

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

COMMONWEALTH OF DOMINICA

CASE NO. 27 OF 2015

BETWEEN:

THE STATE

V

JOSEPH SENHOUSE

Appearances:

Ms. Fernilia Felix for the State

Mrs. Dawn Yearwood-Stewart for the Defendant

2015: December 11

JUDGMENT ON SENTENCING

[1] Thomas J. [Ag.]: The defendant, Joseph Senhouse, is before the court for sentencing as a result of guilty verdicts against him for buggery, unlawful sexual intercourse and indecent assault.

[2] On the return of the verdict the court ordered a Social Inquiry Report to be prepared by a Probation Officer at the Welfare Department.

[3] The report was prepared by Mrs. Delia Giddings-Stedman. The report covers a very wide field with much analysis of a complex social setting. The conclusion reads thus:

“Based on information gathered, the victim is experiencing the harmful psychological, psychosocial and emotional effects as a result of Joseph’s action against her. The victim suffers with anxiety and ongoing fears, especially of death and dying. In addition, the victim also experiences a degree of stigmatization and subjection from her peers and persons within the community. It was reported further by the victim, that she is subject to name calling and ridicule from her peers and adults within the community.

In essence, Joseph’s act of buggery, unlawful sexual intercourse and indecent assault, did not only steal the victim’s sense of security and the joy of being a child, but adversely affected her overall social functioning. One should also note that the victim was familiar with Joseph and the offence took place within the same community where the victim and the abuser resided. One therefore cannot trivialize the wrongfulness of Joseph’s actions.

It was also highlighted during the investigation that Joseph claims to be a victim of child abuse. He claimed that he was subjected to physical and emotional abuse from his mother and seemingly his social environment within his upbringing, lacked interpersonal relationships. During the interview, Joseph said that he does not have a deep desire or love for women and upon reflection, is of the notion that someone should pay for all his pain and suffering that he endured, during his childhood. Furthermore, Joseph described himself as a non-violent person and one who could be selfish and wayward. He added that he is also artistic. Also gathered from investigations is that Joseph Senhouse is known to the Honorable Court and has been criminally charged for an offence of a similar nature, with his daughter being the victim.

Sentiments expressed by those interviewed reveal that Joseph is known for the bad habit of disrespecting children, while others viewed him as hardworking. It was also felt that Joseph took advantage of the victim’s vulnerability, given that her family is financially deprived and was helping them financially. In addition, the community has a very negative view of the victim and her mother, which seemingly, has negatively affected the general relationship of the victim and her mother in the community.

Based on the assessment conducted, it appears that some community members now hold a negative view of the victim and her mother. Seemingly, they are being blamed for the incident especially given their penchant for seeking assistance towards their underprivileged circumstances. It is rather unfortunate that after the abuse suffered by the victim; she is continually being victimized for an action for which she was not at fault. Our children needs to be protected and allowed the opportunity to live a normal life in an environment that is free from abuse.

Furthermore, the sentiments expressed by the interviewees of this report particularly as it relates to sentencing, should be given due consideration when handing down sentence in this matter. It is felt that Joseph should be given a custodial sentence. Bearing in mind the offence for which he is charged and the fact that Joseph’s action has already and will indeed have lasting effects on the victim’s social, physiological and social life, even in the course of counselling.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Joseph Senhouse.”

Relevant considerations

- [4] In order to arrive at an appropriate and just sentence to be imposed on the defendant the following will be considered: the nature of the offences, background to the offences, the manner of execution, maximum penalty for the offences under the law, previous convictions, if any, the ages of the defendant and the victim, the principles of sentencing, mitigating and aggravating factors, the plea in mitigation and the Social Inquiry Report.

Nature of the offences

- [5] Under Section 16 of the **Sexual Offences Act**, 1998 (“the Act”) “buggery” is defined as sexual intercourse per anum by a male person with a male person or by a male person with a female person.
- [6] Unlawful sexual intercourse means sexual intercourse with a person who (a) is not the spouse of the first mentioned person; and (b) is less than 14 years whether or not the person consented and whether or not the first mentioned person believes that the person is 14 years or more.
- [7] The foregoing statement of offences of buggery and unlawful sexual intercourse is supplemented in section 2 (2) of **the Act** which says that: for the purpose of this Act sexual intercourse shall be deemed complete upon proof of the penetration of the vagina to any extent by the penis.
- [8] Finally, under section 13 (3) of **the Act** “indecent assault” means an assault or battery accompanied by words or circumstances indicating an indecent intention.

Background to the offences

- [9] The defendant and the victim at the time of the offences lived in the same area. The defendant knew the victim because of the area where they both lived at the relevant time; and also because the defendant had a relationship with the victim's mother for some time prior.

Manner of execution

- [10] The defendant seized those occasions when the victim was passing on the road to invite her into his house to do what he wanted to do. After each offence fruits and or money were given to the victim and sent on her way.

Maximum penalty under the law

- [11] Under section 16 (1) of the Act the maximum penalty for buggery on a minor is 25 years imprisonment. In relation to unlawful sexual intercourse the maximum penalty is also 25 years if the victim is less than 14 years old. Finally, the maximum penalty for indecent assault is 10 years if committed on a person who is under the age of 14 years.

Defendant's previous convictions

- [12] The defendant has two previous convictions. The first is for indecent language in November 1988 and the other is for unlawful carnal knowledge in October 1997. The victim was his daughter.

Ages of defendant and victim

- [13] The defendant was born on 12th January 1964 while the victim's date of birth is 26th February 2005. The present ages are therefore 51 and 10 years, respectively.

Principles of sentencing

- [14] In the celebrated case of **Desmond Baptiste**¹, in elaborating on what was said in this regard by Lawton LJ in **R v Sargeant**², Byron CJ identified the principles of sentencing of as being retribution, deterrence reformation and protection. These principles will be placed in context later.

Mitigating factors

- [15] The court can discern no mitigating factors.

Aggravating factors

- [16] The following are the aggravating factors: first, the victim was 8 years at the time and her physical appearance, even now at the age of 10 is one of great fragility with a total body weight of less than 70 pounds. Second, after the first sexual offence the defendant gave the victim a bottle of juice, 3 mangoes and two dollars. Third, after the third offence, the defendant told the victim that she should not tell anyone. Fourth, with respect to the fourth occasion, the victim said she could not remember all that happened on this occasion but she did testify that the defendant gave her five dollars, 4 mangoes, 4 passionfruit and 5 oranges. Fifth, the defendant had a prior sexual relationship with the victim's mother. Sixth, both vaginal and anal sex were involved.

Plea in mitigation

- [17] Learned counsel in her plea in mitigation referred to the Social Inquiry Report prepared by Mrs. Delia Giddings-Stedman and described it as being very thorough. Learned counsel also mentioned the fact that no violence was used beyond what is associated with the offences in issue. Mention was also made of his abuse by his mother up to the age of 12 years which caused the defendant to believe that his mother despised him.

¹ Criminal Appeal No. 8 of 2003

² [1974] 60 Crim App R 74

- [18] The positive sentiment of the defendant's intimate partners was also highlighted by learned counsel. In the end, learned counsel asked the court to temper justice with mercy

The Social Inquiry Report

- [19] The report has presented the defendant who was abused as a child, who is the father of six children but sexually abused one of his daughters when she was 12 years old, maintains his innocence and who shows no remorse for the crimes for which he was convicted.

Principles of sentencing in context

- [20] The reforming of the defendant in this context hardly arises because he was imprisoned as late as 1997 for unlawful carnal knowledge. The sentence then was 15 years. And now in 2015 he is back again with the additional finding of guilt buggery and indecent assault. Plus the defendant is now 51 years old with a pending prison sentence that cannot be short. Thus any reform would have to be within the context of the defendant's future endeavours.
- [21] At the other end of the spectrum the other principles of retribution, deterrence and protection are abundantly relevant and applicable.
- [22] This court has on previous occasions made the comment that the Commonwealth of Dominica is in the midst of a wave of sexual abuse of children. The statistic relied on by the court is that the Welfare Department has indicated that between 2010 and 2014 there were in excess of 900 reported cases of child abuse. And in 2015 the trend has continued with the preference being shown for the younger children – even as young as 5 years old.
- [23] The foregoing represents the legal and sociological basis as to why the principles of retribution, deterrence and protection are abundantly relevant and applicable.

[24] Even to a layman, it would be patent that a young child whether male or female could either make or break such a child. In an article entitled: **Overexposed and Under Prepare- The Effects of Early Exposure to Sexual Content** by Dr. Hilary C. Ross, M.D, M.P.H says this in part:

“The earlier a child is exposed to sexual content and begins having sex, the likelier they are to engage in high risk sex. Research shows that children who have sex by age 13 are more likely to have multiple sex partners, engage in frequent sexual intercourse, have unprotected sex and use drugs or alcohol before sex.”

[25] Even if all of the foregoing is not relevant to Dominica, there is evidence that some of it already applies. The added negative factor is that when the defendant had a relationship with a woman with children and one of the female children was sexually molested.

[26] A factor not expressly mentioned the foregoing is the disruption of the education of such children. For it cannot be doubted that such children though from humble beginnings may be a brilliant scholar. The point is well made by a case of child; from a very poor family in the O.E.C.S State received 17 grade 1 in his 17 CXC subjects in 2015.

[27] In the case of **Winston Joseph v The Queen**³ our then Chief Justice sought to enunciate guidance in relation to sentences in the context of the sexual offences. His Lordship said:

“The actual sentences imposed will depend upon the existence and evaluation of aggravating factors, the more common of which I have to list below. 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 towards a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.”

[28] In the same case His Lordship went on to identify the “more common” aggravating and mitigating factors as follows:

“18 Aggravating factors

i. If the girl has suffered physically or psychologically from sexual assault

^{3 3} Criminal Appeal Bo.44/2000 (SLU)

- ii. If it has been accompanied by abhorrent perversions eg. Buggery or fellatio
- iii. Violence has been used over and above the force necessary to commit the offence.
- iv. The offence has been frequently repeated.
- v. The defendant has previous convictions for serious offences of a violent or sexual nature.
- vi. The victim has become pregnant as a result of the crime
- vii. The victim is either very young or very old.

19 Mitigating factors

- i. A plea of guilty should be met by an appropriate discount depending on the usual considerations, that is to say how promptly he confessed and the degree of contrition and other factors.
- ii. Where incest was consensual, in the case of a girl at least 16 years if it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl as an outlet for sexual inclinations.
- iii. Where the girl at least 16 years of age made deliberate attempts at seduction.
- iv. Where the defendant is a first offender and/or is a youth.

Sentencing matrix

[29] The sentencing matrix embraces the totality of the aggravating factors, the principle of sentencing, the nature of the offences, and the threat of death to the victim if she told anyone, the defendant's previous conviction for unlawful sexual intercourse. The details are as follows:

- a) The victim's age of 8 years at the time of the offences.
- b) The offences of buggery, unlawful sexual intercourse on the victim.
- c) The victim's physical appearance at the age of 10 years and her body weight estimated by the court as being less than 70 pounds.
- d) The defendant giving the victim fruits and money after the sexual events.
- e) The defendant's prior sexual relationship with the victim's mother.

- f) The victim in her evidence in chief detailed 3 instances of buggery and vaginal sex with the defendant. She also testified that she could only remember some of the details regarding a fourth occasion. But under cross-examination the victim said that the defendant had sex with her 5 times
- g) The Social Inquiry Report.
- h) The defendant gave the victim fruits and money being two dollars and five dollars at the end of some sessions of sex.
- i) The plea in mitigation

Sentence

[30] The defendant, Joseph Senhouse, must be characterized as a person without a conscience, lacking humanity and, importantly, without a modicum of compassion. He is content to have vaginal and anal sex with an 8 year old child after having a prior sexual relationship with her mother.

[31] Factors which points to your lack of humanity and compassion are the following: the fact of the child's appearance: less than 4 feet tall, about 70 pounds body weight, being and an 8/10 year old version of what her body was at two or three years old. This posed no impediment on approaching your 50th birthday and telling your victim "come a while", on at least 4 occasions. That while, turned out to be sex in her anus and vagina. The victim even gave evidence of something looking like soft bread coming out of her vagina on one occasion when he was finished. No imagination required and other matters also arise. And, to add insult to injury, the defendant, when he had satisfied himself, gave his victim fruits plus two dollars on one occasion and five dollars on another occasion. The intent is patent.

[32] When all of the aggravating factors are considered there emerges nothing but a quest for self-satisfaction, depravity and lack of humanity and compassion. And with that said the court reminds itself of a case from another jurisdiction where a police officer took an older child, who was detained, from the cell, sent her to take a bath and then had sex with her. At the end the child reminded the officer that he had a daughter.

- [33] To the foregoing must be added the defendant's sentence of 15 years for unlawful carnal knowledge in relation to a child, your own daughter. This puts the issue beyond doubt that sex with little girls is your forte. You just don't care. The 15 year sentence was no deterrent.
- [34] To do as you did to an 8 year old child with a body weight of about 70 pounds can only be described as heinous. And people like you and those in custody for this reason before you deserve no mercy. As such, the principles of retribution, deterrence and protection come into full play to the rescue of the Dominican society. More to the point Dominica needs to be protected from people of you ilk.
- [35] Consider the likely mind-set of this now 10 year old and what Dr. Hilary C. Ross and the Probation Officer said are the likely psychological consequences in the context of full life ahead. With that said, the brilliant manner in which the child gave her evidence even under stern cross-examination may point to her rejection of your conduct towards her. But this is only the court's hope.
- [36] In all of this, the court is guided by the sentencing guidelines enunciated by our Court of Appeal in the case of **Winston Joseph v R**⁴ with respect to unlawful carnal knowledge. In this said that in the context of a maximum sentence of life imprisonment with no aggravating factors the sentence should begin at 8 years and increased according to the aggravating factors. In this regard, too, the court is further guided by the case of **The State v Fagan Jno. Hope**⁵ with similar facts regarding the victim.
- [37] Therefore, in the context of a child of 8 years, the numerous aggravating factors and the 1997 sentence of 15 years for unlawful carnal knowledge of your own daughter your sentences are as follows:

- | | |
|--------------------------------|----------|
| 1. Buggery- | 25 years |
| 2. Unlawful Sexual Intercourse | 25 years |
| 3. Indecent assault | 10 years |

⁴ Ibid

⁵ Criminal case No. DOMHCV2014/0037

The sentences for buggery and unlawful carnal knowledge will run concurrently, that is to say, together. The sentence of 10 years for indecent assault will run consecutive to the sentence for the other two offences. Your total sentence therefore is 35 years.

[38] Given the evidence and your prior actions, Dr. Griffin Benjamin, the consultant psychiatrist must make a determination as to whether or not you are in need of psychiatric treatment. An evaluation and treatment, if necessary, is hereby ordered

Errol L. Thomas

High Court Judge