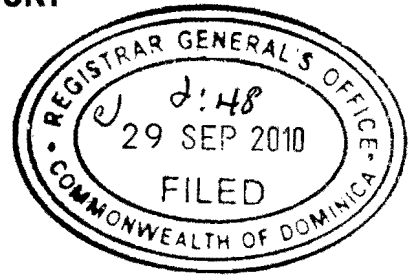


**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(CRIMINAL)**



Claim No. DOMHCR 2010/0009

**THE STATE
V.
ANDREW VALMOND**

Appearances: Mr. Wayne Norde for the State
 Mr. David Bruney for the defendant

2010: 25th - 27th May

SENTENCING

- [1] **STEPHENSON-BROOKS J.:** The Defendant Andrew Valmond, has been found guilty by a jury of his peers of having unlawful sexual intercourse with a girl of or under the age of 14 years contrary to section 7 (1) of the Sexual Offences Act No 1 of 1998 of the Dominica Laws. This offence is a serious one as it carries a maximum penalty of 25 years imprisonment. Mr Valmond is now before the Court to be sentenced. The Court is mindful that generally, offences of a sexual nature especially involving under-age girls are of increasing concern to the public because they appear to be becoming more prevalent.
- [2] The law has vested a wide discretion in the Court on sentencing to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case. The aims of sentencing are well known, the

primary goals being punishment, deterrence, rehabilitation and the protection of the society.

[3] In considering my sentence I am also required to engage in an evaluative process by weighing the mitigating and the aggravating factors. This is the approach endorsed by the Court of Appeal in **Winston Joseph v The Queen, Benedict Charles –v- Queen and Glenroy Sean Victor –v- The Queen**¹ (*hereinafter referred to as “the Joseph Case”*) which set down general principles on sentencing for sexual offences.

[4] In that case **Byron, C.J.** said (para. 17)²

“That the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors and that the tendency would be towards a higher sentence if the aggravating factors are outweighed by the mitigating factors and vice versa.”

[5] At Paragraph 18 of the judgment the Chief Justice Byron also listed the more common aggravating factors as ³:

“(i) If the girl has suffered physically or psychologically from the sexual assault;

(ii) If it has been accompanied by abhorrent perversions e.g. buggery or fellatio;

¹ St Lucia Criminal Appeals No. 4 of 2000, 8/2000 & 7/20000

² *ibid*

- (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. “

[6] Let me say at once, that I see no aggravating circumstances having regard to those referred to in the Joseph Case. However, there are other aggravating circumstances in this case and that is from the evidence presented the Defendant is the stepfather of the Virtual Complainant.

[7] When one reviews the decisions on sentencing in this area reference was made to these types of cases as “ones that are gravely serious offences involving major breaches of trust”: Lord Bingham CJ in ***Attorney-General's Reference***⁴ said

“The main aggravating factor in this type of case is a breach of trust; the Appellant as the Complainant's stepfather living in the same house with her was one of the persons, and especially in the absence of her mother, to whom the child would normally expect to turn for protection and comfort. I agree with

³ *ibid*

4

No. 8 of 1999 (Panel Eric A) [2000] 1 Cr.App.R.(S.) 56.

the authorities that say that the closer the family relationship and the younger the child, the more aggravating is the offence.”

[8] I am concerned by the fact that there seems to be in the Caribbean and indeed in Dominica some amount of incidence of sexual abuse of children by stepfathers and other family members. I am also conscious that the Courts must do everything possible to discourage sexual activity of persons of a very young age.

[9] In the House of Lords decision of *R. v. G.*⁵ Baroness Hale of Richmond said:

para 44 “ ...The offences of unlawful sexual intercourse [with children] were often colloquially known as “statutory rape”. This is because the law regards the attitude of the victim of this behaviour as irrelevant to the commission of the offence (although it may, of course, be relevant to the appropriate sentence). Even if a child is fully capable of understanding and freely agreeing to such sexual activity, which may often be doubted, especially with a child under 13, the law says that it makes no difference.”

[10] Baroness Hale of Richmond stressed the importance of protecting children from premature sexual activity when she said ...

para 45 “⁶. ...It is important to stress that the object is not only to protect ... children from predatory adult paedophiles but also to protect them from premature sexual activity of all kinds.”

⁵ [2009] 1 AC 92,

⁶ *ibid*

- [11] Baroness Hale referred with approval at para 49 ⁷of her judgment to the judgment of the Supreme Court of Canada in *R. v. Hess*; *R v. Nguyen*⁸ as follows:

para 46" ...Penetrative sex is the most serious form of sexual activity, from which children under 13 (who may well not yet have reached puberty) deserve to be protected whether they like it or not. There are still some people for whom the loss of virginity is an important step, not to be lightly undertaken, or for whom its premature loss may eventually prove more harmful than they understand at the time. More importantly, anyone who has practiced in the family courts is only too well aware of the long term and serious harm, both physical and psychological, which premature sexual activity can do."

- [12] In *Hess* and *Nguyen*,⁹ *McLachlin J* explained the objective of creating the offence of statutory rape and the importance of punishment for its contravention in the following paragraphs of her judgment:

para 100 " ...It is not an exaggeration to say that the offence of "statutory rape", as it was commonly referred to, is embedded in our social consciousness. ...

para 101 ...It has two aspects. The first is the protection of female children from the harms which may result from premature sexual intercourse and pregnancy. The second is the protection of society from the impact of the social problems which sexual intercourse with children may produce. ...

⁷ *ibid*

⁸ [1990]2 SCR 906

⁹ *ibid*

Para 103. ...The protection of children from the evils of intercourse is multi-faceted and so obvious as not to require formal demonstration. Children merit this protection for three primary reasons. The first is the need to protect them from the consequences of pregnancies with which they are ill-equipped to deal from the physical, emotional and economic point of view. The second is the need to protect them from the grave physical and emotional harm which may result from sexual intercourse at such an early age. The third is the need to protect them from exploitation by those who might seek to use them for prostitution and related nefarious purposes.

para 104. Each of these reasons to protect against premature sexual intercourse is reflected in corresponding social problems. Juvenile pregnancies adversely affect both family and society. ... The physical and emotional trauma inflicted on children through premature sexual intercourse is reflected in increased medical and social costs and decreased productivity..."

- [14] The above stated approach is in keeping with the state's obligation under the Convention on the Rights of the Child, 1989, which Dominica ratified on 13 March 1991. Article 34 of the Convention provides that:

"State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse."

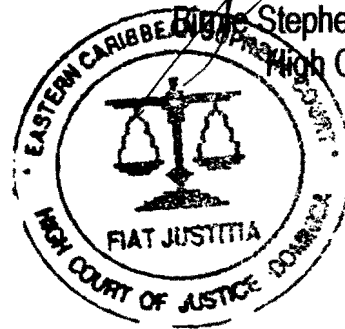
- [15] **The Sexual Offences Act,¹⁰ Section 7(1)** provides the necessary legislative protection for the vulnerable and the punishment for adults who abuse young children. It is for the courts to properly enforce the seriousness of the offence by imposing appropriate punishment.

¹⁰ Act no.1 of 1998 Laws of Dominica

- [16] The key to arriving at the appropriate sentence is proportionality. However distasteful the circumstances of the crime, the Court, must view the relevant factors objectively. It is important to strike an effective balance between the statutory requirements of custodial sentences, the rights of the offender and the need to protect the public from harm.
- [17] A quick review of the sentences imposed by trial judges in matters such as these have generally been in the region of 12 - 15 years. We have taken into account the seriousness of the offence, the circumstances of the appellant and the aggravating and mitigating factors in the case.
- [18] I also take on board the dicta of Acting Justice of Appeal Thomas in the Anguilla Case of **Glen Richardson –v- Regina**¹¹ regarding the sentencing guidelines laid down by the Chief Justice Byron in the St Lucia Case and measure the mitigating factors against the aggravating factors which in this case is the Breach of trust of the relationship of father and daughter and the age of the Virtual Complainant when the offence was committed and this is to be weighed against the mitigating circumstances.
- [19] The Defendant has been found guilty by a jury of his peers of the offence of sexual intercourse with a person under the age of 14 years. The evidence led in the trial disclosed that the Virtual Complainant called the defendant “daddy”, he was in a position of trust, he was her stepfather living in the same house as her and as stated earlier, his decision to have sexual relations with the virtual complainant was a breach of trust and is an aggravating factor in this case.

¹¹ HCRAP2006/001 Court of Appeal (Anguilla)

[20] In determining the appropriate sentence I have taken into account the circumstances of the offence, including any aggravating factors and the mitigating factor which is the Defendant's clean record in that there are no previous convictions recorded against him. I have also taken into account Counsel's plea of mitigation and request that the Court temper mercy with justice and the fact that the Defendant has been on remand for over one year now. Based on all of the factors in this case I find that only a custodial sentence would be just and fair and accordingly I would sentence the Defendant to 8 years in Prison.



Y. B. Stephenson-Brooks
High Court Judge