

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE**

[CRIMINAL]

CASE NO. DOMHCR2014/0025

BETWEEN:

**THE STATE
and
SULLIVAN MARCELLE**

Appearances:

Ms. Evelina E-M. Baptiste for the State

Mr. Geoffrey Letang for the Defendant

2015: March 13

Judgment on sentencing

- [1] **THOMAS, J. [Ag.]:** The prisoner, Sullivan Marcelle, on the 19 February 2015, pleaded guilty to the charge of indecent assault, contrary to the provisions of section 13 (1) (a) of the Sexual Offences Act No. 1 of 1998.
- [2] The charge to which the prisoner pleaded guilty is that on 14th June 2013, at Dublanc, in the parish of St. Peter, in the Commonwealth of Dominica, he did indecently assault Kellis Vidal a girl who is not his spouse and who is under the age of fourteen years, to wit, nine years and nine months.
- [3] In the usual manner a Social Inquiry Report was ordered which was prepared by Mrs. Delia Giddings-Stedman. The report examined the prisoner's family background, home, education and a number of interviews with family members on both sides and also persons in the community. And without exception persons interviewed condemned the prisoner's action in very strong terms.

[4] In her general assessment this Probation Officer sought to draw the court's attention to the prisoner's sentiments, family history and sentiments, the sentiments of the victim's mother, the victim's sentiments and the sentiments of the public at large.

[5] The Probation Officer's conclusion reads thus:

"CONCLUSION

In summary, Sullivan Marcelle has pleaded guilty to having indecently assaulted a minor. It is important to note that a range of factors can influence the impact that indecent assault can have on the victim, to include, the victim's relationship with the abuser, the extent and severity of any accompanying psychological or physical abuse and the negative responses of friends of the victim. The victim in this case has indicated that the incident has caused her emotional pain and embarrassment within her community, more specifically at school. Furthermore the abuser was a close family friend who frequented the victim's home and was trusted by the family.

In gaining insight into Sullivan's character, he stated that he is a hardworking individual who experienced a happy childhood. Furthermore, sentiments expressed by those interviewed revealed that Sullivan is a quiet and hardworking individual and one not known to be involved in problematic situations prior to the incident. The overall assessment did not pinpoint major indicators that could predict a life of criminal activity. However, while Sullivan has been described as a quiet and hardworking individual, through his own admission, the act was committed whilst in a normal state of mind without external influences. Therefore, this fact must be emphasized, and cannot be downplayed.

Taking into consideration all the views expressed, the fact remains that Sullivan Marcelle has pleaded guilty for the offence of indecent assault. This action needs to be deplored and despite his assertion that he is penitent and ashamed of his actions, the incident has left an indentation on the victim's emotional and social life. Given that the victim revealed that her friends were afraid to play with her after the incident, and she is still subject to ridicule at her school especially where the subject of sexual misconducts are discussed, these repercussions cannot be downplayed. In addition, the victim has stated that the experience of indecent assault has also caused her to reflect on pursuing a career in Law, so that she can protect children who fall prey to child sexual abuse.

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. Particular attention should be given to the revelation of the negative effect that Sullivan's action has had on the victim. Moreover, when handing down sentence, consideration should also be given to the emotional and social problems of the victim, in particular, a lack of distrust and fear of Sullivan.

Delia Giddings Stedman
PROBATION OFFICER
5/3/2015"

Considerations in relation to an appropriate sentence.

- [6] The factors which arise for consideration are the nature of the offence, the manner of execution, the age of the prisoner, the maximum penalty under the law, the prisoner's record, if any, the aims of sentencing, mitigating factors, aggravating factors, prevalence of the offence, the plea in mitigation and the conclusions of the Probation Officer.

Nature of the offence.

- [7] The offence is indecent assault which is defined as an assault or battery accompanied by words or circumstances indicating an indecent intention.

Manner of execution.

- [8] This is reflected in the deposition of the victim. According to her the prelude was a request for ice and she continued:

"My grandmother gave me the ice and I brought it for him at his home. When I got at his home, he was in the kitchen and he told me to bring it for him. Then I brought it for him and he took it. Then he hold me and he pull down my tights, my panty and skirt and he showed me his penis. Then I pulled up my clothes and then I ran outside and then after I went to the playing field to meet my grandmother and I didn't tell her anything. The next morning, I tell my granny that when she give me the ice to bring for the accused he pull down my tights, my panty and skirt and showed me his penis. My mother called the accused into the kitchen and he started to cry and then after he went at his home my mother then spoke to my father."

Age of the prisoner.

- [9] The prisoner is 40 years old. His date of birth is March 21, 1974.

Maximum penalty.

[10] The maximum penalty under section 13 (1) (a) of the Sexual Offences Act 1998 is 10 years.

The prisoner's record, if any.

[11] The prisoner has no previous criminal convictions.

Aims of sentencing

[12] In **Halsbury's Laws of England** Vol. 11 (2) at para. 1188, the following is stated in this regard: "The aims of sentencing are now considered to be retribution, deterrence, reformation and protection; and modern sentencing policy reflects a combination of several of these aims.

[13] The retributive element is intended to show public revulsion for the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it. However, the protection of society is often the overriding consideration. In addition, reparation is becoming an important objective in sentencing.

Mitigating factors.

[14] The prisoner's guilty plea is a mitigating factor. In addition he has indicated his penitence and being ashamed of his action.

Aggravating factors.

[15] It must be that he used the need for ice from the victim's family as a ploy, or a trick to implement his planned action. And look at where it has ended.

Prevalence of the offence.

[16] There can be no doubt that sexual offence is now the preferred course of action involving young children. In this session cases have been decided in which boys

and girls aged 4, 8, 10 and 12 were involved. And there are others; one of whom is soon to be sentenced.

Social Inquiry Report.

- [17] There is nothing in the Probation Officer's Report that warrants the court giving him special consideration. Indeed, the report shows that he grew up in a happy environment. In other words, no negative influencing conduct.

Sentence

- [18] A few years ago in the BVI the situation with rising sexual offences existed which prompted the trial judge in cases before her to say this:

"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.** [emphasis added]"¹

- [19] In calibrating the sentence the concern of the court on the narrower matrix must be the following: deterrence, the guilty plea, the victim being spared the indignity of coming to court to give evidence, the age and the victim's age, the prevalence of sexual offences in Dominica, the familiarity with the victim's family and the impact on the victim for the rest of her life. And importantly, his age of 40 who must know better.

- [20] Based on a nominal sentence of 7 years and crediting the prisoner with 1/3 reduction on this sentence; the sentence of the court is 4 years and 7 months in prison. Time on remand must be credited as part of the sentence.

¹

R. v. Huggins

[21] Finally, the court wishes to re-state what was said earlier this week concerning the rule relating to guilty pleas. It is that in order to benefit from such a plea, it must be made at the earliest opportunity.

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ERROL L. THOMAS
HIGH COURT JUDGE [Ag.]