**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**2023/CRI/VBI/ 220/7**

**B E T W E E N**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**AND**

**BASIL SILBERT MCDONALD**

**BEFORE:** The Honourable Madam Justice Guillimina Archer-Minns

**APPEARANCES:** Mrs. Shaneka Carey with Mrs. Betty Wilson for the Office of the Director of Public Prosecutions

Mr. Jairam Mangra for the Convict

**HEARING DATE:** 23 May 2025

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**DECISION ON SENTENCING**

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**CRIMINAL LAW – SENTENCING – UNLAWFUL SEXUAL INTERCOURSE WITH A MINOR OF THE SAME SEX – INDECENT ASSAULT – AGGRAVATING FACTORS – MITIGATING FACTORS – SECTIONS 16(1) AND 17(1)(A) OF THE SEXUAL OFFENCES ACT, CHAPTER 99 – WHAT ARE THE APPROPRIATE SENTENCES TO BE IMPOSED UPON THE CONVICT HAVING REGARD TO THE CIRCUMSTANCES OF THE CASE.**

**ARCHER-MINNS J:**

## INTRODUCTION

[1.] Basil Silbert McDonald, the Convict named herein, is a 28-year-old Bahamian male who was charged, tried and convicted of the following offences, namely –

i. Unlawful Sexual Intercourse with a minor of the same sex contrary to section 16(1) of the Sexual Offences Act, Chapter 99 (3 Counts); and

ii. Indecent Assault contrary to section 17(1)(a) of the Sexual Offences Act, Chapter 99 (3 Counts).

[2.] In this decision on sentencing, where the Court refers to the offences of Unlawful Sexual Intercourse with a minor of the same sex contrary to section 16(1) of the Sexual Offences Act, Chapter 99 (3 Counts) and Indecent Assault contrary to section 17(1)(a) of the Sexual Offences Act, Chapter 99 (3 Counts) collectively, they shall be referred to as the offences. Conversely, where the Court refers to the offences of Unlawful Sexual Intercourse with a minor of the same sex contrary to section 16(1) of the Sexual Offences Act, Chapter 99 (3 Counts) and Indecent Assault contrary to section 17(1)(a) of the Sexual Offences Act, Chapter 99 (3 Counts) individually, they shall be referred to as the Unlawful Sexual Intercourse offences and/or the Indecent Assault offences.

[3.] A nine-member jury was empanelled, and the trial commenced on 27 January 2025 and concluded on 25 February 2025. Following deliberations, the jury, by a unanimous verdict, found the Convict guilty of the offences.

[4.] The Convict was thereafter convicted and remanded to The Bahamas Department of Correctional Services (the "BDOCS") pending the imposition of his sentences.

[5.] Counsel for and on behalf of the Convict, Mr. Jairam Mangra, requested that a probation report be prepared relative to the Convict for use at the sentencing phase of the trial.

[6.] The probation report dated 1 May 2025, prepared by Ms. Deborah Duncombe, Chief Probation Officer at The Bahamas Department of Rehabilitative/Welfare Services within the Ministry of Social Services, Information and Broadcasting, was received by the Court and has been a useful aid in helping the Court to derive at appropriate sentences to be imposed upon the Convict.

## FACTUAL BACKGROUND

[7.] The factual background of this case, which was marshalled by the Prosecution and which was accepted by the jury, may be summarized as follows –

AGS, the Virtual Complaint named herein, is a juvenile Bahamian male who was 7 to 9 years old at the time of the commission of the offences. The Convict, the Virtual Complainant's mother, SLS, and the Virtual Complainant's older brother, TN, were co-workers, having been employed together at a leading wholesale drug agency in The Bahamas. The Convict and the Virtual Complainant's older brother, TN, were also best friends.

The Virtual Complainant, his mother, and his older brother lived together at multiple locations on the island of New Providence, The Bahamas. Sometime between 1 January 2019 and 31 August 2019, and 25 July 2020 and 31 September 2020, the Convict moved in with the Virtual Complainant and his family. The Virtual Complainant and the Convict eventually developed a special bond. The Convict became like a big-brother figure to the Virtual Complainant.

The Virtual Complainant and the Convict would often play video games together, either on the same PlayStation 4 console or their individual PlayStation 4 consoles. The Convict would sometimes babysit the Virtual Complainant while the Virtual Complainant's mother and older brother were at work. Sometime between 1 June 2020 and 30 September 2020, while the Convict babysat the Virtual Complainant, the Convict and the Virtual Complainant would engage in various sexual activities. It was during these times that the Convict would get undressed, and the Convict would instruct the Virtual Complainant to also get undressed. While both were undressed, the Convict and the Virtual Complainant would then cuddle. In addition to getting undressed and cuddling, the Convict and the Virtual Complainant would routinely watch homosexual pornographic material online. On one occasion while the Convict and the Virtual Complainant cuddled, the Convict rubbed his erected penis on the Virtual Complainant's buttocks. On another occasion, the Convict rested his face on the crest of the Virtual Complainant's buttocks. The Convict and the Virtual Complainant would also engage in oral sex. The Convict would instruct the Virtual Complainant to suck his penis and the Convict would reciprocate the sexual act on the Virtual Complainant. The Convict also gave the Virtual Complainant a tongue kiss.

The Virtual Complainant did not initially report the sexual activities between him and the Convict because he thought they were normal activities; he did not know that what he and the Convict were doing was considered wrong. Sometime in March 2023, the Virtual Complainant informed a classmate and his homeroom teacher about what occurred between him and the Convict. On 31 March 2023, the Virtual Complainant was taken to the principal's office at school, following a suicide attempt because of what the Convict did to him. The Virtual Complainant's mother was contacted and informed of what transpired.

In April 2023, the matter was reported to the police following psychiatric counselling and intervention during which the full details of the sexual encounters were disclosed by the Virtual Complainant. The Convict was arrested on 5 June

2023 in reference to the offences. The Convict was positively identified by the Virtual Complainant and was formally charged in reference to the offences.

The Convict maintained his innocence and denied committing the offences. At trial, the Convict gave evidence under oath and called two witnesses on his behalf.

**ISSUE**

[8.] The central issue the Court must now determine relative to the offences is the appropriate sentences to be imposed upon the Convict, having regard to the circumstances of this case.

**SUBMISSIONS**

[9.] Counsel for and on behalf of the Office of the Director of Public Prosecutions (the "ODPP"), Mrs. Betty Wilson, laid over comprehensive written submissions dated 7 May 2025 and made oral submissions. Counsel for and on behalf of the Convict, Mr Jairam Mangra, laid over written submissions dated 23 May 2025 and made oral submissions. Whilst these submissions have not been reproduced in detail, they have been fully considered.

**Submissions of the ODPP**

[10.] Counsel for and on behalf of the ODPP commenced her submissions on sentencing relative to the Convict by referencing the four classical principles of sentencing, namely, retribution, deterrence, prevention and rehabilitation. Counsel advanced that the Court, in determining the appropriate sentences for the Convict relative to the offences, ought to have the four principles of sentencing in mind and apply them to the facts of the case to see which of the four principles has the greatest importance. Counsel advanced that in some cases, one of the four principles may be predominant, while in other cases, two or more of the four principles may be given predominance. Additionally, Counsel stated that the Court, in determining the appropriate sentences for the Convict relative to the offences, ought to be guided by the principle of proportionality. Mrs. Wilson contended that the sentences to be imposed upon the Convict must be proportionate to the gravity of the offences. Counsel conceded that each case will depend upon its own facts and circumstances. Reliance was placed on the authorities of **Michael Edwards v Regina SCCrApp No. 85 of 2010**, **Regina v Musgrove [2012] 1 BHS J No. 107** and **Regina v Dwayne Benjamin Decosta [2020] 1 BHS J. No. 72**.

[11.] Counsel further advanced that the Court, in determining the appropriate sentences for the Convict, having regard to the circumstances of the case, ought to be guided by the aggravating and mitigating factors of the case. Counsel advanced that the aggravating factors of the case outweigh the mitigating factors. Counsel submitted that there are seven aggravating factors in respect to the Convict, namely, (1) the age of the Virtual Complainant, (2) the egregious breach of trust, (3) the psychological harm done to the Virtual Complainant, (4) the seriousness of the offences, (5) the duration of the abuse, (6) the prevalence of sexual offences, and (7) the lack of remorse on the part of the Convict. Two mitigating factors were identified, namely, (1) the age of the Convict – the Convict was 23 years old when the offences were first committed, and (2) the Convict has no previous convictions. With respect to the ODPP's position relative to the aggravating and

mitigating factors of the case, Counsel relied on the pronouncement made by *Lord Lane CJ* in the English Court of Appeal decision in **R v Billiam and other appeals and applications [1986] 1 All ER 985**.

[12.] With respect to the Unlawful Sexual Intercourse offences, Counsel contended that the Court, in applying the four principles of sentencing and the principle of proportionality, together with balancing the aggravating and mitigating factors of the case and having regard to the circumstances of the case, the appropriate sentences to be imposed upon the Convict would fall within the range of 15 to 20 years for each count of the Unlawful Sexual Intercourse offences to run concurrently. Reliance was placed on the authorities of **Dwight Bethel v Regina SCCrim App No. 58 of 2015**, **Franklyn Huggins v The Queen BVIHCR 2009/001**, **Albert Alexander Whyley v Regina SCCrApp & CAIS No. 184 of 2012**, **Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014**, and **Jason Lynes v The Director of Public Prosecutions 2023/CRI/VBI/99/3**. And, for the Indecent Assault offences, Counsel further submitted that the appropriate sentences should fall within the range of 3 to 5 years for each count of the Indecent Assault offences to run concurrently. The authorities of **William Sturrup v Attorney General SCCrApp No. 4 of 2007**, **R v Kenyatta Leslie Lewis SCCrApp No. 19 of 2014**, and **Steve Luciano aka Cano v The Director of Public Prosecutions SCCrApp No. 51 of 2022** were relied upon.

[13.] Counsel finally contended that sentences imposed within the ranges specified are wholly reasonable. Counsel impressed upon the Court that such sentences would send a strong message to the community at large that this type of behaviour is not acceptable, and that the sentences to be imposed by the Court would act as a deterrent, not only to the Convict but to any other person(s) minded to act in a similar manner.

**The Convict's Submissions**

[14.] Counsel for and on behalf of the Convict, Mr. Jairam Mangra, enumerated that the Convict does not accept the verdict of the jury, which he considers erroneous and unjust. The Convict maintains his innocence and denies committing the offences for which he was convicted. Counsel advanced that since the Convict was found guilty of the offences and remanded to custody to await his sentencing, his freedom was unjustly taken away.

[15.] Mr. Mangra urged upon the Court to consider the circumstances in which the offences were committed and the personal circumstances of the Convict when determining the appropriate sentences. He identified several mitigating and aggravating factors that the Court ought to consider, suggesting that the identified mitigating factors outweigh the aggravating factors. The mitigating factors identified were: (i) the Convict is of impeccable good character, (ii) the Convict is a relatively young man, married, gainfully employed and actively enjoyed a personal and social life, (iii) the offences were not committed with any significant violence, and (iv) the psychological harm purported to be inflicted upon the Virtual Complainant by the commission of the offences can only be regarded as alleged psychological harm because no professional/psychological evidence was adduced during the trial. The aggravating factors were: (i) the victim was a child of tender years and vulnerable, (ii) the offences committed may be regarded as crimes of opportunity, and (iii) the alleged psychological harm inflicted upon the Virtual Complainant by the commission

of the offences, i.e., the Virtual Complainant, has since the occurrence of the offences, formed a particular view regarding love and relationships.

[16.] Counsel ultimately contended that the Court ought to properly consider the four principles of sentencing, namely, punishment, deterrence, retribution and rehabilitation, notwithstanding that the Convict has maintained his innocence. Counsel opted not to provide any recommendation on the appropriate sentences to be imposed on the Convict in the circumstances of this case, nor did he provide any authorities to assist the Court in this regard.

**LAW AND DISCUSSION**

[17.] Sentencing is by far one of the most important judicial functions that the Court may have to perform. The Court, in the event of a guilty verdict or the accused person pleading guilty, must perform the delicate task of balancing the interests of all the parties involved, that is, the virtual complainant, the convicted person and the community at large, to derive at a sentence, custodial or otherwise, that is just and appropriate for the convicted person, having regard to all of the circumstances of the particular case.

[18.] The Bahamian Court of Appeal in **The Attorney General v Quincy Todd SCCrimApp No. 56 of 2010**, through the *dicta* of *John JA* at paragraph 44, provided this noteworthy observation on the Court's important sentencing function –

> 44. Sentencing is a judicial function and by far the most important function a trial judge has to perform. In the absence of statutory limitations, the judge has a wide discretion. That discretion must, however, always be exercised in a judicious manner, that is to say, the judge is duty bound to take several matters into consideration. It has always been said that he must take into consideration the aggravating as well as the mitigating factors. Consideration must be given to the nature of the crime and the manner in which it was perpetrated. At the end of the day, the judge using judicial experience, taking into consideration the relevant case law and guidance given in earlier cases is left to determine what is fair and reasonable bearing in mind that no two cases are alike. It is a delicate balancing act.

[19.] **Section 6 of the Criminal Procedure Code, Chapter 91** (the "**CPC**") allows the Court to pass any sentence that it is authorized by law to impose in respect of the offence for which it is to be imposed.

[20.] It is an undeniable fact that sentencing is not an art or science, nor is there an exact arithmetic formula for it. In the absence of any expressed or compiled guidelines on sentencing in The Bahamas (which is certainly needed), the Court is left to draw judicial guidance on sentencing from The Bahamas Court of Appeal in **Prince Hepburn v Regina SCCrApp No. 79 of 2013**, wherein *Adderley JA,* in *obiter dictum* at paragraph 36, adumbrated –

> 36. In exercising his sentencing function judicially, the sentencing judge must individualize the crime to the particular perpetrator and the particular victim

so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crimes and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation, that the tariff is reasonable and the sentence is fair and proportionate to the crime. Each case is considered on its own facts."

[21.] The criminal law, the offences contained therein and the sanctions attached, including the offences before the Court, are grounded in public policy and public interest. A breach of the criminal law will attract sanction calling for the means of sentencing. The purpose of sentencing is to promote an abiding respect for law and order and to discourage criminal activity by the imposition of criminal sanctions. However, the Court, in performing its sentencing function judicially, must always ensure that the sentence imposed upon the convicted person is just and appropriate to the criminal offence committed. The sentence must always fit the crime. The principle of proportionality was endorsed by the Bahamian Court of Appeal in **Jermaine Ramdeen v The Commissioner of Police MCCrApp No. 64 of 2018**. In that decision, *Evans JA (Actg.) (as he then was)* at paragraphs 8 and 9 provided the following observation –

8. Proportionality in sentencing is concerned with the relationship between the seriousness of the offence committed and the sentence imposed. At the same time, proportionality is about the sentencing process, not only its result. Properly understood, proportionality in sentencing entitles an offender 'to a process directed at crafting a just sentence' and 'a sentencing judge is prohibited from arriving at sentences contingent on factors unrelated to the determination of a fit sentence'.

9. The principle of proportionality was discussed by MacMenamin J in the Irish High Court in the case of Gilligan v Ireland and others [2013] IESC 45. The learned judge opined that modern authorities make it clear the fact that the judiciary is entrusted with the task of applying the principle of proportionality in sentencing and that the origin of this principle can be found in the very nature of the judicial task. He then had these instructive observations:

    34. One of the hallmarks of the exercise of judicial discretion in sentencing is the application of the overriding principle of proportionality…

35. By now, it is well established that the distributive principle of punishment under our law requires that, in general, every sentence must be proportionate to the gravity of the offence, and take into account the personal circumstances of the offender (*see Deaton; Osmanovic; and Lynch and Whelan v Minister of Justice)*. Here, the term "proportionality" is used in the sense of the judicial task of striking a balance between the particular circumstances of the commission of the offence, and the circumstances of the offender to be sentenced.

36. In sentencing, proportionality only arises when the judge is exercising a judicial discretion as to sentence, within the parameters laid down by law. Obviously, the principle does not arise in the case of mandatory penalties. The test of proportionality does, however, apply in every case where the offence, on conviction, carries a maximum penalty as opposed to a mandatory sentence. Thus, it arises in any situation where the trial court has a discretion as to the particular penalty to be imposed, within the statutory maximum sentence.

[22.] The Court is also guided by the *dicta* of *Charles J (as she then was)* in **R v Hepburn BS 2013 SC 149,** wherein it was pronounced that a trial court, in exercising its sentencing function, must have regard to the four classical principles of sentencing and apply them to the facts of the particular case at hand. The four classical principles of sentencing include: (i) retribution, (ii) deterrence, (iii) prevention and (iv) rehabilitation. It is recognized that in some cases, one of the principles of sentencing will be predominant, whereas in other cases, predominance may be given particularly to two or more of them.

[23.] The four classical principles of sentencing were adopted and re-stated by *Sir Dennis Byron CJ (as he then was)* in **Desmond Bannister v The Queen (Criminal Appeal No. 8 of 2003 – Saint Vincent and The Grenadines)**. *Byron CJ,* in providing context to the meaning of each of the four classical principles of sentencing, stated at pages 19 – 20 –

Retribution – at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in law. It is rather a reflection of society's intolerance for criminal conduct …

Deterrence – deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others, whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour …

Prevention – the goal here is to protect society from those who persist in high rates of criminality …

Rehabilitation – here, the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has, in the past, borne mixed results. Of course, sentencing ought not to be influenced by executive policy, such as the availability of structured activities to facilitate reform.

[24.] The Convict has been convicted of Unlawful Sexual Intercourse and Indecent Assault offences. The sanctions attached thereto are governed by sections 16(1) and 17(1)(a) of the Sexual Offences Act, Chapter 99. **Sections 16(1) and 17(1)(a) of the Sexual Offences Act, Chapter 99**, read, in part, as follows –

16. **Sexual Intercourse with a minor of the same sex**

(1) Any adult male who has sexual intercourse with another male who is a minor, whether with or without the consent of that other male, is guilty of a sexual offence and **liable to imprisonment for life**.

17. **Indecent assault**

(1) Any person who –

(a) indecently assaults any other person;

(b) …

is guilty of an offence and **liable to imprisonment for eight years**.

[Emphasis added]

[25.] Sections 16(1) and 17(1)(a) of the Sexual Offences Act, Chapter 99 does not fix the sentences for the Unlawful Sexual Intercourse offences and Indecent Assault offences, but fixes maximum sentences and leaves the Court with the unfettered discretion to decide what is, within that statutory maximum, the appropriate sentences for the Convict, having regard to the particular circumstances of the case.

[26.] The majority in the Bahamian Court of Appeal in **Dwight Bethel v Regina SCCrim App No. 58 of 2015**, comprising of *Isaacs JA (as he then was)* and *Crane-Scott JA*, verbalised that unlawful sexual intercourse is equivalent to rape. Unlawful Sexual Intercourse is commonly referred to as statutory rape. *Isaacs JA* at paragraph 23 made the following commentary –

> 23. … Unlawful Sexual Intercourse is in essence a rape offence as it is unlawful sexual intercourse with a minor who by law cannot consent to the act.

[27.] In **Regina v Oscar Ingraham Information No. 54/2/2013**, *Charles J (as she then was)*, at paragraph 26, noted this harsh reality concerning rape offences –

> [26] … Rape is an abomination. It is highly culpable, both in the moral sense and in its almost total contempt for the personal integrity and autonomy of the female. I reaffirm what I said in Franklyn Huggins v The Queen BVIHCR 2009/001 at paragraph 17:
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> > Short of homicide, rape is the "ultimate violation of self". It is a violent crime because it normally involves force, or threat of force or intimidation to overcome the will and the 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.

[28.] The Court, in determining the appropriate sentences to be imposed upon the Convict, having regard to the circumstances of the case, has drawn assistance from sentences imposed or affirmed for similar Unlawful Sexual Intercourse offences and Indecent Assault offences. However, the Court, whilst recognizing that such practice is customary, also recognizes that sentences imposed or affirmed for similar Unlawful Sexual Intercourse offences and Indecent Assault offences provide persuasive assistance to the Court in considering the proportionality of sentences for the Convict. These sentences do not bind the Court in any way. The Court is mindful and cautious not to be straitjacketed by precedent. This is because in considering the sentences, the Court is not seized with all the facts and circumstances of the offence(s) or the offender(s) which were before the particular sentencing judge or appellate court at the time they were imposed or affirmed. More fundamentally, the Court is cognizant that each case stands on its own peculiar facts.

[29.] In the Bahamian Court of Appeal decision of **The Commissioner of Police v Botham MCCrApp & CAIS No. 134 of 2015**, *Isaacs JA (as he then was)*, at paragraphs 35-36, had this caution for courts not to be straitjacketed by precedent –

> 35. Courts must be careful not to be straitjacketed by precedent. V K Rajah, J.A. in Kalaiarasi d/o Marimuthu Innasimuthu v Public Prosecutor [2012] SGHC 58 quoted Nigel Walker at p 6 of Why Punish: Theories of Punishment Reassessed (Oxford University Press, 1991) where the learned author said:
>
> > Yet a sentencer who regards his consistency with his colleagues' practice as a complete justification is rather like a priest who performs ritual actions without asking himself why they are a part of the ritual. Even a ritual has meaning. Punishment is something

> more than a series of hopefully consistent decisions: as we have seen; it is a social institution. Like other social institutions, it must serve – or appear to serve – one or more desired functions.

36. Rajah J.A. goes on to opine:

> It is undisputable that sentencing must serve a "societal purpose". Further, it is axiomatic, other than in situations necessitating mandatory fixed sentencing, that the sentence meted out must be rigorously justified by reference to settled sentencing objectives and principles as well as the facts of the particular case.

[30.] In **Dwight Bethel v Regina SCCrim App No. 58 of 2015**, the Bahamian Court of Appeal upheld a conviction and twelve-year sentence for an appellant who engaged in unlawful sexual intercourse with a dependent child. The appellant was married to the virtual complainant's mother, and the parties cohabited together. The first sexual encounter occurred when the virtual complainant was about 7 or 8 years of age, and while her mother was at work. The sexual encounters continued on several occasions when the appellant would pick up the virtual complainant from the Junior Achievement Program sessions or when the virtual complainant's school was dismissed early. The virtual complainant eventually became pregnant, and the appellant counselled and assisted her in obtaining an abortion.

[31.] In **Albert Alexander Whyley v Regina SCCrApp No. 184 of 2012**, a case involving unlawful sexual intercourse with a girl aged 9 years old, the Bahamian Court of Appeal substituted a life sentence imposed on the appellant for a sentence of 30 years to run from the date of conviction. *Allen P* enumerated at paragraph 24 as follows –

> 24. **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.** They deserve our protection and we believe the sentence of 30 years is appropriate.
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> [Emphasis added]

[32.] In **Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014**, a case involving incest between the appellant and his biological 15-year-old daughter, the Bahamian Court of Appeal endorsed the above-mentioned *dicta* expressed in **Albert Alexander Whyley (supra)** and affirmed a 25-year sentence imposed on the appellant. *Allen P* pronounced –

> Although Whyley is not a case for incest like this one, this court in Whyley emphasized the need for the protection of our children. As the court said in Whyley, the courts in The Bahamas owe it to our children to protect them from those who would prey on them and have sexual intercourse with them. In that sense, there is a golden thread that runs through both cases, namely, the protection of our children. It is obvious from the sentence expressed by the learned judge in this case in

imposing the sentence of 25 years that deterrence was primarily the object of the sentence.

In this case, there is only one mitigating factor, and that is that the appellant has no previous convictions. Weighed against that are numerous aggravating factors, particularly, in our view, the use of violence against his biological daughter to have his way with her, an egregious breach of trust. This young girl ought to have been able to expect protection from her father not abuse or violation.

[33.] In **Jason Lynes v The Director of Public Prosecutions 2023/CRV/VBI/99/3**, a case involving incest between an uncle and his 11-year-old niece, the Bahamian Supreme Court imposed a sentence of 15 years on the convict where he plead guilty to inserting his finger into the virtual complainant's vagina. The virtual complainant was staying at her grandmother's house at the time of the incident. *Grant-Thompson J (as she then was)*, in sentencing the convict, had this commentary at paragraph 6 –

6. … A young female relative, in the instant case, the relationship being that of a niece to an uncle, is a child deserving of protection, anywhere in the society but certainly within the confines of her family home. For the Convict to question her about her pubic hair growth or sexual maturity is inappropriate. To touch her in the most intimate parts of her body is a violation of her innocence which she can never regain. All of this from an elder family member whom she trusted. She immediately knew it was wrong and raised a "hue and cry", but these were events that should have never occurred. As an adult the Convict should have known better. He should never have sought to penetrate the vagina of his young niece.

[34.] In **BM v The Director of Public Prosecutions SCCrApp & CAIS No. 39 of 2023**, a decision emanating from this Court and which involved a case of two counts of incest between the appellant and his biological daughter, the Bahamian Court of Appeal affirmed the convictions and sentences of 25 years for each count of incest to run concurrently. The appellant had sexual intercourse with the virtual complainant on at least two occasions against her will. The first occasion was in 2015 when the virtual complainant was 15 years old and the second occasion was in 2016 when the virtual complainant was 16 years old. The virtual complainant did not immediately report the incidents to her mother or the police. In January 2017, after a recorded telephone conversation with the appellant, the virtual complainant told her mother about the incidents and played the recording of the conversation to her mother. The virtual complainant and her mother then reported the matter to the police. She gave the phone to the police and a police officer downloaded the recording of the telephone conversation. In that telephone conversation, the virtual complainant expressed to the appellant that she was traumatized by the incidents.

[35.] In **William Sturrup v The Attorney General SCCrApp No. 4 of 2007**, a case involving indecent assault between the appellant and a 10-year-old girl, the Bahamian Court of Appeal affirmed the conviction and 1-year sentence imposed by a Circuit and Stipendiary Magistrate on the appellant. The appellant was the proprietor of a local convenience store. The virtual

complainant entered the convenience store to check on the price of a small box of Tide soap powder. On enquiring, she noticed that the price was too high. Whilst in there, however, she noticed a Barbie doll somewhere close to the counter and asked the price. The appellant told her that the Barbie doll cost $12.00. The virtual complainant left the convenience store for some other establishment in search of the tide. She subsequently returned to the appellant's convenience store to purchase candy. The appellant then pulled the virtual complainant into a section of the convenience store and touched her hip and vagina. Afterwards, the appellant gave the virtual complainant the Barbie doll she had enquired into earlier at no cost. The appellant instructed the virtual complainant not to tell anyone what had happened. The appellant eventually buzzed the electronic door and allowed the virtual complainant to leave the convenience store. On her way home, while in tears, the virtual complainant encountered her babysitter, whom she told about the incident. The virtual complainant later repeated the incident to her mother and father, and the incident was later reported to the police.

[36.] In **Kenyatta Leslie Lewis v The Attorney General SCCrApp No. 19 of 2014**, a case involving an assault with intent to rape, the Bahamian Court of Appeal affirmed the conviction of the appellant but substituted the 15 years sentence imposed on him for 7 years. The virtual complainant was walking on her way to church when the appellant offered her a ride in his truck, which she accepted. The appellant drove to the virtual complainant's church, but no one was there. The virtual complainant alleged that the appellant drove her to a deserted area where he tried to grab her vagina, shouted profanities and hit her in her head.

[37.] In **Steve Luciano Bain aka "Cano" v The Director of Public Prosecutions SCCrApp No. 51 of 2022**, a case involving incest and indecent assault, the Bahamian Court of Appeal dismissed an appeal and affirmed the sentences of 9 years for incest and 3 years for indecent assault, respectively. The appellant was convicted of having sexual intercourse and indecently assaulting his 6-year-old niece. The appellant had rubbed his penis on the virtual complainant's vagina and on another occasion had indecently assault her. The incidents occurred sometime in December 2019 while at the Christmas party of a local political organization, but the virtual complainant did not tell her mother of the incidents until May 2020, when the mother had questioned her on whether anyone had ever touched her private parts. The virtual complainant responded that the appellant touched her private parts.

[38.] The Court, in determining the appropriate sentences to be imposed upon the Convict, having regard to the circumstances of the case, also considered the probation report that was prepared for and on behalf of the Convict in the exercise of the Court's discretion as outlined in **section 185 of the CPC**, which provides as follows –

> 185. (1) The court may, before handing down a sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be handed down and may receive any relevant representation from the victim or otherwise hear counsel for the defence and the prosecution on any mitigating or aggravating circumstances that may be relevant.
>
> (2) For the purposes of this section, victim in relation to the offence means –

(a) the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence;

(b) the spouse or any relative of that person in paragraph (a) or the guardian of that person where, as the case may be, he is dead or otherwise incapable of making a statement referred to in subsection (1)."

[39.] The probation report provided, in part, as follows –

> The [Convict] is the fourth (4th) of five (5) children born into a nuclear family structure, but due to marital conflict, his parents separated when he was at an impressionable age. As a result of the same, he, his mother and siblings relocated to his maternal grandmother's dwelling. However, while they were there, his father became ill and his mother opted to care for him; hence, they relocated with his father to another dwelling. At the age of nineteen (19) years, he reportedly left his grandmother's dwelling, as it became overcrowded and moved in initially with friends and then family members.
>
> The [Convict] claimed that his relationship with his grandmother, father and mother and sisters was positive, but the relationship with his older brother was not. He has been married for the past year and a half and described his marriage as great.
>
> The [Convict] graduated from the public school system, and immediately afterwards, he secured employment at [a leading wholesale drug agency in The Bahamas], where he remains to date. The [Convict's] supervisors spoke well of him and viewed him as a well-rounded employee. He was also an active and respected member of his church and enjoyed playing online video games.
>
> Persons interviewed for this report spoke highly of the [Convict] as they described him as well-mannered, bright, honest, reliable, hardworking, and ambitious. Most of them do not believe he committed the present offences. However, the [Virtual Complainant's mother] believes her son, [AGS], told the truth and that despite the [Convict's] positive attributes, he appears to need psychological help for his behaviour. On the other hand, the [Convict] has maintained his innocence.
>
> It is therefore respectfully recommended that all of the above-mentioned be taken into consideration when passing sentence.

[40.] Attached to the probation report was the Convict's Royal Bahamas Police Force Criminal Records Antecedent Form, which revealed that prior to his conviction for the offences, the Convict

had not been convicted of any criminal offence(s) in the Commonwealth of The Bahamas. Therefore, for the purposes of the law, the Convict is deemed to be a person of good character.

[41.] *Lord Lane CJ* in the English Court of Appeal decision of **R v Billam and other appeals and applications [1986] 1 All ER 985,** provided guidance for courts who are required to sentence persons convicted of rape offences. This is particularly so, given that rape offences are considered as being the most serious sexual offences. *Lord Lane CJ*, at pages 987 to 988, adumbrated –

> The variable factors in cases of rape are so numerous that it is difficult to lay down guidelines as to the proper length of sentence in terms of years. That aspect of the problem was not considered in *R v Roberts*. There are, however, many reported decisions of the Court which give an indication of what current practice ought to be, and it may be useful to summarize their general effect.
>
> For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in contested cases. Where rape is committed by two or more men acting together, or by a man who had broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point should be eight years.
>
> At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls. He represents a more than ordinary danger, and a sentence of fifteen years or more may be appropriate.
>
> Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time, a life sentence will not be inappropriate.
>
> The crime should, in any event, be treated as aggravated by any of the following factors: (1) violence is used over and above the force necessary to commit the rape, (2) a weapon is used to frighten or wound the victim, (3) the rape is repeated, (4) the rape has been carefully planned, (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind, (6) the victim is subjected to further sexual indignities or perversions, (7) the victim is either very old or very young, (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figures suggested as the starting point.

> The extra distress which giving evidence can cause to the victim means that a plea of guilty, perhaps more so than in other cases, should normally result in some reduction from what would otherwise be the appropriate sentence. The amount of such reduction will, of course, depend on all the circumstances, including the likelihood of a finding of not guilty has the matter had been contested.
>
> The fact that the victim may be considered to have exposed herself to danger by acting imprudently (as, for instance, by accepting a lift in a car from a stranger) is not a mitigating factor, and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to sexual intercourse, then there should be some mitigation of the sentence. Previous good character is of only minor relevance.

[42.] Both Counsel for and on behalf of the ODPP and the Convict identified mitigating and aggravating factors relative to the Convict for the Court's consideration in determining appropriate sentences to be imposed upon the Convict, having regard to the circumstances of the case. In the Court's view, these are the mitigating and aggravating factors relative to the Convict –

**Mitigating Factors**

(1) **No previous convictions** – the Convict has no previous conviction for any criminal offence(s) in the Commonwealth of The Bahamas. Therefore, for the purposes of the law, he is deemed a person of good character; and

(2) **Age** – the Convict is a relatively young man, aged 28 years (aged 23 years at the time the offences were first committed).

**Aggravating Factors**

(1) **Age of the Virtual Complainant** – the Virtual Complainant was 7 to 9 years old at the time of the commission of the offences;

(2) **Lack of Remorse** – the Convict has expressed no remorse or contrition for his involvement in the offences. The Convict, in maintaining his innocence and denying committing the offences, forced the Virtual Complainant to re-live trauma by having to testify in the trial.

(3) **Breach of Trust** – The Convict was the babysitter and brother-like figure of the Virtual Complainant at the time of the commission of the offences. The Convict committed an egregious breach of trust; the Virtual Complainant deserved protection and trust, not sexual violence;

(4) **Seriousness of the offences** – Unlawful Sexual Intercourse offences and Indecent Assault offences are profoundly serious offences that have deep-rooted and long-term effects on their victims;

(5) **Prevalence of Sexual Offences in The Bahamas** – from the Court's view and based on reports in the media and matters before the courts in The Bahamas, there appears to be a rising influx of sexual violence toward women and children, particularly, perpetrated by individuals in positions of trust; and

(6) **Effect on the Virtual Complainant** – It is unescapable for the Court not to find, even if there was no medical evidence to support (which is not the case), that the offences did not or will not have long-term psychological effects on the Virtual Complainant. As a result of the offences, the Virtual Complainant attempted suicide and is now confused regarding his sexual orientation. The Virtual Complainant is not sure who to love (male or female) and who (male or female) would be considered acceptable to love. The Virtual Complainant is also left pondering whether he enjoyed the sexual violence perpetrated upon him by the Convict.

[43.] The Court is satisfied that the aggravating factors listed above relative to the Convict far outweigh the mitigating factors. The Court, while considering the four principles of sentencing, is satisfied that deterrence, retribution and prevention are most paramount and determinative with respect to the case. Notwithstanding the Convict's relatively young age and the possibility of the Convict being rehabilitated, the Court is satisfied that the appropriate sentences, having regard to the circumstances of the case, must be one that not only deters the Convict from repeating similar offences upon his release but also deters any other person(s) minded to act in a similar manner.

[44.] Unlawful Sexual Intercourse and Indecent Assault offences are profoundly serious and egregious offences that have deep-rooted and long-term effects on their victims. The offences violated the Virtual Complainant and deprived him of his right (of course, when he was much older and mature enough to make such a decision) to engage in intimate activity such as sexual intercourse with the person of his choosing. It is particularly aggravating that the offences were committed by the Convict, someone whom the Virtual Complainant idolised as a big brother and best friend, so much that he referred to him as "King Basil" and a person who was in a position of trust and authority over the Virtual Complainant. Such acts are intolerable and must be met with the strongest condemnation. Sentencing decisions imposed by the courts concerning these offences must demonstrate society's abhorrence, contempt and non-participation in condoning such behaviour by perpetrators of sexual violence under any circumstance.

[45.] For the Convict to violate and abuse the Virtual Complainant not only physically but also psychologically in such an egregious manner, and having total disregard for the sanctity of the family home and the grace offered to him by the Virtual Complainant's mother and older brother, is ghastly reprehensible in the Court's view. This family trusted the Convict and obviously

considered him to be family with the tacit belief that having welcomed him and later his mother into their home with opened arms (during a period of great stress for most in The Bahamas and indeed the world, that is, during the COVID-19 Global Pandemic), he would love, protect and care for all those within the home. The conduct of the Convict revealed during his stay in the homestead could certainly not have been in the family's contemplation.

[46.] From the circumstances of this case, it is clear to the Court that the Convict was on what seems to be a comfortable routine, committing sexual acts upon the Virtual Complainant, who at the time was a very impressionable young child, whenever the opportunity presented itself. The Convict's behaviour manifested was perverted and exhibited a deceptive personality disorder.

[47.] Instead of protecting the Virtual Complainant, the Convict inflicted sexual violence upon him and violated his self-dignity and personhood. The Convict placed the Virtual Complainant in a most precarious situation and undoubtedly adds to his inability to trust others in the future.

[48.] The Court owe it to the women and children of The Bahamas to protect them from all forms of violence, let alone sexual violence. This is particularly so given that violence against women and children has exponentially increased not only in The Bahamas but the wider Commonwealth Caribbean region. These members of a vulnerable class of society deserve all the protection afforded to them under the law and more.

[49.] A strong message must be sent that the Court view sexual violence as profoundly serious and will impose appropriate sentences on individuals convicted of these offences to demonstrate the seriousness of these offences and the Court's non-acceptance of such egregious conduct.

[50.] The Court, in determining the appropriate sentences to be imposed upon the Convict, having regard to the circumstances of the case, takes judicial wisdom from the timely and relevant *dicta* of *Sawyer P* in the Bahamian Court of Appeal decision in **The Attorney General v Richard George Campbell SCCrApp No. 30 of 2004**. It is not relevant that the appellant, Richard George Campbell, was a mature adult, and the Convict in the present case is a relatively young man aged 28 years (aged 23 at the time the offences were first committed). *Sawyer P* pronounced –

> 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 position 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 in sexual forms. That is something they must try to decide when they are of a 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**.
>
> [Emphasis added]

**CONCLUSION**

[51.] Having regard to the foregoing reasons and all the circumstances of this case, the Court is satisfied that the appropriate sentence to be imposed upon the Convict relative to each count of the Unlawful Sexual Intercourse offences is 20 years.

[52.] Having regard to the foregoing reasons and all the circumstances of this case, the Court is satisfied that the appropriate sentence to be imposed upon the Convict relative to each count of the Indecent Assault offences is 5 years.

[53.] The Convict is hereby sentenced to 20 years' imprisonment for each count of the Unlawful Sexual Intercourse offences and 5 years' imprisonment for each count of the Indecent Assault offences to run concurrently from the date of his conviction on 25 February 2025. The Convict was on remand from 12 June 2023 to 3 July 2023, so the time on remand of 22 days is to be deducted from the sentences.

[54.] Whilst the Convict has not expressed any interest in enrolling in any of the programmes and/or classes at the BDOCS, should the Convict wish to do so in the future and the opportunity and availability permit, it is recommended that the Convict be so enrolled. It is also recommended that the Convict be provided with counselling services during his period of incarceration at the BDOCS.

[55.] Lastly, the Court wishes to thank Counsel for and on behalf of the ODPP and the Convict for their efforts in the case.

**Dated this 3rd day of July 2025**

**GUILLIMINA ARCHER-MINNS**
***Justice***
***Supreme Court of The Bahamas***