

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/0379A

BETWEEN:

THE QUEEN

Claimant

AND

EAMON CHARLES

Defendant

Appearances:

**The Defendant in person
Mr. Seryozha Cenac Crown Counsel for the Crown**

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2012: June 13
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** On the 6th January 2011 the defendant was indicted by the Director of Public Prosecutions for the offences of rape and incest. Both offences were allegedly committed on the 2nd February 2009 at Barre Denis. On the 11th January 2011 at his arraignment the defendant pleaded guilty to both counts on the indictment before Benjamin J but on the 20th January 2011 he resiled from his guilty pleas and pleas of not guilty were entered. On the 12th

March 2012 the defendant pleaded guilty to the first count and the crown offered no evidence against him on the second count of the indictment.

[2] **THE FACTS**

On Monday February 2, 2009 the defendant had a confrontation with the victim at her home in the kitchen. Whilst there the defendant placed a knife to the victim's throat and forced her out of the house to a goat shed in the nearby bushes and forced her to have sex with him. At the conclusion of the sexual act the defendant sent the virtual complainant home. The virtual complainant is the sister of the defendant.

[3] The court ordered that a Pre-Sentence Report be prepared for the defendant. This report painted a bleak picture of the personality and character of the defendant in the eyes of members of the community in which he resided. He is known to be a heavy consumer of alcoholic beverages and a frequent user of marijuana. He's described as frequently being in fights and occasionally would have a knife in his possession. Persons on hearing of the defendant's conviction for this offence were not surprised about it.

[4] The defendant himself admits that he is a heavy drinker and a user of marijuana. His mother stated that the defendant was a loving child and was always protective of his sisters when growing up, hence she was dismayed and surprised at his actions. She blames his change in attitude to excessive use of cannabis and alcohol as well as his association with shady characters.

[5] **THE LAW**

I will now apply the four principles of sentencing namely retribution, deterrence, prevention and rehabilitation to the facts and circumstances of this case.

[6] **RETRIBUTION**

The offence of rape is very serious to the extent that the legislature has enacted a maximum penalty of life imprisonment for anyone who is found guilty of same. What makes the circumstances of this case even more egregious is that the victim is the sister of the defendant who ought to be able to rely on his protection and be exempt from his sexual advances. I also find that this offence was not spontaneous but was planned and premeditated.

[7] **DETERRENCE**

Deterrence is general as well as specific in nature. The former is intended to be a restraint against the particular criminal relapsing into recidivist behaviour. Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addiction or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. The defendant is a self-confessed addict of alcohol and cannabis and in the words of his mother associates with shady individuals. The court must consider not only the peculiar characterises of the defendant as a contributor to recidivist behaviour but must also consider that this offence is prevalent in this jurisdiction and that would be offenders must be forewarned of the courts sentencing policy when dealing with persons who commit this offence.

[8] **PREVENTION**

The defendant is not a first offender and has been convicted for offences involving firearms and ammunition. In his case the sound of shutting of the iron cell door has not had a deterring effect on him. His unlawful conduct has escalated to the extent that even his siblings are now treated by him as acceptable prey.

[9] **REHABILITATION**

The pre-sentence report discloses that the defendant has been well behaved whilst on remand at Bordelais Correctional Facility. This is neither surprising nor in the circumstances a credit to the defendant as whilst at the Bordelais Correctional Facility he resides in a controlled environment where he would be unable to indulge in excessive consumption of alcohol and cannabis. I see no positive declarations by the defendant that he intends to turn his life around and that he needs help to do so. On the other hand, the residents of the community where he resided share the opinion that he is a menace and threat to the society and it would be better if he does not return.

[10] I find the following to be the aggravating and mitigating circumstances herein:

AGGRAVATING FACTORS

1. The seriousness of the offence of rape;
2. The defendant's breach of trust by committing such a heinous act on his sister;
3. The defendant planned and premeditated the offence. He went to his sister's residence when she was alone and used the guise of a quarrel to rape her at knife point;
4. The psychological effect on the victim as is stated at in the Pre-Sentence Report under the heading Victim Impact;
5. The Defendant's violation of the sexual anatomy of his sister.

MITIGATING FACTORS

1. The defendant's guilty plea which has spared the victim the trauma of having to relive and testify of this incident.

[11] I have carried out a balancing exercise in respect of the aggravating and mitigating factors in the circumstances of this case and find that the aggravating factors significantly outweigh the mitigating ones.

[12] **SENTENCE**

The defendant at his sentencing hearing said nothing to the court by way of mitigation. When invited to do so he said he had nothing to say. He has neither shown nor expressed remorse or offered an apology to his sister for his disgraceful violation of her sexual anatomy. Indeed his primary concern as stated in the pre-sentence report is that he feels badly and that people will view him as a rapist. He contends to the probation officer that he does not remember raping the virtual complainant. However in his statement under caution to the police he stated that "I was drunk but I know it is true and I am taking the blame for it. I taking the blame for everything".

[13] I am concerned about the defendant's alcohol and drug addiction as these would certainly entice him to re-offend with disastrous consequences. He will certainly require the necessary counselling to wean him off of his addictions and to prepare him for re-integration to the society. The defendant is not a first offender but I have taken into consideration the fact that this is his first conviction for a sexual offence. His previous convictions are consistent with the life style he adopted more particularly as stated by his mother that he associates with shady characters.

[14] The legislature has enacted a maximum sentence of life imprisonment for anyone convicted of this offence and by so doing unequivocally indicates the seriousness with which it is viewed. I have also considered the sentencing guidelines as set out by the court of Appeal in *Winston Joseph et al v Regina*. Whilst they are worthy of respect and ought to be followed they are just guidelines and no more. I am comforted in that view by the dictum of Henry L.J. in *R v Loff James Lennon* (1999) 1 Cr App. Rep. (s) 117 to be most helpful and instructive:

“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] In the circumstances, I find that a benchmark of twenty (20) years imprisonment to be appropriate here. I will notwithstanding the vacillations of the defendant on his previous guilty plea allow him the full one thirds reduction of sentence for his guilty plea. In so doing I am aware that he has not had the benefit of counsel's advice. Accordingly I will deduct seven (7) years for the guilty plea and three (3) years for the remorse shown in his expressions of personal shame for what he has done and his inability to face his sister. The defendant is sentenced to ten (10) years imprisonment. He will be fully credited for the three (3) years spent on remand awaiting his trial. He shall receive counseling for his drug and alcohol abuse.

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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE