

IN THE HIGH COURT OF JUSTICE ON ANTIGUA & BARBUDA

EASTERN CARIBBEAN SUPREME COURT

ANUHCR 2016/0044

REGINA

V

GREGORY GEORGE

APPEARANCES:

Ms Rilys Adams for the Queen

Mr. Ralph Francis for the Defendant

2017 February 3

SENTENCE

For serious indecency

- 1 **Morley J:** Gregory George falls to be sentenced for a single count of serious indecency on 19.11.14 against a child, JL, aged 11, contrary to s15 (1)(a) of the *Sexual Offences Act 1995* on Antigua & Barbuda.
- 2 On 13 December 2016, he pleaded guilty. In the pre-sentence report (PSR) of 25.01.17, prepared by Ms Nakitia Williams, he protested innocence. Unusually, the Court permitted him to vacate his plea on hearing evidence from him on 27.01.17, on which date he had been due for sentence. Trial began on 02.02.17, and after hearing evidence from the complainant and her mother, he again pleaded guilty, expressly accepting he will be sentenced on the child's version of events.

- 3 The defendant was a neighbor to the mother of JL. He sold fruit and vegetables. Relations were good, and he would share food. In October 2014, when 11, the defendant touched her bottom. She complained to her mother who warned her three children to be wary of him. On 19.11.14, JL was home from school ahead of her mother and siblings. She asked to use the defendant's phone to call her mother. He was on his gallery. She followed him into his house. As she was dialing, he said, '*come me touch your pork nuh*', meaning let me touch your vagina. She went out, still dialing. He called her back in, for the return of the phone, grabbed her by the skirt, threw her on the bed, put his hand over her mouth, took off her skirt and panties, threw them on a pile of washing, and forced his way onto her. He then pushed his right index finger up her vagina. She tried to escape but he was bigger than her. He still had his other hand on her mouth. She could not do anything, but kick out. She got him off her. She said it all happened 'pretty quickly'. She grabbed her panty and skirt and went outside to sit on her home step, where her mother found her crying. She told her mother what happened, who then confronted the defendant. He then said it was JL who had come onto her, and that he had not touched her. In police interview, he lied that she had taken his hand and placed it on her vagina, over her panty, and had rubbed her own vagina, also playing with his penis, and had then wanted money.
- 4 JL was 11. Children must be protected by the courts. This offence is so serious that only custody can be justified. Moreover, the sentence should be a deterrence for others.
- 5 In assessing sentence, the court has looked to the UK sentencing guidelines. These are not directly applicable as the offence in the UK would be *assault by penetration of a child under 13* contrary to s6 of the UK *Sexual Offences Act 2003*, for which the maximum is life, whereas the maximum for *serious indecency* against a minor on Antigua & Barbuda is 10 years. This was digital penetration of the vagina. While not sexual intercourse, where the penis penetrates the vagina, digital penetration is a similar highly personal invasion. As such the court assesses the starting point to be 4 years.
- 6 As to aggravation, the sentence is aggravated by the age of JL, being 11, and therefore far from the threshold of being a minor. It is further aggravated by the violence applied, in throwing her on the bed, stripping her skirt and panty, and placing a hand over her mouth, so that she had to kick out to escape. The sentence increases to 6 years.

- 7 As to mitigation, the defendant has no previous convictions. Moreover, in the community report on page 6 of the PSR, the defendant is described as '*quiet, friendly and respectful*', and the offence as '*out of character*', (so that coincidentally the court finds he is not dangerous). The sentence reduces by one year, to 5 years.
- 8 His late plea will attract a discount of 10%. This reflects firstly the policy that pleas are to be encouraged, for they save public money in not requiring guilt to be determined by jurors in trial; and secondly, on hearing the defendant when vacating his plea, the court took especial note that he is a man of limited intellect, so that the concept of pleading guilty has been difficult for him to weigh and he should therefore receive some credit for accepting responsibility for his actions. The sentence is reduced by a further 6 months, to 4.5 years.
- 9 The sentence on a late plea to serious indecency by forcible digital penetration of the vagina of a girl aged 11 is therefore assessed as 4.5 years.

The Hon. Justice Iain Morley QC

3 February 2017