

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

Cri/vbi/99/5/2016

Between:

REGINA

VS

JOSUE CELESTIN

BEFORE: The Honourable Mr. Justice Gregory Hilton

APPEARANCE: Raquel Whymms along with

Francis Wilson for the crown

FednerDorestal for the Defendant

Sentencing Date: 28th March 2019

Decision on Sentencing

1. By Voluntary Bill of Indictment (No. 99/5/2016) filed 12th May 2016 the (now) convict Josue Celestin was charged with Rape. The particulars alleging that he on Monday the 9th of November 2015 at New Providence, did have sexual intercourse with Macdala Telfort, without her consent.
2. His trial commenced on 2nd October 2018 and on 11th October 2018 he was found guilty of rape by the jury by a 7-2 count.
3. A probation report and a psychiatrist report was requested and on 29th November 2018 the probation report was presented; and on 4th February 2019 the psychiatric report was presented. No victim impact statement was made other than what the victim stated to the probation officer.
4. On 28th February 2019 I heard counsel for the convict's plea in mitigation and submissions by counsel for the crown.
5. The virtual complainant is the cousin of the convict's wife and at the time of the incident she was residing at the home of the convict for several months, with the convict, his wife and their children.
6. The brief facts in this matter are that on the 19th November 2015 in the early morning the convict's wife left the house to take the children to school. The convict then went into the victim's room armed with a screw driver and propositioned her to have sex with him. When she refused (and additionally told him that her menstrual cycle was on) he forced her to suck his penis against her will until he ejaculated into her mouth. He then put two of his fingers into her vagina for about 5 minutes while holding the screw driver to her neck; And then licked her vagina briefly.
7. The psychiatric report states that the convict does not meet the criteria for any formal Psychiatric Disorder. That the convict expressed remorse that the victim endured pain and suffering, and understood the consequences of being found guilty.
8. The Probation Report notes that the convict was 36 years old at the time of the offence. He is of Haitian parentage but was born in the Bahamas. His father died in 2002 and his mother died in 2009. The convict was expelled from high school while in the Twelfth grade for robbing a fellow student. After his expulsion he worked in the construction field and then as a security officer and was working in this capacity when he was arrested for the offence. The convict is married to Mrs. Linda Davilma Celestin and has one child with his wife (who has 3 other children from previous relationships) and is the bread winner of the family.

The convict's wife and brother spoke highly of him as a hard working man who is not a trouble maker and Mrs. Celestin does not believe that he raped the victim.

9. The Probation Report notes that the victim, as a result of the incident, was depressed for several months, experienced mental stress and had a miscarriage.
10. At the sentencing hearing the convict acknowledged the seriousness of the offence and accepted the jury's verdict. He has been in custody since the date of his arrest on 10th November 2015 for approximately two years prior to receiving bail on the 8th November 2017 and has again been remanded from the date of his conviction on 11th October 2018.
11. In deciding on the appropriate sentence consideration, must be given to the general principles of sentencing. Halburys Law Vol. 11 (2) paragraph 1188 on the aims of sentencing states that:

“The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation. However, the protection of society is often the overriding consideration. In addition reparation is becoming an important objective in sentencing”.

12. Each case must depend on its own circumstances and various factors must be considered by the court in deciding which principle of sentencing should predominate.
In R.V.Billam and others [1986], ALLER 985 Lord Lane C.J. gave the following guide lines on the appropriate sentence of rape.

“The appropriate sentence for rape committed by an adult without any aggravating or mitigating features is not less than five years imprisonment. Where rape is committed by two or more men acting together or by a man who has broken into or otherwise gained access

to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the appropriate sentence is not less than eight years imprisonment. Where the defendant has carried out a campaign of rape committing the crime on a number of different women or girls, a sentence of 15 years imprisonment or more may be appropriate since such a defendant represents a more than ordinary danger. Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder and where he is likely to be a danger to women for an indefinite time if he remains at large, it will not be inappropriate to impose a Life Sentence.

The crime of rape will be treated as aggravated by the following factors:

- a) where violence is used over and above the force necessary to commit the rape,
- b) where a weapon is used to frighten or wound the victim,
- c) where the rape is repeated,
- d) where the rape has been carefully planned;
- e) where the defendant has previous convictions for rape or other serious offences of a violent or sexual kind;
- f) where the victim is subjected to further sexual indignities or perversions,
- g) where the victim is either very old or very young,
- h) where the effect on the victim whether physical or mental is of special seriousness

Where any such aggravating features are present, a substantially higher sentence should be imposed than would otherwise be the case.

13. In the Bahamas the offence of rape carries the maximum penalty of life imprisonment. This penalty underscores the gravity of the offence as it places rape in the category of such other serious offences such as Murder, manslaughter and armed robbery, which nearly always warrant a custodial sentence. The court also recognises that sentences in cases of "relationship rape" where there was a consensual sexual relationship at the time of the offence and "acquaintance rape" are to be treated as of equal seriousness to cases of "stranger rape".
14. In exercising my discretion in sentencing I must consider those factors which are both mitigating and aggravating about the offence and the offender.
15. With respect to the convict I have considered as mitigating circumstances the fact that he is a relatively young man and had a clean criminal history. He was gainfully employed at the time of this offence and was married with one child and 3 step-children for whom he was the family breadwinner and provider. At the sentencing phase of this trial he has acknowledged the seriousness of the offence.

The Probation report does not speak to his prospects for rehabilitated; and in those circumstances there is no basis for the court to conclude that he is not able to be rehabilitated particularly as the Psychiatric Report notes that he has expressed remorse.
16. The Court considers that the aggravating factors in this case are that the victim lived in the same house as the convict and was the cousin of the convict's wife. That the convict used a weapon (a screwdriver) and threatened the victim. While no penile penetration occurred, the victim was on her menstrual cycle and the victim (notwithstanding) still penetrated her vagina with two fingers for 5 minutes. That the victim was forced to endure the humiliation of semen being ejaculated in her mouth.
17. In applying the principles of sentencing to the facts of this case a sentence is required which is sufficient to express the community's abhorrence of this type of behaviour. That sentence must be able to act as a deterrent to the convict specifically and to any other persons minded to act in a similar fashion.

18. Counsel for the convict has submitted that the convict should be sentenced to time served. Counsel for the crown has submitted that a sentence of 25 years was appropriate.
19. The court is of the view that the convict (while not a young man) is a 39 year old man who should after an appropriate sentence have an opportunity to be rehabilitated and eventually returned to society.
20. The court has taken into consideration the 2 years that the convict has spent on remand. I find that an appropriate sentence for Josue Celestin would be twelve years with the effect from the date of conviction, conviction being on the 11th October 2018.

Dated this 28th March 2019

The Hon. Mr. Justice Gregory Hilton