

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COLONY OF MONTSERRAT
(CRIMINAL)**

A.D 2016

NO. MNIHCR2016/0013

REGINA

V

DWAYNE IRISH

APPEARANCES:

Mr. Kenroy Hyman for the Crown

Mr. David Brandt for the Accused

2016: NOVEMBER 25

SENTENCE

[1] **MORLEY J.**, On 8 November 2016, Dwayne Irish was convicted by the jury of indecent assault on a girl under 13, for which the maximum sentence is 10 years.

[2] As indicated to counsel in court, I ignore the affidavit filed today by a 'Mr Junior Allen' saying he can give evidence that Irish is not guilty.

- [3] On 10 June 2016, at Look Out, at 4.30pm, he saw 10 year old KC go up the road, and anticipating she would return, he gathered some plumrose fruit, waited at his gate and when she returned with pizza, he offered her the plumrose and led her by the hand into his house (which is the home of his absent girlfriend). In the kitchen, he kissed her cheek, asked if he could suck on her 'titti', meaning breasts, and touched her over her skirt on her vagina. At 10, KC has no breasts. She felt angry, fled, reported the event to her mother, and made a video recorded statement of her complaint the next day. On arrest, Irish denied any wrongdoing, saying KC was lying, and that she had never passed inside his gate.
- [4] This case was presented at trial under the new rules pertaining to special measures, so that it was the first case on Montserrat where a child's evidence was received before the jury by videolink, while her primary evidence, as offered by the prosecution, was her early police video-ed interview. Such measures are designed to facilitate the reception of a child's evidence, and to avoid creating a situation where court room presence and questioning might create confusion and thereby possible injustice to one so young.
- [5] I have listened carefully to mitigation and have read in depth the thorough pre-sentence report of probation officer Stanford Kelly dated 24 November 2016.
- [6] Irish has no previous convictions and was born on 21.04.76, being now 40. He is described by Mr Kelly as of low risk of re-offending. He is universally described as a hard worker, currently for the Ministry of Agriculture. His friends and work colleagues express disbelief that he committed this offence. He continues to deny it.
- [7] However, the evidence was clear and compelling. For any who watched the trial, KC's evidence made an overwhelming case.

- [8] In assessing sentence, I have chosen to be guided by the UK Sentencing Guidelines, found at *Blackstones 2016* supplement 3 at SG83, for the similar offence of sexual assault of a child under 13, for which the maximum sentence is 14 years.
- [9] In those guidelines, the offence falls within category 3, at the lower end of the scale, as being momentary and limited touching over clothing. Culpability falls within category B. The starting point is therefore (at page 473) 6 months' imprisonment. I adjust the starting point upwards by 50% as I take account of how on Montserrat there is a much-publicised policy of zero tolerance toward sexual offences, meaning that a deterrent effect is required in this sentence, so that the starting point is now 9 months. The public should know that indecent assault on children will be dealt with firmly.
- [10] Aggravating features are that the child is much below 13, being 10, and that he waited for her after she went up the road, so the sexual approach was planned. The gravamen of the offence is she was then drawn out of sight to inside of the home of Irish. The sentence has now increased by six months to 15 months.
- [11] The mitigating features are good character and exemplary work conduct. Everyone says this offence is completely out of character. These in combination reduce the sentence back to 9 months.
- [12] I do not consider Irish to be 'dangerous' as he is at low risk of re-offending.
- [13] The question arises as to whether the sentence of imprisonment should be suspended, or as it would be a short sentence whether it can be

adjusted to a community penalty, such as for example probation. I have considered this carefully. However, Irish continues to deny the offences so that probation would be of no value. As to suspending the sentence, I must consider that Irish is 40, fully understood what he was doing was wrong, which is why he was so quick to deny it, even before the full accusation was put to him by KC's mother, and so to avoid culpability has attacked the veracity of the child, suggesting, and still suggesting, she is lying, which I judge continues to be damaging to her. In these circumstances I can see no good reason to suspend the sentence.

- [14] The sentence of the court is one of 9 months imprisonment. I make no ancillary orders. His exact date of release will be determined by the prison authorities. Any days he has spent in custody so far in this matter will count towards the sentence.

The Hon. Justice Iain Morley QC

High Court Judge