IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

INDICTMENT NO. CR20240054C

BETWEEN:

THE KING

and

CARLTON JIMENEZ

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, SC, for the Crown

Mr. Ian Gray, for the Accused

2024: May 14
June 26
July 8, 19, 20
September 23
October 17, 29

JUDGMENT ON SENTENCING

[1] **NATALIE CREARY-DIXON, J:** On May 22, 2024, Mr. Carlton Jiminez(hereafter "the convicted man") entered a plea of guilty to two counts of unlawful sexual intercourse contrary to Section 47(2) of the Criminal Code 101 of the Substantive Laws of Belize (Revised Edition) 2020('the Criminal Code") in that, on April 2, 2022, and June 3, 2022, in Belmopan City, Cayo District, he had unlawful sexual intercourse with "XS", a female, above the age of fourteen years but under the age of sixteen years, to wit: fifteen years and two months.

[2] The Court then requested the following documents to aid in the sentencing process:

(1) The Agreed Facts
(2) A social Inquiry Report ("SIR")
(3) Victim Impact Statement
(4) Criminal Record of the convicted man

Agreed Facts

[3] Sometime between the 11th and 12th day of December 2021 at Second Street, San Ignacio Town in the Cayo District, the convicted man had unlawful sexual intercourse with XS, a female who was then 15 years and 7 months. One night she went by the convicted man's house to see him. That night, she stayed by the convicted man's house with his grandmother and her daughter; the complainant told the grandmother that she was eighteen years old, after which she was welcomed into the yard. The accused fed her and that night they had sexual intercourse.

[4] The next day, the convicted man left the yard; when he returned, he told her that the police were looking for her, so she had to take her things and leave. Together they brainstormed where she could stay, and eventually decided on Santa Elena. That night they had sexual intercourse again.

[5] Later, the convicted man left her alone again, after they decided that if the police were looking for her, they should find her alone, especially as her

mother would press charges if she found them together.

The Social Inquiry Report the "SIR"

[6] The SIR detailed that the convicted man had a very troubled life as he " moved from foster home to institutions many times in life. After the loss of his father his mother moved on leaving him to fend for himself; never looking back to support her son. His mother did not seek to re-unite with her son and Carlton seems to suffer from feelings of rejection. He is never formally supported in a proper manner, and he contributes this to having a broken life. He blames the system which he refers to the social welfare services for his downfall. At a young age, he developed anti-social behaviours that caused him to begin an early criminal career. In 2023 he was "arrested for the crimes of aggravated assault and wounding where he served time. This was after some minor infractions as a juvenile at the Wagner's Place of Safety.

The report concludes that "it is very clear that Carlton may continue down the wrong path in life".

Victim Impact Statement

[7] The complainant outlined that at the time if the incident, she knew that what she did was wrong, but being only 15 at the time, the convicted man convinced her to do certain things; she didn't know at the time, that she was a victim; she was angry at everyone; she felt re-victimized when she had to re-tell her story to the police, and violated when she had to be medically examined. She still suffers from trust issues, which affects her current relationship prospects. She is still seeing a Counsellor for the trauma she endured.

Antecedent History

[8] The convicted man had minor infractions as a juvenile, and one count of wounding in 2023.

Submissions

[9] The defence urged the Court to consider the age and immaturity of the convicted man at the time of committing the offence and exercise its discretion to impose a non-custodial sentence. He further urged the Court to consider that the convicted man ought to be seen as having a good character given that his minor infractions were committed when he was a minor.

THE LAW

[10] The offence of Unlawful Sexual Intercourse is contrary to Section 47(2)(2) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020. Where relevant, Section 47(2) (a) reads:

"(2) Every person who has unlawful sexual intercourse with a person who is above the age of fourteen years but under the age of sixteen years, commits an offence and is liable on conviction on indictment to imprisonment for a term that is not less than five years but no more than ten years."

[11] To further reinforce the point that the court ought not to dispose of such matters other than by way of imposing the custodial sentence fixed by law, the Court notes that Sections 6, 28, and 29 of the **Penal System (Alternative Sentences) Act** ("Alternative Sentences Act"), which speak to the disposition of matters other than by way of a custodial sentence, exclude (sexual offences) cases such as the present case, where a custodial sentence is fixed by law.

[12] The Court may however impose a sentence which is ***less than*** the mandatory minimum sentence on the authority of Section 160 (1) of the Indictable Procedure Act; the Court may depart from the mandatory minimum sentence where it is warranted by the circumstances of the case.

[13] The local Court of Appeal case of **R *v Zita Shol No 2 of 2018 ("Shol")*** also offers support for the position that the Court may impose a sentence below the minimum mandatory. Here Bulcan J.A. noted that it is "in *theory open to the trial judge to depart from the mandatory sentence if he regarded it as excessive and thus contrary to s. 7 of the Constitution".*

[14] Section 7 of the Constitution of Belize reads that ***"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.*** "In essence then, ***Shol*** directs that if on the facts of the 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 accordance with the prohibition against cruel and inhumane punishment enshrined in Section 7 of the Constitution.

[15] The question is raised, however, as to what constitutes "inhuman or degrading punishment"; is the mandatory minimum of five years imprisonment in the convicted man's case truly too inhuman and degrading a sentence for him? Our local Court of Appeal case of ***Edwin Bowen v George Ferguson No. 6 of 2015,*** offers guidance, on answering this question, at paragraphs 29 and 30:

> ***"29.*** *The Privy Council, after a review and discussion of the various provisions of Constitutions and Charters, affirmed the test for determining whether a minimum mandatory sentence amounts to inhuman or degrading punishment as that laid down by Lamer J in R v Smith (above), namely, that: "a sentence must not be grossly disproportionate to what the offender deserves.*
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> *"**30**. When is a sentence grossly disproportionate such that it constitutes inhuman or degrading punishment? In R. v. Ferguson (above), Chief Justice McLachlin, at paragraph 14, adopted the statement in R v Smith (above) and said that for a sentence to be considered grossly*

disproportionate, it must be more than excessive..."

[16] The Court is of the view that having considered the circumstances of this case and reviewed the documentation listed above, in particular the agreed statement of facts and the favourable SIR, that the mandatory minimum sentence of five years would be disproportionate, as it is more than excessive. The Court is of the view that the mitigating factors outweigh the aggravating factors.

[17] What then would be an appropriate sentence for the convicted man?

[18] The offences carry terms of imprisonment upon conviction. The Court therefore considered the appropriateness of imposing a custodial sentence. In this regard, the Court considered the following provisions of the Penal System (Alternative Sentences) Act:

[19] Section 28(1) reads:

"…the 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".

Section 31 (1) goes on to state that:

"… a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section. (2) The guidelines referred to in subsection (1) of this section are as follows, 1. The rehabilitation of the offender is one of the aims of sentencing... 2. The gravity of a punishment must be commensurate with the gravity of the offence….

[20] Before concluding this exercise of determining the appropriateness or otherwise of a custodial sentence, the Court must also consider the objectives of sentencing as outlined in the decision of the CCJ in ***Calvin***

Ramcharran v DPP **[2022] CCJ 4 (AJ) GY** on this issue, per Barrow JCCJ:

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

[21] In the ordinary course of events, this is a matter for which a custodial sentence would be warranted because:

(i) The offence is quite serious; the virtual complainant has suffered psychological and emotional damage for which she is still undergoing counselling
(ii) It is prevalent in the Cayo District and by extension in Belize
(iii) The public interest in preventing and punishing sexual offences.
(iv) The need to deter the convicted man and others from taking advantage of innocent children

[22] The Court did provide a sentencing indication at the request of Defence Counsel and indicated that, for the following special reasons, the Court would not impose a custodial sentence, as it would be considering:

(i) the youth of the convicted man (at the time of the commission of the offence he was just past his eighteenth birthday.9 years old).
(ii) the agreed facts which outlined that the offense was

consensual.

(iii) the minor disparity in the age of the complainant and the accused; and

(iv) the fact that the Court deems the convicted man to be in dire need of rehabilitation given his difficult past, which may impact future decisions.

(v) The Offender is of previous Good Character and his character is a factor that the Court can take into account in deciding whether to depart from the mandatory minimum (see **Darren Martinez v The King** Criminal Appeal no. 35 of 2019).

(vi) Although the convicted man is being sentenced for multiple offences, this case does not fall into the category of the worst of the worst which warrants the imposition of the maximum sentence, and the starting point is likely to be at the lower end of the sentencing range.

[23] The Court considered the binding nature of sentence indications as outlined in **R v Goodyear [2005] EWCA Crim 888, [2006] 1 Cr App Rep (S) 6 para 61;** per LCJ:

"Once an indication has been given, it is binding and remains binding on the judge who has given it…". Further, in the case *of* ***R v Newman [2010] EWCA Crim 1566, [2011] 1 Cr App Rep (S) 68*** it was held that ". The attractions of Goodyear and its practical importance are manifest. Goodyear indications will only serve their purpose if indications once given can be relied upon. Accordingly, and at least save exceptionally, indications thus given are binding in as far as they go, hence the need for circumspection before they are given. It goes without saying that revisions to Goodyear indications should be very much the exception, and, as it seems to us, they can only be made in a manner which is fair to the defendant". The Court has not been apprised of any information

that bears on the present matter which would warrant a review of the indication given, of a non-custodial sentence.

At the time of sentencing, the Court did not receive any adverse information that would affect the sentencing indication given; consequently, as the Court is obligated to follow the indication given of a non-custodial sentence, the Court will now employ the sentencing methodology outlined in the case of ***Persaud*** to construct a just non-custodial sentence.

Constructing the starting Point

[24] The Court found considerable assistance in establishing the appropriate starting point from the ECSG guidelines where this offence would fall under the guideline for Unlawful Sexual Intercourse. The Court having regard to the Significant psychological or physical harm to the victim (as evidenced in the victim impact statement) has assessed the consequence of this offence as high, but the seriousness of the offence as lesser, given that there was no physical violence meted out to the complainant; no weapon used and no significant disparity in age.

[25] For such a classification the ECSG guidelines provide a range for the establishment of the starting point as between 5% to 35% of the maximum penalty.

[26] The Guidelines suggest a starting point of 20% of the maximum. The starting point is therefore (20% of 10) 2 years.

[27] 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.

[28] 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 in the Cayo District, and throughout Belize
c) The repeated incidents of Unlawful Sexual Intercourse
d) The attempt to hide the VC from her mother and the authorities.

For this the Court would be minded to add 1 year, taking the total to 3 years.

[29] The Court next considered the mitigating factors of the offence. One such factor that was suggested by the Prosecution, is that the convicted man thought that the complainant was 18 years old, because she said so in his presence. The Court rejected this suggestion, as the agreed facts indicate that the grandmother initially suspected her to be between 12 and 15 years old but under the age of 16; the Court is of the view that the convicted man also knew the complainant was under the age of consent as he took great pains to elude her mother and the police and avoid being found with the complainant. The Court therefore does not consider this a mitigating factor.

Guilty plea

[30] The convicted man pleaded guilty before the commencement of a trial, which the Court accepts broadly as the earliest possible opportunity, meriting the discount of 1/3 of the remaining sentence. The sentence remaining when this discount is applied is 1 year on each count.

Consideration of the Totality Principle

[31] Since the Court is sentencing the Offender for separate sexual offences that were committed at different times against the same complainant, the

Court must consider the application of the well-settled totality principle, in determining a just and fair sentence.

[32] This principle is generally considered when the Court is sentencing an offender for multiple offences and has to consider the overall quantum of the sentence in a bid to ensure that the overall sentence accurately and fairly reflects the punishment for the offending behaviour before the Court.

[33] The Court must then consider 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; (c) If the answer to (b) above is yes, then the sentences should be made to run concurrently. If the answer is no, then the sentences are usually made to run consecutively; however, at this point, the Court should still consider that the sentence must be just and proportionate.

[34] The Court having determined the appropriate sentence for the individual offenses 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

[35] The one year remaining would be credited as time served pre-trial, given that this case does not merit a custodial sentence as discussed above.

[36] The Court is of the view however, that the convicted man is in dire need of supervision given his past history of peer pressure and making the wrong decisions which lead him to run afoul of the law. He needs positive role models

who can support and offer guidance. The Court notes the conclusion in the SIR that the convicted man may continue down the wrong path in life.

[37] When considering all the factors of this case, it is felt that a sentence of one year on probation is appropriate. This sentence is made pursuant to Section 3 (3) of the **Probation of Offenders Act, Revised Edition Chapter 120 Revised Edition 2000, which reads as follows:**

"*(3) Where any person is convicted of an offence which is punishable on indictment, and the court is of the opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may in lieu of imposing a sentence of imprisonment make a probation order*[1]*"*

This sentence is being imposed in acknowledgment of the dominant sentencing aim of rehabilitation.

[38] Given the circumstances of this case also, it is felt that this sentence would still acknowledge the gravity of the offence whilst appreciating the special circumstances of this case. This sentence is to be served at the termination of any sentence imposed for the subsequent offence for which he was remanded.

Disposition

[39] Carlos Jimenez is hereby sentenced to one-year probation on each count of the offense of unlawful sexual intercourse,

[1] The Court also noted and applied the provision of Section 3(4) of the Probation Act which reads: (4) Before making a probation order under subsection (3) the court shall explain to the offender in ordinary language the effect of the order and that if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

[40] The sentences are to run concurrently.

[41] The sentences are to commence at the end of any sentence that will be imposed hereafter in respect of any other offence.

[42] The court also makes the following auxiliary order effective immediately: the Court orders, pursuant to Section 65(1) (a) of the **Criminal Code**, that the Convict undergo mandatory counselling, medical, and psychiatric treatment as the appropriate prison authorities deem necessary to facilitate his rehabilitation.

This order is effective on the 29th of October 2024

[43] This is the Judgment of the Court.

Delivered this **29th** day of **October 2024**

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar