, that she was a human being with feelings, but he did not, and after about 5 mins ejaculated in her vagina. Lying on the bed he placed his foot over her to prevent her getting up. He started intercourse a second time, moving fast and rough. He kissed her on the mouth and sucked her breast. He started intercourse a third time. He then stopped and sucked her vagina, before laying on the bed and falling asleep. AF quickly went mostly naked to her eldest son BJ next door, shaking and frightened and reported she had been raped by this defendant. BJ took up a spear gun, found the defendant in his mother's bed, a struggle ensued, he was disarmed of the spear gun, and the defendant ran down the road, while BJ called for help from neighbours. In interview on 03.10.13, the defendant denied being at AF's house. He has been in custody on remand since. Medical examination showed injury to the complainant's neck consistent with choking and to her vagina consisted with rough intercourse. In her victim impact assessment, Probation Officer Philip on page 10 in his lengthy and detailed pre-sentence report (PSR) of 01.02.17 described *'while the victim claimed she had no challenges, the writer is of the view she may have experienced some trauma which appeared to have instilled some form of fear in her'*, demonstrating an uncommon fortitude on her part.

- 3 The rape offence is so serious that only a custodial sentence can be justified. The larceny is the same, as it has features of violence and burglary.
- 4 The maximum sentence for rape is life. The court has chosen to be assisted by the UK sentencing guidelines, at para SG 74 of *Blackstones Criminal Practice 2017 1st supplement* p 364, for the identical offence of rape, with the same maximum. The offence is in category 2 for prolonged detention and uninvited entry, and section A given it occurred in the course of burglary. The starting point for an offence in category 2A is 10 years.
- 5 Turning to the aggravating features, the complainant was aged 65, and therefore additionally vulnerable as a senior citizen. There were three instances of intercourse, with ejaculation at least once. In addition, the raping occurred on the complainant's bed with her disabled son alongside. These are substantially aggravating features. They increase the sentence by 5 years to 15 years.

- 6 There are no mitigating features independent of the plea, as the defendant made no admissions, expressed no remorse, has no mitigating family circumstance, and is not of good character, (though has no convictions for sexual matters which instead would have aggravated sentence).
- 7 The plea attracts a full discount of 1/3, as it was entered at the first reasonable opportunity, given the defendant was without representation prior to plea on 13.12.16, reducing the sentence by 5 years.
- 8 As to dangerousness, in the PSR, at page 5, the defendant was said by the Barbuda community to be *'intelligent, helpful and respectful', 'quiet and who spends most of his time alone'*: as such, the court does not find him to be 'dangerous', so that the sentence does not require further adjustment.
- 9 The sentence is therefore 10 years' imprisonment. For the larceny, for which the maximum is 3 years, there will be 2 years' imprisonment concurrent. This was an appalling invasion of an elderly woman's home, in which she was choked, money was forcibly taken from her, and she was raped three times on her bed alongside her disabled son, by a man who was intoxicated. From the circumstances of the raping, it matters not whether there had been a previous relationship, about which there has been some discussion in court, as this was plainly repeated brutal non-consensual intercourse.

The Hon. Justice Iain Morley QC

3 February 2017