

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CASE NO. DOMHCR2014/0019

BETWEEN:

THE STATE

And

WILSON WADE

Appearances:

Ms. Evelina E-M. Baptiste, Director of Public Prosecutions and Ms. Fernillia Felix,
State Attorney, The State

Mr. David Bruney for the Defendant

2015: 27th February

JUDGMENT ON SENTENCING

- [1] **THOMAS, J.:** Before the court for sentencing is Wilson Wade by virtue of the fact that he was found guilty of the offences of buggery and indecent assault; contrary to sections 16 (1) (c) and 13 (1) (a) of the **Sexual Offences Act** ¹1998 No. 1, respectively.

Relevant Facts

- [2] On 7th January 2013, at Fond Cole, in the parish of St. George, a young boy, then aged 8 years and 8 months and attending primary school, was on his way home on Glasgow Road, Fond Cole, after taking clothes for his baby brother and sister at the baby sitter lower down on the said Glasgow Road. At some point before he reached his home, a man, who turned out to be the prisoner, held him by his left

¹ Laws of the Commonwealth of Dominica

hand and took him to an abandoned house, below the road and buggered him and committed indecent assault on the young boy.

- [3] The torrid and horrendous details of these offences are that when the prisoner took the little boy to the house he put him to kneel on a white cloth, he told him to pull down his pants, then the prisoner pulled down the child's boxers and told him to suck his penis. The prisoner put his penis in the child's 'boom boom' then took out his penis and pushed it again in the child's mouth. The child said he spat out a white thing and then he told the prisoner he wanted to 'poo poo' and the prisoner showed him where to 'poo poo' in the room - less than 2 feet from where he decimated and de-humanized him.
- [4] After this episode of crime, the prisoner told the child not to tell anyone and promised the child a ball. But the child's response was that he has a ball already.
- [5] That piece of evidence which the child remembered about the ball was highlighted by the court so that the jury could determine whether the person who promised the ball, the person who said he was playing football all day on 7th January and the person who Kennon Samuel saw playing football on the afternoon about 4 p.m. was the same person. The child also told the court that after he was released by the prisoner and walking to his home, he saw the prisoner go through a blue gate.
- [6] When the child reached home, the evidence accepted by the jury was that he was depressed which triggered his sister to enquire and his response to set off a train of events including a report to the police, the child being treated and detained at the Princess Margaret Hospital for 5 days, the identification of the prisoner by the child and charges being laid and ultimately the trial.

The Social Inquiry Report

- [7] The Social Inquiry Report ordered by the court was comprehensive and detailed and eloquent. The court wishes to thank Mrs. Delia Giddings-Stedman for the excellent work being done. For as the court always says, the Probation Officers and the Welfare Department, by extension, are an important adjunct to the court.

[8] The report in part, reads:

“Conclusion

Being sexually abused is one of many painful and potentially damaging experiences that a human being may suffer in childhood. The possibilities and long term effects of child abuse are endless and consist of extreme antisocial behaviours and juvenile delinquency, to include social and economic effect on a society. This social ill, infringes on the most basic rights of a child and the experience steals a child's sense of security and the joy of being a child. It should be noted that the experience was a traumatic one for the victim. This experience can have a lasting negative effect on the whole person, more particularly, on his emotional and social life. The impact may be deemed even worse when the victim is familiar with the abuser and resides within the said environment and in close proximity where the abuse took place. The incident it was noted took place within close proximity of the victim's home and the accused also resides within close proximity of the victim.

Based on information gathered, the incident has adversely affected the victim's emotional and psychological state of mind to the extent that he suffers from Post-Traumatic Stress Disorder (PTSD). One therefore cannot trivialize the wrongfulness of Wilson Wade's actions. It was highlighted during the investigation, that Wilson's personality is one of violence. Wilson also described himself with one word 'violent'.

While Wilson stated that he “feels ashamed” as it relates to the incident, he did not express remorse, but rather maintained his innocence. Wilson is of the view that irrespective of his feelings, his image has not been taken away; meaning that his peers does not have a negative view of him, notwithstanding the nature of the offence for which he has been charged.

Also gathered from investigations is that Wilson Wade has a matter pending before the Honourable Court for an offence of throwing missiles.

Wilson Wade's action has affected a child's emotional and social well-being and by extension his entire family. Wilson has described himself as being violent. However, while his family and associates described him as a quiet individual, his admission of having a violent disposition is cause for concern, given that his personality lends towards further criminal actions.

One should therefore note that Wilson Wade's action will indeed have lasting effects on the victims life, even in the course of counseling. The memory of the brutal sexual experience suffered by the victim will forever be etched in his mind.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Wilson Wade.

Delia Giddings Stedman

Probation Officer

23/2/2015”

Matters that must be considered by the court

- [9] The court must now consider certain matters in detail for the purposes of sentencing. These are the nature of the offences, the manner of execution, maximum penalties for the offences, the age of the prisoner, the age of the child, aims of sentencing, mitigating factors, aggravating factors, prevalence of sexual offences, and the plea in mitigation.

1. The nature of the offences.

Buggery

The law defines buggery as sexual intercourse per anum by a male person with a male person. Here the victim was a minor.

Indecent assault

Indecent assault is classified as a sexual offence defined as an assault or battery accompanied by words or circumstances indicating an indecent intention. The cases show that the offence involving a woman's breasts, buttocks or her genital area; but it also involves an individual putting his penis on the body of another person. In this case, it is the penis in the child's mouth on two occasions. One after he removed it from what the child called his 'boom boom'.

It has been said judicially that indecent assault is largely a non-penetrative sexual offence but is no less despicable and the victims must carry their memories with them for the rest of their lives. It is also described as a nasty and unpleasant offence.

2. Manner of execution

Taking an innocent 8 year old child returning from a family errand and decimating him in an abandoned house and telling him not to talk and then offering him a ball.

3. Maximum penalties under the law for buggery and indecent assault.

-Buggery – section 16 (1) (c) carries a 5 year sentence, if committed by a minor.

-Indecent assault carries a 10 year sentence.

4. Age of the prisoner.

19 years old. Date of birth 13th January, 1996. His birthday was just 6 days away at the time of the offence.

5. Age of the child at the material time- 8 years 8 months

6. Aims of sentencing.

In Vol. 11 (2) of **Halsbury's Laws of England**² the aims are stated to be: retribution, deterrence, reforming and protection.

Retribution is intended to show public revulsion for the offence and to punish the wrongdoer.

Deterrence is aimed at sentences to deter not only the actual offender for the present offence but further offences but also potential offenders.

Reforming. This is aimed at seeking to alter the offender's attitude towards crime.

Protection. This is aimed at society as a whole so that certain persons are neutralized by imprisonment.

7. Mitigating factors.

The prisoner is now 19 years old in the face of section 3 of the **Criminal Justice Reform Act**, Chap. 12:35. At the time of the offence he was 16.

8. Aggravating factors.

1. The child's age.

2. Manner in which the offences were committed especially the insertion of his penis in the child's mouth resulting in the child's words "a whitish thing was in my mouth" which he spat out.

3. Lack of remorse by the prisoner but he confesses that he feels ashamed but adds that he is violent.

4. Potentially exposing the child to diseases despite his treatment at the hospital for 5 days.

9. The prevalence of sexual offences involving young children in Dominica is now a matter of record.

² Para. 118, pg 995

10. The plea in mitigation. In his plea in mitigation, learned counsel for the prisoner, spoke to the seriousness of the offences giving rise to a cause for concern.

Sentencing guidelines

[10] The point about sentencing guidelines is that they do not seek to set down sentences to be imposed for the offences involved. To begin with, in our many common law Caribbean jurisdictions, invariably the sentences for particular offences differ. Further, the circumstances will not be the same. With that said in the case of **Winston Joseph v. R**³, Byron CJ had this to say in relation to rape:

“In this category a wide range is likely. Starting with 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.”

[11] The foregoing was highlighted in order to illustrate the point about the use of guidelines. The fundamental point is, however, guidelines must be read and applied in their context and modification made especially where the penalties differ. The foregoing was in relation to rape.

[12] In **Murdoch v. R. [2003] NICA 21**, Justices Carswell and Coghlin in the Northern Ireland Court of Appeal was even more critical approach is espoused. This is how they reasoned:

“Guidelines are of use in maintaining a degree of consistency in sentencing, but they are not to be slavishly followed, since the sentencer in any given case has to determine what is appropriate for the individual case before the court. Mitigating and aggravating factors in the particular case will have to be taken into account in determining the final disposition. Reported previous decisions may provide a benchmark, but it should be observed that in some reported cases there may be unstated factors, eg co-operation with the police, which have influenced the length of sentence. It should also be borne in mind that levels of sentence may move upwards, or downwards, depending on the prevalence and danger to the public of any type of offence.”

³ Criminal Appeal No. 4 of 2000 (St. Lucia)

The Methodology of the sentence

[13] The dictum of Byron CJ in **Winston Joseph v. R**⁴ is widely quoted in this regard.

This is what he said:

“The actual sentence to be imposed depends upon the existence of an evaluation of aggravating and mitigating factors, the more common of which I will attempt to list below. It is not enough for the court merely to identify the presence of aggravating factors when sentencing. A sentencing court must embark upon an evaluation process. If the aggravating factors are outweighed by 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.”

[14] On the matter of the age of the offender, again Chief Justice Byron in **Desmond Baptiste v The Queen**⁵ said the following:

“[30] On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first time offenders, the more serious the offence, the less relevant will be these circumstances.”

[15] The **Criminal Justice (Reform) Act** ⁶ also speaks in this direction. And section 3 (1) says this:

“Subject to subsection (2) where a person who has attained the age of eighteen years but is under the age of twenty-three years is convicted in any Court for any offence, the Court, instead of sentencing that person to imprisonment, shall deal with him in any other manner prescribed by law.”

[16] But subsection (2) creates these exceptions. It says this:

- “2. Subsection 1 shall not apply where-
- (a) the Court is of the opinion that no other method of dealing with the offender is appropriate;
 - (b) a sentence of imprisonment for the offence is fixed by law; or

⁴ Loc Cit

⁵ Criminal Appeal No. 8 of 2003 (St. Vincent) at para. 30

⁶ Chap. 12:35

- (c) violence or threat of violence has been used in the commission of the offence; or
- (d) the person at the time of the commission of the offence was in illegal possession of a firearm.”

[17] This sentencing comes in the midst of a rapid rise in sexual offences and, more often than not young boys and girls are often the victims. In the case of **R v. Huggins** the court observed the following in relation to the BVI:

“Crimes of a sexual nature particularly where the victims are young school children are on the rise in the BVI. Of the 25 criminal cases for trial in this Criminal Assizes, at least 10 are matters of a sexual nature. The time has come for the court to send out a stern warning that these crimes will not be tolerated. Society is utterly fed up with our adult male population who prey on young school-children for their sadistic sexual satisfaction. Worst of all, nearly all the time, the rape is committed by someone the victim knows. Not a creepy man in the alley.”

[18] In the case of the Commonwealth of Dominica sexual offences make up 13 of the 32 cases now in this session.

The sentence

[19] You have left an indelible mark on a very young, innocent and well-mannered child by your despicable, heinous shameful, unpleasant and unforgivable crime the motive for which is not obvious.

[20] Even now you are still saying you are innocent and others have echoed your chorus despite the evidence and in particular your order to the child not to tell anyone and the child by God’s guidance looked back to see you go thru the blue gate. This came after he had suffered at your hands and other parts yet he refused your offer of a ball.

[21] In the case of **R v. Christopher Milberry**⁷, Lord Lane gave this dictum in relation to a 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 punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances...”

⁷ [2003] 2 Cr. App. R. (S) 31

[22] In the face of section 3 (1) of the **Criminal Justice (Reform) Act**⁸ it is the determination that having regard to the facts and circumstances of this case no other method exists to deal with this offender, other than a custodial sentence. Plus the prisoner's unequivocal adherence to violence.

[23] You have exposed the child to ridicule and a heavy burden to bear for the rest of his life, regardless of where he goes; and yet no remorse and no apology. Instead, you stand by being "violent"; and the fact that you can say that to the Probation Officer speaks volumes.

[24] In this case the aggravating factors far outweigh the mitigating factor of your age. The aggravating factors stand out to compel the court to impose a custodial sentence even in the face of section 3 (1) of the **Criminal Justice (Reform) Act**. The manner of execution, the lack of remorse and the exposure of the child to potential diseases despite his medical treatment.

[25] Section 3 (3) of the **Criminal Justice (Reform) Act** requires the court to give a reason for the imposition of a custodial sentence.

[26] This rests on the rise of sexual offences involving young children in Dominica and the aggravating factors mentioned above. Also in the equation is the need for the court to make it abundantly clear that like all crimes, this type of crime will not be tolerated. The children are our future.

[27] The sentence of the court is as follows:-

For the offence of buggery, the sentence is 3 years.

For the offence of indecent assault, the sentence is 6 years.

The sentences are to run concurrently and time on remand will count towards the sentence.

[28] The court also orders that the prisoner be evaluated and counseled during his term of imprisonment.

[29] It is unusual for the court to draw Government's attention to the need for amendment of legislation. In this case, the court wishes to draw attention to what it considers to be an anomaly that exists between sections 16 (1) (a) and 13 (1)

⁸ supra

(c). For while the age of the offender is important, such a person can commit a grave offence and the court would need greater sentencing latitude to deal with such an event. As the law stands, the lesser offence of indecent assault carries a greater penalty than buggery by a person who is a minor.

.....

Errol L. Thomas
High Court Judge [Ag.]