**COMMONWEALTH OF THE BAHAMAS 2024**

**IN THE SUPREME COURT CRI/vbi/108/4/**

**CRIMINAL DIVISION**

**B E T W E E N**

 **THE DIRECTOR OF PUBLIC PROSECUTIONS**

 **The Respondent**

**V**

 **KIRKWOOD ROLLE**

 **The Convict**

**Before: The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson**

**Appearances: Mr. Rashied Edgecombe along with Mrs. Cashena Thompson- Counsel with the Director of Public Prosecutions**

**Mrs. Sonia Knowles– Counsel for The Convict**

**Hearing: 30th October, 2024; 13th November, 2024; 12th December 2024**

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

**Convicted for Incest, contrary to Section 13(1)(a) of the Sexual Offences Act, Chapter 99 (20 counts)- Convicted for Indecent Assault contrary to Section 17(1)(a) of the Sexual Offences Act, Chapter 99 (1 count)- Convict 57 years old at the time of the offence (now 62 years old); Section 185 of the Criminal Procedure Code, Chapter 91*; Albert Alexander Whyley v. Regina SCCrivApp & CAIS No. 184 of 2012; R v. Puru (1985), LRC [Crim] 817; R v Ingraham BS 2016 SC 24; Franklyn Huggins v. The Queen BVIHCR 2009/001; Richard George Campbell v. AG SccrApp No 30 of 2004;*** ***Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014; BM v. The Director of Public Prosecutions SCCrApp No. 39 of 2023; Steve Luciano Bain aka Cano v. The Director of Public Prosecutions [2022] 2 BHS J. No. 24; Regina v. Franklyn Roberts [2016] 1 BHS J. No. 70; Gordon v. Regina [2016] 2 BHS J. No. 74; Dustin Taylor v R MCCrApp & CAIS No. 63 of 2014; BM v. Director of Public Prosecutions SCCrApp & CAIS No. 39 of 2023***

**GRANT-THOMPSON SNR. J**

**BACKGROUND**

1. The Convict, Mr. Kirkwood Rolle, initially charged with the offence of **INCEST (22 counts)** contrary to **Section 13(1)(a) of the Sexual Offences Act, Chapter 99**. Additionally, the Convict was also charged with the offence of **INDECENT ASSAULT (1 count)** contrary to **Section 17(1)(a) of the Sexual Offences Act, Chapter 99.** The Crown conceded at the close of the Prosecution’s case, that a case had not been made out of counts 19 and 21**.** The Court withdrew those counts from the consideration of the jury.On the 30th of October, 2024, Mr. Rolle was formally convicted of offence of **Incest** on twenty (20) counts- the Convict was also formally convicted of the offence of **Indecent** **Assault**.
2. The matter was adjourned to the 13th of November, 2024, for sentencing submissions. Both Counsel relied on their written submissions along with their Plea Mitigation made after Mr. Rolle was convicted.

**THE FACTS**

1. The brief facts as posited by the Crown and accepted by the jury were as follows:
	1. Sometime between May 2019 and Wednesday 24th January, 2024, a period of some five (5) years, the Convict on multiple occasions had anal sexual intercourse with KB (the Virtual Complainant), he would have also stimulated her vagina with his fingers. KB is a female born the 21st of July, 2007, who is by blood relation his granddaughter. Further that on the 24th January, 2024, the Convict Indecently Assaulted, KB by spreading apart and squeezing together her butt cheeks.
	2. The Virtual Complainant reported that she eventually confided in her friend Ms. Sierra Thompson of the travesty she was enduring. Ms. Thompson in turn encouraged her to report the matter to her mother. In the result, on the 6th of February, 2024, by way of a WhatsApp message she informed her mother of what her grandfather was doing. The mother was residing in Exuma, The Bahamas, and traveled to New Providence. Thereafter the matter was reported to the police. The Virtual Complainant was removed to reside with her maternal grandmother.
	3. The Convict was subsequently arrested and charged for the offences before the Court.

**THE LAW**

**Incest**

1. **Section 13(1)(a) of the Sexual Offences Act, Chapter 99** provides as follows:

*“(1) Any person who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has* ***unlawful sexual intercourse*** *with that other person, whether with or without the consent of that other person, is guilty of the offence of incest and liable to imprisonment —*

1. *if he is an adult who commits the offence with a minor, for life*;…”
2. **Section 17(1)(a) of the Sexual Offences Act, Chapter 99** says that “*Any person who-(a) indecently assaults any other person; is guilty of an offence and liable to imprisonment for eight (8) years*”
3. In the Court of Appeal decision of **Albert Alexander Whyley v. Regina SCCrApp & CAIS No. 184 of 2012,** the Appellant was sentenced to life imprisonment for the offence of Unlawful Sexual Intercourse with a nine (9) year-old girl. The Appellate Court found that a determinate sentence was more appropriate. Allowing the appeal, the Court of Appeal reduced the sentence to thirty (30) years due to the offenders antecedent history. The Learned President stated beginning at **line 24, page 2:**

“*We believe that we owe it to the children of The Bahamas to protect them from people who would prey on them and have sexual intercourse with them at the age of nine years. They deserve our protection…*”

1. A young female relative, in the instant case, the relationship being that of a granddaughter to grandfather, is a child similarly deserving of protection, anywhere in the society but certainly within the confines of her family home. For the Convict to engage in anal, vaginal, and oral sex with the Virtual Complainant is both inappropriate and unacceptable. To touch her in the most intimate parts of her body is a violation of her innocence which she can never regain. This child should have been protected. All of this from an elder family member whom she trusted. As the senior adult the Convict should have known better. He should never have sought to partake in anal, vagina, or oral sex with his young granddaughter. Kirkwood Rolle sought to corrupt his granddaughter before she was of an age to give consent in a sexual manner. Nor would she have ever consented to having sexual intercourse with her family member. She is scarred for life. To the extent that she has testified that she has sworn off having sexual intercourse with men in the future. These are actions which the society condemns.
2. In **R v. Puru (1985), LRC [Crim] 817 (as cited in R v. Ingraham BS 2016 SC 24) the Court stated:**

“*In exercising their sentencing responsibilities, judges must balance various critical considerations. While society's condemnation of rape is a paramount consideration, sentences should also seek to protect women, to deter future offences and to punish the offender justly with regard to his case and by reference to other cases*”

1. Lastly, President Sawyer stated in **Richard George Campbell v. AG SccrApp No 30 of 2004**, that:

“*In our judgment, where a person who is a mature person is convicted of a sexual offence with a minor-whether or not there is any relationship of trust-the only question is not whether or not they would go to prison, but for how long. Where they are in a relationship of trust with a minor, there can be no doubt that imprisonment is the only method of punishment for that type of offence. We say that without doubt at all. Children are not things. They are not objects. They are to be protected. They are not to be abused in any form, let alone sexual forms. That is something they must try to decide when they are of mature age, whether or not they wish to yield to a particular person. It is not for the person in a position of trust to breach that trust by corrupting them before they can handle the effects of such actions*.”

1. As asserted by then Mrs. Justice Charles in the case of **Franklyn Huggins v. The Queen BVIHCR 2009/001** the offence of Incest and any other forms of sexual assault “*belongs to a class of indignities against a person that cannot be fully righted and that diminishes all humanity*”. The seriousness of this offence is reflected in the maximum penalty provided for by Parliament that being life imprisonment, it is the ultimate indignity. Parliament amended the penalty to the maximum of life imprisonment to indicate its abhorrence of this type of offence- the need to protect the nations youth.

1. Consequently, in the instant case, the principles of sentencing to be applied would be deterrence, retribution and rehabilitation. In passing a determinate sentence, this Court must examine both the mitigating and aggravating factors. The aim of this Court in the matter at hand is one of deterrence to prevent this type of offence from ever occurring again.

**AGGRAVATING FACTORS**

1. The aggravating factors against the Convict, Mr. Kirkwood Rolle, are:
	* 1. **Age of the Victim-** the Virtual Complainant was eleven (11) years old at the time the first offence occurred;
		2. **Breach of Trust-** the Convict was the grandfather of the Virtual Complainant, she deserved protection and trust, not sexual abuse;
		3. **The seriousness of the offence;**
		4. **Lack of Remorse**;
		5. **The manner in which the offence was committed- by the forceful entry of the penis into the anus injuring the Virtual Complainant and the potential future injury to that tender area**;
		6. **The amount of sexual indignities and perversions the Virtual Complainant endured;** and
		7. **Increased Prevalence of Sexual Offences in The Bahamas**.

**MITIGATING FACTORS**

1. The Convict a sixty-two (62) year old, male (at the time of the committing this offence he was fifty-six (56) years old). The following can be identified as **Mitigating Factors**:
* The Convict is of a virtual good character, prior to this conviction he has not been convicted of any other offence other than a spent Firearms matter;
* The Convict is of an older age. His sixty-two (62) years old; and
* There was no weapon used.

**CROWN'S SUBMISSIONS ON SENTENCING**

1. Under all of these circumstances, applying the principles of sentencing, the guidelines from the cited authorities along with balancing the mitigating and aggravating factors in the instant case, the Crown submitted that a sentence of twenty-five (25) to thirty-five (35) years for the offence of Incest is appropriate. Further, the Crown also submitted that the sentence of three (3) to five (5) years is appropriate for the offence of Indecent Assault. Counsel for the Prosecution submitted these sentences are necessary and appropriate in order to reflect the seriousness of the offences, to act as a deterrence, that aggravating factors in this matter far outweighed the mitigating factors.
2. This sentence is intended to 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 deterrence to the Convict specifically and to any other person minded to act in a similar fashion.
3. In their submissions, Counsel for the Prosecution relied on the case of **Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014**, where the Defendant was convicted of committing ten acts of Incest against his fifteen (15) year old daughter. The Appellate Court provided that “*The law considers incest a most serious offence given the maximum sentence of life which the law prescribes for that offence. In considering whether the judge was correct in imposing a sentence of 25 years and whether this court ought to interfere, we must determine whether the court's decision was outside the ambit of reasonableness or whether she was so plainly wrong that the only reasonable conclusion is that she erred in exercising her discretion in sentencing the appellant as she did*”. The Court of Appeal of The Bahamas dismissed the appeal and affirmed the sentence of 25 years.
4. **BM v. The Director of Public Prosecutions SCCrApp No. 39 of 2023** is also helpful. In that case the Convict was sentenced by the Learned Trial Judge to twenty-five (25) years for two (2) charges of the offence of Incest, upheld by the Court of Appeal. At paragraph 45 the Appellate Court opined that there is a *“golden thread which run through …these cases, namely the protection of children”*. The Court repeats that our innocent children should be protected.

**RECOMMENDATION FROM THE PROSECUTION**

1. It was humbly recommended that this Court should sentence Mr. Kirkwood Rolle to a term of imprisonment of twenty-five (25) to thirty-five (35) years for the offence of **INCEST,** contrary to Section 13(1)(a) of the Sexual Offences Act, Chapter 99. That the sentence of three (3) to five (5) years is appropriate for the offence of **INDECENT ASSAULT** contrary to Section 17(1)(a) of the Sexual Offences Act, Chapter 99.

**PLEA IN MITIGATION**

1. Counsel for the Convict submitted a sentence of nine (9) years for the offence of Incest which was both appropriate and fair. Additionally, Counsel for the Convict also submitted that a sentence of three (3) years for the offence of Indecent Assault was again appropriate and fair.
2. In support of her submission Counsel for the Convict, Mrs. Sonia Knowles, relied on the case of **Steve Luciano Bain aka Cano v. The Director of Public Prosecutions [2022] 2 BHS J. No. 24.** In this case Mr. Steve Bain was convicted of Unlawful Sexual Intercourse and Indecent Assault of his six (6) year old niece. Mr. Bain rubbed his penis on his niece’s vagina. On another occasion he indecently assaulted her. Following a trial, Mr. Bain was found guilty. He was sentenced to nine (9) years and three (3) years imprisonment, respectively. On appeal, both the convictions and sentences were affirmed.
3. Mrs. Knowles also relied on **Regina v. Franklyn Roberts [2016] 1 BHS J. No. 70**. In this case a sixty-five (65) year old grandfather pled guilty to two (2) counts of Incest and one (1) count of Attempted Incest. The grandfather suffered from a number of illnesses. He was sentenced to six (6) years on each count, suspended for medical reasons.
4. Lastly, the case of **Gordon v. Regina [2016] 2 BHS J. No. 74** was also submitted for this Courts consideration. Gordon was convicted of multiple acts of Incest with his fifteen (15) year old daughter. He was sentenced to twenty-five (25) years. Gordon had no previous convictions. Gordon also used violence to have his way with his daughter, which Counsel Mrs. Knowles submitted was an egregious breach of trust.

**Differentiating Factors**

1. Having reviewed the authorities provided by both Counsel for the Prosecution and Counsel for the Convict, this Court finds that the sentence of nine (9) years for the offence of Incest, three (3) years for the offence of Indecent Assault is not appropriate under the circumstances of this case.
2. Counsel for the Convict, Mrs. Knowles, submitted that the sentence of nine (9) years for Incest, three (3) years for Indecent Assault should be applied based on the case of **Steve Luciano Bain aka Cano v. The Director of Public Prosecutions (supra).** However, having reviewed this case, respectfully, the Court does not agree with Mrs. Knowles assertion. The case of **Steve Luciano Bain aka Cano v. The Director of Public Prosecutions (supra)** is distinguishable as Mr. Bain was sentenced to nine (9) years and three (3) years, respectively, for one (1) count of Incest and one (1) count of Indecent Assault. By contrast in this case the Convict was convicted of twenty (20) counts of Incest, one (1) count of Indecent Assault. If this Court were to apply the mathematical principle set out in **Steve Luciano Bain aka Cano v. The Director of Public Prosecutions** (supra), the Convict would be sentenced to One Hundred Eight (180) Years (9 years per count x 20 counts) for the offence of Incest and Three (3) years for the offence of Indecent Assault.
3. One act of Incest is egregious. Twenty (20) such acts of abuse over five (5) years is unimaginable torture. The Virtual Complainant had to endure Incest over all hours of the day, in a close quarter situation, in a small home in our inner city, unable to report it, forced to endure same by a man who was left to parent her. She testified that she was terrified to report it to her mother because that was her mothers father. The Virtual Complainant lived under the implied threat of Kirkwood Rolles temper and tendency to violence. Notwithstanding, that he was never violate to her during the sexual acts.
4. Counsel for the Convict, Mrs. Knowles further sought to rely on **Regina v. Franklyn Roberts (supra),** where a sixty-five (65) year old grandfather pled guilty to two (2) counts of Incest and one (1) count of Attempted Incest. He was sentenced to six (6) years on each count, suspended for medical reasons as the grandfather suffered from a number of illnesses. Comparing this case to the matter at hand, this Court notes that it has never been submitted that this Convict suffered from any mental or physical illness. Moreover, this Court notes that unlike in the case of Franklyn Roberts, this Convict did not plead guilty to any of the counts he was charged with. Mr. Kirkwood Rolle went to trial on all counts- subjecting the Virtual Complainant to relive the unfortunate experiences. Therefore, the sentences handed down in the case of **Regina v. Franklyn Roberts (supra)** cannot be relied upon as the facts vastly vary from the current matter. **Further, even after conviction this Convict shows no remorse**.
5. Moreover, this Court notes that even if the sentences handed down in **Regina v. Franklyn Roberts (supra)** were applied, the Convict would still be looking at a sentence of One Hundred Thirty Two (132) years (6 years per count x 22 counts) for the offence of Incest.

**Lack of Remorse**

1. The authorities are clear that where an accused person does not admit to the crime(s) for which he has been charged it is not expected that he will expressremorse. In **Dustin Taylor v R MCCrApp & CAIS No. 63 of 2014**, Justice of Appeal Crane-Scott, observed that when considering a proper sentence the court may have regard to ‘*Expressions of remorse (if any) (bearing in mind that the absence of remorse should not be held against the offender and cannot be regarded as having aggravated the seriousness of the offence’*.
2. This Court is also guided by the Court of Appeal case of **BM v. Director of Public Prosecutions SCCrApp & CAIS No. 39 of 2023**, where the Appellate Court examined and discussed whether a sentence of twenty-five years for the offence of Incest given by the lower Court was unduly harsh. At paragraph 45 of the judgment the Appellate Court took into consideration several issues, one of those being whether the Appellant was remorseful.

“*This, notwithstanding the Court views the acts of the convict upon his daughter as reprehensible and the ultimate breach of trust of a parent, in this case a father who is expected to love, nurture, care, safeguard and protect his child from harm, danger or abuse of any kind of potential perpetrators. But instead of being that protective parent he is the very one who would have, by his actions, humiliated, abused and violated his own child of such tender years. Not once, but twice, repeatedly breaching her trust and even openly compared her to her own mother. Further, the convict lacked contrition.* ***Notably at no point during the course of the trial or the sentencing process did the convict or counsel on his behalf express remorse for his conduct's****. Matter of fact there was a consistent denial of the acts and as referenced in the probation report the convict maintained his innocence asserting that the virtual complainant made up the allegations against him and denied being verbally recorded by the virtual complainant claiming that it was a voice ove*r”

1. The Court took the above precedents into consideration. The Convict showed no remorse throughout these proceedings nor after the conviction. Instead, he expressed open anger towards the Court.

**SENTENCING PROVISIONS**

1. **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**

1. In determining the seriousness of the offences, the Crown submitted that the range of sentence should be as follows:
2. The **most serious** of offences are those in which a weapon is used resulting in serious injury;
3. 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
4. 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.
5. 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**

1. 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 law and order, maintain a peaceful and safe society, 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.
2. This Court is guided by the four classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation.
3. **Retribution** – This society has spoken out, the first page headline of every daily speaks to the cries against the children of the society. The legislation has deliberately increased this sentence. In recognition that punishment is intended to reflect society and the legislatives abhorrence of the offence;
4. **Deterrence** – to deter potential offenders, the offender himself from recidivism;
5. **Prevention** – aimed at preventing the offender through incarceration from offending the law, to protect the society; and
6. **Rehabilitation** – assist the offender to reform his ways to become a contributing member of society.
7. 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. The Convict appears incapable of rehabilitation. The Court is mindful of his advanced age. The Court also takes into consideration the time he spent on remand.

**Life Imprisonment**

1. This Court accepts that Thirty-five (35) years for the offence of Incest and Five (5) years for the offence of Indecent Assault is a harsh sentence. It is one that the Court usually reserves for an individual convicted of Murder, the most serious of offences. Further, Mr. Rolle has now become an elderly man- to impose such a sentence may cause him to spend the rest of his natural life imprisoned. However, Parliament reflecting its views which no doubt reflects the morales of our society, our abhorrence of these types of offences, our need to protect this class of vulnerable victims, the nations youth. The virtual complainant was asked to perform sexual acts with the frequency of a mature woman notwithstanding the Convict had a live in girlfriend and consensual sex readily available. This young child was preyed on. The doctor described the probability of future damage in her anus. The Virtual Complainant has expressed an abhorrence of men and any interaction with them. She asked to move away from her home to live elsewhere and her grandmother collected her. She currently resides in Canda and gave evidence via video link.
2. The events occurred habitually, over many years and frequently to such an extent that they were coupled 2019 offences, 2021 offences, 2022 offences, 2023 offences, 2024 offences.
3. The complainant’s home had become a “house of horrors” where she could expect abuse of her vagina, anus, mouth and breasts. The Court accepts that the Convict has no previous convictions and that no weapon was used against the Virtual Complainant. The witness however, testified that “*He was violent, and he would get physical easily, get loud easily. He would hit you with anything he could get his hands on. I was afraid of him so I never put up no argument or nothing like that. He would hit with broomstick and rake, pool stick, hammer*”.
4. The Court considered the Indecent Assault to be a less egregious breach of the Virtual Complainants person. Therefore, the sentence of five (5) years is appropriate. In the Courts view the Convict cannot be rehabilitated. He has shown no remorse. The facts were egregious.
5. This Court hereby finds that the Convict should be sentenced to **Thirty-Five (35) year for the offence of Incest and Five (5) years for the offence of Indecent Assault**. The Courts reasons are that:
	1. The Virtual Complainant was a young child of tender years. She was eleven (11) years old when this abuse occurred, a still a vaginal virgin. Her hymen remains intact but her anus was repeatedly assaulted, with recurring pain, discomfort, blood and much tears. Further, she is a close relative of the Convict, his granddaughter. The mother entrusted the Virtual Complainant to the Convicts care and that of his girlfriend- so she was living inside his house like a daughter;
	2. The VC was in her grandfather’s house which is a place where she should have felt protected. Not assaulted nor abused;
	3. The Convict was her relative – she is his granddaughter. Young KB should have been able to admire the Convict. Moreover, she should have been able to look up to the Convict for his strong protection from the streets and the curve balls of life, rather than him being her determined assailant;
	4. The Convict’s interest in an eleven (11) year old girl emerging sexuality is in this society unacceptable. The Convict sought to abuse and breach the VC’s trust by performing indecent acts on her, partaking in inappropriate sexual activities with her- such as engaging in oral and anal sex, pulling aside her panties and stimulating her vagina with his fingers, vigorously, aggressively, spreading her butt cheeks to the point of tearing the entry to her anus until she bled;
	5. The Convict was unconcerned that other relatives were home. He assaulted her with other relatives in the next room;
	6. The Convict is an adult. He knew better and should have acted better; and
	7. The breach of trust, abuse of authority and sexual violation of the VC is highly aggravating.
6. This Court intends 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 deterrence to the Convict specifically and to any other person minded to act in a similar fashion'. Having regard to the circumstances of the case the Court is of the view that it does so.
7. Mr. Kirkwood Rolle you are hereby sentenced to a term of imprisonment of Thirty-Five (35) years, for the offence of **INCEST.** Moreover, the sentence of Five (5) years for the offence of **INDECENT ASSAULT**. This Court has already taken the Convict’s time on Remand into consideration in reducing the sentence. Mr. Kirkwood Rolle sentence will run concurrently from the date of conviction which is the 30th day of October, 2024.
8. This Court promised to put its reasons in writing this it now does.

**Dated the 6th  day of December, A.D., 2024.**

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**The Honourable Madam Senior Justice Cheryl Grant-Thompson**