**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**VBI No.219/07/2021**

**B E T W E E N**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**AND**

**DANIS CEZALIEN**

**Before:** The Honourable Madam Justice Renae McKay

**Appearances:** Mrs. Tabitha Fraser for the Prosecution

Mrs. Wendawn Miller Fraser for the Convict

**Hearing Dates:** 4th November 2025

## DECISION ON SENTENCING

[1.] Danis Cezalien (or the Convict) was charged with one count of rape contrary to section 6(a) of the Sexual Offences Act, Chapter 99.

[2.] After the commencement of the trial by jury which began 12th May 2025, Cezalien was convicted by majority on 15th May, 2025 to the single count of rape and was thereafter remanded to custody at The Bahamas Department of Correctional Services.

[3.] The facts herein were that late in the evening of Saturday 25th November 2023 a grouping of friends which included the Complainant herein went out for a night on the town to celebrate her boyfriend who was regarded as a cousin of the Convict and his then roommate's birthday.

[4.] While changing party spots her boyfriend was arrested for outstanding road traffic tickets and was detained to custody. As such the Complainant ended up being together in the residence at alone with the Convict

[5.] The Virtual Complainant admitted that she had consumed at least 6 drinks and as such left the bar drunk. Having gone back to the residence she fell asleep and was awaken when she felt pressure on her chest. Initially she thought it was her boyfriend however she recalled that he was in custody and realized that it was the Convict. She began to scream and demanded that he stop. The Convict placed his hands over her mouth and had intercourse with her

[6.] Thereafter she messaged two of her friends and told them of the ordeal and sought their advice. Her friends advised her to call the Police and leave the house but she did neither because she was afraid to leave the bedroom. Later that same day she stated that she drove again with Mr. Cezalien to pick up her boyfriend from the police station but she did not feel safe to reveal what transpired to her boyfriend as yet, due to Mr. Cezalien being present at the time. The Complainant eventually told her boyfriend that the Convict had raped her and as a result they called the police. The Convict who fled was eventually arrested by Police and charged with the offence.

**The Law**

[7.] **Section 6(a) of the Sexual Offences Act, Chapter 99** provides the sentence considered appropriate where a person is found guilty of rape:-

> **"6. Any person who —**
> **(a) commits rape;**
> **(b) …**
> **(c) …**
> **is guilty of an offence and liable to a term of imprisonment within the range of fifteen years to imprisonment for life.**

**Sentencing Provision**

[8.] **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."**

**Probation Report**

[9.] A Probation Report was prepared on 28th October, 2025 by Deborah Duncombe from the Department of Rehabilitation and Welfare Services. The Court has had full regard of the same.

[10.] It was reported that Cezalien was born at New Providence in November 1993 to Haitian parents both of whom had relocated to The Bahamas and is the eldest of their six children. Educated in the public school system he completed his formal education at Uriah McPhee

Primary L W Young Junior High and Doris Johnson Senior High Schools where he said that he was "good" at some subjects and was involved in the school's soccer and baseball programs.

[11.] After graduation the Convict worked at a Mechanic shop for two years and then with his father on his fishing vessel before securing employment in the construction field since 2016. The father of one is described by his parents as a person whom "they never had problems with" and they attribute the present circumstances to his friends. They doubt his guilt. The Convict maintains that the sexual encounter between he and the Complainant that night was consensual.

**Submissions by Defense Counsel**

[12.] Mrs. Miller Fraser made submissions on behalf of the Convict. She placed reliance on the authorites of **R v Millberry, R v Coakley, and Oliver v R** arguing that the facts in this instant case are similar to those in the matter of R v. Coakley (James) where a seven-year sentence was imposed).

> **"Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for immediate custodial sentence. A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly to emphasize public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last, but no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but in cases of rape vary widely from cases to case."**

The Court continues on to discuss aggravating and mitigating factors.

> **"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 a contested case. Where a rape is committed by two or more men acting together, or by a man who has 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 15 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."**
>
> **…**
>
> **"there are, broadly, three dimensions to consider in assessing the gravity of an individual offence of rape. The first is the degree of harm to the victim;**

**the second is the level of culpability of the offender; and the third is the level of risk posed by the offender to society."**

[13.] Counsel emphasized that the Convict who had no prior convictions at the time of the offense, maintained his belief that the sex was consensual. Mr. Miller-Fraser submitted that the Convict who has begun the process of being held accountable for his actions, is not a danger to the public, would be capable of rehabilitation, and could learn a trade while in custody. Counsel submitted that a sentence in the range of seven to ten years would be appropriate and would permit the Convict the opportunity to be released at an age where he could become a productive and law abiding member of society.

**Submissions by Prosecution**

[14.] Mrs. Fraser made submissions on behalf of the Prosecution. She said that the accused was convicted in accordance with **Section 6(A) of the Sexual Offences Act, Chapter 99** which states "6. Any person who — (A) commits rape; (B) attempts to commit rape; or (C) assaults any person with intent to commit rape, is guilty of an offence and liable to a term of imprisonment within the range of fifteen years to imprisonment for life."

[15.] The Prosecutor who said that the starting point for this Court in regards to sentencing is 15 years relied on cases like **R v Millberry, Benjamin v Regina, and Frederick Green v Regina** to establish sentencing principles: retribution, deterrence, prevention, and rehabilitation.

**"Short of homicide, rape is the "ultimate violation of self". It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and 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."**

[16.] The Prosecutor highlighted the aggravating factors namely the seriousness of the offence, the fact that it was premeditated, the victim's age (23), the prevalence of sexual offences, and the fact that the Convict forced the victim to relive the trauma by pleading not guilty and showing no remorse.

[17.] Mrs. Frazer submitted that a sentence of 15 to 20 years is appropriate to send a strong message of deterrence to the community.

**Purpose of Sentencing**

[18.] 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.

[19.] 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, thus protecting the society; and

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

[20.] I have had regard to paragraph 26 of the dicta of Charles J (as she then was) in **Regina v Oscar Ingraham Information No. 54/2/2013** where she said:-

> **"[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:-**
>
> > **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 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."**

[21.] The Court is of the opinion that the sentence imposed ought to act as a deterrent from this type of behavior for other members of society who are like minded. 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 behavior is not acceptable.

## Decision

[22.] The Court has a wide and unfettered discretion to sentence an accused who has been convicted of an offence at the end of his trial. I have reviewed and considered the relevant statutory provisions, the principles of sentencing, case law on sentencing, the Probation report and the evidence as accepted herein.

[23.] I have also considered the aggravating and mitigating factors relevant to the Convict. The mitigating factors with respect to this Convict who at the time of this conviction had no previous antecedents is that he is a young man and the father of one. I find the following additional aggravating factors:-

i. The serious offence was premeditiated;

ii. The Virtual Complainant a young girl of 23 years was not the girlfriend or wife of the Convict. She was known to the Convict as the girlfriend of his roommate and a former work colleague. She was not a stranger.
iii. The Virtual Complainant was familiar with the Convict for many years prior to the incident. She ought to have felt safe and protected.
iv. The Convict took advantage of the Virtual Complainant in her inebriated state. She was too incoherent to resist or fight him off.
v. The Convict's interest in taking advantage of a female in a vulnerable state is unacceptable.
vi. The Virtual Complainant thought that she was safe in her boyfriend's home. She recalled securing the home and locking the front door behind her.
vii. The prevalance of sexual offences in The Bahamas

[24.] I take judicial notice of the prevalence of sexual matters, particularly rape against young females in the country and the need to diminish acts of this nature. I have also taken particular notice of the circumstances surrounding the acts of the rape being that the Convict took advantage of the Complainant in her inebriated state in what she considered to be a safe space.

[25.] Having performed the necessary balancing act of the aforementioned, I find that a sentence of imprisonment is appropriate for this conviction of rape. Accordingly, I find that an appropriate sentence for the conviction of rape is seventeen (17) years imprisonment. The sentence is to take effect from the day of conviction, 15th May, 2025, less the time spent on remand.

Dated this 9th day of December, 2025

W. Renae McKay
The Honourable Madam Justice