

EASTERN CARIBBEAN SUPREME COURT

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CRIMINAL)
A.D. 2016**

Criminal Case No. 21 of 2015

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

AND

DWIGHT WILSON

Appearances:

Mr. Teshawn Vasquez for the Director of Public Prosecutions
Accused appears in person, unrepresented

2016: 17th March

SENTENCE

- [1] **CARTER J.:** The accused pleaded guilty to four (4) counts of the indictment: indecent assault, buggery and two (2) counts of unlawful carnal knowledge, the first two (2) offences were committed against the virtual complainant between September 2009 and December 2012 when she would have been between the ages of 9 – 12 years old and the latter two (2) offences, one in March 2013 and the other in April 2013, when the virtual complainant was thirteen (13) years old.

[2] The accused was unrepresented when he first appeared before this Court but defence Counsel, Mr. John Cato obliged the court and appeared, amicus curiae in order to advise the accused before he was arraigned.

[3] The facts of the matter as presented by the prosecution were as follows:

1. The virtual complainant in this matter is a girl who was under the age of fourteen (14) years old at the time of the commission of the offences.
2. The accused in this matter had a relationship with the sister of the virtual complainant and would visit the home of the virtual complainant from time to time and continued to do so even after his relationship with the Virtual complainant's sister had ended. He would visit the home as often as once per week and would sometimes spend the night in an empty bedroom. The accused as a result knew the virtual complainant from the time that she was five (5) years old.
3. The accused began showing sexually explicit videos to the Virtual complainant when she was nine or ten years old and it was after this exposure that the offences for which the accused has now pleaded guilty occurred.
4. In relation to the indecent assault this occurred when the virtual complainant went into the bedroom where the accused was staying at her home and the accused performed acts of oral sexual intercourse on the Virtual complainant and had the virtual complainant perform similar acts on him.
5. In relation to the offence of the buggery this offence occurred in the living room of the virtual complainant's home. The accused told the virtual complainant that she needed because a back shot would make her bum bigger so that people would like watching her bum. The virtual complainant described that it did not feel right and it was painful.
6. The offences of unlawful carnal knowledge occurred on the 26-27th of March 2013 and on the 29th of April 2013. The pattern of offending was only discovered when the virtual complainant's mother intercepted phone messages from the accused to the virtual complainant.

[4] Prior to sentencing a Social Inquiry Report¹ was ordered and tendered at the sentencing hearing. This report detailed that the accused had an unremarkable

¹ Social Inquiry Report for Dwight Wilson dated 24th February 2016

upbringing, enjoying a good relationship with his parents and other siblings. The accused was a young man who has been gainfully employed since he left formal schooling. He was variously described by the persons interviewed for the report as being “*quiet and easy going*”, “*helpful and friendly*” and of “*a cool mannerism*”.

- [5] In relation to the offences for which he has pleaded guilty before this Court, the accused stated to the probation officer:

*“I feel terrible about it because what I did was not nice...I used to be friendly with the older sister. I use to go by the house...I was trusted to look out for them.”*²

- [6] The court has also had the benefit of a Victim Impact Statement³ submitted to the probation officer in this case wherein the victim described that “*my fear is how my future is destroyed due to his actions.*”

- [7] The court must consider the relevant principles in relation to sentencing as they have been set out and alluded to in such cases as **R v Sargeant**⁴ and **Desmond Baptiste v R**⁵. The court’s main aim in seeking to arrive at an appropriate sentence in this case must be retribution and deterrence. Members of society must be made to understand by the sentence imposed for offences such as these that criminal offending of this kind involving young, extremely young, children will not be tolerated and has real consequences.

- [8] **In Winston Joseph v The Queen, Benedict Charles v The Queen and Glenroy Sean Victor v The Queen**⁶ Sir Dennis Byron CJ [as he then was] stated that the

² Explanation and Attitude towards Offence, pg. 5 of Dwight Wilson’s Social Inquiry Report

³ Submitted on 1st March 2016

⁴ 60 Cr. App. R. 74 at 77

⁵ St. Vincent Criminal Appeal No.8 of 2003

⁶ St. Lucia Criminal Appeal No. 4 of 2000, Criminal Appeal No. 8 of 2000 and Criminal Appeal No. 7 of 2000 (consolidated)

actual sentence imposed should depend upon the existence and evaluation of aggravating and mitigating factors.

[9] I consider that the aggravating factors in this case are as follows:

1. The age of the virtual complainant when the offences were committed. The virtual complainant was between the ages of 9 to 13 years old.
2. The difference in the ages between the accused and the virtual complainant at the time of the commission of the offences. In 2009 when the first offence in time would have been committed, the virtual complainant would have been nine years old and the accused 29 years old, an age difference of some 19 years.
3. The offences are part of a long history involving multiple sexually penetrative acts. The Virtual complainant's evidence was that the accused had sexual intercourse with her over ten times.
4. Acts of sexual perversion committed on the Virtual complainant. The evidence before this court was that the accused prisoner had the virtual complainant perform acts of oral sexual intercourse on him on more than one occasion, and that he also performed such acts on her.
5. Breach of position of trust. The accused was a friend of the family and knew the virtual complainant since she was five years old and attending pre-school.
6. The offences resulted in the Virtual complainant contracting a sexually transmitted disease: herpes, a condition for which there is currently no known cure.
7. The lasting effect that the offences will have on the virtual complainant. The "Victim Impact Statement" details the psychological effects on the virtual complainant as well as direct financial loss associated with her continuing medical treatment for the sexually transmitted disease.

[10] I consider that the mitigating factors are as follows:

1. The accused entered guilty pleas at an early stage of the trial and the direct result of those pleas was that the virtual complainant has not had to give evidence in Court.
2. The accused has no previous convictions for any similar or like

offence.

3. The remorse expressed by the accused as detailed in the social inquiry report.

[11] The aggravating factors clearly outweigh the mitigating factors in this case. The court bears in mind that it not just the identification of these factors that is called for. As stated by Byron CJ in **Winston Joseph**⁷:

“It is not enough for the court merely to identify the presence of 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.”

[12] The penalties for the various offences are as follows:

- (i) For the offence of indecent assault, the maximum sentence prescribed by law is 10 years imprisonment, with or without hard labour;
- (ii) For the offence of buggery, the maximum sentence is ten (10) years imprisonment, with or without hard labour; and
- (iii) For the offence of unlawful carnal knowledge the maximum sentence is imprisonment for life.

[13] There is no doubt that in this case a custodial sentence is warranted. In **R. v. Roberts (Hugh)** [1982] 1 WLR 133, in relation to the offence of rape, Lord Lane CJ stated at pages 134-135: *“Other than in wholly exceptional 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*

⁷ St. Lucia Criminal Appeal No. 4 of 2000

punish the offender, and last, but no means least, to protect women. The length of sentence will depend on the circumstances.”⁸

[14] These reasons are as relevant to rape as to the offences before this court today and particularly the offences of unlawful carnal knowledge where the protection of a child must be considered. The court is strengthened in this view when it considers that the maximum penalty for rape and for unlawful carnal knowledge is identical. The maximum sentence of life imprisonment for unlawful carnal knowledge is a clear indication that it was intended that persons who seek to desecrate the innocence of young children should be severely punished.

[15] The offences of unlawful carnal knowledge are particularly troubling. In submissions to this court the prosecution expressed that *“the conduct of the prisoner in relation to the virtual complainant...amounts to grooming which is designed to secure the virtual complainant’s complicity in the sexual acts.”* This court cannot agree more. The accused, placed in a position of trust, betrayed that trust but more than that he used the trust of a young child in a family friend to slowly and deviously pervert a young child’s mind to the extent that she unwittingly became complicit in his vile acts. As detailed above he has left that child psychologically and physically scarred, fearful of her future and with an incurable disease. It is to these matters that the court has in mind as it seeks the appropriate sentence in this case.

[16] In **Winston Joseph**⁹, Byron CJ stated that for the offence of unlawful carnal knowledge of a female under thirteen years of age which carries a maximum

⁸ See also, DPP v Shaunlee Fahie, HCRAP 2008/003 –Court of Appeal in the Territory of the Virgin Islands [unreported]

⁹ Ibid, pg. 4

sentence of life imprisonment:

“...starting at a minimum where the 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 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.”

[17] In this jurisdiction, for the offence of unlawful carnal knowledge, in circumstances similar to the instant case, the sentences imposed by the court have ranged from six (6) years imprisonment on a guilty plea in the case of **Camron Wilkinson**¹⁰ to sixteen (16) years imprisonment where the offence was committed on a virtual complainant who was eleven (11) years old at the time of the commission of the offence in the case of **Wendell Welcome**¹¹. In **Welcome's** case the accused had no previous convictions.

[18] In this case the court is being asked to sentence for two separate counts of unlawful carnal knowledge committed a month apart from each other. Although the facts of the case point to a prolonged period of sexual offending the court is mindful to clarify that its sentence is in relation only to these two (2) counts of unlawful carnal knowledge for which the accused has now pleaded guilty. The court will take as its starting point ten (10) years imprisonment. This starting point will be increased given the nature of the aggravating factors and because of the measure by which they outweigh the mitigating factors to fourteen (14) years imprisonment. The court will discount this sentence by 1/3 to account for the accused early guilty plea. The sentence of the court is nine (9) years and four (4) months imprisonment on each count of unlawful carnal knowledge.

¹⁰ SKBHCR2012/0041

¹¹ SKBHCR2012/0049

[19] For the offence of indecent assault the authorities show that the starting point for such an offence is in the region of five (5) years imprisonment. This was the starting point suggested by the Court of Appeal in **Sherwin Williams v The Queen**¹², a case in which the prisoner broke into the Virtual Complainant's home and performed oral sex on her and also forced her to perform oral sex on him. The prisoner pleaded guilty. His sentence upon appeal was reduced from ten (10) years imprisonment to six (6) years imprisonment. The court took as its starting point a period of five (5) years imprisonment.

[20] As has been stated the aggravating factors clearly outweigh the mitigating factors in this case, especially the age of the virtual complainant as well as the abhorrent nature of the acts which constitute the offence of indecent assault on the facts. The court will take as its starting point five (5) years imprisonment and increase this to account for those aggravating factors to six (6) years. The six (6) years will be discounted by 1/3 to account for the accused early guilty plea to bring the appropriate sentence for the indecent assault to four (4) years imprisonment with hard labour.

[21] For the offence of Buggery the maximum sentence is ten (10) years imprisonment. The starting point on a guilty plea is also in the range of five (5) years. As was stated by the probation officer in the Social Inquiry Report:

"...the charge and guilty plea to BUGGERY ...the department view as the most brutal form of child sexual offences."

The officer expressed his view that the court must send *"a strong message that such behavior cannot be tolerated within our society."*¹³

¹² SKBHC RAP2012/0005 delivered on 3rd June 2015

¹³ Page 8 of Social Inquiry Report for Dwight Wilson dated 24th February 2016

- [22] Having considered that the aggravating factors outweigh all mitigating factors and especially considering the heinous nature of this offence committed against a young child between 9-12 years old, the court will increase that sentence to seven (7) years imprisonment. The court will reduce the seven (7) years by 1/3 to account for the accused early guilty plea. The appropriate sentence for the offence of buggery is five (5) years and four (4) months imprisonment with hard labour.
- [23] After reviewing the facts of this case, this court is of the view that this is a case in which the imposition of a combination of concurrent and consecutive sentences is appropriate. 'Consecutive sentences are wrong in principle if they are imposed for offences which arose out of single incident. However a sentence should not be concurrent simply because of the similarity of conduct or because it may be seen as part of one course of criminal conduct.... Where an offender is convicted of several similar offences committed at different times he could be sentenced to consecutive terms of imprisonment.'¹⁴ Where as in this case an offender commits a number of sexual offences over an extended period of time, it is permissible for a Court to impose consecutive sentences in relation to each.¹⁵
- [24] The court has considered that the final sentence should reflect all of the accused offending behavior as a whole¹⁶. In Blackstone's Criminal Practice paragraph E1.21 states:
- "The definitive sentencing guideline, Totality (see Supplement, SG-578), restates general principles set out in earlier case law, providing:...all courts, when sentencing for more than a single offence, should pass a*

¹⁴ Noble [2003] 1 Cr App R (S) 312

¹⁵ R v K (P G) [2015] EWCA Crim 1002

¹⁶ The Queen v Andre Penn, BVIHCR 2009/0031, at page 27, Per Ramdhani J (Ag.).

total sentence which reflects all the offending behavior before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence."

[25] The total sentence of the court is that the accused shall serve the sentences for the various offences as follows:

- (i) For the offence of unlawful carnal knowledge each sentence of nine (9) years and four (4) months imprisonment will run concurrently with the other;
- (ii) For the offence of indecent assault, a sentence of four (4) years imprisonment with hard labour to run consecutively to the sentences for unlawful carnal knowledge;
- (iii) For the offence of buggery a sentence of four (4) years and eight (8) months imprisonment with hard labour to run consecutively to the sentence for indecent assault.

[27] The accused shall serve a total period of eighteen (18) years imprisonment. The time served by the accused on remand from 25th September 2015 will be taken into account and deducted from this sentence.

Marlene I. Carter
Resident Judge