

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C100/2023A

BETWEEN

THE KING

and

EZEQUIEL AYALA

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Mrs. Romey Cunningham, Crown Counsel for the Crown.

Mr. Leeroy Banner for the Prisoner.

2024: May 14th, 16th, and 17th.

June 28th

September 20th

October 21st

**ASSAULT OF A CHILD UNDER SIXTEEN BY PENETRATION- SEXUAL ASSAULT-
RAPE OF A CHILD- SENTENCING**

JUDGMENT ON SENTENCING

[1] **PILGRIM J.:** Ezequiel Ayala (“the prisoner”) was convicted after trial by judge alone on a five-count indictment for the offences of assaulting a child under sixteen by penetration,

sexual assault and rape of a child arising out of his sexual molestation of S in 2020 and 2021, contrary to section 47B, section 45A (1) and 47A of the **Criminal Code**¹ (“the Code”), respectively. The Court has received the necessary pre-sentence reports and held a mitigation and sentencing hearing.

[2] The Court must now pass sentence on the prisoner.

The Legal Framework

[3] The definition of assault of a child under sixteen by penetration in the Code, where relevant, is:

*“47B. Every person who **intentionally penetrates the...vagina...**of another person who is **under the age of sixteen years** with a part of his body other than his penis or anything else and that penetration is **sexual in nature**, commits the offence of assault on that person and is liable on conviction on indictment to imprisonment for not less than twelve years but may extend to imprisonment for life.” (emphasis added)*

[4] The Crown must establish for this offence: (i) the prisoner by even the least degree penetrated S’s vagina by a body part other than his penis; (ii) that penetration was intentional; (iii) that penetration was sexual in nature; and (iv) S was under the age of sixteen.

[5] The definition of sexual assault in the Code, where relevant, is:

*“45A.-(1) Every person who **intentionally touches** another person, that touching being **sexual in nature, without that person's consent or a reasonable belief that that person consents**, and where the touching involved–*

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2011.

*(a) that **person's vagina** ... commits an offence and is liable –... (ii) where that person was under sixteen years at the time the offence was committed, ...on conviction on indictment to a term of imprisonment for twelve years.”*
(emphasis added)

[6] The facts that the Crown must establish in this case on the charge of sexual assault, in light of the provisions of section 12(b) of the Code, are: (i) that the prisoner touched S's vagina; (ii) that touching was intentional; (iii) that touching was sexual in nature; and (iv) the prisoner knew, or could have with reasonable diligence found out, that S was under sixteen or S did not consent and he knew she was not consenting or had no reasonable belief in her consent. The first portion of the fourth element is adopted from the requirement in the last paragraph of section 12 that though the consent of a child under sixteen to sexual assault is void, “no person shall be prejudiced by the invalidity of any consent if he did not know and could not by the exercise of reasonable diligence have known of such invalidity.” The Court in this regard is guided by the decision of the Court of Appeal supporting this analysis in Lewis Leiva v R².

[7] The elements of the offence of rape of a child under the Code, where relevant, are as follows:

*“47A. Every person who **rapes** another person and that person **is under the age of sixteen years** commits an offence and is liable on conviction on indictment to—... (b) imprisonment for not less than fifteen years, but may extend to life, where that other person was under the age of fourteen years at the time the offence was committed.*

...

*71.-(1) Rape is the **penetration of a person's...vagina...with a penis, without that person's consent.**”* *(emphasis added)*

² Criminal Appeal No. 16 of 2009 at para 38.

- [8] The Court of Appeal in **FW v R**³ considered the issue of proof of the element of the absence of consent, per Sosa P:

*“[26] As regards the relevant law, the majority accepts the submission...that **there is a valid legal distinction between mere submission to sexual intercourse and consent thereto.** Support for that submission is found in *Olugboja*, where Dunne LJ, speaking for the England and Wales Court of Appeal (Criminal Division) on the topic of proper directions to a jury, said, at page 8:*

‘They should be directed that consent, or the absence of it, is to be given its ordinary meaning and if need be, by way of example, that there is a difference between consent and submission; every consent involves a submission, but it by no means follows that a mere submission involves a consent.’

*Consistent with that view is the statement in the judgment in *Malone*, where Roch LJ speaking for the same Court, gave examples of possible factual situations in cases involving rape charges and went on to say, at para 7:*

*‘[These examples] suffice to demonstrate **that it is not the law that the prosecution in order to obtain a conviction for rape have to show that the complainant was either incapable of saying no or putting up some physical resistance or did say no or put up some physical resistance.**’*

...

... the above-cited statements in these authorities...accurately [represent] the current state of the law in Belize...” (emphasis added)

- [9] The Crown has to establish for this offence, as is relevant to this case: (i) the prisoner by even the least degree penetrated S’s vagina; (ii) that penetration was with the prisoner’s

³ Criminal Appeal No. 18 of 2011.

penis; (iii) that penetration was without S's consent and the prisoner knew she was not consenting; and (iv) S was under the age of sixteen.

[10] In determining the propriety and length of a custodial sentence on these facts the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**⁴, (the "PSRASA") which provides, where relevant:

"31.-(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.

(2) The guidelines referred to in subsection (1) of this section are as follows,

- 1. **The rehabilitation of the offender is one of the aims of sentencing...***
- 2. **The gravity of a punishment must be commensurate with the gravity of the offence....**" (emphasis added)*

[11] The offences of assaulting a child under sixteen by penetration and the rape of a child are, on a plain English reading, offences with a mandatory minimum term of imprisonment. The propriety of the imposition of a mandatory minimum penalty in ordinary legislation, such as the Code, is subject to the injunction in section 7 of the **Constitution** against inhuman and degrading punishment. This was decided by the Court of Appeal in the matter of **R v Zita Shol**⁵ which adopted its earlier reasoning in the case of **Edwin Bowen v PC 440 George Ferguson**⁶, where they quashed the imposition of the mandatory minimum penalty for drug trafficking on an appellant who was of effective good character, per Bulkan JA:

*"[14]...**this court held that the mandatory sentence was grossly disproportionate, given the small amount of cocaine in the appellant's possession alongside his previously unblemished record. The majority reasoned that if a mandatory sentence is found to be grossly disproportionate or such as to outrage the standards of decency, it***

⁴ Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25.

⁵ Criminal Application No. 2 of 2018 at paras 12-18.

⁶ Criminal Appeal No 6 of 2015.

would violate the constitutional prohibition on inhuman and degrading punishments. (emphasis added)

[12] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (“CCJ”), in the Barbadian case of **Teerath Persaud v R**⁷ on the issue or the formulation of a just sentence, per Anderson JCCJ:

“[46] Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender. Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point. Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should then be a discount for a guilty plea. In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentenced imposed.” (emphasis added)

⁷ (2018) 93 WIR 132.

[13] The Court is also guided by the decision of the CCJ in Calvin Ramcharran v DPP⁸ on this issue, per Barrow JCCJ:

*“[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that **sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean.***

*[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. **These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime (‘as first and foremost’ and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.***

*[18]... **to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases (usually from the territorial court of appeal).**”
(emphasis added)*

[14] This is a case which involves multiple counts and offending on different occasions which raises consideration of the totality principle. This was considered by the CCJ in the decision of Linton Pompey v DPP⁹, per Saunders PCCJ:

⁸ [2022] CCJ 4 (AJ) GY.

⁹ [2020] CCJ 7 (AJ) GY at para 32.

“[15] ... barring special circumstances, courts should normally impose concurrent sentences where a person is convicted of multiple offences which arise out of the same set of facts or the same incident....”

[16] The “special circumstances” mentioned in the previous paragraph is, in part, a veiled reference to what is known as “the totality principle”. The principle may be thought of in much the same fashion as one may express the principle of proportionality. The sentence imposed upon a convicted person should ultimately be neither too harsh nor too lenient. It must be proportionate. The totality principle requires that when a judge sentences an offender for more than a single offence, the judge must give a sentence that reflects all the offending behaviour that is before the court. But this is subject to the notion that, ultimately, the total or overall sentence must be just and proportionate. This remains the case whether the individual sentences are structured to be served concurrently or consecutively.

[17] If, therefore, a judge is minded to order that two or more sentences should be served consecutively, before pronouncing the order, the judge must factor the totality principle by considering the effect of the total sentence. The judge must ensure that this total is proportionate and not excessive. As was stated by DA Thomas, as cited in *Mill v The Queen*:

... when ... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences.

[18] ...Consecutive sentences will normally be appropriate where offences arise out of unrelated facts or incidents, or when offences are of the same or similar kind and are committed against the same person at different dates. So, for example, in cases of domestic violence

or repeated sexual offences committed against the same individual at varying times, consecutive sentences may well be appropriate. Public trust and confidence in courts are significantly impacted by sentencing decisions. It would be quite wrong for courts to foster the impression that a convicted person should receive an unjust discount for multiple offending against the same person.

...

[33] So far as the totality principle is concerned, in cases where it is necessary to sentence someone for multiple serious offences, before pronouncing sentence the judge should:

(a) Consider what is an appropriate sentence for each individual offence;

(b) Ask oneself whether, if such sentences are served concurrently, the total length of time the prisoner will serve appropriately reflects the full seriousness of his overall criminality;

(c) If the answer to (b) above is Yes, then the sentences should be made to run concurrently. If the answer is No and it is felt that justice requires a longer period of incarceration so that the sentences should run consecutively, test the overall sentence against the requirement that it be just and proportionate;

(d) If upon having the sentences run consecutively, the total prison time to be served is not just and proportionate ...go back to the drawing board and consider structuring the sentence in a different fashion bearing uppermost in mind the totality principle. This re-structuring exercise might be achieved by lowering the individual sentences and retaining their consecutive character or by altering the individual sentences (in particular the most serious one) and having the sentences run concurrently;

*(e) Finally, carefully explain the rationale for the sentence and its structure in a way that will be best understood by the parties and the public.”
(emphasis added)*

The facts

[15] On December 31st, 2020, S, who was 13 years old at the time, was invited to her family's dinner. Her mother, E, dropped her off at her uncle's house at around 7 p.m. in Belama Phase 4, Belize City. When they got there, S told E that she was not feeling well and wanted to go back home. S's cousins convinced her to stay because it was supposed to be her last year in Belize. S told them that she still was not feeling well, and her cousin, F, offered to take her to her house to freshen up. F's house, which she shared with the prisoner and who was also her boyfriend, was about 3 minutes from her uncle's. She agreed to go and went in the prisoner's car which was driven by the prisoner. S knew the prisoner for about 6 years before that date. He was 35 years old at the time.

[16] S went there to sleep while they got ready. While they were getting ready S went into F's room. She would normally sleep there during the weekends when she would sometimes stay at F's house. S heard a car leave and then fell asleep. S was awoken by someone pulling on the straps of her dress. When she opened her eyes she saw the prisoner, who was then between her legs. Her body froze. She closed her eyes and started to tremble.

[17] S was able to see the prisoner as the top window beside the bed was open and the lamp pole outside was on. There was also a clock that had a green LED light. S testified that the distance between her and the prisoner was about 1 foot. Nothing was obstructing S from seeing him. She was able to see his face and his whole body.

[18] The prisoner lifted up S's dress and pulled down her tights and underwear. S then heard what appeared to be a zipper go down and she felt the prisoner's penis being pushed into her vagina. He pushed his penis in and out twice for about 30 seconds. At this time, it was still the same lighting, and the distance was 1 foot. Nothing was obstructing her and she saw his face and his whole body. S pushed the prisoner off with her feet and he took his penis out.

[19] The prisoner then put his fingers into S's vagina. His fingers were in and out for about 30 seconds. S then tried to get up but the prisoner pulled her back down. At the time she was afraid and hurt because of his fingernails. The prisoner then started to lick S's vagina for about 5 seconds. He then got up and left and then S fixed herself and went to the bathroom.

[20] S did not consent to the prisoner putting his penis in her vagina. She testified that "my body language was clear I was uncomfortable." She indicated that she did not have sex prior to this night with anyone. S stated that the incident lasted 5 minutes and she was closing and opening her eyes throughout.

[21] S testified that on February 13th, 2021, when she was now 14 years old, F and the prisoner took her out at about 1 p.m. to buy ice cream. They then went back to F's house in Belama Phase 4 and the prisoner gave S permission to use his computer to play and then he left. S got on to play Roblox with her friend and she saw F in the kitchen cooking and taking out vegetables. S was in F's room sitting in a black office chair. After about 30 minutes she heard the vehicle pull up to the yard. S didn't think much of it because she assumed it was F was in the kitchen. S then saw the prisoner coming her way and he spun the chair around facing him.

[22] The prisoner pushed her to the bed and closed the door. The windows were open, so it was clear enough for her to see him. When he closed the door, he came towards S and he pulled up her skirt and pulled her tights and underwear down. The prisoner then inserted his two fingers into her vagina about 4 times. He looked at her and she looked away because she was afraid and embarrassed. S tried to get back up, but the prisoner pushed her back down and started to lick her vagina. He gripped onto her legs. He licked her vagina for about 30 seconds. S struggled, pushed him off and went to the bathroom. She fixed herself and went out to the verandah. When the prisoner put his fingers inside of her the windows were open and it was daytime. She was about 1 foot away from him. Nothing was obstructing her from seeing him. She saw his face and his whole body. About 30 seconds had passed when his fingers were in her vagina. It was the same lighting when he licked her vagina, the windows were open, and it was daytime. It was the same distance of about

1 foot, and nothing was obstructing her from seeing him. She was able to see his face and his whole body.

[23] S then saw F coming back into the yard. She did not tell F what happened because she did not think F was going to believe her.

[24] S testified that she told F's mother, A, about what happened to her on December 31st, 2020, and February 13th, 2021, sometime around April 2021. She indicated that she felt that maybe F's mother would have believed her because she trusted her and gave her words of comfort. She did not tell her mother, E, because they did not have a close relationship. She also said that she "still wanted to process everything."

[25] S testified that on April 24th, 2021, she was at home watching television while her mother was sleeping in her room. While watching television she heard two slight knocks. She opened the door because she thought it was someone who would bring groceries for her mother named Jose. When she opened the door, she saw the prisoner standing there wearing his uniform shirt, his $\frac{3}{4}$ khaki-coloured pants and in his brown boots. He was standing about 2 feet away from her and she smelled alcohol under his breath. She found that he was watching her "weirdly", so she went to the bathroom. She hoped he would leave. After about 2 minutes, S then got out of the bathroom and saw the prisoner sitting on the sofa. She washed the dishes to avoid him and after she was done, she walked back to the sofa. S saw him with her phone. She took her phone away and sat on the opposite side of the sofa. The prisoner asked where her mother was, and she replied that E was sleeping in her room.

[26] The prisoner then pulled S from her shoulders towards him. As she leaned back, he pulled down her shorts and he knelt. He then inserted his fingers into her vagina. S felt pain because of his fingernails. She then pushed him off. She got up and fixed herself and went to the bathroom and cried silently for about 2 minutes. She was able to observe what transpired because the top windows were open, and it was daylight. Her distance from the prisoner was about 2 feet. Nothing was obstructing her view. She saw his whole face and his entire body. S testified that the entire incident lasted about 30 seconds.

[27] S then came out of the bathroom and went to sit on the opposite side of the sofa. S stated that there was nowhere else she could have gone because she felt if she went back to her room, it could have escalated if he followed her.

[28] He then again pulled her towards him, pulled her shorts and pants to above her knee and he started to lick her vagina. S struggled and pushed him off. The prisoner got up and he said he was going to leave and would be right back. When he was licking her vagina, the windows were open, he was about 2 feet away. Nothing was obstructing her from seeing him. She saw his face and entire body. The incident lasted about 30 seconds.

[29] S testified that at that moment she was scared and embarrassed. She did not think that she had anyone to talk to. She was scared because she did not think there was going to be an end to that cycle. She started to cry and went out to the verandah and sat out there for some fresh air. S cried for about 5 minutes until her mother woke up and she came outside. E spoke with S and E called someone. E then took S to S's room and comforted S while she was crying. She later heard a knock on the door.

[30] S later did a medical examination with a doctor. She testified that she did not have sex with anyone other than the prisoner from Dec 31st until that medical examination. She further stated that she did not consent to what the prisoner did to her on all of those days. She did not flirt with him at any moment.

Analysis

The Offending

[31] The Court, following *Persaud*, will begin the sentencing process by seeking to identify the aggravating factors relevant to the offending. These factors, in the Court's view, are as follows:

- i. **Breach of Trust:** The prisoner would have used his connection to F, S's cousin, to better facilitate the commission of these offences. S would have let her guard down and felt comfortable sleeping at the prisoner's house because of F's suggestion. The prisoner egregiously breached that trust. It is important to note that this factor of adults exploiting the trust of children to sexually molest them has been considered a justification of the imposition of life sentences in the Guyanese CCJ decision of **AB v DPP**¹⁰, per Jamadar JCCJ:

*"[19] Life imprisonment is the maximum penalty under the relevant section of the Sexual Offences Act. Its imposition is available within the range of punishment options available to the sentencing judge, where the sexual activity included sexual penetration. In this case, all of the circumstances of the Applicant's crime were before the trial judge. The judge found no mitigating circumstances. **However, what makes this case distinct in its severity, was the special relationship of trust between the victim-survivor and the perpetrator and the young age of the former.***

*[20] In Guyana, there are several precedents in which for the crime of sexual activity with a minor, perpetrated by an adult in a position of trust, life imprisonment has been imposed. In all of these, eligibility for parole was fixed for periods in excess of 20 years. It is therefore fair to say that the choice of concurrent life imprisonment sentences in this case is neither extraordinary nor manifestly excessive in Guyana. **Indeed, it is reasonably arguable on the available precedents, that life imprisonment in the circumstances of this case is within the starting range of sentences that ought to be considered. Furthermore, it is also fair to say that the imposition of a 20-year period of ineligibility for parole is well within the existing range for similar cases. In this latter regard, it is also noteworthy that the 20-year period is among the lower periods that have been imposed!***

...

¹⁰ [2023] CCJ 8 (AJ) GY at paras 20 and 23.

[23] This case may be thought of as difficult to reconcile with this Court's earlier decisions in *Pompey* and *Ramcharran*, and to a certain extent it is. However, in those cases the sentences imposed were clearly manifestly excessive and erroneous (as explained). In this case that is not so. This Court, like the Court of Appeal, will not readily interfere with the exercise of a judicial sentencing discretion that is justifiable, procedurally and substantively. **What these three cases demonstrate therefore, are indicators for a range of sentences for sexual assaults on minors (in this case and in Pompey) and young adults (in the case of Ramcharran) by persons in positions of trust, that this Court considers appropriate in their respective circumstances. This decision is, for that reason, of important precedential value and may be of guidance in similar cases.**”
(emphasis added)

- ii. **Significant Disparity in Age:** When this offending began there was a 22-year age difference between the prisoner and S. The prisoner used the authority and power that comes with adulthood to keep harming S who was a particularly vulnerable child, owing to her fractious relationship with her mother, she felt isolated with no one to complain to.
- iii. **Serious Psychological Harm Caused to the Victim:** The Court notes the words of S herself in her victim impact statement which speaks to the prisoner's acts causing considerable harm:

“1. I was thirteen years old when I started. my freshman year at...school during the Covid lockdown. I was excited and looking forward to my first year of high school.

2. After the abuse from Ezequiel Ayala started, however, my mental health became very poor, and my only way to cope was self-harming. I needed physical pain to feel relief from my emotions. I had to get through days filled with anxiety and nights where I would stay up and overthink.

3. *I asked myself what have I done to deserve it and questioned whether it was my fault or not. So many insecurities were gained, not being able to love my own body which caused an eating disorder that I still struggle with today.*

4. *I have trust issues with everyone I communicate with. Having my OWN family turn against me because no one believed me was devastating. Every night before bed, I cried myself to sleep begging God to take me so I would not have to do it myself.*

5. *The thoughts of suicide haunted me. I had a few therapy sessions, yet I still felt uneasy and stopped attending the sessions. I was unable to feel loved by my own father without overthinking.*

6. *I lost all my motivation to join my online classes, and I eventually failed the school year. I felt as if I were nothing more than a disappointment to my family.*

7. *I would like Ezequiel Ayala to know that taking advantage of a vulnerable teenager was not okay. I suffered alone having to heal on my own.”*

- iv. **Prevalence of the Offence:** Sexual offences against children in Belize, as in the wider Caribbean, are reaching epidemic proportions. The dockets of the criminal courts in the Senior Courts are overflowing with indictments alleging child molestation and the sentence imposed must have a significant deterrent effect, as Jamadar JCCJ said in *Pompey*:

“[45] Children are vulnerable. They need to be protected. Children are developing. They need to be nurtured. Children are precious. They must be valued. Society has these responsibilities, both at private individual levels and as a state. Sexual offences against children, of which rape may be one of the most vicious, and rape by a person in a relationship of trust in the sanctity of a family home the most damaging, is anathema to the fabric of society. The idea of it is morally repugnant. Its execution so condemned,

that the State has deemed, as an appropriate benchmark, imprisonment for life as fit punishment in the worst cases.

[46] The Universal Declaration of Human Rights asserts as its first principle, that all humans are born free and equal in dignity and rights. **Children, minors, and all vulnerable young persons are owed a special duty of protection and care, by both the society at large and the justice system in particular, to prevent harm to and to promote the flourishing of their developing and often defenceless personhoods.** They, no less than, and arguably even more than, all others, are entitled to the protection and plenitude of the fundamental rights that are guaranteed in Caribbean constitutions... **Thus, just as an accused must be afforded all rights that the constitution and the common law assure, so also must care be taken to ensure that victims, especially those that are children, minors, and vulnerable, are also afforded the fulness of the protection of the law, due process and equality.**” (emphasis added)

- v. **Offences Committed on Separate Occasions:** This offending was repeated which would have increased the trauma caused to S.

[32] There are no mitigating factors of this offending.

The Starting Point

[33] In arriving at the starting point, the Court observes that Belize does not yet have formal sentencing guidelines, though it happily takes judicial notice that they are not too far on the horizon. There has also been no range of sentences for these offences set by the Court of Appeal. However, as was noted above in *AB*, in cases where there has been a breach of a child’s trust which leads to sexual molestation involving penetration it falls comfortably within this Court’s discretion to impose a life sentence with a minimum term for the offences with a life penalty such as rape of a child and assaulting a child under sixteen by penetration. The

public interest in the deterrence of this kind of offending is overarching and must be a major factor in the sentencing of this offence.

[34] The Court also wants to impose concurrent sentences which would capture globally the nature of all the offending consistent with the totality principle. This was not a one-and-done offence where 'some devil' came over the offender and he stopped. The prisoner sexually molested S on 3 separate occasions spanning months. On the evidence it seemed that the only thing that stopped a fourth occasion, in S's words, and 'ending the cycle' was her finding the courage to make a report to her mother. The Court must heed the warning of Saunders PCCJ in *Pompey* that, "It would be quite wrong for courts to foster the impression that a convicted person should receive an unjust discount for multiple offending against the same person."

[35] The Court for those reasons and recognizing that the sentence must be commensurate with the offending selects a starting point of 30 years imprisonment for rape of a child and assault of a child under sixteen by penetration; and 8 years imprisonment for sexual assault. All sentences are to be concurrent. Again, the Court underlines that the starting point was selected with totality in mind and the fact that it is trying to arrive at global concurrent sentences for multiple offences. The Court notes the sentence of 5 years imprisonment imposed in the case of **Darren Martinez v R**¹¹ by the Court of Appeal for the offence of assault of a child under sixteen by penetration but that case is distinguishable on the basis that that was a single offence in which the principle of totality did not have to be considered.

[36] The Court would now individualize the sentence of the prisoner.

The Offender

[37] The prisoner was found to have no mental issues in his assessment by Dr. Matus Torres.

¹¹ Criminal Appeal No. 35 of 2019.

[38] There are no aggravating factors relevant to the offender in relation to the prisoner. The Court would not consider his maturity as an aggravating factor here as that has been considered already in the age disparity factor under consideration of aggravating factors of the offence.

[39] The mitigating factors in relation to the offender are as follows:

- i. **Good Character**: The Prisoner has no previous convictions. This is his first brush with the law and he must be given credit for living 35 years without a criminal infraction.
- ii. **Positive Social Inquiry Report (“SIR”) and Character Evidence**: The SIR report paints a very positive picture of the prisoner. He is a university graduate and a manager. He is a workaholic who was a lynchpin of his family, encouraging his siblings to succeed. He assists in the management of the family farm. He worked to take care of his mother who suffered with cancer. The death of his mother from cancer appeared to have quite a dramatic effect on his life. He works hard now to pay for the medical bills of his common law wife who also now is suffering from cancer. The prisoner would have also done yeoman service to Belize by doing installations and maintenance of oxygen tanks and other equipment at the hospitals during the COVID-19 pandemic. The character witnesses speak in one voice to the prisoner being helpful, reliable, caring and a good father and husband. He is the father of a daughter who is 1 year and 7 months old. The prisoner is not someone beyond rehabilitation.
- iii. **Genuine Remorse**: The prisoner made a heartfelt apology to the victim and others and accepted the responsibility for his actions. This is a significant sign that he has begun to rehabilitate.

[40] The Court reminds itself of the guidance in the PSRASA that rehabilitation is a core principle of sentencing. However, it believes that though there are significant mitigating factors the repeated offending by the prisoner; its effect on S; and the public interest in preventing the future harming of Belize’s most precious resource, its children, deterrence must play a central role in the sentence. As was noted by the CCJ in **Alleyn v R**¹², per Anderson JCCJ, “Rehabilitation is one of the aims of sentencing and a very important aim, but not the only

¹² (2019) 95 WIR 126 at para 45.

one and in some circumstances, not the overriding one.” The mitigating factors in relation to the offender would cause a 6-year deduction in the sentence for rape of a child and assault of a child under sixteen by penetration and a 2-year reduction in the sentences for sexual assault.

[41] This leaves a final sentence of 24 years imprisonment for the rape of a child count and the two assault of a child under sixteen by penetration counts and 6 years imprisonment on the sexual assault counts. The prison records demonstrate that the prisoner has spent 4 days on pre-trial remand. The sentence will be appropriately backdated pursuant to the Court’s powers under section 162 of the Indictable Procedure Act¹³ as considered in R v Pedro Moran¹⁴. The sentence will take effect from 24th June 2024.

DISPOSITION

[28] The sentence of the Court on Ezequiel Ayala is as follows:

- i. Count 1- Assault of a child under sixteen by penetration- 24 years imprisonment.
- ii. Count 2- Sexual assault- 6 years imprisonment.
- iii. Count 3- Assault of a child under sixteen by penetration- 24 years imprisonment.
- iv. Count 4- Sexual assault- 6 years imprisonment.
- v. Count 5- Rape of a child- 24 years imprisonment.
- vi. All sentences are to be served concurrently with effect from 24th June 2024.

Nigel Pilgrim
High Court Judge
Criminal Division
Central District
Dated 21st October 2024

¹³ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

¹⁴ Criminal Application No. 1 of 2017 at para. 38.