

COMMONWEALTH OF THE BAHAMAS

Information No. 167/9/2020

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

AND

MAURICE REYNOLDS

Convict

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mrs. Donna Dorsett- Major Counsel for the Convict
Mrs. Destiny McKinney- Morley along with Tabitha Mrs. Frazer Bonamy
for the Respondent

Sentencing Date: 5th April, 2023

DECISION ON SENTENCING

Darville Gomez, J

Introduction

1. The Defendant was convicted on 19th October, 2022 of Unlawful Sexual Intercourse with a person under the age of 14 contrary to section 10(1)(a) of the Sexual Offences Act. The offence carries a maximum possible sentence of life imprisonment.
2. The trial lasted ten days, during which time six witnesses were called by the prosecution, including the virtual complainant and her mother. The convict exercised his right to remain silent, however, he tendered a defence of alibi for which he called his neighbor as a witness. Additionally, his mother and stepfather gave evidence on his behalf.

3. Upon conviction, I ordered a probation report and adjourned for sentencing to today. The report, was prepared and submitted and the convict called Pastor Bevelyn Lewis as a character witness.
4. The evidence at the trial indicated that the convict had sexual intercourse with the virtual complainant (hereafter, the VC) in September, 2020 when she was 13 years of age. At that time, he was a 23 year old married man.
5. The VC testified that on 11th September, 2020 she walked through the track road to visit the convict's wife and was informed that she was over at his mother's home. She waited there for about 10 minutes and testified that he convict pushed her onto the mattress, placed her on her stomach, spread her legs, pulled down his pants and hers, and then inserted his penis into her vagina. During this time, she stated that she was crying and screaming but the convict covered her mouth with his hands. The VC's evidence is that the encounter lasted for about 10 minutes and when he was finished, he told her to get dressed and go home.
6. The convict denied the offence and called an alibi witness who lived not far from him. She testified that he was with her at the time that the offence was committed. His mother and stepfather similarly testified in his defence and suggested that the incident never occurred and that the story was a fabrication because the family were jealous that the convict was given a parcel of land on which to build a home.
5. As the probation report bears out, the convict is the only child of his mother and had recently moved to The Bahamas. He initially lived with his mother and stepfather but was eventually gifted a parcel of land by his stepfather who owned the majority of the land on which the VC and her family resided. He had built a small home for him and his wife to reside which was close to his mother. It is for this reason that the mother and stepfather of the convict believed that the VC concocted this story.
6. In this difficult and emotionally fraught matter the court must now impose an appropriate sentence having regard to both the circumstances of the case and the particular circumstances of the convict, without regard for the emotions or sentiments of the parties, on either side.

Law

7. **Section 10(1)(a) of the Sexual Offences Act, Chapter 99** reads as follows:
 10. (1) Any person who —
 - (a) has unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse;is guilty of an offence and liable to imprisonment for life.
8. According to **section 185 of the Criminal Procedure Code, Chapter 91,**

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.”

Crown’s Submissions

9. The Crown provided authorities in support of its legal arguments on the sentencing of the convict. A brief summary was given of the following unlawful sexual intercourse cases: **Edward Butler v. Regina SCCrApp & CAIS No. 9 of 2014**; **Leonardo Rolle v Regina SCCrApp & CAIS No. 61 of 2009**; **Dwight Bethel v Regina SCCrim App. No 58 of 2015**; and **Dwayne Gordon SCCrApp & CAIS No. 74 of 2014**.
10. In submission, the Crown contended that ‘the Court must weigh the mitigating factors against the aggravating factors’. The aggravating factors submitted by the Crown is the age of the virtual complainant; the age difference between the virtual complainant and the convict; the forceful rape of the virtual complainant; emotional damage; the prevalence of unlawful sexual intercourse offences within the country and that the convict showed no remorse for his actions.
11. Reference was also made to **Raphael Neymour and The Attorney General SCCrApp No. 172 of 2010** as the Court noted at paragraph 42 of the judgment:

“The Bahamas is facing a wave of uncharacteristic and unprecedented violence. Whilst we accept the general approach adopted by the English Court of Appeal in the case of Suratan and Ors(Supra), the court is very mindful of the fact that The Bahamas is culturally different from England and we must therefore be cautious not to slavishly following the courts of England on sentencing issues. The courts have a duty to send a strong message to the community at large and particularly to those involved in disruptive behaviour that as society advances a higher measure of self-control is called for. The sentence in our view ought to serve as a deterrent to the appellant and those minded to act in similar manner.”

12. The mitigating factors identified by the Crown are as follows: (i) that the convict has no previous convictions or infractions with the law, and (ii) the probation report indicated that he was highly regarded by loved ones.
13. The Crown’s argument is that the aggravating factors immensely outweigh the mitigating factors in this matter and as such the convict, Maurice Reynolds should receive a custodial sentence ranging between 7 – 10 years.

Defence Submissions/ Plea-in-Mitigation

14. Defence Counsel invited the Court to consider the four classical sentencing principles and submitted that the convict, Maurice Reynolds is capable of rehabilitation.

15. Counsel's plea in mitigation on behalf of Maurice Reynolds encompassed factors such as: (i) the age of the convict (25 years); (ii) no criminal history; (iii) a favourable Probation Report; (iv) has a dependent child 1 year of age; (v) and suffered the recent loss of his wife.
16. The Court was directed to section 185 of the **Criminal Procedure Code, Chapter 91** which provides :
“ *The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.*”
17. In submission, Counsel implied that it would be inappropriate to impose a custodial sentence because it is usually kept for those offences that are serious in nature; for example, those involving violence.
18. The Court was further reminded of the fact that the verdict was not unanimous. Counsel pointed out that this was an indication that 2 of 7 jurors did not accept the Crown's case that Maurice Reynolds was guilty of unlawful sexual intercourse.
19. Counsel relied on the case of **Dwayne Benjamin Decosta 2018/CRI/VBI/182/8**. Grant-Thompson J sentenced the convict to six (6) months imprisonment and one (1) year probation. Decosta was initially charged with unlawful sexual intercourse pursuant to section 10(1)(a) of the Sexual Offences Act but the charge was lessened to assault and abduction on which he was convicted. Defence Counsel added that it would be appropriate for this Court to impose a similar sentence; 6 months imprisonment and a probationary period of 1 to 2 years.

Analysis and Court's Considerations

20. In exercising its discretion, the court must always consider the four cardinal principles of sentencing as set out in the case of **R and Hepburn BS 2013 SC 149**, Charles, J. at paragraph 31: (i) retribution; (ii) deterrence; (iii) prevention; and (iv) rehabilitation.
21. Another important principle of sentencing is the court's duty to ensure that sentences are proportionate to the gravity of the offence. This exercise entails considering all of the circumstances of a case particularly the aggravating and mitigating factors. The principle was affirmed by Adderley JA in **Prince Hepburn v Regina SCCrApp No. 79 of 2013**, at paragraph where he pronounced that:

“ In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular VC so that he can in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first

opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation, that the tariff is reasonable and the sentence is fair and proportionate to the crime. Each case is considered on its own facts.”

22. As already noted, the offence carries a potential maximum penalty of life imprisonment, so the offence has to be considered a serious offence and therefore, I disagree with the assertion by the Defence Counsel that it is not a serious offence and a non-custodial sentence would be appropriate in the circumstances. Further, the case relied upon **Decosta, supra** is unhelpful given that the offence that the accused was eventually convicted of was a lesser offence than the one in the instant case.
23. Similarly, the cases proffered by the Crown were unhelpful and were easily distinguished from the instant one. I considered the case of **R v Kzeno Kevin Kemp 2011 VBI 196/9** where Senior Justice Bernard Turner sentenced the accused to 6 years for a similar offence of unlawful sexual intercourse where the virtual complainant was a cousin of the accused. In that case the accused was similarly of good character.
24. The Probation Report of Mrs. Andrea Saunders from The Department of Rehabilitative/ Welfare Services provided a Probation Report dated the 23rd November, 2022 reference to this matter. She interviewed Maurice Reynolds, the convict; his mother, Marlene Lopez- Nixon; step- father Roger Nixon, Ms. Odessiny Petitfrere, administrative assistant at Guard Force Security International Limited where he was employed prior to his incarceration; the VC A D; and her grandmother, Ms. Pearlina Dames.
25. The individuals that spoke on behalf of Mr. Reynolds described him as: respectful, mannerly, calm, peaceful, hard-working, productive, willing, helpful, generous, peaceful, quiet, and encouraging.
26. According to the report, Mr. Reynolds stated that he “feels bad and is down every day”, expressing displeasure with his conviction but maintains his innocence. He also added that he misses his daughter and would appreciate the opportunity to continue parenting.
27. Pastor Bevelyn Lewis gave evidence on behalf of the convict whom she knew of because of her relationship with his mother. She described the convict as a quiet, shy, humble, respectful person who often visited church with his mother or stepfather.
28. I have also taken into consideration the mitigating and aggravating factors in this matter as follows:
 - Mitigating Factors:
 - (i) The convict’s clean criminal history; this being his first offence;
 - (ii) The fact that he was industrious selling peanuts on the street until he obtained employment;
 - (iii) The high regard that his family and employer hold him in;

- (iv) The prolonged illness and eventual death of his wife;
- (v) The surviving dependent parent to a one year old daughter;

Aggravating Factors:

- (i) The act was committed with the use of force;
- (ii) Age of the VC;
- (iii) Age difference between the VC and the convict;
- (iv) No remorse by the convict;

29. The Probation Officer reported that the VC relocated to Grand Bahama with her maternal grandmother, Ms. Pearline Dames who indicated that she appears to be doing okay. However, as reported by the Probation Officer, the VC has *not received any counseling since the offence and is oftentimes very sad, especially in the company of a lot of people.*"

30. I note that at the date of the Probation Report, the VC had not had any form of counselling (some two years after the commission of the offence). I recognize the potential negative emotional and psychological impact on her in the future.

31. Having regard to the maximum sentence possible of life imprisonment, which would be reserved for repeat prolific offenders with aggravating features, and a low end of a non-custodial sentence, which I have already indicated is not an appropriate sentence, I believe that Mr. Reynolds has the ability to become a contributing member of the society.

32. Accordingly, in the circumstances, I find that an appropriate sentence for **MAURICE REYNOLDS** would be 4 years. That sentence is to run from the date of conviction, on 19 October 2022. Mr. Reynolds's time served on remand must be deducted from the sentence imposed.

Dated the 5th day of April, 2023



Justice Camille Darville Gomez