IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C12 of 2023

BETWEEN:

THE KING

and

RU

Convict

Appearances:

Ms. Cheryl-Lyn Vidal Senior Counsel, DPP and Mr Robert Lord, Crown Counsel for the King

Mr. Norman Rodriguez Counsel for the Convict

2024: October 30; 31

November 25

2025: January 27

JUDGMENT: SENTENCING

AGGRAVATED ASSAULT; SEXUAL TOUCHING; AND RAPE

Introduction

[1] **NANTON, J:** Robert Usher (hereinafter referred to as "the Prisoner") was indicted for the following offences:

Count 1- Indecent assault contrary to **Section 45 (f) of the Criminal Code**[1]

Count 2- Sexual Assault contrary to **Section 45 A of the Criminal Code**[2]

Count 3- Rape contrary to **Section 46 of the Criminal Code**[3]

Count 4 – Rape contrary to **Section 46 of the Criminal Code**

Count 5- Rape contrary to **Section 46 of the Criminal Code**.

[2] This trial by judge alone commenced on 30th October, 2024 pursuant to **Section 65 A (2)(g) of the Indictable Procedure Act**[4] . The Prisoner was re-arraigned and pleaded Not Guilty to all counts on the indictment.

[3] On 25th November, 2024 the Court, having considered all the evidence, found the Prisoner guilty of all counts of the indictment, and the matter was adjourned for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP** [5].

[4] Sentencing Judges are required to ensure that all appropriate information is available to the Court. The Court requested various reports and information to attempt to construct a fair and informed sentence. The Court has received all of the requested reports, save the Psychiatric Report, which could not be produced due to the absence of a Psychiatrist attached to the Prison at this time. The Court will exercise its discretion to proceed without the Psychiatric Report as there were no issues raised in relation to suspected psychiatric illness or impairment of the Prisoner. The Court is now in receipt of the following reports:

i. Social Enquiry Report

ii. Criminal Antecedent Record

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[1] Chapter 101 of the Substantive Laws of Belize Revised Edition 2011
[2] Chapter 101 of the Substantive Laws of Belize Revised Edition 2020
[3] Chapter 101 of the Substantive Laws of Belize Revised Edition 2020
[4] Chapter 96 Indictable Procedure Act of the Laws of Belize Revised Edition 2020
[5] [2020] CCJ 7 (AJ) GY at para 32

iii. Victim Impact Statement

[5] The Prisoner called the following 5 witnesses at his Sentencing Hearing and also spoke on his own behalf:

i. Joshana Neal (Girlfriend of the Prisoner)
ii. Hallett King (Pastor)
iii. Amparo Diaz (Mother of the Prisoner)
iv. Vashti Usher (Sister of the Prisoner)
v. Agnes Thompson (Justice of the Peace)

[6] Counsel on behalf of the Prisoner made an oral plea in mitigation and the Crown provided written submissions on sentencing.

[7] The Court has considered all of the above before arriving at sentence.

The Law

[8] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the "CCJ") in the Barbadian case of **Teerath Persaud v R**[6] on the issue or the formulation of a just sentence, as highlighted by 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*

[6] (2018) 93 WIR 132

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."

[9] Additionally, in relation to all counts on the indictment, the Court has considered the propriety or otherwise of a custodial sentence having regard to the provisions of the **Alternative Sentencing Act**[7] ,(the "ASA") which states:

"74.-(2) …the court shall not pass a custodial sentence on the offender unless it is of the opinion,

(a) That the offence[8] 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; or

(c) where the offender is a juvenile, the offender was informed of the right to legal representation.

[10] The Court has taken into account the prevalence, gravity, seriousness and continuity of these types of offences, the irreparable harm inflicted on the Virtual Complainant (The VC), as well as the need to protect the society from serious harm by the Offender. In light of the guidance and the principles of sentencing adumbrated by the CCJ jurisprudence, and the statutory requirement under the ASA that the gravity of the punishment must meet the gravity of the offence, the Court thinks it appropriate to impose a custodial sentence as no other type of sentence would be just. The public interest in punishing sexual offences against children is served by a custodial sentence and the Court must deter the Prisoner himself and

[7] Alternative Sentencing Act No 148 of 2024

[8] The Court wishes to observe that the Section 2 of the Alternative Sentencing Act defines the term "offence" as an offence triable on indictment which may be tried summarily (with consent) or an offence triable summarily and not otherwise. That definition plainly construed does not therefore encompass strictly indictable offences and as such any reference to "offence" within the legislation would be confined to the expressed narrow interpretation. This seems to be an unexpected and perhaps unintentional lacuna in the law as some of the sections of the ASA itself seem to contemplate application to all offences inclusive of strictly indictable matters. This is an anomaly which ought to be brought to the attention of the Ministry of the Attorney General for urgent review and amendment if necessary.

others from preying on the young and innocent. For these reasons, the Court considers that the imposition of a custodial sentence is warranted in relation to all 5 counts on the Indictment.

The Facts

[11] The facts accepted by this Court after trial is that on more than three occasions between the 16th day of October 2010 and the 19th day of February 2014 the Prisoner committed assaults of an indecent nature upon the VC without her consent. The Court further accepted that on more than three occasions between the 18th day of September, 2014 and the 21st September 2019 the Prisoner intentionally touched the Virtual Complainant without her consent, that touching being sexual in nature. The Court further accepted that on three occasions: the 28th September 2019; an unknown date between 30th September and 31st October 2019, and on the 31st October, 2019 the Accused had sexual intercourse with the VC without her consent.

[12] The VC's testimony, which was accepted by this Court was that when she had turned 8 years old on 15th August 2010 she lived with her mother, her two younger sisters and the Prisoner, who was at that time her mother's boyfriend. During that period of cohabitation the Prisoner started to touch her by grabbing her butt and touching her vagina underneath her clothing. He would do this when no one else was around. Her siblings would be sent to the shop, or in one of the other houses and her mother would usually be at work. On the occasions that the VC resisted the Prisoner would hit her on different parts of her body and sometimes in her face. The Prisoner would peep at her through the holes in her bathroom while she was bathing and sometimes he would come into the bathroom and touch her and suck her breasts. He would do this when her mother and her siblings were not around.

[13] On 28th September 2019 at the Best Time Inn in Belize City, the Prisoner called her to the bathroom door; he bent her over, took down her clothes, and he tried to put his penis inside of her. She told him she did not want to do it and that it was hurting

her, but he put his hands on her mouth, because she was making noise. He held her down and put his penis inside her vagina. After a little while he stopped and then he pulled out his penis and continued to "jerk off" and then he ejaculated into a piece of clothing that was on the bed. The VC went into the bathroom and her vagina was hurting her and when she touched it she saw blood. That was the VC's first experience of sexual intercourse. The Prisoner's two toddler sons were present in the same room when this occurred.

[14] About two weeks after that incident at the Best Time Inn, the VC and the Prisoner were back at home in Kamal Street. The Prisoner came into the room that she slept in and told her that he wanted to have sex with her. She told him that she did not want to, so the Prisoner stomped her in her stomach, took off her clothes, pulled down her pants to her foot, bent her over, and put his penis in her vagina. After he was done he ejaculated into a piece of clothing.

[15] On the 31st October, 2019 the VC was again in the room at Kamal Street when the Prisoner came into the room and told her that he wanted to have sex with her. She again resisted him, but he insisted and pulled her off the bed. He sucked on her breast and rubbed his penis on her and then into her vagina and told her not to make any noise, because his mother was at the time in the living room sleeping. The Prisoner had sexual intercourse with her for a couple minutes and; thereafter, ejaculated into a piece of cloth.

Analysis

[16] The Court is immeasurably grateful for the recent publication of **the Practice Directions on Sentencing Guidelines of the Senior Courts of Belize January 2025 (hereinafter Belize's Sentencing Guidelines)**. **Practice Direction 4 of 2025,** which addresses the General Sentencing Guidelines, states that the Guidelines are intended to achieve the following:

i. a uniform approach to sentencing practice;

ii. ensure greater consistency in sentences passed;

iii. regulate the sentencing process while preserving the judicial discretion to determine the appropriate sentence to be passed in individual cases;

iv. promote greater public confidence in the administration of criminal justice through transparency in the sentencing; and

v. aid both the Prosecution and Defence in making sentencing submissions to the Court thereby making proceedings more efficient and reducing delays in the completion of criminal matters.

[17] The Court reflects on the dicta of our apex court in **Calvin Ramcharran v DPP**[9]:

> *"[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.*

[18] That case also highlighted the ideological aims of sentencing, which mirrors the objectives outlined in **Belize's Sentencing Guidelines**:

> *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)."*

[9] [2022] CCJ 4 (AJ) GY

[19] In considering the construction of an appropriate sentence, the Court is guided by the conceptual framework for sentencing sexual offences against children discussed by the CCJ in **Linton Pompey v DPP**[10], per Jamadar JCCJ:

> *"[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."*

[20] Regrettably, at the time of writing this judgment the Practice Direction on Sentencing Guidelines for Sexual Offences have not yet been published in Belize. In its absence, the Court has referred to **The Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Sexual Offences"**[11] (the "ECSG") for assistance in its assessment of an appropriate starting point for each offence. The ECSG suggests that the Court first consider the consequences of the harm flowing from the offence and the particular culpability of the Offender. An appropriate range is then identified. Thereafter the aggravating and mitigating factors are considered and an appropriate starting point is determined within that identified range. Factors

[10] [2020] CCJ 7 (AJ) GY.
[11] Re-Issue, 8th November 2021.

relative to the Offender are; thereafter, identified which may result in an upward or downward adjustment to the starting point, or in some cases no adjustment at all. Once that figure is determined the Court will then go on to consider the totality principal and the usual credits for guilty plea and deductions for any time spent in pre-trial custody.

Count 1: Aggravated Assault – The Starting Point

[21] **The penalty as reflected by Section 45 (f) of the Criminal Code states:**

> **45.** Every person who commits an unlawful assault of any of the following kinds, namely,
>
> f) indecent assault on any person, whether male or female;
>
> shall be guilty of an aggravated assault and, on conviction thereof, be liable to imprisonment for two years, Provided that in respect of an indecent assault upon a female or an aggravated assault upon any male child or any female, a person convicted under this section shall be liable to imprisonment for three years instead of two years.

[22] Count 1 is a specimen count pursuant to **Section 4 of Indictable Procedure (Amendment) Act No 3 of 2022.** That section states:

> *(1A) Notwithstanding sub-rule (1), more than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission or the victim of the offence."*

[23] The evidence accepted by the Court was that the Prisoner engaged in a course of conduct, which covered at least three instances of similar type offending over a four year period beginning on the 16th day of August, 2010 to 19th day of February, 2014.

[24] The Prisoner started to indecently assault the VC in 2010 when she was just 8 years old, first by grabbing her butt and; thereafter, he progressed to touching her vagina from under her clothing. The VC would often ask him not to and sometimes she would move away from him, but he would still continue to touch her seemingly at

any opportunity he got. The Court accepted the VC's evidence that at times he would hit the VC if she resisted him.

[25] The Court considers the harm caused by this offending as high. The VC was still a child at the time of these offences. In her tearful and emotional testimony was visibly shaken and distraught when describing these incidents. She had to take several breaks during her testimony and it was evident that she is, to this day, still in fact tormented by the actions of the Prisoner. At the time of recording her victim impact statement she stated that she still suffers from flashbacks and she described the fear confusion and horror that she experienced at the hands of the Prisoner. She explains that she is still very fearful of having people close to her and that even though she is now an adult she does not like going anywhere alone. As admitted by the VC herself, the trauma of sexual abuse stays with victims forever.

[26] The Court also assessed the seriousness i.e. culpability of the Offender to be high due to the following factors: there was significant abuse of trust in a family setting, a significant disparity of age repetition of the offences over a significant period of time and gratuitous use of violence beyond that which is implicit in the act of indecent assault.

[27] The ECSG states that offences falling within category 2 of harm i.e. high and with a high level of seriousness should attract a starting point between the range of 35-65% of the maximum penalty, this of course leaves room for the worst of the worst.

[28] Having established the range the Court will now determine the exact starting point by reference to the following aggravating and mitigating factors of each offence-taking care not to double count factors already considered:

Aggravating Factors

- Seriousness and prevalence of sexual offences in Belize
- Repetitive nature of the offending over a significant period of time

- Significant age difference
- Parties lived together in the same home and there was a significant abuse of trust
- Gratuitous violence

Mitigating Factors

There are none

[29] After considering the above principles and the aggravating and mitigating factors of the offences, in this case, would choose a starting point of 65% of the maximum penalty of three years. The Court therefore sets the starting point at **two years imprisonment**.

Count 2: The Starting Point

[30] The penalty is stipulated by Section 45 A, which states:

> **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, penis, anus, breast or any other part of that person's body; or
> *(b)* that person being made to touch the person's vagina, penis, anus or breast or any other part of the person's body,
> commits an offence and is liable –
> *(i)* where that person is sixteen years or over at the time the offence was committed, on summary conviction to a term of imprisonment of five years or on conviction on indictment to a term of imprisonment for ten years; or
> *(ii)* where that person was under sixteen years at the time the offence was committed, on summary conviction to a term of imprisonment for a term of seven years or on conviction on indictment to a term of imprisonment for twelve years.

[31] Count 2 is also a specimen count. In her accepted testimony, the VC stated that between the 18th day of February 2014 and the 21st day of September 2019, the Prisoner sexually touched her without her consent almost every day. The VC was during that time, between the ages of 11 to 17 years old.

[32]. The Court considers the harm caused by this offending as high. The VC was still a child at the time of these offences, and as relates to the earlier offences she was under the age of 16 years. She was physically forced to commit acts that no child should be forced to commit. The VC, in her tearful and emotional testimony was visibly shaken and distraught when describing the incidents. She had to take several breaks while recounting these incidents and it was evident that she is still in fact tormented by the actions of the Prisoner. At the time of recording her victim impact statement she stated that she still suffers from flashbacks and she described the fear confusion and horror that she experienced at the hands of the Prisoner. She explains that she is still very fearful of having people close to her and that even though she is now an adult she does not like going anywhere alone. As admitted by the VC herself, the trauma of sexual abuse stays with victims forever.

[33] The Court also assessed the seriousness i.e. culpability of the Offender to be high due to the following factors: there was significant abuse of trust in a family setting, repetition of the offences over a significant period of time, gratuitous use of violence beyond that which is implicit in the act of sexual touching, and a significant disparity of age.

[34] The ECSG states that offences falling within category 2 of harm i.e. high and with a high level of seriousness should attract a starting point between the range of 35% - 65% of the maximum penalty, this of course leaves room for the worst of the worst.

[35] Having established the range, the Court will now determine the exact starting point by reference to the following aggravating and mitigating factors of each offence-taking care not to double count factors already considered:

Aggravating Factors

- Seriousness and prevalence of sexual offences in Belize
- Repetitive nature of the offending over a significant period of time
- Significant age difference
- Parties lived together in the same home and there was a significant abuse of trust
- Gratuitous violence

Mitigating Factors

- There are none

[36] After considering the above principles and the aggravating and mitigating factors of the offences, in this case, would choose a starting point of 60% of the maximum penalty. In determining the maximum penalty, the Court notes that some of the offending took place when the VC was under the age of 16 while some took place when she was over 16 years. The Court will for this reason afford the Prisoner the benefit of using the lesser maximum sentence, which is 10 years imprisonment. The Court; therefore, sets the starting point at **6 years imprisonment.**

Counts 3, 4 and 5 Rape: The Starting Point

[37] **The penalty as stipulated by Section 46 states:**

> *46. Every person who commits rape or marital rape shall on conviction on indictment be imprisoned for a term which shall not be less than eight years but which may extend to imprisonment for life.*

[38] **Section 46** above, which stipulates a mandatory minimum term of imprisonment, must be read in conjunction with **Section 160 (1) of the Indictable Procedure Act**[12] (the IPA) which provides:

[12]Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020

(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.

[39] The Court has considered the constitutionality of the mandatory minimum sentence set out above and whether the Court is bound by said statutory minimum when viewed against **Section 7 of the Constitution** which provides that *"no person shall be subjected to torture or to inhuman or degrading punishment or other treatment"*

[40] The decision of our Court of Appeal in **R v Zita Shol**[13] is instructive, per Bulkan JA:

> *Mandatory sentences have always created some tension and are justifiably viewed with caution. Sentencing is a quintessential judicial function, so the tension results from the fact that a fixed penalty forecloses judicial discretion. Nonetheless, it is conceded that every branch of government has a role to play in the criminal justice process, including that of punishments: the executive sets policy, the legislature implements that policy by enacting crimes with attendant penalties, and the judiciary administers justice in individual cases, including through the sentencing of offenders. Where a particular activity becomes a persistent or grave societal problem, as in the case of drug trafficking or gang activity, policy-makers 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 this Court. … [14]… In Aubeeluck v the State [2011] 1 LRC 627, another decision of the Privy Council on appeal from Mauritius, the issue for determination concerned the constitutionality of a mandatory minimum sentence for trafficking in narcotics. The Board noted that the effect of the constitutional prohibition on inhuman and degrading punishments (also contained in s. 7 of the Mauritius Constitution) is to outlaw "wholly disproportionate penalties". The Board then held that when confronted with a mandatory minimum sentence fixed by statute, there are three courses open to a court to ensure there is no violation of the constitutional protection – to invalidate the law providing for the mandatory sentence; to read it down and confine the mandatory penalty to a particular class of case only; or simply to quash*

[13] Criminal Application No. 2 of 2018

the sentence in the case under consideration if to impose the full mandatory period of imprisonment would be disproportionate in those specific circumstances. In this case, the Board rejected the more expansive routes and opted for the third one. In striking down the sentence of 3 years' imprisonment that had been imposed on the appellant for trafficking in narcotics, their Lordships factored in that he was dealing with only a small quantity just barely over the limit that raises the presumption of trafficking and that he hitherto had a clean record. The significance of this approach is that it attempts to accommodate the legislative intention as far as possible, in that mandatory sentences are not automatically invalidated in all cases. Not only is there the possibility of reading them down, but also a court can depart from them on an individual basis where the circumstances demand.

[41] The Court reasons that it is clearly entitled to follow the **Aubeeluck**[14] approach of departing from the mandatory sentence in specific cases where to abide by the mandatory minimum will result in a disproportionate sentence. This approach has similarly been adopted in **Bowen v Ferguson**.[15]

[42] The Court interprets the guidance in **Shol** to be that though the Court is to have considerable regard to the intention of the National Assembly in creating a mandatory minimum sentence; however, if on the facts of the particular case the Court finds that the mandatory minimum is so disproportionate as to be inhuman and degrading punishment then the Court is obliged to depart from it in protection of the Prisoner's rights pursuant to **Section 7 of the Constitution**.

[43] For the reasons that will be outlined below, the Court thinks that this is not such a case where an imposition of the mandatory minimum penalty will be disproportionate. In fact, this case is one that falls on the higher end of offending and as such the Court's sentence will reflect that reality.

[44] The Court considers the harm caused by this offending as high. The VC was still a child at the time of these offences and had her innocence stolen from her as she

[14] [2011] 1 LRC 627
[15] Cr App 6/2015, decision dated 24 March 2017

was physically forced to commit acts that no child should be forced to commit. The VC, in her tearful and emotional testimony was visibly shaken and distraught when describing the incidents of sexual intercourse. She had to take several breaks while recounting these incidents and it was evident that she is still in fact tormented by the actions of the Prisoner. At the time of recording her victim impact statement, she stated that she still suffers from flashbacks and she described the fear confusion and horror that she experienced at the hands of the Prisoner. She explains that she is still very fearful of having people close to her and that even though, she is now an adult she does not like going anywhere alone. As admitted by the VC herself, the trauma of sexual abuse stays with victims forever.

[45] The Court also assessed the seriousness i.e. culpability of the Offender to be high due to the following factors: there was significant abuse of trust in a family setting, repetition of the offences, gratuitous use of violence beyond that which is implicit in the act of rape, and a significant disparity of age.

[46] The ECSG states that offences falling within category 2 of harm i.e. high and with a high level of seriousness should attract a starting point between the range of 35% - 65% of the maximum penalty, this of course leaves room for the worst of the worst.

[47] Having established the range, the Court will now determine the exact starting point by reference to the following aggravating and mitigating factors of each offence- taking care not to double count factors already considered:

Aggravating Factors

- Seriousness and prevalence of sexual offences in Belize
- Repetitive nature of the offending over a significant period of time
- The victim was a virgin at the time of the first offence
- Significant age difference
- Parties lived together in the same home and there was a significant abuse of trust

- Gratuitous violence
- At least two of the counts for rape were committed in the presence of close relatives (toddler sons of the Prisoner in one incident and the mother of the Prisoner in another incident)

Mitigating Factors

- There are none

[48] The CCJ, in the Guyanese case of **AB v DPP**[16] noted that, *"Child abuse casts a shadow the length of a lifetime."* In that case the Court found that life sentences with a minimum term of 20 years imprisonment for sexual activity with a child were neither excessive nor severe. Secondly, the Court highlighted the significance of the factor of the abuse of trust. This Court, thirdly, takes notice of the National Assembly's intention by setting a mandatory minimum term for offences of this kind. The Court as stated previously finds that there is no basis to trigger the Court's constitutional discretion to go under that minimum sentence.

[49] After considering the above principles and the aggravating and mitigating factors of the offences in this case would choose a starting point of 65% of the maximum penalty of life imprisonment. The Court therefore sets the starting point at a determinate sentence of **23 years imprisonment**.

[50] The Court has measured these starting points against the Court of Appeal decisions helpfully referred by Crown Counsel in his written submissions on Sentencing: particularly **The Queen v Paul Jex**[17]**; Kent Francis v the Queen**[18] and **Levi Jackson v the Queen**[19], all of which involved sentences for rape. The Court found that the degree of offending in this case was of a more egregious nature than that of Kent Francis and Lexi Jackson. The loss of the VC's childhood to sexual abuse

[16] [2023] CCJ 8 (AJ) GY.
[17] Indictment C 29 of 2018
[18] Cr App No 25 of 2006
[19] Cr App No 6 of 2009

at the hands of a close parental figure and the multiplicity and violent nature of the offending distinguishes this offence from those. The Court finds that the aggravating features fall on the higher level of offending for the reasons outlined above and as such, the Court is minded to sentence more in line with **Paul Jex Jr** in terms of the levels of depravity. The Court also considers the fact that **Paul Jex Jr** is a much more recent appellate judgment and seems to be more consistent and commensurate with present attitudes towards sexual offences and how they should be punished.

All counts: Factors relative to the Offender

Aggravating factors

- No aggravating factors relative to the Offender

Mitigating factors

- Family members are heavily dependent on the Prisoner
- No prior convictions or pending matters of a serious nature

[51] The Court has taken full account of the passionate pleas of the Prisoner's relatives and loved ones who gave sworn testimony on his behalf pleading with the Court for leniency. The Court cannot dismiss their pleas. The Court has empathised with the fact that the Prisoner has 6 minor children, one of whom is sickly and a girlfriend who are financially dependent on him. These facts have been considered carefully by the Court. Notwithstanding, the Court is unable to acquiesce to the Prisoner and his family members' emotional requests for a fine to be imposed so that he can remain present in his children's lives. The nature of the Prisoner's offending is so morally repugnant, and the manner in which the offences were committed was callous and I daresay barbaric. The Court is unable to afford much more by way of discount due to the fact that the children of the Prisoner are heavily reliant on him for the simple and practical reason that a lengthy sentence of imprisonment is necessary and warranted. Although the Court must strike a balancing exercise

between the public interest and the particular interests of the Prisoner, the first and foremost principle of sentencing, which is overarching, is the public interest in punishing and preventing crime. The Court has a duty to protect the children of Belize from the Prisoner and must also send a message to would be offenders that this type of behaviour will not be countenanced in Belize.

[52] **Bothma v Els and others** [20]:

> *"Child rape is an especially egregious form of personal violation. As law reports from other jurisdictions shows, it is sadly found in all social classes in all parts of the world. It is widespread, if under-reported, in South Africa. By its nature, it is frequently characterised by secrecy and denial. There is accordingly a special public interest in taking action to discourage and prevent the rape of children. Because it often takes place behind closed doors and is committed by a person in a position of authority over the child, the result is the silencing of the victim, coupled with difficulty in obtaining eye-witness corroboration. Complainants should be encouraged rather than deterred when, breaking through feelings of fear and shame, they seek to bring to light past abuses against them."*

[53] For his mitigating factors the Court will grant the Prisoner a **one year deduction** to each of the starting points above outlined.

Totality Principle

[54] The Court must also have regard to the totality principle outlined by the CCJ in **Linton Pompey**[21] as the Prisoner is being sentenced for two counts of rape, per Saunders PCCJ:

> *"[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*

[20] [2009] ZACC 27
[21] [2020] CCJ 7 (AJ) GY at para 32.

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)

[55] The Court answers the question under (b) as No- if all sentences are ordered to run concurrently; the overall sentence will not properly reflect the criminality which involved continuous sexual abuse, accompanied in some instances by violence, on a vulnerable youth over an extended period which encompassed almost the entire childhood of the Virtual Complainant.

[56] In order to ensure that the overall sentences are just and appropriate, the Court orders that the sentences for Counts1-2 are to run concurrently to each other, and Counts 3-5 are to run concurrently to each other; however, in order to maintain proportionality the Court orders that the sentences for Counts 3-5 are to run consecutive to the sentences for Counts 1 and 2.

[57] This means that the Prisoner will begin serving his sentences on Counts 3, 4 and 5 at the expiration of his sentences for Counts 1 and 2.

[58] The Court has tested the effect of the exercise of the Court's discretion to structure the sentences in this manner, and finds that so doing will result in a just and proportionate sentence.

Pre-Trial Custody

[59] The Court notes that in **Romeo da Costa Hall v The Queen**[22] the CCJ highlighted the importance of awarding full credit for the time spent in pre-trial custody. The Prisoner was remanded in pre-trial custody on the 23rd July 2020 to 30th July 2020 which is a total of 8 days inclusive. This period will be deducted from his sentence.

[22] [2011] CCJ 6 (AJ)

Disposition

[60] The sentence of the Court is as follows:

i. **On Count 1 of the indictment for aggravated assault, the sentence is 11 months and 22 days imprisonment.**

ii. **On Count 2 of the indictment for sexual touching, the sentence is 4 years 11 months and 22 days imprisonment.**

iii. **On Count 3 of the indictment for rape, the sentence is 21 years 11 months and 22 days imprisonment.**

iv. **On Count 4 of the indictment for rape, the sentence is 21 years 11 months and 22 days imprisonment.**

v. **On Count 5 of the indictment for rape, the sentence is 21 years 11 months and 22 days imprisonment.**

The sentences on Counts 1 and 2 are to run concurrent to each other with effect from the date of verdict, which is 25th November, 2024. Counts 3- 5 are to run concurrent to each other, but consecutive to Counts 1 and 2.

[61] The Court also makes the following orders:

i. The Court orders, pursuant to **Section 65(1) (a) of the Criminal Code**, that the Prisoner undergo counselling, medical and psychiatric treatment as the appropriate prison authorities deem necessary to facilitate his rehabilitation.

ii. The Court orders, pursuant to **Section 65(1)(b) of the Criminal Code**, that the Prisoner on his release shall not change his residence without prior notification to the Commissioner of Police and to the Director of Human Development in the Ministry responsible for Human Development, Women and Youth, and shall comply with such other requirements as the Commissioner of Police may specify for the protection of the public.

Candace Nanton

High Court Judge

Senior Courts of Belize

Dated: 27th January, 2025