IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C00014/2023

BETWEEN

THE KING

and

JEROD DAWSON

Prisoner

Before: The Honourable Justice Nigel Pilgrim

Appearances:

Mrs. Romey Cunningham, Crown Counsel for the Crown.

Mrs. Virginia L. Requeña-Moore for the Prisoner.

2024: January 17th, 18th, 22nd, and 31st
February 8th
March 1st and 8th
May 21st
July 23rd
September 18th
October 31st
November 11th

JUDGMENT

SENTENCING-SEXUAL ASSAULT- ASSAULT OF A CHILD UNDER SIXTEEN BY PENETRATION-MANDATORY REPORTING

[1] PILGRIM, J.: Jerod Dawson ("the prisoner") was convicted on 21st May 2024 of the offences of sexual assault and assault of a child under sixteen by penetration, contrary to section 45A(1) and section 47B of the **Criminal Code**[1] ("the Code") respectively. The offending in a nutshell is that the prisoner, while in a car with 12-year-old A, rubbed his penis on A's vagina and also digitally penetrated her vagina.

[2] The Court ordered appropriate reports to inform the sentencing process and held a mitigation hearing where it received helpful submissions. The Court now must pass sentence on the prisoner.

The Legal Framework

[3] It would be helpful to firstly examine the elements of the crime of sexual assault and penetrative assault of a child under sixteen for which the prisoner stands convicted.

[4] The definition of sexual assault and its penalty, in the context of this case, in the Code are:

> *"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–*
> *(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)*

[5] The facts that the Crown must establish in this case on the charge of sexual assault are: (i) that the prisoner touched A's vagina; (ii) that touching was intentional; (iii) that touching was sexual in nature; and (iv) the prisoner knew she was not consenting or had no reasonable belief in her consent.

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020, as amended by the **Indictable Procedure (Amendment) Act, 2022.**

[6] The definition of assault of a child under sixteen by penetration and its penalty, as relevant to this case, in the Code are:

> *"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)*

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

[8] 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**[2],(the "PSRASA") which provide, 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)*

[9] The offence of assaulting a child under sixteen by penetration, on a plain English reading, is an offence 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

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

the matter of **R v Zita Shol**[3] which adopted its earlier reasoning in the case of **Edwin Bowen v PC 440 George Ferguson**[4], 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 would violate the constitutional prohibition on inhuman and degrading punishments**." (emphasis added)*

[10] 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**[5] on the issue of 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***

[3] Criminal Application No. 2 of 2018 at paras 12-18.
[4] Criminal Appeal No 6 of 2015.
[5] (2018) 93 WIR 132.

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)*

[11] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**[6] 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)*

[12] This is a case which involves multiple counts which raises consideration of the totality principle. This was considered by the CCJ in the decision of **Linton Pompey v DPP**[7], per Saunders PCCJ:

[6] [2022] CCJ 4 (AJ) GY.
[7] [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**.*

…

*[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." (emphasis added)

The Facts

[13] On 14th March 2022 at about 7:35 p.m. A was at home with her sister and brother. The prisoner came and knocked on the door and asked for help pushing his car. A, her brother, sister, E and another person went to help push the car by his house. When they were finished the prisoner asked A if she wanted to go to the shop with him. A replied no. The prisoner said to A, "lets go". A asked if her sister and brother could come and the prisoner said no. A went in the car behind the passenger seat. The prisoner drove

off in the direction of Ladyville. He then turned into a dark road. A was not worried because the shop was through there.

[14] The prisoner came out of the car. He went behind the driver's seat. The prisoner took off his pants. A asked the prisoner what he was doing. The prisoner responded, "he just the do wa lee thing". The prisoner took off A's pants and panty. The prisoner took his penis and rubbed it on her vagina. A told the prisoner to stop. The prisoner did not stop. The prisoner took out a glove from out of "a black thing" from the front of the passenger seat. The prisoner then put the glove on his hand and then he took his finger and pushed it in her vagina. A tried to push him off and then he held her down. The prisoner then got up and A put on her panty and her pants. She did not see what the prisoner did with the glove.

[15] A then started to walk home. The prisoner followed her. The prisoner asked A if she liked him and she replied, no. He also asked A to be his girlfriend, to which she again replied, no. She went home and made a report to her mother and later went to the police station. A said that she never gave the prisoner permission to do anything he did to her in the car. The prisoner was later arrested and charged.

[16] A testified, "I mi tek Jerod Dawson as my father kaaz he use to buy anything weh I mi need such as school things."

Analysis

The Offending

[17] 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 was viewed by A as a father figure. That fact would have made A more compliant to the prisoner's demands and facilitated the commission of this offence. 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**[8], 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!***
>
> *…*
>
> *[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***

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

***important precedential value and may be of guidance in similar cases**." (emphasis added)*

ii. **Significant Disparity in Age**: When this offending occurred there was a 38-year age difference between the prisoner and A. The power dynamic created by that disparity in age would make it easier for the prisoner to dominate A and commit this offence.

iii. **Serious Psychological Harm Caused to the Victim**: The Court notes the words of A herself in her Victim Impact Statement ("VIS") which speaks to the prisoner's acts causing considerable psychological harm:

> *"3. I cannot recall the exact date that I was sexually assaulted, but I would never forget the day because I was very afraid of what was going to happen to me on that night. I am glad that I am alive, but from then on, I always keep my guard up as I don't trust anyone anymore.*
> *4. I am afraid of all males. I do hate when I am passing and they would be hissing and telling me all of sort of words that I do not like. They are very disrespectful. Due to this, I have asked my mom to cut my hair like that of a boy so that all males would not see me as a girl and would just leave me alone.*
> *5. I go to school, but I am very afraid to meet Mr. Jerod Dawson. I recall one day, I do not know if it was him or someone who looks like him in front of my school. When I saw this, I got so frightened and I ran to principal's office. I told my principal that Mr. Jerod Dawson was at the school and that I am afraid because every time I think he would come after me. The principal made checks but he wasn't there . I can't live comfortable anymore fearing that one day I have to meet Mr. Dawson."*

Her mother also added in her VIS:

> *"5….[A] used to be a normal girl, but now as she is in her early teens and she doesn't want to grow her hair as normal females do. She always begs me to cut her hair like that of a boy, because she do not want males to be hissing her. [A] tells me that she doesn't like to be bothered by males, because they are very disrespectful especially older men.*

6. All I want is to ask…Jerod Dawson that (sic) why he had to this to me? Knowing my daughter was only a child."

iv. **Sexual assault- Skin to skin contact of both genitals**[9]: A discrete aggravating factor for the offence of sexual assault is that the prisoner placed his penis onto A's vagina increasing the seriousness of the touching.

v. **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,***

[9] Eastern Caribbean Supreme Court's, "**A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Sexual Offences**" at p 28.

***minors, and vulnerable, are also afforded the fulness of the protection of the law, due process and equality**." (emphasis added)*

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

The Starting Point

[19] In arriving at the starting point, the Court observes that Belize does not yet have formal sentencing guidelines. 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 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.

[20] The Court is assisted in consideration of a starting point for the penetrative assault offending by considering the Eastern Caribbean Supreme Court's, "**A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Sexual Offences**[10]", ("the ECSG") in particular its aggravated sexual intercourse guidelines[11]. This can be used with adaptations considering that both offences include penetration and offending against children.

[21] The Court considers the ECSG in its sentencing process in reliance of the dicta of the CCJ in *Pompey* per Jamadar JCCJ:

"[111] Thus, in so far as one may wish to look to other jurisdictions for trends in sentencing, one should first look to relatively comparable jurisdictions, such as those in this region….As I have already alluded to, a truly Caribbean jurisprudence must be born and grounded in the sitz im leben of Caribbean peoples and Caribbean spaces." *(emphasis added)*

[10] Re-Issue 8th November 2021.
[11] Ps. 19-25.

[22] However, the Court notes that guidelines are not a strait-jacket and that judicial discretion must remain at the heart of the sentencing process, as noted by the CCJ in the Barbadian case of **Burton et al v R**[12]**.**

[23] Having regard to the aggravating factors identified above, in particular serious psychological harm and abuse of trust, have a suggested ECSG starting point of 40% of the maximum sentence, equal to 12 years imprisonment, with a range of 25-55%, equal to 8-17 years imprisonment. The Court finds that a starting point of 14 years imprisonment for the offence of assault of a child by penetration is appropriate. It would uplift that by 2 years imprisonment to 16 years imprisonment to take into consideration the totality principle for the multiple offending.

[24] The Court notes the sentence of 5 years imprisonment imposed in the case of **Darren Martinez v R**[13] 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. The Court also observes that the decision in *Martinez* was issued before the apex court, the CCJ, would have reviewed the principles of sentencing for sexual assaults against children which involved a breach of trust in *AB*.

[25] In relation to the sexual assault offending the ECSC guidelines on indecency are apposite having regard to the similarity of the offences. On the facts there is a suggested starting point of 45% of the maximum sentence, equal to 5 years imprisonment, with a range of 30-60%, equal to 4-7 years imprisonment. The Court finds that a starting point of 5 years imprisonment for the offence of sexual assault is appropriate. The Court would impose any sentence for both offences concurrently.

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

[12] 84 WIR 84 at para. 13.
[13] Criminal Appeal No. 35 of 2019.

The Offender

[27] The aggravating factor relevant to the offender in relation to the prisoner is his multiple prison infractions. The prisoner has 4 prison infractions over 2022-2023. Three of these, worryingly, are for violence, namely assaults and one for possession of a weapon. This may be an indication that the prisoner is not serious about rehabilitating. In this regard the Court notes that the prisoner has completed no rehabilitative programs while at prison according to their records. The prisoner has baldly asserted that he has a certificate from completing a course in prison but has provided no proof.

[28] 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.

[29] This aggravating factor would cause the Court to uplift the sentence for both offences by 1 year to 17 years imprisonment for assault of a child by penetration and 6 years imprisonment for sexual assault.

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

i. **No previous convictions**: The prisoner has no previous convictions. This is his first brush with the law and he must be given credit for living 50 years without a criminal history.

ii. **Good character and the Social Inquiry Report ("SIR")**: The SIR speaks to the prisoner as being gainfully employed as a tattoo artist, hardworking and helpful to those in need. The character witness for the prisoner similarly described the prisoner as generous and industrious. The Court was concerned that the officer interviewing the prisoner suggested, having regard to the latter's sometimes strange discourse, that the latter be psychologically evaluated. The Court had ordered such an evaluation, but the prisoner refused to participate. The Court had further delayed the sentencing to plead with the prisoner to participate in a psychological evaluation and advised him of its importance and he again refused. The Court was also concerned that the prisoner in the SIR made no mention at all about A, which raises concerns about whether he is rehabilitating. However, it is clear that the prisoner is not someone beyond rehabilitation.

[31] The Court reminds itself of the guidance in the PSRASA that rehabilitation is a core principle of sentencing. However, as was noted by the CCJ in **Alleyne v R**[14], per Anderson JCCJ, "Rehabilitation is one of the aims of sentencing and a very important aim, but not the only one and in some circumstances, not the overriding one." The Court will give a reduction for the mitigating factors but not a large one because it appears the prisoner is at this point not terribly serious about rehabilitating and deterrence must play a central role given this heinous offence of the sexual molestation of a child whose trust he abused, against a backdrop of a sea of sexual offences against children in Belize. The mitigating factors in relation to the offender would cause a 2-year deduction in the sentence for both offences.

[32] This leaves a final sentence of 15 years imprisonment for the assault of a child under sixteen by penetration count and 4 years imprisonment on the sexual assault count. The prison records demonstrate that the prisoner has been on remand since 17th March 2022. The sentence will be appropriately backdated pursuant to the Court's powers under section 162 of the **Indictable Procedure Act**[15] as considered in **R v Pedro Moran**[16]. The sentence will take effect from 17th March 2022.

[33] The Court would have been minded to make orders under section 65(1) of the Code for mandatory treatment and reporting as a sex offender, however under the definition of "sexual offence" at subsection (2)[17], it is unclear that either offence for which he has been convicted would qualify. It is unclear conceptually why the offences of sexual assault and assault of a child by penetration should not be convictions which attract such requirements, while the now abolished offence of indecent assault[18] is a listed "sexual offence" under section 65(2) of the Code. The Court would implore the appropriate authorities to urgently address what appears to be a very serious legislative lacuna. Notification requirements and mandatory counselling are crucial public safety imperatives for treating with sex offenders, particularly those who offend against children.

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[14] (2019) 95 WIR 126 at para 45.
[15] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.
[16] Criminal Application No. 1 of 2017 at para. 38.
[17] *"In this section, "sexual offence" means rape, attempted rape, marital rape, carnal knowledge, forcible abduction, unnatural offence, incest or indecent assault."*
[18] Section 3 of the **Criminal Code (Amendment) (No. 2) Act, 2014**.

Disposition

[34] The Court sentences Jerod Dawson as follows:

i. Count 1: Sexual assault- 4 years imprisonment.

ii. Count 2: Assault of a child under sixteen by penetration- 15 years imprisonment.

iii. Both sentences are to be served concurrently with effect from 17th March 2022.

Nigel Pilgrim
High Court Judge
Central District
Dated 11th November 2024