

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUHCRD 2010/0411

BETWEEN:

THE QUEEN

Claimant

AND

JUNIOR COMPTON

Defendant

Appearances:

The Defendant in person

Mr. Stephen Brette, Crown Counsel for the Crown

.....
2013: May 31
.....

JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** the defendant was indicted by the Director of Public Prosecutions for the offence of rape committed on March 18, 2010 on Cleo Fontenelle (the virtual complainant). During his trial and after the virtual complainant had testified the defendant changed his plea to guilty. The court ordered a pre-sentence report and later a psycho-social assessment be produced and fixed a date for a sentencing hearing.

[2]. **THE FACTS**

The defendant is known to the virtual complainant as from time to time he does odd jobs around the yard of the virtual complainant's parents' home. At one time he resided with the virtual complainant's brother. On the day in question the virtual complainant's parents were away at work and the defendant entered her home. She enquired of his reason for doing so because he had never entered the home prior to that date. The defendant however, lifted the virtual complainant and took her to her bedroom and had sex with her without her consent. The virtual complainant suffers from mental retardation.

[3]. **THE HEARING**

The pre-sentence report painted a bleak picture of the defendant's upbringing and adolescence. His parents were involved in a tumultuous relationship and as a result the defendant had to relocate at two year intervals. His father describes him as being disinterested in acquiring a skill to make a legitimate living. He removed from his father's home after a quarrel over the defendant's association with a thirteen (13) year old girl of which his father strongly disapproved. He went to reside with an uncle who complained of his continuous use of cannabis and association with persons of questionable character. His formal education ended at age thirteen (13) as he was expelled from school for being involved in a fight on school grounds.

[4]. At or around age fourteen (14) the defendant resided on his own and became involved in fishing at Dennerly. However, residents in the area where he resided complained of his excessive use of cannabis. He was also identified as a thief and an impudent person. I will refer to other parts of the pre-sentence report later in this judgment.

[5]. **THE LAW**

Mr. James for the crown in his written submissions addressed the court on what he considered to be the relevant principles of law applicable to the case at bar. He considered the following to be the aggravating factors:

AGGRAVATING FACTORS

1. The seriousness and prevalence of the offence;
 2. The mental retardation of the complainant and her inability to adequately make decisions and care for herself;
 3. The impact of this offence on the complainant. She states that the defendant took her innocence;
 4. The defendant's abuse of marijuana;
 5. The views of the community as it relates to the defendants behavior and interaction with community members;
 6. The breach of trust of the complainant's family.
- [6]. Crown counsel submits that the only mitigating factor is that the defendant has no previous convictions and contends that he should not benefit from a discount for his guilty pleas as this was made at a late stage of his trial which did not spare the virtual complainant the discomfort of recounting the horrible events in which she stated "her innocence was lost".
- [7]. I accept the aggravating factors set out by crown counsel but I would also allow the defendant to benefit from his guilty plea as he was unrepresented by counsel.
- [8]. I will now apply the principles of sentencing to the facts and circumstances of this case.

RETRIBUTION

The pre-sentence report indicates that the defendant has been a beneficiary of the benevolence of the virtual complainant's family. He was from time to time provided with meals and clothing notwithstanding his reputation in the general community as a thief. At one time he resided at the home of the virtual complainant's brother. It is against that background that the defendant decided to rape the virtual complainant who he well knew to be mentally retarded. His actions were both traumatizing and revolting and deserving of a suitable sentence to show the court's abhorrence therefor.

DETERRENCE

This court is aware of the large number of sexual offences in the jurisdiction and needs to impose an appropriate sentence to deter the defendant and others from the further commission of this type of offence. Apart from this conviction the pre-sentence report reveals previous incidents of inappropriate sexual conduct by the defendant.

PREVENTION

Though the defendant is a first offender his addictions to cannabis and history of sexual misconduct make him a prime candidate for recidivism. Hence this ground should be considered and applied in the determination of a suitable sentence for this def.

REHABILITATION

The pre-sentence report discloses that the defendant is considered a model prisoner whilst on remand. He has evinced an interest in curing his drug addiction and finding a suitable job to be reintegrated to the society and earn the respect of members of the community. While this augers

well for the defendant the court must not ignore the fact that the defendant is currently in a controlled environment and has very little opportunity to offend with impunity.

[9]. The court is concerned however with the mental health issues mentioned in the pre-sentence report where it was disclosed that he had previously attempted suicide and was referred to the Wellness Centre. He was at that time diagnosed as suffering from obsessive compulsive neurotic disorder. Thus as part of his rehabilitation the defendant will need to be assessed and treated for any whatever psychotic features which present themselves.

[10]. Mr. Fearon, a clinical psychologist who examined the defendant, opined that his prognosis for successful rehabilitation is good. He has cited the following as encouraging factors:

Overall, his ability for normal development appears sound with respect to emotional reflection (affect) and acceptance of reality. He also reflects self-awareness and the personal need for rehabilitative intervention alongside his own independent contribution to society.

Insofar as making preparation for his eventual return to society, Junior Compton is currently engaged in academic quests as well as recreational pursuits that generally point in the direction of one's successful reintegration. He is currently enrolled in preparatory classes for three CXC subjects namely English, Mathematics and Information Technology, at Bordelais. Junior Compton is also active in sports being made the captain of his quarter's cricket team.

[11]. **SENTENCE**

I have evaluated the aggravating and mitigating factors herein and find that the aggravating factors outweigh the mitigating ones. I have taken into consideration the seriousness of this offence and its effect on the virtual complainant which have been exacerbated by her mental retardation. I have also considered the remorse expressed by the defendant, his guilty plea though not early and the progress made by him so far at the Bordelais Correctional Facility which augers well for his rehabilitation.

[12]. The court has considered the dictum of Sir Dennis Byron on sentencing in sexual offences in the decision of Winston Joseph v Regina to wit:

“The actual sentence impose will depend upon the existence and evaluation of aggravating and mitigating factors, the more common of which I attempt 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 toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.”

[13]. The court has considered the sentencing guidelines laid down by Sir Dennis Byron CJ in the Winston Joseph decision in which he has suggested a starting point for rape of an adult to be eight (8) years imprisonment. However, the victim in this offence though an adult had the mental development of someone far younger in years a fact of which the defendant was not unaware.

Notwithstanding this however, the defendant rather than being protective of the virtual complainant was instead abusive towards her.

[14]. In R v Loff James Lennon Henry L.J. opined thus:

“It is not the purpose of the judgment to seek to lay down guidelines for sentencing in cases of indecent assault. It is never easy to sentence in such cases. The circumstances of each case will vary greatly....What the judge must do, as I see it, is to tailor the sentence to the particular facts of the case before the court. In most cases, the personal circumstances of the offender would normally take second place behind the plain duty of the court to protect the victims of sexual attacks and to reflect the clear intention of Parliament that offences of this kind should be met with greater severity than may have been the case in former years when the position of the victim may not have been so clearly focused in the public eye”.

[15]. I have considered the personal circumstances of the defendant, his checkered childhood and the obvious emotional damage caused by the tumultuous marriage of his parents and his consequential relocations. I have also considered the dictum of Henry LJ in R v Loff James aforesaid against the background of the prevalence of this offence and the special circumstances of the victim herein.

- [16]. Accordingly, the defendant is sentenced to ten (10) years imprisonment. He shall continue to pursue the educational program at the Bordelais Correctional Facility and shall receive counseling for his drug and alcohol abuse. The defendant shall be taken to the Wellness Centre for a psychiatric assessment and shall be provided with whatever treatment is prescribed by a psychiatrist. The defendant shall be credited for all times spent on remand whilst awaiting trial.



.....
FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE