

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

Criminal Division

150/7/2015

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

M. W. S.

Before: The Honourable Madam Justice Renae McKay

Appearances: Mr. Lessiah Rolle for the Convict

Mr. Terry Archer and Ms. Tyler Murray for the Prosecution

Hearing Dates: 3rd October 2025

SENTENCING DECISION

McKay J.

[1.] M.W.S. (**hereinafter referred to as Saunders or the Convict**) was charged with two counts of attempted incest:-

[2.]After a trial by jury, he was on the 14th July 2025 convicted of the offences. A sentencing hearing followed on the 3rd October 2025 and I now give my decision on the same.

Summary of the Facts

[3.]The facts as were put to the jury are set out as follows:-

[4.]The Convict is the maternal grandfather of the Complainant. Regrettably financial issues forced her mother to relocate back to the family homestead with her son and daughter earlier in 2019. They all shared a sleeping bed in a room with another relative.

[5.]The convict on two separate occasions in September of 2019 at the family residence at Mt. Tabor Estates firstly on the exterior heading towards the back yard and the second occasion about a week and a half later at the Blue Room inside the home attempted to have sexual intercourse with his then eleven year old granddaughter by raising her clothing and attempting

to insert his penis into her vagina. The matter was reported to the Police after the Complainant told her mother.

The Law

[6.] **Section 83 of the Penal Code** provides that a person who attempts to commit an offence by any means shall not be acquitted on the ground that, by reason of the imperfection or other condition of the means, or by reason of the circumstances under which they are used, or by reason of any circumstances affecting the person against whom, or the thing in respect of which, the offence is intended to be committed, or by reason of the absence of such person or thing, the offence could not be committed according to his intent.

(2) Whoever attempts to commit an offence shall, if the attempt is frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall, except as in this Code otherwise expressly provided, be punishable in the same manner as if the offence had been completed.

[7.] **Section 13 (1) of the Sexual Offences Act, Chapter 99** provides the term of imprisonment which is appropriate where a person has been found guilty of incest 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 — (a) if he is an adult who commits the offence with a minor, to a certain term; (b) if he is an adult who commits the offence with another adult for life

Sentencing Provisions

[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 30th September, 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 the now 65 year old Convict who was born at New Providence is a retired Carpenter. He and his wife have been married for over 40 years and is the father of five children and the grandfather of the Complainant. The Convict is an active member of a local church for the past seven years. His Pastor who believes in second chances and grace

described the Convict as a dedicated Christian who is committed to his Christian walk. A niece said of him "UM quickly became a father figure to me and I admired his love for God, his wife and his children....I was terrified to learn of the egregious false claim spoken against UM".

[11.]The now 17 year old Complainant said that she is coping well as the incidents happened "quite a while ago" however she gets the occasional "flashbacks" She is seeking justice for herself and her mother because he betrayed them and she wants to protect others from him. Her mother believes that the Convict needs psychiatric help.

[12.]The Convict is reported to have been vague in the initial interview with the social worker as he attempted to recall when the offences could have happened and said that whatever happened must have happened quickly. In a subsequent interview he said that the charges were made against him more than six years ago and trying to remember what happened then was challenging for him. He said there was a possibility that he might have been tipsy but he couldn't believe what happened happened. He said that he feels bad really bad and wants his granddaughter to know that he "screwed up really, really bad"

Submissions by Defense Counsel

[13.]Mr. Lessiah Rolle in his submissions on behalf of the Convict, argued that the rehabilitative purpose of sentencing is most relevant, noting the Convict has acknowledged his failure and already started the process of rehabilitation, becoming a "changed person.

[14.]The Convict he said who is 64 years old suffers from high-blood pressure and has received good character references from church members. Counsel asked the Court to impose a sentence of **no more than four and a half years**, and requested that all time spent on remand be deducted

Submissions by Prosecution

[15.]Mr. Terry Archer made submissions on behalf of the Prosecution. Mr. Archer emphasized that the sentence must reflect the seriousness of the crime against children, especially by a person in a position of trust. He noted that under the Penal Code, an attempt carries the same sentence as the actual offense

[16.]Counsel described the actions as "egregious," noting the disparity in age (58 at the time of the offense vs. the 11-year-old victim): He highlighted the victim's pain and the family trauma caused by the acts. Mr. Archer contended that the Convict's limited remorse, blame on being "tipsy," and "he say, she say" attitude show a failure to fully accept the gravity of his actions, which undermines his claim to rehabilitation.

[17.] Mr. Archer placed reliance on a number of authorities. He relied firstly on the principles of sentencing as was shown at page 5 in Regina v Musgrove [2012] 1 BHS J. No. 107, per Justice Charles at paragraph 25 quoted the establish principles of sentencing:-

"Punishment is always a matter for the court's discretion having regard to the particular circumstances of the case. When sentencing, the Court must have regard to four classical principles of sentencing which could be summed up in four words 'retribution, deterrence, prevention and rehabilitation.'"

[18.] Mr. Archer also relied on the authority of Gordon v Regina SCCrApp No. 74 of 2014. Gordon was charged and convicted of incest with his 15-year old daughter. Consequently, a custodial sentence of 25-years was imposed upon him; a sentence which he subsequently appealed his sentence to the Court of Appeal. In her oral judgment Dame Anita Allen, P stated at paragraph 7:-

"In this case there is only one mitigating factor, and that is that the appellant has no previous convictions. Weighed against that are the numerous aggravating factors, particularly, in our view, the use of violence against his biological daughter to have his way with her, and egregious breach of trust. This young girl ought to have been able to expect protection from her father not abuse or violation. In the premises, we find the judge's sentence appropriate and a reasonable exercise of her discretion. We therefore dismiss the appeal and affirm the sentence of 25 years from the date of conviction."

[19.] In Gordon, the Court also quoted the case of Albert Alexander Whyley v Regina SCCrApp No. 184 of 2012. In that matter, Whyley was charged with unlawful sexual offence and sentenced to life imprisonment. Upon his appeal, the Court of Appeal agreed that Whyley deserved a 'significant term of imprisonment'. However, the panel was of the view that a determinate sentence would be more appropriate. Dame Anita Allen, P, at line 20 in her oral judgment provided:-

"We therefore allow the appeal and substitute the sentence of 30 years from the date of conviction. We also affirm the direction of the learned judge that treatment be afforded to the appellant while he is in prison. We believe that we owe it to the children of The Bahamas to protect them from people who prey on them and have sexual intercourse with them at the age of 9 years. They deserve our protection and we believe the sentence of 30 years is appropriate."

[20.] Further in Jason Lynes v The Director of Public Prosecutions 2023/CRI/VBI/99/3 paragraph 16, the Defendant was charged with one count of Incest, contrary to Section 13(1)(a) of the Sexual Offences Act, against his 11-year old niece. The Defendant pleaded

guilty before the commencement of the trial and was sentenced to 15 years imprisonment. In balancing the Court's goals of implementing a stern, yet fair punishment for the Convict in this matter, the Court found that 15 years was reasonable. The Court's reasons are that:-

“i. The virtual complainant was young and was a relative of the Convict; ii. The victim was in her grandmother's house, which is a place where she should have felt protected and not assaulted and abused; iii. The Convict was her relative; an older uncle. The victim should have been able to look up for the Convict for protection from the streets and the curve balls of life, rather than him being her assailant; iv. The Convict's interest in an 11-year old girl is emerging sexuality (a time she herself was probably confused by the changes of the body) is unacceptable. The Convict sought to abuse and breach the victim's trust by asking her inappropriate sexual questions, pulling aside her panties and penetrating her vagina with his fingers; v. The Convict did not even care that other relatives were home. He assaulted her with other relatives in the next room; vi. The Convict is an adult. He should have known better. In this particular incident "his remorseful attitude and early plea are appropriate under the circumstances. The Court must say from his very demeanour he looked ashamed, as he should under all of the circumstances; vii. The breach of trust, abuse of authority and sexual violation of the victim is highly aggravating, however, the Court will temper justice and will show mercy on the Convict...and impose a sentence of 15 years.”

[21.]. Counsel submitted that the Defence's request of a sentence of four and a half years is "unduly lenient. He urged the Court to prioritize deterrence and prevention to protect the community.

Purpose of Sentencing

[22.]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 if 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.

[23.]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.

[24.]The court takes express notice of the principles outlined in **Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014** where the Defendant was sentenced to a term of twenty five years imprisonment. In that case the Defendant had been convicted of ten acts of incest against his biological daughter of fifteen years.

Decision

[25.]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. With respect to the Convict in the instant case, I have reviewed and considered the relevant statutory provisions and case law on sentencing, in addition to the aggravating and mitigating factors and the principles of sentencing.

[26.]Having performed the necessary balancing act of the aforementioned, I find that a sentence of imprisonment is appropriate for the conviction of two counts of attempted incest.. Such sentence shall automatically encompass all four of the classical principles of sentencing. The Courts reasoning for the sentence are as follows:-

- i. The virtual complainant was 11 years old at the time of the commission of the offence by the Convict and he was 59 years old;
- ii. The Convict is the maternal grandfather of the Complainant. She ought to have been able to feel safe and protected by the Convict and not taken advantage of. The Convict should have been one of the person that she looked to for protection from the streets and curve balls of life;
- iii. The Convict's interest in a 11 year old girl is emerging sexuality (a time when she herself was probably confused by the changes of her body) is unacceptable;
- iv. The Convict breached the trust of the virtual complainant by his inappropriate sexual acts at the family home;
- v. The Convict is an adult and ought to have known better. He is not remorseful;
- vi. The breach of trust, abuse of authority and sexual violation of the virtual complainant is highly aggravating.

[27.]I take judicial notice of the prevalence of sexual matters, particularly against young females in the country and the need to diminish acts of this nature. I have also taken notice of the circumstances surrounding two counts of attempted incest.

[28.]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. The sentence of the Court must be able to act as a deterrent to the Convict specifically and to any other person

minged to act in a similar fashion'. Having regard to the circumstances of the case I am of the view that it does so.

[29.]Accordingly, I find that an appropriate sentence for the convictions is as follows:-

- i. One count of attempted incest contrary to section 23 (1)(a) of the Sexual Offences Act, Chapter 99, twelve (12) years;
- ii. One count of attempted incest contrary to section 23 (1)(a) of the Sexual Offences Act, Chapter 99, twelve (12) years;

[30.]All sentences are to run concurrently from the date of conviction namely 14th July 2025. The Convict who is advised of his right of appeal is to be given credit for any time spent on remand.

Dated this 9th day of December, A.D. 2025

**Renaë McKay
The Honourable Madam Justice**