

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

[CRIMINAL]

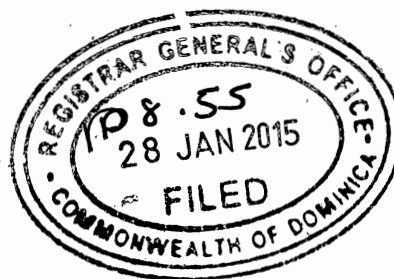
DOMHCR2014/0009

BETWEEN:

THE STATE

V

CHRIS METOR



Appearances:

Ms. Evelina E-M. Baptiste, Director of Public Prosecutions with
Ms. Sherma Dalrymple, State Attorney in the office of the Director of Public Prosecutions
Mr. David Bruney for the Defendant

2014: December 5th

SENTENCING REMARKS

- [1] **Stephenson, J:** The defendant was indicted by the Learned Director of Public Prosecutions for the offences of unlawful sexual intercourse, unlawful sexual connection and indecent assault. At his arraignment he pleaded guilty to unlawful sexual connection, whereupon the Learned Director of Public Prosecutions withdrew the counts of unlawful sexual intercourse and indecent assault.
- [2] The court ordered that a pre-sentence report be prepared by the Social Welfare Department and the said report was to include a Victim Impact Statement. Agreed facts were to be filed on or before 20th October, 2014 and written submissions on or before 7th November, 2014.
- [3] The Social Enquiry Report, agreed facts and written submissions by the Prosecution were all filed out of time and to date the court has not received any written submissions from Defence Counsel. However, with the leave of the court, learned counsel for the defendant made brief submissions in mitigation.
- [4] The defendant is now before the court for allocutus and sentencing.
- [5] The facts can be shortly stated as thus: on 4th May 2012, the Virtual Complainant then sixteen years old went to Delices in the company of her older cousin.

[6] They went to Valda's shop for chicken and chips. Upon arrival at the shop they all went into the shop. The virtual complainant subsequently returned to the car because she was feeling unwell. The accused joined the virtual complainant in the car where he fondled the VC, sucked on her breast and put his hands in her pants and touched her external genitalia.

[7] The defendant also engaged in an act of felatio with the VC, followed by him masturbating in her presence until he ejaculated.

[8] Section 4 (1) of the **Sexual Offences Act**, No. 1 of 1998 reads:

"A person is guilty of unlawful sexual connection with another person if that person has sexual connection with that other person.

- a) without the consent of the other person;
- b) without believing that the other person consents to the sexual connection;
- c) with the consent of the person if the consent is
 - (i) obtained from a person under the age of sixteen years."

[9] Section (3)- A person who is guilty of the offence of unlawful sexual connection is liable upon conviction:

- a. To imprisonment for fourteen years; or
- b. To imprisonment for twenty-five years where the sexual connection is as described in 2 (a) unless the court is of the opinion that, having regard to the particular circumstances of the offence or of the offender including the nature of the conduct constituting the offence the offender should not be sentenced to imprisonment."

[10] "The actual sentence which is imposed shall depend on the existence and evaluation of the aggravating and mitigating factors." Re: **Winston Joseph et al v The Queen** (St. Lucia Criminal Appeal No. 8 and 7 of 2000 consolidated).

[11] The state in its submissions identified the following eight aggravating factors:

1. That the accused has shown no remorse;
2. That the accused continues to proclaim his innocence;
3. That the virtual complainant has been traumatized and the incident will have life long effects on her;
4. The accused was related to the virtual complainant so therefore there was a breach of trust;
5. The prevalence of this type of matters in Dominica;

6. Exploitation of a vulnerable victim and her family;
7. The embarrassment, distress and humiliation to the victim and her family;
8. Infringement of socially acceptable behaviours.

[12] Learned Counsel for the state identified only two mitigating factors, that is:

- i. That no violence was used;
- ii. That the defendant pleaded guilty and did not waste the courts' time.

[13] In evaluating these factors I must be careful not to double count the aggravating factors.

[14] Learned Counsel for the state reminded the court of the prevalence of these offences in Dominica and drew to the court's attention the fact that sexual offences have dominated the assizes in recent years. I note same.

[15] In my deliberations I have taken into account the four cardinal principals of sentencing, that is: "retribution, prevention and rehabilitation" and apply them to the facts of this case.

[16] I have considered the aggravating and mitigating factors as submitted by both learned counsel and note that prior to the matter before the court the defendant was not known to the court. A review of the Social Enquiry Report revealed that the accused was of good repute with his peers who expressed surprise at the accusations leveled at him.

[17] I also take into consideration the seriousness and of the prevalence of the offence and I am of the considered view that the message must be sent out that the court and society will not tolerate this kind of behavior.

[18] It is noted that this was a non-penetrative act and it was not accompanied by violence and in doing so I am in no way trivializing the defendant's conduct as what he did was clearly wrong and out of order.

[19] A review of sentences in Dominica and indeed across the region vary from lengthy sentences in prison, suspended sentences and fines. It is noted that each case turns on its own facts and upon the individual records of the accused.

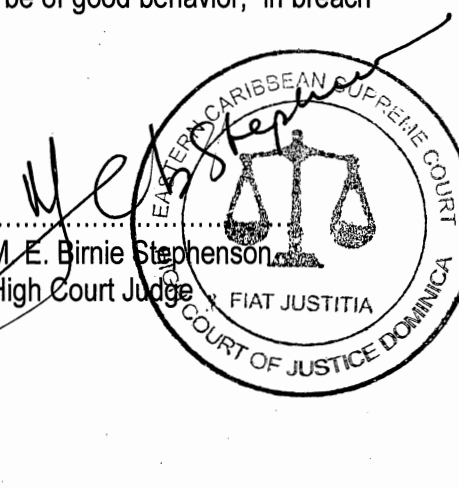
[20] The court is assisted by the sentencing guidelines that suggest the bench marks or starting points, and it is noted that these guidelines are not set in stone and should not be slavishly followed.

[21] The bench mark in matters such as these in the region- which I accept and will apply in the case at bar- is two years and I can move up or down from that figure based on the aggravating and mitigating factors of the case, the individual facts of this case, the contents of the pre sentence report and the defendant's record. I hasten to say that there are some matters where without a

doubt based on the foregoing there should be a custodial sentence, however, in the case at bar I am not disposed to imposing a custodial sentence for a number of reasons including the previous clean record of the accused and the fact that he takes care of his disabled father.

[22] The notional sentence which I am required to identify would be to fine the defendant the sum of \$6000.00 to be reduced by one third which the defendant is entitled to based on his guilty plea.

[23] Having taken into consideration all the mitigating and aggravating factors, the contents of the pre sentence report, the principles of sentencing and the other sentences of this court and in the region, Mr. Metor you are fined \$6000.00 less 30% - that is \$4000.00 to be paid in nine months. Failure by you to pay the said fine within this time you are to serve 15 months in prison. You are also bond over to keep the peace for a period of 12 months and to be of good behavior, in breach of which you will serve 12 months in prison.


M. E. Birnie Stephenson,
High Court Judge

