

IN THE SENIOUR COURTS OF BELIZE
CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C116 of 2020

Between:

The King

and

[1] **Orlando Hyde**

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the King.

Mr. Simeon Sampson S.C., counsel for the Defendant.

Dates:

Trial Dates:	2023:	June 22 July 4, 5, 10, 14 September 19 October 12 November 9, 17, 30 December 14
Judgment Date:	2024:	February 8 March 7 April 18 May 29
Sentencing Date:	2024:	June 12

JUDGMENT ON SENTENCE

[1] **CUMBERBATCH, HON. MR. FRANCIS M.:** The convicted man was convicted on three counts of Carnal Knowledge of the virtual complainant contrary to the

provisions of section 47(1)¹ of the **Criminal Code** CAP 110 of the Revised Edition of the Laws of Belize 2020 and two counts of unlawful sexual intercourse with the virtual complainant contrary to the provisions of section 47(2)² of the aforesaid **Criminal Code** after a fully contested trial by a judge alone pursuant to the provisions of section 65A³ of the **Indictable Procedure Act**.

The Facts

[2] The facts are extracted from the evidence of the virtual complainant that on diverse occasions commencing during the month of December 2010 and continuing until the month of August 2014 the convicted man had sexual

¹CAP 101 Criminal Code section 47(1)(2) of the Substantive Laws of Belize Revised Edition 2020 47.-(1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life.

² CAP101 Criminal Code section 47(2) of the Substantive Laws of Belize Revised Edition 2020 47.-(2) (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, provided that with regard to sub-section (2) –

- i. in the case of a person who is charged with a crime under that subsection who is under the age of eighteen years, the presence of reasonable cause to believe that that other person was above the age of sixteen years shall be a valid defence on the first occasion on which such accused person is charged with a crime under that subsection; or
- ii. in the case of a person who is charged with a crime under that subsection who is of or above the age of eighteen years, the presence of reasonable cause to believe that the complainant was over the age of sixteen years shall be a mitigating circumstance for the purpose of sentencing on the first occasion on which such accused person is charged with a crime under that subsection, and in any such case the mandatory minimum sentence of five years prescribed above shall not apply.

³ **Indictable Procedure Act** CAP 96 of the Substantive Laws of Belize Revised Edition 2020 section 65A.- (1) Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences.

(2) The offences referred to in sub-section (1) are– (a) Murder, (b) Attempt to murder, (c) Abetment of Murder, and (d) Conspiracy to commit murder.

(3) In an indictment charging an accused person with any of the offences specified in sub-section (2), no other count for an offence not referred to in the said sub-section shall be added.

intercourse with her against her will. The virtual complainant, who is her uncle, is her mother's younger brother and the last child of her grandmother and they resided in the same village and from time to time in the same premises.

[3] The virtual complainant stated that when she completed secondary school she sought and obtained employment and removed from the house. She said she informed the family of the sexual abuse she sustained over the years aforesaid from the convicted man but got no support from anyone as they all were more concerned with making excuses for him. She also sought and obtained treatment from a therapist and reported the matter to the police.

[4] After the convicted man was convicted the court ordered that a sentencing hearing be held and ordered a Social Inquiry Report be produced. The court also ordered the production of a Psychiatric Report and a report from the prison on the convicted man's conduct whilst an inmate there. A date was set for the sentencing hearing.

The Hearing

[5] The court obtained the documents ordered. The court also obtained a Victim Impact Report from the virtual complainant.

[6] Counsel for the convicted man addressed the court seeking leniency on behalf of his client. He asked the court to accept his client's expression of remorse and regrets for the embarrassment to the virtual complainant and to the family who were occupants of the *locus in quo*.

[7] Mr. Sampson S.C., further contends that as a result of the convicted man's behaviour there was an abuse of trust in the family but there was no inordinate degree of violence except the psychological impact upon the virtual complainant.

Senior Counsel urged the court to take into consideration the hitherto clean criminal record of the convicted man, the fact that he was lawfully employed and is the father of two children. He urged the court to impose a non-custodial penalty.

[8] Ms. Mohammed for the crown addressed the court on the provisions of sections 47 (1) and 47 (2) of the **Criminal Code**. Crown Counsel also addressed the court on the contents of the victim impact statement which outlined the physical, emotional and psychological effects of the years of abuse she suffered at the hands of the convicted man from the time she was 11 years old until she attained age 14 plus. Crown Counsel took issue with Defence Counsel's submission about the convicted man's expressions of remorse and regret. Ms Mohammed denied that took place and contends that at no time did the convicted man ever express remorse or regret for what he did to the virtual complainant.

[9] The Social Inquiry Report contained statements about the convicted man from family members and his employers all of whom spoke of his character, personality and work ethic in glowing terms. The report from the Belize Central Prison disclosed that the convicted man as an inmate had not committed any infractions therein. However, he has not participated in any rehabilitative programs. The psychiatric evaluation was unremarkable.

The Law

[10] I will apply the classical principles of sentencing, to wit, retribution deterrence, prevention and rehabilitation to the facts and circumstances of the case at *bar*.

Retribution

[11] The facts disclose that the convicted man on repeated occasions sexually violated the virtual complainant from the time she was 11 years old to 14 years old. He

took advantage of her tender age, her fear of him and her inability to resist his demands. The psychological effects of these repeated acts of sexual abuse to the virtual complainant were clearly outlined in the victim impact statement and her evidence during the trial. They ranged from depression, a decline in her academic performance at school and thoughts of suicide.

- [12] The court must show its abhorrence for these dastardly acts of sexual abuse of minor girls by the sentence it imposes.

Deterrence

- [13] This phenomenon of unlawful sexual activity involving little girls has attained alarming proportions within this jurisdiction. Indeed, a pilot project for the creation of a full-time sexual offences court has recently been concluded by the Senior Court of this jurisdiction.

- [14] This convicted man planned and premeditated the events that unfolded on the various days and obviously went in search of the virtual complainant when they removed from the same premises in which he resided.

- [15] This principle is intended to deter those for whom the sound of the shutting of the iron cell door has no effect and are prone to re-offend and to deter those members of the society who may be contemplating offending in like manner.

Prevention

- [16] This principle is more applicable to repeat offenders and those persons who are considered to be a danger to the society.

Rehabilitation

- [17] It is obvious that the convicted man needs to undergo appropriate rehabilitative processes to ensure that he is weaned off his predilection for the commission of

acts of sexual abuse. He has by the offences committed herein revealed that he is a sexual predator and the fact that his victim was a close family member was not a deterrent.

[18] Regrettably, however, the convicted man has not volunteered to participate in any relevant rehabilitative programs. Therefore, the court must impose as a part of his sentence an order for his rehabilitation.

[19] The court will now consider the Aggravating and Mitigating factors herein:

Aggravating Factors

1. The seriousness of these repeat offences.
2. The vulnerability of the victim because of her age.
3. The breach of trust the victim held with the convicted man who is her uncle and the younger brother of her mother.
4. These offences were planned and premeditated.
5. The severe psychological harm to the virtual complainant.
6. The convicted man was not remorseful.
7. The prevalence of this offence within the jurisdiction.

Mitigating Factors on the Offence

There are no mitigating factors relating to the commission of the offences.

Mitigating Factors relating to the Offender

1. The convicted man's prior clean criminal record.
2. The convicted man's age at the time when he committed the first two offences,
3. The favourable remarks made of the convicted man by his relatives and employer.

Sentence

[20] The counts in the indictment for which the convicted man has been convicted are contrary to the provisions of sections 47(1) and 47(2) of the **Criminal Code** Chapter 101 of the Laws of Belize Revised Edition and provide thus:

“47. -(1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life.

(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:

(i) in the case of a person who is charged with a crime under that subsection who is under the age of eighteen years, the presence of reasonable cause to believe that that other person was above the age of sixteen years shall be a valid defence on the first occasion on which such accused person is charged with a crime under that subsection; or,

(ii) in the case of a person who is charged with a crime under that subsection who is of or above the age of eighteen years, the presence of reasonable

cause to believe that the complainant was over the age of sixteen years shall be a mitigating circumstance for the purpose of sentencing on the first occasion on which such accused person is charged with a crime under that subsection, and in any such case the mandatory minimum sentence of five years prescribed above shall not apply”.

[21] In the unreported decision of *R v Franklyn Huggins*⁴, a decision from the ECSC Hariprashad J as he then was at paragraph 17 of his judgment stated thus:

“Short of homicide, it (rape) is the ‘ultimate violation of self’. It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity”.

[22] I have evaluated and balanced the aggravating and mitigating factors aforesaid and find that the aggravating factors substantially outweigh the mitigating ones. These offences were most heinous. The well thought out plans by the convicted man to sexually abuse the virtual complainant and the execution thereof with its attendant consequences must be with an appropriate sentence. The court must unequivocally show its abhorrence for the convicted man’s horrendous conduct by the sentence it imposes.

⁴ The Queen v Franklyn Huggins BVIHCR 2009/0001 dated 13 July 2010 ECSC para. 17

[23] In the decision of *The Queen v Justyn Kyle Napoleon Friesen*⁵ the Supreme Court of Canada opined thus. I find this *dictum* to be applicable in this jurisdiction and it is well worth repeating here:

*“Protecting children from wrongful exploitation and harm is the overarching objective of the legislative scheme of sexual offences against children in the **Criminal Code**. At the sentencing stage, in order to effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause and give effect to both in imposing a sentence. This will help bring sentencing law into line with society’s contemporary understanding of the nature and gravity of sexual violence against children and will ensure that past biases and myths do not filter into the sentencing process. Parliament’s creation of the modern legislative scheme of sexual offences against children shifted the focus of the sexual offences scheme from sexual propriety to wrongful interference with sexual integrity. The prime interests that the legislative scheme of sexual offences against children protect are the personal autonomy, bodily integrity, sexual integrity, dignity, and equality of children. Emphasis on these interests require courts to focus*

⁵ The Queen v Justyn Kyle Napoleon Friesen [2020] SCC 9

their attention on emotional and psychological harm, not simply physical harm. In particular, courts need to take into account the wrongfulness and harmfulness of sexual offences against children when applying the proportionality principle, as these factors impact both the gravity of the offence and the degree of responsibility of the offender and understanding them is key to imposing a proportionate sentence”.

[24] Parliament has in recent times enacted a mandatory minimum sentence of 12 years imprisonment for anyone convicted of an offence contrary to section 47(1) of the **Criminal Code**. However, in determining what an appropriate sentence should be I will take into account the fact that at the time of the commission of the offences in counts 1 & 2 and 4 of the indictment he was still a minor.

[25] It is common ground that the date of birth of the Accused is the 11th of May 1996 thus at the time of the commission of the offence in count 1 of the indictment he was 14yrs 7 months old, count 2 he was 14 years 8 months. At the time of the commission of the offence in count he was 17 years 5 months. These counts are for offences contrary to section 47(1) of the **Criminal Code** aforesaid.

[26] The convicted man was a minor at the time when he committed the offences contrary to section 47(1) of the Criminal Code aforesaid. I find this fact to be good and sufficient reason to justify a reduction in the mandatory minimum sentence of 12 years imprisonment.

[27] With respect to the offences committed contrary to counts 5 and 6 of the indictment these constitute breaches of section 47(2) of the **Criminal Code** in respect whereof a sentence of not less than 5 years but not more than 10 years imprisonment is provided therein. At the time of the commission of these two offences the convicted man was already 18 years old hence he was and was an adult. At that time, he was not a first offender for the offence of unlawful sexual intercourse. Indeed, he had already committed 3 offences of carnal knowledge of the virtual complainant aforesaid.

[28] Accordingly, the convicted man is sentenced as follows:

1. For the commission of the offences in counts 1, 2 & 4 in the indictment he is sentenced to 6 years imprisonment on each count.
2. For the commission of the offences in counts 5 & 6 in the indictment he is sentenced to a period of imprisonment of 7 years on each count.
3. He shall be enrolled in appropriate rehabilitation programs to treat his predilection for sexual predatory prior to his release from prison.

[29] The sentences aforesaid shall run concurrently.

Hon. Mr. F M Cumberbatch

Justice of the High Courts