

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2011/0046

BETWEEN:

THE QUEEN

Claimant

AND

CLEMENT LUCIEN

Defendant

Appearances:

**Mr. Maurice K. Compton Counsel for the Defendant
Mr. Stephen Brette Crown Counsel for the Crown**

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2012: April 25
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions on the 14th October 2011 for the offence of sexual intercourse with a minor, to wit a female aged seven (7) years old. The offence took place on the 1st December 2007. At his arraignment the defendant pleaded guilty as indicted.

[2] **THE FACTS**

The defendant at the time of the commission of this offence was 50 years old. The Virtual Complainant was seven (7) years old. The defendant had a visiting relationship with one Mariana McVane who is the grandmother of the Virtual Complainant. On the day in question the Virtual Complainant and her two young aunts went to the defendant's home at the behest of Mariana McVane to collect ground provisions from him. On their arrival he sent the aunts to a friend of his on an errand to obtain DVD's and insisted that the Virtual Complainant not accompany them on the errand but that she should remain with him. At the departure of the Virtual Complainant's aunts the defendant took her into the bedroom removed her underwear and had sex with her. On their return with the DVD's the Virtual Complainant complained to her aunts of what the defendant did to her and later told her mother. The matter was reported to the police and a search was carried out at the defendant's residence. In his bedroom the police observed what appeared to be blood stains on the sheet, the Virtual Complainant's underwear and a piece of bloodstained cloth. In a statement under caution the defendant said 'when I drink alcohol I do not know what I doing, I cannot control myself'.

[3] **THE HEARING**

At the hearing the court was in receipt of a comprehensive Pre-Sentence Report which provided valuable background information of the defendant. The court learnt that the defendant was regarded by his friends and members of the communities in which he resided to be a generally good person who became troublesome when he drank alcohol. The defendant confirmed his alcohol use and stated that when he got paid at weekends he drank alcohol.

- [4] Most residents in the community where the defendant lived expressed shock and surprise on learning of this incident. They indicated that they have no problem with him and did not consider him to be posing any risk in the community. The single recurring negative sentiment expressed about the defendant is that when he drinks alcohol he can become troublesome. I shall return to other aspects of the Pre-Sentence Report later in this judgment.
- [5] Defence Counsel Mr. Compton who appeared pro bono for the defendant applied to the court for a psychiatric evaluation of the defendant to be conducted on the ground that this incident was totally out of character with the defendant's personality. The court ordered that such an evaluation be done but up to the time of the writing of this decision the court has not had the benefit thereof. Counsel referred the court to the decision of *Winston Joseph v R* where the Court of Appeal set out guidelines and ranges of sentencing for sexual offences.
- [6] Counsel considered the following to be the aggravating and mitigating factors:

THE MITIGATING FACTORS

1. **Early guilty plea – saved the Court immense time, effort and use of resources.**
2. **Defendant has no previous convictions.**
3. **The Defendant has been a model inmate while incarcerated at the Bordelais Correctional Facility as shown by the Probation Report.**
4. **He is of good character, as also evidenced by the Probation Report.**
5. **Community residents all in agreement that the Defendant was a helpful good natured community member**
6. **Residents both young and old are in accord that the Defendant was a good person who unfortunately may have an alcohol problem.**

The Defendant accepts that his actions can in no way be justified whether he is of good character or otherwise but we stress that his own human frailties are not and would not have been premised on foresight but rather on instinctive and spontaneous reactions in any given circumstance.

THE AGGRAVATING FACTORS

1. The age of the complainant vis-à-vis that of the Defendant.
2. The Defendant was in a position of trust as of his close relations with the Complainant's grandmother
3. The Virtual Complainant could potentially have suffered psychologically from the experience.

[7] THE LAW

The Court of Appeal in *Winston Joseph et al v Regina* per Sir Dennis Byron C.J. set out the guidelines to be applied when the court comes to sentence an offender for a sexual offence. I find that these principles and guidelines are worth repeating here: - Sir Dennis opined thus:

“The actual sentence imposed 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.”

[8] **AGGRAVATING FACTORS**

- i. If the girl has suffered physically or psychologically from the sexual assault;
- ii. If it has been accompanied by perversions abhorrent to the girl, e.g. buggery or fellatio;
- iii. Violence is used over and above the force necessary to commit the offence;
- iv. The offence has been frequently repeated;
- v. The defendant has previous convictions for serious offences of a violent or sexual kind;
- vi. The victim has become pregnant as a result of the crime;
- vii. The victim is either very young or very old.

[9] **MITIGATING FACTORS**

- i A plea of guilty should be met by an appropriate discount, depending on the usual considerations, that is to say how promptly he confessed and the degree of contrition and other relevant factors;
- ii Where it was consensual, if it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for sexual inclinations;
- iii Where the girl made deliberate attempts at seduction
- iv Where the defendant is a first offender and/or is a youth.

[10] The Sentencing Guidelines for Sexual Offences as issued by the Sentencing Advisory Panel 2003 lists the following factors to be considered:

- (a) Violation of the victim's sexual anatomy;
- (b) Exploitation of a vulnerable victim;
- (c) Embarrassment, distress or humiliation of the victim;
- (d) Infringement of standards of socially accepted behavior;
- (e) The physical/psychological harm caused by non-consensual offences;
- (f) The relationship between the victim and offender;
- (g) Abuse of a position of trust.

[11] In applying these principles and guidelines to the case at bar I find the following to be the aggravating and mitigating factors:

AGGRAVATING FACTORS

1. The seriousness of offence;
2. The offence was premeditated. The defendant sent away the Virtual Complainant's aunts to allow for uninterrupted sexual abuse of the infant child;
3. The defendant abused his position of trust. The victim's grandmother with whom he had a visiting relationship felt that her granddaughter would be safe in the defendant's company;
4. The effect this incident has had on the Virtual Complainant as is stated in the Pre-Sentencing Report;
5. The comparative age of the Virtual Complainant and the Defendant at the time of this incident.

MITIGATING FACTORS

1. The early plea of guilt by the defendant which relieved the Virtual Complainant of reliving the horrendous experience in court;
2. The hitherto clean criminal record of the defendant;
3. The expressions of remorse by the defendant;

I have considered the aggravating and mitigating factors herein in light of all the circumstances of this case and find that the aggravating factors significantly outweigh the mitigating ones.

[12] SENTENCE

This offence committed by the defendant in the manner in which he did was most heinous. The Virtual Complainant has been deprived of the opportunity of being introduced to sexual activity at a mature age and under conditions of mutual love and affection. Indeed the psychological effect of this incident on the Virtual Complainant is aptly described in the Pre-Sentence Report thus:

“The Virtual Complainant who is presently 11 years old stated that as a result of the incident she feels sad and ashamed. Her class teacher reported signs of the Virtual Complainant becoming quite withdrawn particularly when participating in group activities and that she lost focus frequently during the teaching/learning experience. It was noted that the Virtual Complainant would often sit in a corner all alone when she is at school and at home.”

- [13] The maximum sentence for this offence is life imprisonment. Whilst I appreciate that the Court of Appeal in Winston Joseph suggested a range of sentences for various sexual offences it must be remembered that these are guidelines which ought not to be slavishly followed.

- [14] The genuineness of the defendant's remorse cannot be disputed as is his previous good character. As stated aforesaid the court was not provided with a psychiatric evaluation of the defendant so in its absence the court is faced with no other alternative but to conclude that there are no psychiatric issues which contributed to the defendant's outrageous conduct that day.
- [15] The defendant's admitted predilection for alcohol is another worrying matter as in his caution statement to the police; he blamed alcohol for his conduct that day. Notwithstanding that however the court is concerned that the defendant was attracted to a 7 year old child to the extent that he planned and premeditated this sexual act. The obvious and unanswered question which arises is whether or not the defendant is a pedophile. The court cannot in the public interest seek to marginalize this issue and must of necessity impose a sentence which provides the opportunity for the defendant to receive the necessary counseling and psychotherapy to prepare him to re-integrate in the society.
- [16] The seriousness with which parliament views this offence is reflected in the maximum sentence of life imprisonment. I find however in the circumstances a benchmark of 20 years is appropriate. The defendant will benefit from a deduction of seven (7) years for his early guilty plea and three (3) years for the unexplained delay in bringing this matter to a stage of finality. Thus accordingly the defendant is sentenced to ten (10) years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall receive counseling for his alcohol addiction and for his preference for infant girls as an outlet for his sexual cravings.



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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE