

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

COMMONWEALTH OF DOMINICA

CASE NO. 29 OF 2015

BETWEEN:

THE STATE

V

NEQUESTA STEADMAN

Appearances:

Ms. Evelina E.M. Baptiste, Director of Public Prosecutions

Mr. Peter E. Alleyne for the defendant

2015: October 15

JUDGMENT ON SENTENCING

[1] **THOMAS J. (Ag.):** Nequesta Steadman is before the court for sentencing. The crime of which he was found guilty is Indecent Assault, contrary to Section 13(1) (a) of the **Sexual Offences Act 1998**. The offence was committed on 10th September, 2011, at Sayers Estate, St. Joseph.

[2] Upon the foregoing event, the court ordered that a Social Inquiry Report be submitted to the court with respect to the defendant.

[3] Such a report was prepared by Anestin Baron and the following is her conclusion:

“Nequesta Stedman was found guilty of the offence of Indecent Assault against Keria Cuffy. At the time of the incident, Keria was a minor. The impact of any sexual related offence against an individual may be reflected in various ways.

Based on information received during the investigation, although Nequesta continues to deny having indecently assaulted Keria, she maintained her stance that he assaulted her. Furthermore, irrespective of the fact that Keria has been belittled by community persons for her decision to report the matter to the Police and proceed to Court afterwards, she stands firm with the belief that she did the right thing. According to her, she did it for herself, and as such, is uncaring towards what others may think of her for doing what she believes was right.

It is interesting to note that although Keria denied having any relationship or friendship with Nequesta, he continues to make reference to a supposed relationship that existed between them. Notwithstanding whether or not a relationship existed between Nequesta and Keria, this does not excuse his action on the day in question.

Based on the interview conducted with Nequesta, it can be deduced that he was not remorseful for his action. This was concluded on the basis that he remains in denial of his actions and when he expressed his sentiments towards the offence, he only mentioned that he feels badly about the situation and his present incarceration pending sentencing.

The interview conducted did not portray Nequesta as someone with a negative personality or one with a history of engaging in such behaviour. However, the action which led to the offence in question cannot be downplayed or overlooked. His actions were against a minor who, from her own admission, has been affected. She has indicated that Nequesta breached her privacy within her home that has caused her to feel disrespectful and uncomfortable. Also, lack of remorse from Nequesta as well as his continued declaration of innocence, raises the question of whether he understands or acknowledges the seriousness of his actions.

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

Relevant considerations

- [4] For the purposes of arriving at an appropriate sentence, the following are relevant considerations: the nature of the offence; background to the offence; the manner of execution; maximum penalty for the offence; previous convictions; age of the defendant and the victim; aims of sentencing; aggravating and mitigating factors; the plea in mitigation and the Social Inquiry Report.

The Nature of the Offence

- [5] The offence is Indecent Assault, which, under Section 13(3) of the **Sexual Offences Act 1998**, is defined as an assault or battery accompanied by words or circumstances indicating an indecent intention. This encompasses inappropriate actions against a female.

Background to the Offence

- [6] The victim's evidence is that while she knew the defendant, she did not invite him to enter her parent's home and to lie next to her in the nude with his penis touching her.

Manner of Execution

- [7] There was no evidence as to the manner in which the defendant entered the house but there is evidence that the defendant entered through the back door which was kept closed by a piece of cord or string.

Maximum Penalty under the Law

- [8] The maximum penalty under the law is imprisonment for 10 years.

Previous Convictions

- [9] The defendant has no previous convictions.

Age of the Defendant and the Victim

- [10] At the time of the offence, the defendant was 23 years old while the victim was 16 years old.

Principles of Sentencing

[11] The principles of sentencing are retribution, deterrence, reformation and protection. The initial articulation of these aims were first articulated by Lord Justice Lawton in **R v. Sargeant**¹ and expanded on by Chief Justice Byron in **Desmond Baptiste v R**². The essence is as follows: retributive element is intended to demonstrate public revulsion for the offence and to punish the offender for his conduct. Deterrence is aimed at deterring not only the present offender but also potential offenders. Reformation is aimed at the offender in an effort to change his inclination to commit crimes. Protection is all encompassing as it seeks to have the entire society protected by the sentence imposed.

Aggravating Factors

[12] The court can discern the following aggravating factors: the manner in which entry was gained into the victim's house; the defendant's removal of his clothes and lying on the couch with the victim; and the offence being committed sometime after 2:00 a.m.

Mitigating Factors

[13] The only mitigating factor that can be identified is that the defendant left the house without a struggle after a certain request was denied. Further, there were no heinous acts involved.

Principles of Sentencing in Context

[14] The evidence is that Sayers Estate, St. Joseph, is a rural area of the Parish. By definition, it means that the population density is not great and the area would not be as well lit as densely populated areas.

¹ [1974] 60 CR App. R.74

² Criminal Appeal. No. 8 of 2003

[15] It is in the foregoing context described that the principles of sentencing must be considered and applied.

[16] The defendant, on the evidence, entered the victim's house without being seen or heard either by the victim or her mother who was in the bedroom adjoining the living room. These facts bring the principle of deterrence and protection immediately into focus as the defendant must be punished for his crime and others must be deterred. And, with that, protection of the society becomes equally important for the court not only for Sayers Estate but also beyond, given the nature and import of the conduct involved.

[17] A further dictum of Lord Justice Lawton in **R v. Sargeant**³ is also relevant and compelling. This is what he said:

“Any judge who comes to sentence ought always to have those five classical principles in mind and to apply them to the facts of the case to which of them has the greatest importance in the case with which he is dealing.”

Indecent Assault

[18] The statutory definition of Indecent Assault has already been given but there are judicial dicta on this offence which go beyond the accused but also to the victim. For instance, Madam Hariprashad-Charles in **The Queen v Andre Penn** had this to say:

“53. With respect to these seven counts of indecent assault this case reminds me of **the Queen v Donald Rogers**...relied upon by the prosecution, where I said:

‘Indecent assault is largely a non-penetrative sexual offence but no less despicable on that account. In the words of Lord Griffiths.....although the offence of indecent assault may vary greatly in its gravity from an unauthorized teenage sexual grouping at one end of the scale to a near rape at the other, it is in any circumstance a nasty unpleasant offence...’

³ Supra

Although indecent assault is less serious than rape, the latter carrying a maximum penalty of life that does not make indecent assault any less traumatic to the victim.”

Sentencing Guidelines

[19] In terms of sexual offences⁴ and other offences, sentencing⁵ guidelines have been laid down by our Court of Appeal. But it has been said on occasions that guidelines are not intended to be binding but more as a guide. A further consideration is that in some cases the statutory penalties differ substantially.

Sentencing Precedents

[20] While sentencing precedents are not intended to serve as binding guidelines since for the most part they were imposed by a lower court, but they can give an indication as to the manner in which the offence was dealt with on similar facts and the law.

[21] In the British Virgin Islands, the legislation prescribes a maximum of 10 years imprisonment for indecent assault of a girl under 13 years of age. Thus, in **The Queen v Kemel Dublin**, the defendant was sentenced to 12 months imprisonment for Indecent Assault. A similar sentence was imposed in **The Queen v Donald Rogers**. Also, in **The Queen v Nelson Calwood**, a sentence of 3 years was imposed for the offence. And, in **The Queen v Lloyd Arthur**, the defendant, a pastor, was sentenced to 5 years imprisonment on each of the three counts of Indecent Assault to run concurrently.

[22] In the St. Lucia case of **R v. Marc St. Rose**, the defendant was imprisoned for 1 year for Indecent Assault. The acts of indecency involved kissing the victim's breast and licking and kissing her vagina.

⁴ **Winston Joseph and the Queen**; Criminal Appeal No. 4 of 2000

⁵ **Desmond Baptiste and Queen**, Criminal Appeal No. 8 of 2003

[23] In the case of Dominica, going back to 2010, the sentences for Indecent Assault range from 6 months⁶ to 3 years⁷, to 6 years⁸, to 8 years,⁹ to 9 years¹⁰, to 10 years¹¹, to a fine of \$3,000.00.¹²

Plea in Mitigation

[24] Learned counsel, Mr. Peter Alleyne, in his plea in mitigation, referred to the defendant's apology for his action in entering the victim's house; the Justice (Reforms) Act; the climate of sex crimes involving children and the actions of the defendant while at the victim's house. On these bases, learned counsel sought leniency for his client.

Sentence

[25] While the defendant in this case did not involve the victim in any heinous act, he lay in the nude behind her on a couch after he had entered the victim's house uninvited sometime after 2:00 am. These are all aggravating factors which operate against the defendant. At the same time, this offence is but a fraction of an affliction of sexual offences against children which threatens to sully the good name of Dominica both regionally and internationally. This affliction is unrelenting with a preference being shown for girls aged 11 years, sometimes a little more than that, while at other times a lot less than 11. This is neither the context nor the season for leniency.

[26] In the **Winston Joseph** case, the court reasoned that if the mitigating factors outweigh the aggravating factors then the tendency must be toward a lower sentence but where there is the reverse, the sentence must tend to go higher. Applying the reasoning in that case, the clear result is that the aggravating factors outweigh the mitigating factors.

⁶ The State v Bevon Barton, Criminal Case No. 44/09

⁷ The State v Francis Warrington, Criminal 33/14 case no. 45/09 and The State v Peter Daniel, Criminal Case No. 46/09

⁸ The State v Thomas Prince, Criminal Case No. 3/2013

⁹ The State v Andrew Valmond, Criminal Case No. 9/2010

¹⁰ The State v Royer Valentine, Criminal Case No. 7/2014

¹¹ The State v Robert Bellot, Criminal Case No. 48/09

¹² The State v Isiah Paris Criminal Case no. 5/14 and The State v Nigel Hector Criminal Case No. 8/14

[27] In all the circumstances of the case as examined above, the sentence of the court is imprisonment for 18 months; time on remand will count towards the sentence.

.....
Errol L. Thomas
High Court Judge [Ag.]