

SAINT LUCIA

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

CASE NO. 43 OF 2005

THE QUEEN

VS.

THEODORE BOUDHAR O/C HEIDI

APPEARANCES: Mrs. R. Willie-Trotman for Crown
 Accused Unrepresented

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WEDNESDAY 16TH NOVEMBER, 2005
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ORAL JUDGMENT ON SENTENCING

1. **EDWARDS J:** Mr. Boudhar, the Jury found you guilty on the 2nd November 2005 for **Unlawfully and Carnally** knowing the Virtual Complainant, a female of the age of 12 years and 5 months old on the 8th December 2004 at Goodlands, Castries.
2. You have no previous convictions, and the pre-sentence report discloses that you are a person of good character, hardworking, and the breadwinner for your elderly parents with whom you live. You are also regarded as being generous and kind by persons in your community.
3. You were 38 years old when you sexually abused the Virtual Complainant. In fact, your relatives and your live-in 20 years old girlfriend (*the Virtual Complaint's sister*) told the Probation Officer that you very often provided food and clothing for the Virtual Complainant

who sometimes came to your home in need and hungry. You obviously have an attraction to young females under 17 years since your relationship with the Virtual Complainants sister started according to you when she was 16 years old.

4. The generosity you showed to the Virtual Complainant, gave you no licence or justification to sexually molest her. By now, all of the men in St. Lucia should know, whether they cannot read and write like you or are literate, that they will be sent to prison as punishment where they are convicted for sexually molesting females under 16 years, even where such females consent to have sex with them.
5. I also hope that young girls and young women in St. Lucia realize by now that it is also not a good thing to beg or depend on the generosity of men who are not their fathers, care givers, or relatives, for favours, hand outs, money, food, groceries, clothing among other things, since by so doing they very often provide the opportunity, and tempt these unscrupulous seemingly "**kind**" men to demand sex from them, and sexually abuse them in return. The mothers of these young females also need to take heed and be reminded of this. Many of the cases of sexual abuse coming before this Court, occur in such circumstances where mothers by their behaviour and bad example make their daughters vulnerable to sexual abuse.
6. A substantial custodial sentence is inevitable, having regard to our Court of Appeal's decisions in Winston Joseph, Benedict Charles and Glenroy Sean Victor –vs- The Queen (Criminal Appeal Nos. 4, 8 and 7 of 2000 respectively, delivered on 31st October 2001).
7. Given the facts which grounded your conviction, the notionally determinate period of incarceration for this kind of offence is 8 years since the Virtual Complainant is 12 + years. The maximum punishment is life imprisonment.
8. But I must also take into account and evaluate any mitigating and aggravating circumstances – "**If the aggravating factors are outweighed by the mitigating factors then the tendency must be towards a lower sentence:**" (Per Byron C J. At page 8 – 9 para. 17 in the above mentioned decisions).

9. Your good record and good character are mitigating factors that I must take into account. Since there are no aggravating factors directly connected with the offence, the notional determinate sentence of 8 years should be reduced below 8 years to reflect your good or relatively good character and clean record.
10. I am also taking into account the fact that you are breadwinner for your elderly parents and you are a hard working provider. Though these matters are wholly unrelated to the offence, I believe that you should receive credit for this conduct.
11. The Probation Officer states that your ailing parents are very distraught and distressed, saying they no longer wish to live, and they see death as imminent if you are sent to prison. The effect of the Sentence on the Convicted Offender's family is not normally a circumstance which should serve to prevent you from being incarcerated. The Courts normally should not take this into account: (***Principles of Sentencing*** (2nd ed.) by D.A. Thomas at page 211). The unhappiness of your elderly parents and their distress at your conviction is a consequence of your misdeeds. That is the inevitable consequence of your crime. The distress and hardship which your incarceration must necessarily bring on your parents is one of the penalties which you must suffer for this very serious offence.
12. I recognize that there are exceptions to this rule, where there is evidence that the degree of hardship that your family will bear is considerable more severe than the deprivation suffered by other parents in normal circumstances as a result of the imprisonment of a child : (***Principles of Sentencing*** (2nd ed.) by D.A. Thomas – A study of the Sentencing Policy of the Court of Appeal Criminal Division, England).
13. However, I do not consider your parents' distress or hardship to fall within this recognizable exception since they have 6 other children, 5 of whom are resident in Goodlands, and the other is in Martinique.
14. In my opinion therefore, their hardship is not exceptional and considerably more severe than normal. Your siblings will, or should, or have a duty, to step in your shoes and assist your ailing elderly parents.

15. Applying Section 1102 of **The Criminal Code 2004**, the gravity of the punishment must be commensurate with the gravity of the offence. The Sentence of the Court therefore is that you be imprisoned for 6 years, sentence to run from the 2nd November 2005.

Dated this 16th day of November 2005

OLA MAE EDWARDS
High Court Judge