

IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N14/2022

BETWEEN

THE KING

and

HILDO PECH

Accused

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Ms. L. Cuello, Dovini Chell and Mrs. Shanidi Urbina for the Crown

Mr. Hurl Hamilton for the Accused

2024: November 15th, November 22nd
December 3rd

SENTENCING - SEXUAL ASSAULT – RAPE OF A CHILD

[1] **MORGAN, J.:** Hildo Pech (“the offender”) was convicted on the 26th of June 2024 on one count of Sexual Assault contrary to **section 45A (1)** and two counts of Rape of a Child contrary to **section 47A** of the **Criminal Code**¹ (“the Code”).

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

[2] On the 1st Count of the indictment the offender stands convicted of touching the vagina and buttocks of the virtual complainant (VC) A², on 6 different occasions between the 7th day of July 2019 and the 14th day of July 2019. On the 2nd and 3rd Counts the offender stands convicted of raping the VC, a child under the age of sixteen on the 10th day of July 2019 and the 12th day of July 2019 respectively.

[3] Upon conviction the Court ordered the following reports to aid in the sentencing process:

- a) Victim Impact Statements
- b) Social Inquiry Reports
- c) Prison report from Kolbe
- d) Antecedent Report/Criminal Record (if available)

[4] The matter was adjourned for a separate sentencing hearing pursuant to the decision of the CCJ in **Linton Pompey v DPP**³.

[5] The Social Inquiry Report on behalf of the offender was received by the Court on the 15th of October 2024, several months after the Court's initial order. The Court notes and commends the efforts made by the Community Rehabilitation Department in shortening the delivery time for reports requested by the Court. It is the experience of this court that the lengthy delay in the delivery of this report was anomalous to the usual timeline which is 4-6 weeks from the date of the Court's order. While the Court notes that lengthy delays can cause prejudice to persons awaiting sentence, in the circumstances of this case the Court found that the delay did not prejudice this offender as he will be credited for all his time spent in custody prior to the imposition of this sentence.

[6] The Court then held a mitigation hearing for the offender on the 15th of November 2024 where the offender called three witnesses and gave a dock statement. Oral submissions were then made by Counsel for the offender and Counsel for the Crown on the 22nd of November 2024. The Court then reserved its decision.

² The name of the victim is anonymized for her protection as she is a minor

³ [2020] CCJ 7 (AJ) GY

[7] The Court will now proceed to sentence.

Legal Framework

General Principles

[8] The Court reminds itself of the ideological aims/principles of sentencing which were identified by the CCJ in Lashley v Singh⁴. These were set out as follows:

- a) The public interest, in not only punishing, but also in preventing crime (“as first and foremost” and as overarching),
- b) The retributive or denunciatory (punitive),
- c) The deterrent, in relation to both potential offenders and the particular offender being sentenced,
- d) The preventative, aimed at the particular offender;
- e) The rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law-abiding member of society.

[9] These principles were restated and emphasised by Jamadar JCCJ in Pompey v The DPP⁵. The import or significance of each principle may differ from case to case as a Court engages in the individualised process of sentencing the particular offender⁶.

[10] Where an offender is convicted of an offence which carries a custodial term the Court is guided by the provisions of **Part XV** of the **Alternative Sentences Act 2024 (ASA)** encompassing **sections 74-76** of the Act. **Section 74 (2)** provides *inter alia* that a court shall not pass a custodial sentence on the offender unless it is of the opinion:

- a) That the offence was so serious that only such a sentence can be justified for the offence;
- b) Where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from the offender.

⁴ [2014] CCJ 11 (AJ) GY

⁵ [2020] CCJ 7 (AJ) GY

⁶ *Alleyne v The Queen* [2017] CCJ (AJ) GY

[11] A court when imposing a custodial sentence is obligated to state in open court that it is of the opinion that either of the circumstances highlighted above are applicable and why it is of that opinion and further to explain in ordinary language to the offender why it is passing a custodial sentence on the offender⁷.

[12] In accordance with the general principles of sentencing a maximum sentence ought properly to be reserved for cases that fall into the category of the 'worst of the worst'. Should the Court decide to impose a custodial sentence, it should generally be for a term commensurate with the seriousness of the offence but not exceeding the permitted maximum sentence. However, the Court has a discretion to exceed the permitted maximum sentence where it is of the opinion that such a term is necessary to protect the public from serious harm from the offender⁸.

Sentencing Methodology

[13] In calculating what the appropriate sentence should be, custodial or otherwise, the Court is guided by the judgements of the CCJ in Teerath Persaud v R⁹ and Calvin Ramcharan v DPP¹⁰. The Court set out a comprehensive sentencing methodology to assist Courts in determining the appropriate sentence as follows:

- a) The first step is to set the appropriate starting point: This is not a mathematical exercise but rather an exercise aimed at seeking consistency and avoidance of the imposition of arbitrary sentences. Courts in fixing the starting points should look at the particular offence under consideration bearing in mind the comparison with other types of offending. The Court should also look at the aggravating and mitigating factors for the specific offending. The Court should be careful at this stage to consider only those aggravating and mitigating factors concerned with the objective seriousness and characteristics of the offence. In ascertaining the starting point regard should be had to guidelines cases from the territorial court of appeal and the body of precedent pertaining to sentencing of the offence¹¹.

⁷ Alternative Sentencing Act 2024 section 74(4)

⁸ Alternative Sentencing Act 2024 section 75(1)

⁹ [2018] 93 WIR 132

¹⁰ [2022] CCJ 4 (AJ) GY

¹¹ Per Barrow JCCJ in Ramcharran at para 15

- b) Having ascertained the starting point, the Court should then proceed to individualize the sentence having regard to aggravating and mitigating circumstances peculiar to the offender. At this stage the Court can adjust the starting point upwards or downwards depending on the weight that the Court gives to the factors when weighing them in the balance.
- c) After considering the aggravating and mitigating factors peculiar to the offender, where appropriate there should be a discount for a guilty plea.
- d) The Court should then give full credit to the offender for any time spent in pre-trial custody and proceed to impose sentence.

Proportionality

[14] Where a Court is sentencing an offender for multiple offences, such as in this case, the CCJ's decision in **Pompey** is instructive. In **Pompey** Saunders PCCJ, *inter alia*, gave guidance on the principle of proportionality. This principle comes into play generally when the Court is sentencing an offender for multiple offences and must therefore consider the overall quantum of the sentence in a bid to ensuring that the overall sentence accurately and proportionately reflects the punishment for the offending behaviour before the Court¹².

[15] The principle also looms large when the Court is considering whether to impose concurrent or consecutive sentences. In deciding whether to impose consecutive sentences the Court should adopt the following approach:

- (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;

¹² Pompey *ibid* per Saunders PCCJ at para 16

- (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 proportionate¹³.

Statutory Framework:

Sexual Assault

[16]The maximum penalty for Sexual Assault is twelve (12) years as prescribed by **section 45A (1) (ii)** of the Code. There is no fixed minimum term prescribed for the offence of Sexual Assault in the Code.

[17]The Court is unaware of any guideline cases from our territorial Court of Appeal in Belize which set out the sentencing range for the offence of Sexual Assault. The Court has however taken note of several 1st instance judgements where local Courts imposed sentences for Sexual Assault. The Court particularly took note of judgements by Cumberbatch J in **The Queen v Randolph Coleman**¹⁴ (a sentence of 5 years imposed for one count), Pilgrim J in **The Queen v Giovanni Burn**¹⁵ (a sentence of 4.5 years imposed for one count) and Nanton J in **The King v WF**¹⁶ (a sentence of 5 years each was imposed for two counts).

[18]As there are no guideline cases emanating from our Court of Appeal in respect of a range for the offence of Sexual Assault, the Court has looked to see whether guidance can be gleaned from the experience of any of our neighbours within the Commonwealth Caribbean with respect to the sentencing of similar offences. The Court found extremely helpful the **Sexual Offences Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court (ECSG Guidelines)**¹⁷ where the equivalent offence would be the offence of **Indecency**.

¹³ Pompey *ibid* per Saunders PCCJ at para 33

¹⁴ Indictment No. C7 of 2016

¹⁵ Indictment No. C75 of 2020

¹⁶ Indictment No. C55 of 2022

¹⁷ November 2021 re-issue

Rape of a Child

[19]The offence of Rape of a Child pursuant to **section 47(A) (b)** carries a mandatory minimum or fixed penalty of fifteen (15) years and a maximum penalty of life imprisonment. The Court is similarly unaware of any guideline cases from our territorial Court of Appeal which sets out a sentencing range for the offence of Rape of a Child.

[20]As the offence carries a mandatory minimum sentence or fixed penalty the Court is guided by **section 160 of the IPA:**

160.-(1) Where any person is convicted of a crime punishable by a mandatory minimum term of imprisonment under the Code or any other enactment, the court may, if it considers that the justice of the case so requires, having regard to special reasons which must be recorded in writing, exercise its discretion to sentence the person to a term of imprisonment, as the case may be, less than the mandatory minimum term prescribed for the crime for the Code or other enactment, as the case may be.
[emphasis mine].

[21]The Court is also mindful of the general guidance of our Court of Appeal in The King v Zita Sho¹⁸ where Bulkan JA indicated as follows:

- a) Mandatory sentences have always created some tension and are justifiably viewed with caution. Sentencing is a quintessential judicial function, so the tension results from that the fact that a fixed penalty forecloses judicial discretion.
- b) Where a particular activity becomes a persistent or grave societal problem, as in the case of drug trafficking or gang activity, policymakers and legislatures have resorted to mandatory penalties as one means of ensuring consistency in judicial approaches and ultimately eradicating the problem. For this reason, mandatory sentences have traditionally not been regarded as a usurpation of the judicial function or contrary to the principle of separation of powers including by decisions of our local Courts.

¹⁸ Criminal Application for leave to appeal no. 2 of 2018 at para 12

- c) Where a mandatory sentence is regarded as producing a disproportionate outcome, it may be struck down for violating the prohibition against the imposition of inhuman or degrading punishments, a standard constitutional guarantee. The underlying rationale is that by foreclosing any opportunity for individualization, mandatory penalties are an affront to human dignity, which is a core value promoted by the prohibition on cruel and inhuman punishments.

[22] Bulkan JA also went on to identify that there are two different judicial approaches after a finding of disproportionality of the sentence. One is the approach adopted by the CCJ in Zuniga et al v The AG¹⁹ where the Court declared the particular piece of legislation unconstitutional and severed the portion of the section that was unconstitutional to bring it into conformity. The other approach is that adopted by the Privy Council in Aubeeluck v The State²⁰ where the particular legislation or legislative section is left intact and only its application in the specific case invalidated, in a circumstance where its imposition would result in a sentence that was grossly disproportionate. The Aubeeluck approach was followed by the Belizean Court of Appeal in Bowen v Ferguson²¹ and in Zita Shol.

[23] The Court therefore understands that in the process of arriving at the appropriate sentence for this offence the Court must consider whether the imposition of the mandatory minimum sentence in this case will be grossly disproportionate. Should the Court decide that the imposition of such a sentence would be grossly disproportionate in the circumstances, the Court can, following the Aubeeluck approach and **section 160 of the IPA**, impose a sentence that is less than the mandatory minimum sentence without needing to invalidate the law in its entirety.

[24] In determining the appropriate sentence as there are no local guidelines cases, the Court again found extremely helpful the **Sexual Offences Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court (ECSG Guidelines)**²² where the equivalent offence would be the offence of **Rape**.

¹⁹ [2014] CCJ 2 (AJ)

²⁰ [2011] 1 LRC 627

²¹ [2008] 1 SCR 96

²² November 2021 re-issue

[25] The sentencing approach under the ECSG Guidelines, reflects the CCJ guidance in **Persaud** and is as follows:

- a) Constructing a notional starting point by assessing the harm and seriousness of the offence – this notional starting point is assessed as a percentage of the maximum sentence.
- b) Adjusting the starting point upwards or downwards for any aggravating or mitigating features of the offence not already considered in setting the notional starting point
- c) Adjusting the figure upwards or downwards taking into account the aggravating and mitigating features of the offender
- d) Crediting the offender for a guilty plea where applicable
- e) Where sentencing for more than one offence, consideration is given to the totality principle in order to assess whether a further adjustment to the sentence is needed and also to consider the question of concurrent or consecutive sentences
- f) Crediting the offender for any time spent in pre-trial custody
- g) Finally, the Court considers what if any ancillary orders are applicable or necessary

Facts

[26] In July 2019, A was nine (9) years old and lived with her mother R, her sister B and her brother W. The house was a two-storey house with the upstairs being made from board and the downstairs being made of concrete. Her father and brother slept downstairs. The upstairs had a living room and one bedroom that was separated into two by a quilt dividing it into halves. There were two beds in the bedroom upstairs. The VC and her sister B slept in the bed on the right side of the bedroom. Her mother slept on the bed on the left side of the room. The quilt that separated the rooms was heavy so that she could not see through the curtain. The offender was in a relationship with her mother and lived with her mother at the time staying at their house for multiple days a week.

[27] On the 8th of July 2019 A went to bed at around 8:00 pm with her sister B. Her mother and the offender were the only other persons upstairs with them. At some point during the night A was awakened by someone touching her. When she woke up, she saw the offender touching her buttocks and her vagina. He then brought down her underwear and continued rubbing his hands on her buttocks and vagina. This

continued for about two to three minutes until A kicked him in his face to signal to him that she was not consenting. The offender then left and went back to the side of the room where he slept with her mother. Before leaving however, the offender threatened A by telling her that if she told anyone he would kill her and her mother.

[28] On the 9th of July 2019 A again went to sleep on the bed with her sister B. Her mother and the offender were again the only other persons upstairs with them. At some point during the night A was again awakened by the offender touching her buttocks and her vagina. When she turned around to face him, he brought down her underwear and continued to touch on her buttocks and her vagina. The touching continued for two to three minutes and again ended when A kicked him so that he would leave her alone. A did not tell anyone about the incident because she was ashamed and because of the earlier threat from the offender to kill her and her mother if she told.

[29] On the 10th of July 2019 A was again awakened from her sleep by the offender who was touching her. When she awoke, he brought down her underwear and continued rubbing her buttocks and her vagina for about two to three minutes. A kicked the offender but he remained. He then turned her over on her belly and came on top, inserting his penis in her anus and moving up and down. This caused A to feel pain and she kicked him again. She told the offender to stop when he was on top of her. Sometime after she said stop, he left.

[30] On the 11th of July 2019 A was again awakened from her sleep by the offender who was touching her buttocks and her vagina. He then brought down her underwear and continued to touch her vagina and buttocks. This lasted again for about two to three minutes. A then said "Go Hildo" to him and he left.

[31] On the 12th of July 2019 A was awakened by the offender touching her buttocks. When she awoke, he continued touching her buttocks and vagina for about two to three minutes. After that time, he brought down her underwear and turned her around. He came on top of her and inserted his penis into her anus. He started moving up and down for a period. A tried to kick him and shortly after A tried to kick him, he came off of her and left, returning to the side of the room where he slept with A's mother.

[32] On the 13th of July 2019 A was again awakened by the offender touching her buttocks. He brought down her underwear after he woke her up. He then continued touching her buttocks and vagina. He lay down beside her, then came on top of her and started rubbing his penis on her vagina. He did that about four

to five minutes. He then got off her and laid down beside her while continuing to touch her. They both then fell asleep.

[33] On the morning of the 14th of July 2019 A was awakened by the sound of her mother arguing with the offender. Her mother upon realizing that the offender was not in her bed, got up to look for him and found him asleep next to A. A's legs were off the bed while her underwear was down to her knees. R, her mother, berated the offender who was off the bed and standing in front of it talking to R. After the offender left, R came close to her and took her to the window and started searching her to see if she was hurt. A then confessed to her mother that the offender had been touching her.

[34] R took A to the police station on the same day to make a report to the police. The offender was arrested later that day when he returned to the home. He was then charged for Sexual Assault on the 15th of July 2019. He was later re-arrested and charged for the offence of Rape of a Child on the 18th of September 2019.

The Mitigation hearing

[35] At his mitigation hearing the offender gave a dock statement where he begged for the forgiveness of the Court and the family of the victim. He further asked the Court to consider that if he was given an opportunity, the earliest possible, he would never be the man that he was before.

[36] The Offender also called three witnesses:

- a) **Hiliberto Santos – Pastor** – who testified that he has known the offender for 47 years and he has known him to be a good man. He knows the offender as a very respectful man who comes from a good, religious family and not as a person who gets into problems. He asked the Court for mercy on behalf of the offender.

- b) **Celceo Ramirez – Farmer** – who testified that he has known the offender for many years as the offender is a family friend. He further testified that the offender comes from a well-respected family and has always been a calm, peaceful person. He also asked for mercy from the Court as the offender has a family who loves him and would miss him if he was incarcerated for a significant period.

- c) **Joe Mesa – Truck Driver** – who testified that he has known the offender for as long as he can remember. He knows the offender to be a good man, who he would sometimes employ as he has a side business where he sells water. Sometimes on the occasions he employed the offender, he would enquire from the other staff he employed about Mr. Pech's behaviour, and they would all have good things to say.

Victim Impact Statement

[37]The Court received two victim impact statements by means of affidavit from R and A respectively.

[38]A deposed that this incident had a significant negative impact on her personally. She fell behind in her educational studies. The trauma caused her to not be able to properly concentrate in class, a problem which was exacerbated when she was taught by a male teacher. This affected her grades which have now begun to improve. She has now formed strong connections in her new school which have been therapeutic for her, helping her to move on.

[39]After the incidents she felt ashamed, confused, anxious and fearful for her wellbeing. She felt as if the offender violated the confidence and trust that she had in him as she really looked up to him for guidance and protection. The incident caused her to have terrible flashbacks at night and constant nightmares which wake her up at various times and make her unable to sleep. She fell into severe depression and was afflicted with constant headaches. She would often have to be taken to get medical attention at the Northern Regional Hospital. Presently, there are days when she feels like she does not have the energy to do anything including eating and doing her daily chores. She feels vulnerable and uncomfortable around male persons even male students in group work.

[40]As a result of this incident, she has become overprotective of her younger sister and becomes apprehensive when anyone is around her, including her close male relatives. Further, her family went through tumultuous times because of the incident, but they have become united again after having frequent conversations amongst themselves.

[41]R deposed that she became physically ill after the incident happened as she had difficulty dealing with the incident. Her relationship with her daughter became strained as she struggled to understand how the situation could have happened and to deal with the guilt that she felt as the situation happened right under her nose. She has noticed the change in A as the incident has affected her physically and mentally as she suffered with depression and constant headaches. Her daughter A also became withdrawn and declined in her studies.

The Reports

Social Inquiry Report

[42]From the Social Inquiry Report submitted on behalf of the offender, the Court was able to glean the following:

- a) The offender is divorced and has three adult children who are not dependent on him.
- b) The offender has a primary school level education as he left school at 13 to assist his family with making ends meet
- c) His family was very structured and religious while he was growing up and he maintains a very good relationship with his family
- d) The offender drinks often and is employed doing odd jobs around Guinea Grass village where he lives.
- e) The offender indicated in the report that he had a good relationship with A's family. He had been staying in their home and he went into A's room and had his way with her.

Antecedent Report

[43]The Offender has no previous convictions.

Kolbe Report

[44]The report from Kolbe indicated that the offender has been incarcerated for the following periods in respect of these offences:

- a) July 17th 2019 to July 26th 2019.
- b) September 20th 2019 to October 1st 2019.
- c) June 24th 2024 to present.

Submissions by the Offender

[45] Counsel for the offender submitted that while, having regard to the offence, a custodial sentence was warranted in the matter, the Court should not impose the mandatory minimum sentence. Counsel on this issue relied on the judgement of our Court of Appeal in **Darren Martinez v The King**²³ a case of sexual penetration of a child. In **Martinez** the Court of Appeal found that the trial judge had been wrong to impose the mandatory minimum sentence and reduced a 12-year sentence to 5 years. In reversing the decision to impose the mandatory minimum sentence the Court of Appeal had regard to the aggravating and mitigating factors of the case including the good character of the Appellant and the scheme of sentencing regarding sexual offences in the Code.

[46] The offender further prayed that should the Court not impose the mandatory minimum sentence; the appropriate starting point should be in the vicinity of 7 years. Counsel elicited in support of this submission the Dominican case of **The State v Steve John**²⁴ where the offender was sentenced to 7 years for unlawful sexual connection with a child which is the statutory equivalent to sexual penetration of a minor.

[47] Counsel also argued that offender is entitled to a downward adjustment having regard to his previous good character, the character evidence provided at the mitigation hearing and the almost 5 years delay in bringing his matter to trial. Counsel submitted orally that the delay was primarily attributable to the Crown as the offender was charged in 2019 and there were several delays since at one point there was a shortage of judicial officers and the judicial officers who were available had to manage several jurisdictions. Further Counsel argued that the offender on several occasions was ready for his matter to proceed, and the matter was adjourned for reasons out of his control. Counsel accepted however that a portion of that period was during the Covid 19 pandemic.

²³ Criminal Appeal no 35 of 2019

²⁴ Case No. DOMHCR2016/0012, Eastern Caribbean Supreme Court of Dominica

Submissions by the Crown

[48] The Crown submitted that this was a case where the Court ought to impose the mandatory minimum sentence as there were no exceptional circumstances or special reasons which warranted a departure from the statutory minimum.

[49] The Crown further submitted that the Court should have regard to the following as additional aggravating factors:

- a) The abuse of trust by the offender as confidence and trust was reposed in the offender by A and R.
- b) The significant disparity in age between the offender and A
- c) The fact that the offence occurred in the home of the victim
- d) The fact that the victim was robbed of her innocence at a tender age
- e) The threats from the offender
- f) The tremendous impact of the offence on A
- g) The damage done to the family of the victim because of the offence

[50] The Crown submitted that there were no mitigating factors of the offence but highlighted the following as mitigating circumstances of the offender:

- a) The previously clean record of the Offender
- b) The genuine remorse of the Offender
- c) The Good Character evidence submitted on behalf of the Offender at the mitigation hearing

[51] The Crown prayed in aid of their submissions the following authorities:

- a) **The King v CM**²⁵ – a judgement by Nanton J – in this case the offender was convicted of one count of assault of a child by penetration and one count of Rape of a Child. The

²⁵ Indictment no. c95 of 2023

Court imposed a sentence of 20 years on the count of assault of a child by penetration and 22 years on the count of Rape of a Child.

- b) **The King v WF**²⁶ – a judgement by Nanton J – in this case the offender was convicted of two counts of incest and two counts of sexual assault in respect of his niece. On the counts of Sexual Assault, the Court imposed a sentence of 5 years on each count.
- c) **The King v Charles Martinez**²⁷ – a judgement by Sandcroft J – in this case the offender was indicted on one count of Rape of a Child where it was alleged that on three occasions in 2019 he raped the victim. The Court imposed a sentence of 20 years imprisonment, ordering that the offender serve 15 years before being eligible for parole.

[52] On the issue of delay, the Crown submitted that while there was a delay of almost 5 years in having the matter brought to trial, the Crown could not be said to be wholly or substantially at fault as part of that period fell within the Covid 19 pandemic and there were portions of time attributable to the offender in 2023 when he indicated that he was no longer represented by Counsel and needed time to seek representation. Accordingly, the Crown argued that if any discount ought to be given for unreasonable delay, it should be minimal.

Analysis

Whether a custodial sentence is warranted for these offences

[53] Having regard to the circumstances of the commission of these offences, the multiplicity of offences and the significant age disparity between the offender and A, the Court is of the opinion that a custodial sentence is warranted. The Court while sentencing, engages in balancing several different factors and interests including but not limited to the interests of the victim, the rights of the offender and the interest of society in ensuring that crimes are appropriately punished. In having regard to society's interests, the Court must take care to ensure that the eventual sentence adequately reflects society's abhorrence of the crime which the offender has committed. Sentencing as part of its deterrent function, *vis a vis* would

²⁶ Ibid

²⁷ Indictment no. c38 of 2022

be offenders, must send a message that crimes of a similar nature will not be tolerated or given inordinately lenient punishments. The Court notes the legislative scheme of the **ASA** is such that custodial sentences should only be imposed where warranted and/or necessary for the protection of society. The Court as indicated above is satisfied that in instances such as this where one of the most vulnerable of our society is targeted and abused, a custodial sentence is warranted.

[54] The Court in arriving at this opinion bears in mind the conceptual framework for sentencing in cases involving child victims which was set out by Jamadar JCCJ in **Pompey**²⁸:

*"[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 fullness of the protection of the law, due process and equality.**" [emphasis mine]*

[55] This philosophical underpinning was also emphasized by the CCJ in **Calvin Ramcharran** and **AB v DPP**²⁹.

²⁸ Ibid

²⁹ [2023] CCJ 8 (AJ) GY

Application of the Mandatory Minimum Sentence for the offence of Rape of a Child

[56]As indicated above, a conviction for Rape of a Child carries a mandatory minimum sentence of fifteen (15) years with a maximum of life. Per **section 160** of the **IPA** and the guidance of the Court of Appeal in **Shol**, the Court is entitled to depart from the mandatory minimum if the Court is of the opinion that the imposition of such a sentence will be grossly disproportionate in its effect. The Court also notes that **section 160** encompasses the **Aubeeluck** approach which is the approach that the Court will adopt if it is minded to depart from the prescribed mandatory minimum sentence.

[57]The Court in exercising its discretion notes that the offender is of previous good character and these offences do not fall into the category of 'the worst of the worst'. However, the Court considers that the imposition of the mandatory minimum sentence is appropriate in this case considering the multiplicity of the offences and the gravity of the circumstances surrounding the commission of these offences.

[58]Particularly, the Court is of the opinion that the decision of the Court of Appeal in **Darren Martinez** is distinguishable for the following reasons:

- a) In **Darren Martinez** there was one offence for which the Appellant was convicted while in the instant matter the offender has been convicted of several offences.
- b) The gravity of the circumstances surrounding the commissions of these offences by the offender differs markedly from the gravity of the offence in **Darren Martinez**. The criminal conduct in **Martinez**, while traumatic and serious, entailed the intentional insertion of the Appellant's finger into the vagina of the victim. The Court notes that there was no accompanying threat to force her silence nor was there a continuing course of conduct. In the instant matter, however, there was a continuous course of conduct executed over a week against A, beginning with sexual assault and culminating in two acts of rape. The offender further threatened the nine-year-old victim to ensure her silence.

[59]The Court is of the considered opinion that there are no special reasons justifying a departure from the imposition of the mandatory minimum sentence in this case.

Starting Point

Sexual Assault

[60] Having found that the offence warrants a custodial sentence, the Court finds guidance in setting the starting point from the ECSG Guidelines entitled 'Indecency'. The Court having regard to the age disparity between the offender and the victim, the age of A at the time of the Sexual Assault and the serious psychological impact that the offence has had on A, has assessed the consequence of this offence as exceptional and the seriousness of the offence as High. For such a classification the ECSG guidelines provide a range for the establishment of the notional starting point as between 50% to 80% of the maximum penalty. The Court assesses that on these facts the appropriate notional starting point is 50% of the maximum penalty which amounts to 6 years.

[61] Following the ECSG Guidelines the Court now looks at the other aggravating and mitigating features of the offence to arrive at the actual starting point. The Court considers the following as additional aggravating features of the offence (outside of those used to establish the consequence and seriousness of the offence):

- a) The nature of the offence
- b) The prevalence of the offence. Sexual offences are prevalent throughout the entirety of Belize and particularly on this Court's list where at least seventy percent of the pending indictments are for sexual offences.
- c) The abuse of trust by the offender
- d) The impact of the offences on the nuclear family of A.
- e) There were multiple incidents of sexual assault
- f) The offence was accompanied by a threat to kill A and her mother R
- g) The offences continued despite the protestations of the victim
- h) The offence was committed in the presence of A's younger sister
- i) The offender used his penis on one occasion to commit the assault for several minutes

[62]The Court considers that there are no mitigating features of the offence. Further, considering the aggravating features of the offence, the Court will adjust the notional starting point upwards by 4 years leaving a starting point of **10 years**.

Rape of a Child

[63]Considering the age disparity between the offender and the victim, the age of A at the time of the offences and the abuse of trust by the offender the Court assesses the consequence of each offence as exceptional and the seriousness of the offence as High. For such a classification the ECSG guidelines provide a range for the establishment of the notional starting point as between 60% to 90% of the maximum penalty. The Court assesses that on these facts the appropriate notional starting point is 70% of the maximum penalty which amounts to 21 years.

[64]Following the ECSG Guidelines the Court now looks at the other aggravating and mitigating features of the offence to arrive at the actual starting point. The Court considers the following as additional aggravating features of the offence (outside of those used to establish the consequence and seriousness of the offence):

- a) The nature of the offence
- b) The prevalence of the offence. Sexual offences are prevalent throughout the entirety of Belize and particularly on this Court's list where at least seventy percent of the pending indictments are for sexual offences.
- c) The impact of the offences on the nuclear family of A
- d) There were multiple incidents of rape
- e) The offence was accompanied by a threat to kill A and her mother R
- f) The offence was committed in the presence of A's younger sister as she slept on the same bed

[65]The Court considers as a mitigating feature of the offence that there was no violence beyond that inherent to the offence of rape. However, considering the aggravating features of the offences which far outweigh the sole mitigating feature, an upward adjustment is warranted in the amount of 3 years leaving a starting point of 24 years.

Consideration of the circumstances of the Offender

[66] At stage two of the methodology in **Persaud**, a Sentencing Court must then consider the aggravating and mitigating circumstances of the offender to individualize the sentence.

[67] For the offender, the Court finds as mitigating his previous good character which the Court gleaned from his clean antecedent record, and the good character evidence submitted on his behalf at the mitigation hearing. The Court noted from the hearing that the offender is hard working, respectful and not a troublemaker generally. The Offender also appears to be family oriented.

[68] The Court also considers the genuine remorse of the offender shown at his mitigation hearing as a significant mitigating feature. The Court also notes that this remorse is also indicated in his Social Inquiry Report.

[69] There are no aggravating features of the offender. Accordingly, a downward adjustment in the amount of two years is made at this stage leaving a notional sentence of 8 years for Sexual Assault and 22 years for the offence of Rape of a Child.

Delay

[70] Considering the submission by Counsel for the offender, the Court must look carefully at the circumstances to ascertain whether there was indeed a breach of the reasonable time guarantee of the offender and if there was, the appropriate remedy to vindicate any such breach.

[71] The **Constitution. Section 6(2)** provides as follows:

“6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

[72] This right was considered by our apex court, the CCJ with a similar constitutional provision from Barbados, **Section 18(1)** of their Constitution, in the case of **AG v Gibson**³⁰, per Saunders and Wit JCCJ:

[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system....

[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life...By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.

...

[59]...The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?

*[60] In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources, **or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee ...***

[61] When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach."

[73] It is to be noted that Belize has a similar constitutional terrain to Barbados. The equivalent of their **Section 13(3)** is our **Section 5(5)**³¹ and their enforcement provision to protect constitutional rights at their **Section 24(1)** is our **Section 20(2)**.

[74] In **Gibson**, the CCJ also indicated the following with respect to fashioning a remedy for a breach of the right to trial within a reasonable time:

[63].....As previously indicated at para [42] above, s 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a

³⁰ [2010] 5 LRC 486.

³¹ "If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."

permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate.....[emphasis mine]

[75] In **Gibson** the Court accepted that a reduction in sentence is an appropriate remedy.

[76] In **R v Henry**³² the CCJ also affirmed that Belizean Courts in giving effect to the Constitution and remedying a breach of the right to trial in a reasonable time also have a wide breadth of options:

[41].....**Remedies for breach may be a declaration, an award of damages, stay of prosecution, quashing of conviction, or a combination of these or some other or others. Everything depends upon the circumstances**.....[emphasis mine]

[77] The Court can only come to a finding of unreasonable delay after an analysis on the facts. It cannot be reached by the application of a mathematical formula. The Court must consider such factors³³ as:

- a) The length of the delay – the lapse of a significant amount of time between charge and trial gives rise to a rebuttable presumption that there has been undue delay.
- b) The complexity of the case
- c) The reasons for the delay
- d) The conduct of both the Accused – an accused person or an offender cannot pray for the Court to remedy a delay that has been caused by themselves.
- e) The conduct of the State - it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee.

[78] In the instant matter the offender was charged on the 15th of July 2019 and brought to trial in March 2024, a delay which amounts to approximately 4 years 8 months. This is significant and in the mind of the Court is significant enough to give rise to a rebuttable presumption that there has been a breach of the

³² [2018] 93 WIR 205

³³ Gibson (supra) para 58

reasonable time guarantee. The Court is fortified in this opinion considering the prescribed two-year trial timeline for indictable matters where the Accused is on bail from the date of the 1st hearing at the Magistrates Court, contained within the **Criminal Procedure Rules of Belize (CPR)**³⁴. The CPR has been in force since 2016 some three years prior to when this offender was even charged. Sufficient time has been given for the various stakeholders to adapt and adhere to the timelines contained therein. The Court therefore is satisfied that there exists a rebuttable presumption of delay in this matter.

[79]The Court notes however that the CPR's trial timeline dovetails with the transitional period contained in the **Needham's Point Declaration on Criminal Justice Reform: Achieving a modern Criminal Justice System** as regionally we seek to make much needed improvements to the efficiency of our respective criminal justice systems. In the **Needham's Point Declaration** the participating Caribbean countries, including Belize, adopted the following aspirational goal:

19. That as a rule, trials should be held within one (1) year of the accused being charged (for indictable offences) and six (6) months (for summary offences). During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences) and twelve (12) months (for summary offences).

[80]While not law, this declaration represents persuasive ideals which our individual courts aspire to and should seek to implement and enforce as much as possible. It is hoped that here in Belize we can progress to first achieving the CPR/Needham's Point transitional timeline and eventually the full timeline of one year between charge and trial. Indeed, great strides have already been made in that regard.

[81]A perusal of the record reveals the following:

- a) The offender was committed for trial on the 6th of August 2020.
- b) The indictment in this matter was only filed on the 2nd of September 2022.
- c) Case management was completed on the 22nd of November 2022.
- d) The matter was fixed for trial on the following occasions thereafter:
 - i. 27th February 2023
 - ii. 20th June 2023

³⁴ Criminal Procedure Rules appendix 1

- iii. 25th September 2023
- iv. 11th October 2023
- v. 16th October 2023 – Adjournment sought by the Defence for a medical issue
- vi. 30th October 2023
- vii. 6th November 2023 – Adjournment sought by the Defence
- viii. 23rd November 2023 – Request by Defence Counsel to withdraw from the matter
- ix. 30th November 2023 – the Accused informed the Court that he can't get a lawyer so he needed a further adjournment
- x. 17th January 2023 – Matter adjourned for case management by new sitting judge in Orange Walk
- xi. 22nd March 2024 – trial began.

[82] It is clear therefore that most of the delay of almost 5 years in this matter is attributable to the Crown. A significant portion of the delay fell during and when the country was recovering from the effects of the Covid19 pandemic. The Court understands the strain that the pandemic placed on the criminal justice system but the responsibility to ensure the protection of the prisoners' constitutional rights rests with the Crown who has brought them before the Courts. However, even if that portion is excused, the delay attributable to the Crown extends beyond that period. The Court takes judicial notice that reopening of the Courts after the pandemic occurred in April 2021 however the indictment in this matter was only filed in September 2022 indicating an almost 19-month delay after the pandemic. Thereafter there were also other resource issues attributable to the Crown as the sitting judge had to attend to several jurisdictions resulting in delays in the matter being brought to trial for the majority of 2023.

[83] The Court finds that the delay in this matter that is attributable to the offender constitutes the period from October 2023 to January 2024. The Court notes however that when this Court assumed office in January 2024, the offender and his counsel were ready for trial resulting in this matter being fixed for March 2024 for trial.

[84] In answering the question as to whether there has been a breach the Court has weighed the competing interests of the public and those of the offender and applied the principles of proportionality. Uppermost in the Court's mind, as was stated in Gibson, is the premise that the Crown has a constitutional

responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. The Court having considered all of the circumstances finds that there has been a breach of the offender's right to trial within a reasonable time. Following the CCJ in Gibson, this Court further finds that having regard to the stage of the proceedings at which the issue is raised, the appropriate remedy in the circumstances is a reduction in the sentence that is to be imposed on the offender.

[85]The Court will therefore adjust the starting point downwards for the offender by **two** (2) years for the breach of his right to trial within a reasonable time leaving a notional sentence of 6 years for sexual assault and 20 years for Rape of a Child.

Consideration of the Totality Principle

[86]As the Court is sentencing the Offender for separate sexual offences that were committed at different times albeit against the same VC, the Court must consider the application of the totality principle in determining a just and fair sentence. To the Court the overall sentence for the offences accurately and proportionately reflects the punishment for the offending behaviour of the offender.

[87] Further, the Court having determined the appropriate sentence for the individual offences finds that there is no need for the sentences to be served consecutively. The sentences if served concurrently, will accurately reflect, the seriousness of the offending behaviour before the Court.

Credit for time served

[88]The Court notes that the offender was incarcerated prior to the sentence of this court in Kolbe for a cumulative period of six months. Accordingly, he will be given full credit for time served, leaving a final sentence of 5 years and 6 months for the offence of Sexual Assault and a final sentence of 19 years and 6 months for the offence of Rape of a Child.

Ancillary Orders

[89]The Court has considered the provisions of **section 65** of the Code and orders pursuant to **section 65(1)**

(a) that the offender undergo mandatory counselling, medical and psychiatric treatment as the appropriate prison authorities deem necessary to facilitate his rehabilitation.

Disposition

[90]The order of the Court in respect of the offender Hildo Pech is as follows:

- a) On the offence of Sexual Assault, the offender is sentenced to a term of **five years and six months** to commence today
- b) On the offences of Rape of a Child the offender is sentenced to a term of **nineteen years and six months** on each count to commence today.
- c) The sentences are to run concurrently.

Raphael Morgan

High Court Judge

Dated: 3rd December 2024