

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION**

2018/CRI/VBI/182/8

B E T W E E N

REGINA

Respondent

AND

DWAYNE BENJAMIN DECOSTA

Convict

Before: The Honourable Madam Justice Cheryl Grant-Thompson

**Appearances: Ms. Jacqueline Burrows and Mr. Perry McHardy
Counsel for the Crown**

Mr. Murrio Ducille – Counsel for the Convict

**Date of Hearing: Trial - 19 August - 10 September, 2019
Sentencing Hearing - 2nd October, 2019
Sentencing Decision - 19 November 2019**

S E N T E N C I N G J U D G M E N T

**Convicted of Assault and Abduction - Former Police Sergeant
(previously charged with Unlawful Sexual Intercourse) - 1st offence -
man of good character - should he receive a custodial sentence**

GRANT THOMPSON, J
SENTENCING JUDGMENT

BACKGROUND

1. On the 19th August, 2019 the trial against the Convict Mr. Dwayne Benjamin DeCosta commenced before me. The Prosecution formally closed its case on 10th September, 2019, having called 9 witnesses. The Prosecution made an application to close without calling Five (5) witnesses namely: Karen Brown, Dr. F. Pinder, W/D/ Sgt. 2461, Yvette Deveaux, D/Insp. Keino Demeritte, and W/D/Cpl. 3349 Cheyenne Wilkinson.

2. The Convict, was charged on indictment with Unlawful Sexual Intercourse, contrary to section 10(1)(a) of the Sexual Offences Act, Ch. 99. During the trial the Virtual complainant, in this matter did not give any form of evidence in relation to the 'sex acts' she complained of, in her statement to the police of the 14th of July, 2018.

3. As a result of the legal arguments which were heard by this Court at the close of the Prosecution's case, the Convict was not required to answer to the charge of Unlawful Sexual Intercourse, but instead, the lesser subsumed offences of Abduction contrary to sections 22 and 25 of the Sexual Offences Act, Ch. 99 and Assault contrary to sections 19(1)(c) and 365(4) of the Penal Code, Ch. 84 were left for the consideration of the jury.

THE FACTS

4. The facts as posited by the Crown and accepted by the Defence read as follows:

At about 6am on the morning of 14 July 2018, A.B., (a 13 year old girl) was at her grandmother's house, where she lived along with her mother. A.B.

said she poured water in her mother's bed and as a result, her mother took her to her father's residence, left her there and drove off. Later, her father's neighbour saw her still sitting outside and took her to the East Street South Police Station. The neighbour gave a report and left. A.B. who was invited to sit. She was wearing a grey jacket and pink short pants. Sometime after 11am she recounts an officer dressed in all navy approached her, called her outside, followed her to the back and then told her to go up the stairs, which she did. The officer was behind her the entire time. The officer instructed her to open the door and go through it which she did. The officer took her into one of the rooms. A.B. told the police that later she saw him speaking to another officer.

The station surveillance video of 11:53am shows A.B. seated in a chair, her hoodie on her head. She then gets up goes outside after being beckoned outside by a male officer. The station surveillance video timed 12 noon, shows A.B. returning to the station, and now sitting in a slouched-over posture, her head is held down and arms folded. A different **posture**.

W/Sgt. Bain gave evidence. She was on duty at the East Street South Police Station at the relevant date and time. Sgt. Bain said that she was pointed out a juvenile female who was brought to the station who was not to leave the station until a parent or guardian came for her. Sgt Bain said the female was initially jovial as she had spoken to her before she left for patrol, but when she returned at 12:15pm, she noticed that the girl was still there, and she offered her something to eat, which she refused. A.B. did confirm that she told police that an officer had attempted to give her some food, but she did not accept it, and that the officer subsequently asked her what was wrong.

Sgt. Bain went on to say that the female seemed frantic and that she kept her head held down. Further that the female, appeared disturbed about something, she did not appear to be the same person she left when she went on patrol. When asked about the garage area, Sgt. Bain said that the area is restricted to civilians and officer's, and she gave the reason for such restriction.

Insp. Bowles the investigating officer, gave evidence that A.B., who was accompanied by her mother, showed her the garage area of the station the next day and same was photographed.

During his arrest by Sup. Goodman on 15th July, 2018, Decosta admitted to taking an incident report from A.B. when she was brought in, and also to seeing A.B. outside, and telling her to go back inside.

Record of Interview of Dwayne Decosta

5. Decosta's interview was conducted by Insp. Bowles. Decosta confirmed that he worked the 1am to 12 noon shift on the 14th July, 2018, after being shown the sign-in sheet. He also admitted that he took an incident report, when A.B. was brought to the station. But Decosta denied speaking to A.B. alone outside. However, when shown the station surveillance of 11:53am, Decosta identified himself as the officer calling A.B. outside. He said he went to assist her to go across the road to the Esso Gas Station to get something to eat, as she said that she was hungry. He said they never left the compound (to go to the gas station) because he stopped to speak to a male who was standing next to a Nassau Flight Services bus. He spoke to him being there at the station, meanwhile, A.B. was told to stand by the gate. He denies taking A.B. to the garage area.

6. Mr. Ricardo Adderley gave evidence that he was employed with Nassau Flight Services for a number of years and at the relevant time. Adderley said that on 14th July, 2018, he was scheduled to start his shift at 12 noon. He arrived at the East Street South Police station at 11:45am, parked his vehicle and, went to the only Nassau Flight Service bus (owned by the company) that was parked at the station. He said he left the station at 11:50am, and that he did not speak to anyone while at the station.

The Case of the Defence

7. Dwayne Decosta chose to remain silent, and did not call witnesses or lead any evidence on his own behalf.

THE VERDICT

8. On Monday, 23rd September, 2019, the Court delivered a summation in respect of this matter and the jury was sent to deliberate. The jury advised the Court that they had reached a verdict of Guilty of Assault and Abduction on a count of:

- Guilty: 9-0

LAW

9. Assault

Section 19 of the Penal Code defines assault as:

19. (1) "Assault" includes —

- (a) assault and battery;
- (b) assault without actual battery;
- (c) imprisonment, or detention and compulsion.

(2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Title vii. of this Code.

Section 22 of the Penal Code Ch 84 defines assault by imprisonment as:

22(1) A person imprisons another person if, intentionally and without the other person's consent, **he detains the other person in a particular place**, of whatever extent or character and whether enclosed or not, **or compels him to move or be carried in any particular direction.**

(2) This definition is subject to the following provisions, namely, that detention or compulsion may be constituted, within the meaning of this section, either by force **or by any physical obstruction to a person's escape** or by causing him to believe that he cannot depart from a place, or refuse to move or be carried in a particular direction, without overcoming force or incurring danger of harm, pain, and annoyance, or by causing him to believe that he is under legal arrest or by causing him to believe that he will immediately be imprisoned if he does not consent to do, or to abstain from doing, any act.

10. **Abduction**

contrary to sections 22 and 25(d) of the Sexual Offences Act

Abduction is defined as:

"22. Any person who is guilty of an abduction of any unmarried person under sixteen years of age is guilty of an offence and liable to imprisonment for two years.

25. For the purposes of the sections of this Part relating to abduction —

(d) a person having the temporary custody, care or charge of another person for a special purpose, as his attendant, employer or schoolmaster or in any other

capacity, can be guilty of abduction of that person by acts which he is not authorized to do for such special purpose, and he cannot give consent to any act by another person which would be inconsistent with such special purpose."

11. For Assault the Convict is liable to imprisonment for three (3) years imprisonment.

AGGRAVATING FACTORS

12. The Crown submitted that there were several aggravating factors against the Convict; namely:

i) Dwayne Decosta being a Senior Reserve Officer at the time, was in a position of trust and authority, and therefore, held at a higher standard in society; and

ii) has showed no remorse and has subjected the victim to a trial.

MITIGATING FACTORS

13. Dwayne Decosta has no previous convictions.

CROWN'S SUBMISSIONS ON SENTENCING

14. The Crown submitted that the range of sentence should be as follows:

Dwayne Decosta is liable to a term of imprisonment for Two (2) years for the Abduction conviction and Three (3) years for the Assault conviction. Due to the fact that these offences were committed within the same design, it has submitted that any sentence for both offences, to run concurrently.

15. The Prosecution further submitted that due to the fact that the Convict was an officer in a position of trust and authority at the time of the

commission of the offences, that he should serve a custodial sentence. The Prosecution relied on the Bahamas Court of Appeal decision of **Prince Clarke v R. SCCrrApp No. 101 of 2010.** In that decision Mr. Justice John JA opined that:

"To whom much is given, much is required. When a person is given a certain authority, for example, a police officer, and he has the privilege of wearing the uniform of the Royal Bahamas Police Force, that is an honour, that is a privilege, but it is not a privilege to be abused. On this occasion this appellant abused his authority. In fact, he confused authority with power. He has authority and he was privileged to wear a uniform of the Royal Bahamas Police Force. Regrettably, he brought the police force into disgrace on that occasion, and I trust that whilst we continue to sit in these courts, we will not see a like occurrence."

In that case Clarke was sentenced to Five years for the offence of Rape, in that he inserted his fingers into the vagina of the complainant during a traffic stop.

The Prosecution further submitted that Dwayne Decosta being a person of previous good character could only be of minor relevance. This was pointed out in the case of **Andrew Bridgewater v R. SCCrrApp No. 8 of 2007.**

In that case, the appellant had breached the trust which was imposed upon him by the caregiver of the Six (6) year old victim.

RECOMMENDATION FROM THE PROSECUTION

16. It was humbly recommended that I sentence Dwayne Decosta to a term of imprisonment of Two (2) years imprisonment for the Abduction

and Two (2.5) years for the Assault. Further that the sentences should be ordered to run concurrently.

PLEA IN MITIGATION

17. On 2nd October, 2019, Mr. Murrio Ducille made a plea in mitigation on behalf of Mr. Dwayne Decosta. Mr. Ducille stated that it is not always that Caesar should get what he deserves. And also, at the same time, he reminded the Court that we must all be mindful of Shylock (phonetic). At the end of the day, Shylock who ended up with nothing, because he wanted a pound of flesh, and in extracting that pound of flesh, he had to get blood with it, and that was not a part of the equation. He commended to me the other characters in the Shakespeares Merchant of Venice, specifically Portia, in dealing with the quality of mercy.

18. One of the offences, Mr. Ducille correctly submitted is obviously, a summary one under the Third Schedule (to the Criminal Procedure Code, Ch. 91), which is characterized as a hybrid offence. So, all things considered, in the normal course of things, in another court, these would attract, he submitted certainly not, a custodial sentence.

19. Mr. Ducille submitted that I would not really be making any mistake, having regard to the unimpeachable evidence that was given by both Canon Tynes, and also Mr. Ferguson, and, of course, what he described as the unassailable letters from Mrs. Rachel Culmer, (Attorney-at-Law) and the Right Honourable, Perry G. Christie. (former Prime Minister of the Commonwealth of The Bahamas). These character witnesses he commented had all gone unchallenged, and these are persons who, more or less, commended to me, the good character of Mr. Decosta.

20. I was reminded that I had the occasion also of observing Decosta, during the course of the trial. He is not one of those persons I had to look for. When I came on the bench he was always here, a punctual defendant throughout the trial. This Mr. Ducille submitted goes to the depth of his character, and shows consistency in him. We are not God he told me. We don't know the truth about things. But we can only go by certain reference points.

21. But what is of importance, Mr. Ducille opined, is that during the course of the evidence before me, no one has come here and identified Mr. Decosta that is factual, as doing anything. And on that very same token, forgetting the legal aspects of it, that anyone did anything untoward, much more Mr. Decosta. He reminded me that that is uncontroverted before me.

22. Given all of those circumstances, and the situation at hand, he opined that I would not be making any mistakes, for Mr. Decosta to continue his life, as he has been accustomed to.

23. Mr. Ducille asked me to notice that during this period, between the conviction and up to this point, Mr. Decosta has remained upright and has followed all of my instructions. He has nowhere to hide. In his heart, he still considers his purity, Mr. Ducille submitted.

24. Mr. Ducille respected the jurors verdict. He did not quarrel with that at all. What he is doing, he submitted to me that, we have to respect the system, he is accustomed to.

25. He left himself in my hands. And the only thing he strongly and vehemently advanced, is that one of the offences, the one involving the abduction, attracts two years, and the other one attracts three years, the

hybrid offence. And the circumstances are such that he, commended to me Section 124 of the Penal Code, Ch. 84 which provides as follows:

"124. (1) Where a person is convicted of any summary offence or any crime punishable with imprisonment, and the court is of opinion that, having regard to the youth, character or antecedents of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is inexpedient to inflict, any other nominal punishment, or that it is expedient that the offender by released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct and order that he be released on his entering into a recognizance with or without surety or sureties, and during such period, not exceeding three years, as the court may direct, to appear for sentence when called upon, and in the meantime to keep the peace and be of good behavior.

(2) The court may also, subject to the provisions of this Code, order the offender to pay such damages for injury or compensation for loss and such costs of the proceedings as the court thinks reasonable. If the offender is under sixteen years of age, and it appears to the court that the parent or guardian of the offender has conduced to the commission of the offence, by wilful default or by habitually neglecting to exercise due care of him, the court may order payment of such damages and costs by such parent or guardian.

(3) Where an order is made under this section the order shall, for the purpose of revesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction.

(4) If the Supreme Court or any magistrate's court is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at each time as may be specified in the summons.

(5) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by the recognizance to appear for conviction or sentence, be brought before a court of summary jurisdiction.

(6) The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court.

(7) An offender so remanded to custody may be committed during remand to any prison to which the court having power to convict or sentence him has power to commit prisoners. In the case of a child or young person under sixteen years of age, he shall be committed in to custody of any fit person named in the commitment who is willing to receive him (due regard being had, where practicable, to the religious persuasion of the child), to be detained in that custody for the period for which he has been remanded, or until he is thence delivered by due course of law, and the person so named shall detain the child or young person accordingly, and if the child or young person escapes he may be

apprehended without warrant and brought back to the custody in which he was placed.

(8) A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence.

(9) The court before which any person is bound as surety by a recognizance given under this Code may, upon the application of such person, and after notice to the offender, vary the conditions of the recognizance and may, on being satisfied that the conduct of the offender has been such as to make it unnecessary that he should remain longer under supervision, discharge the recognizance.

The following provisions of this section shall apply to New Providence only:

Provided that the Governor-General may by Order extend such provisions, or any portion thereof: to any Out Island District –

(10) A recognizance order to be entered into under this section shall, if the court so order, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognizance shall be referred to as a probation order.

(11) A recognizance under this section may contain additional conditions as the court may, having regard to the particular circumstances

of the case, order to be inserted therein with respect to all or any of the following matters –

- (a) for prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places;
- (b) as to abstention from intoxicating liquor where the offence was drunkenness or an offence committed under the influence of drink;
- (c) generally for securing that the offender should lead an honest and industrious life.

(12) The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe.

(13) A person named in a probation order may be paid such remuneration and out-of-pocket expenses as the court making the probation order may direct; and the court may at any time relieve him of his duties; in which case (as well as in case of the death of the person so named) another person may be substituted by the court.

(14) It shall be the duty of the person named in a probation order, subject to the directions of the court –

- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order, or, subject thereto, as the person named in the probation order may think fit;
- (b) to see that he observes the conditions of his recognizance;

(c) to report to the court as to his behaviour; (d) to advise, assist, and befriend him, and, when necessary, to endeavour to find him suitable employment.

26. He respectfully submitted that he knew he was preaching to the converted. But he had a job to do. He invited me to not only look at the offence, but also to the offender. Having looked at Mr. Decosta, Mr. Ducille submitted that he is not the kind of person who ought to be anywhere else, but with this family.

SENTENCING PROVISIONS

27. Section 185 of the Criminal Procedure Code, Chapter 91 (“the CPC”), provides as follows:

“The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.”

SENTENCE OF THE OFFENDER

28. In determining the seriousness of the offence, the Crown submitted that the range of sentence should be as follows:

1. The **most serious** of offences are those in which a weapon is used, resulting in serious injury;
 - (i) The offences which are of **medium seriousness** are those in which a weapon is used, however, there is either no injury or very minor injury; and

- (ii) The **least serious** of offences are those in which no weapon is used, or despite there being a weapon, mere threat or minimal force it used.

29. The Crown respectfully, submitted that this offence fell within the lower spectrum of the sentencing scale, i.e. of the least serious type of offence.

PURPOSE OF SENTENCING

30. Sentencing must always be proportionate to the gravity of the offence and promote a sense of responsibility in the offender for the offence committed. The object of sentencing is to promote a respect for the law and order, maintain a peaceful and safe society, and discourage crime by the imposition of sanctions. Sentencing should also be aimed at the rehabilitation of the offender so that he may reform his ways to become a contributing member of society. Such sanctions for breach of the law are provided by law for the means of sentencing.

31. I am guided by the four classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation.

- (i) **Retribution** - In recognition that punishment is intended to reflect society's and the legislative's abhorrence of the offence;
- (ii) **Deterrence** – to deter potential offenders and the offender himself from recidivism;
- (iii) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of the society; and

- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

32. The Court is of the view that the Convict should be deterred from this type of offence - and other members of society who are like minded should also be deterred. However, having said that I believe that this Convict is capable of rehabilitation.

AUTHORITIES

33. In the decision **The Attorney General v Bullard [2004] BHS J. No. 41** at paragraphs 1, 23, 24, 25 and 26, which states:

"1. The oral judgment of the court was delivered by Sawyer, P: This is a case in which the Attorney General sought leave - and we have treated the application for leave as the hearing of the appeal - to appeal to this court against the sentence of three -and-a-half years which the learned magistrate imposed. The learned magistrate decided this:

"The defendant having pleaded guilty at the close for the prosecution, the court orders as follows: Defendant conditionally discharged, to be placed on good behavior bond for a period of three-and-one-half years. Defendant is to place himself at the disposal of the Royal Bahamas Police Force/Commissioner of Police in his anti-corruption drive. Defendant to be utilized in addressing new recruits, job fairs, career days at high schools where and whenever called upon to do so during the three-and-a-half year period. Defendant must, during these events state explicitly that he was a corrupt police officer and admonish those concerned to not so become. If necessary, defendant must do so at his own

expense. In default, defendant to serve three-and-one-half years imprisonment of hard labour."

23. After the police and the other witnesses for the prosecution had given evidence and the prosecution closed its case, the respondent Vincent Bullard pleaded guilty to the offence of extortion, contrary to Section 367 of the Penal Code which was then chapter 77.

24. The facts of the case are quite similar to the facts in Iferenta's case. Iferenta is reported in the Law Reports of The Bahamas 1971 to 76, volume one, at page 364. It was a stipendary and circuit magistrate in that case. In this case, it is a police officer.

25. The principles of sentencing as we understand them in relation to corruption in public office are quite plain. A custodial sentence is the norm. The only variable is the length of that sentence.

26. The reason for it may well be that it is done so that the public can see that persons who do not exercise their public office properly are not to be treated with slaps on the wrist. They are not to be treated as those who do not know any better. They are to be given the full weight of the law because they have sworn to uphold the law."

34. In these circumstances, and applying the general principles of sentencing and the Court of Appeal guidelines as stated above along with balancing the mitigating and aggravating factors in the instant case, the Crown proposed that a sentence of two and a half years is appropriate.

35. The Crown further submitted that the sentence will 'send a strong message to the community at large that if we are to advance as a society,

this type of behavior is not acceptable, the sentence of the court must be able to act as a deterrent to the Convict specifically and to any other person minded to act in a similar fashion'.

RELEVANT CONSIDERATION

SENTENCE

REASONS

36. I was impressed with the quality of the persons prepared to stand in the gap and vouch for the Convict. It troubles me that the Convict has never expressed any remorse. The complainant did not admit to any sexual encounter with the Convict I did not allow him to seek to defend this spurious charge without evidence. However what are we left with - a police officer who in the mind of the public is sworn to serve, protect and enforce the rule of law.

37. So what happened here? A police officer with all of the sterling character attributed to such a person. A father and a 56 year old grown man. Takes a young, underage female, legally vulnerable for those reasons, but made particularly vulnerable because she may have felt abandoned by both parents upstairs. She would have felt vulnerable to be in a police station, a stern and sterile environment without a parent, friend or guardian dealing with a male stranger. She was moved to an abandoned restricted area. She was with a person in authority. Why take a female child to such an area for even a minute much less seven. If the convict had confessed this to the priest or his friend or asked his attorney to say it to me on his behalf or elected to do so himself. Indicate it showed bad judgment which would never be repeated I would be reassured that it would never happen again. The fact that the behavior is not owned,

apologized for, remorse shown leaves the chance the behavior can happen again. It means that the Convict shows these esteemed persons one face and in his very uniform, in full sight of the surveillance cameras practices another. For the lack of remorse in my view he should serve a period of time. I will not sentence him to the two and a half years the Crown asks of me. Nor the probation requested by Counsel for the Convict. For the actions and lack of remorse, to a child who deserved protection, not be abducted and/or assaulted as the jury found - I will sentence the Convict to six (6) months imprisonment and one (1) years of probation to keep the peace and be of good behavior. I have taken the pretrial incarceration of 15 July 2018 - 24 July 2018 - 9 days into consideration and the sentence begins immediately from today's date.

38. I promised to put my reasons in writing this I now do.

Dated the 3 day of April, 2020

**The Honourable Madam Justice
Mrs. Cheryl Grant-Thompson**