

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

Criminal Division

265/10/2022

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

JAKYLE BARRY

Before: The Honourable Madam Justice Renae McKay
Appearances: Mr. Glendon Rolle, Counsel for the Convict
Mr. Basil Cumberbatch, Counsel for the Prosecution
Hearing Dates: 17th April, 2026

Background

1. On 24th November 2025, Jackyle Barry (“the Convict”) pleaded guilty to eleven counts of unlawful sexual intercourse, contrary to section 10(1)(a) of the Sexual Offences Act, Chapter 99.
2. The unlawful sexual relationship between the Convict and LM (“the Virtual Complainant”) commenced in or about August 2021 and continued until sometime in April 2022.
3. At the material time, the Convict was 19 years old. The Virtual Complainant was a female child aged 12 to 13 years. The acts occurred at the residence of the Virtual Complainant’s grandmother in the Berry Islands, The Bahamas, where the Virtual Complainant was then residing.

4. As a result of the unlawful sexual relationship, the Virtual Complainant became pregnant and later gave birth to a baby boy. A paternity test was conducted and confirmed that the Convict is the child's biological father.
5. A probation report was requested on the Convict's behalf, and the matter was adjourned to 17th April 2026 for a sentencing hearing.
6. Having heard submissions from Counsel for the Convict and Counsel for the Prosecution, I reserved my decision, which I now render.

The Law

7. **Section 10(1)(a) of the Sexual Offences Act, Chapter 99** provides that:-

Any person who —

(a) has unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or

(b) ...

is guilty of an offence and liable to imprisonment for life.

Sentencing Provision

8. **Section 185 of the Criminal Procedure Code, Chapter 91** ("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.

9. The Court is therefore required to impose a sentence that is proportionate and just, having regard to the particular facts of the case and the circumstances of the offender.

Probation Report

10. A probation report dated 13th February 2026 was prepared by Ms. Deah Duvalier in respect of the Convict. The report addresses, *inter alia*, the Convict's guilty plea, his expressions of remorse, the death of his mother during his incarceration, the absence of information concerning his father, his employment history, favourable character references, and his apparent capacity for rehabilitation.

11. The report also notes the Convict's limited involvement in the welfare of his 3-year-old son and the circumstances reported by the Virtual Complainant. The Virtual Complainant, now 17 years old, has expressed a desire that the Convict play an active role in their son's upbringing.

Submissions by Defence Counsel

12. Mr. Rolle, Counsel for the Convict, submitted that the Convict pleaded guilty and did not waste judicial time. Counsel further submitted that the Convict is a young man who did not complete high school, is remorseful, and wishes to play an active role in the upbringing of his son.

13. Counsel relied on section 124 of the Penal Code, Chapter 84, and submitted that probation and compensation may be ordered instead of a custodial sentence where the nature and circumstances of the offence, the character of the offender, and other relevant considerations justify such a course.

14. He further submitted that the imposition of a lengthy custodial sentence would adversely affect the Convict's mental and medical well-being, particularly in light of the recent death of his mother.

15. Counsel submitted that the Convict is not a danger to the public, was a contributing member of society prior to conviction, and remains capable of rehabilitation.

16. In conclusion, Counsel urged the Court to impose probation or, alternatively, a custodial sentence in the range of 2 to 5 years' imprisonment.

Submissions by Prosecution Counsel

17. Mr. Cumberbatch, Counsel for the Prosecution, submitted that the Convict engaged in unlawful sexual intercourse with a minor female child who was between 12 and 13 years old, and that the minor child gave birth to a baby boy as a result.

18. Counsel submitted that the seriousness of the offence, the prevalence of sexual offences in The Bahamas, and the Convict's previous summary convictions are aggravating factors which the Court should take into account in imposing a proportionate sentence.

19. In short, Counsel submitted that a sentence in the range of 12 to 15 years' imprisonment is appropriate in the circumstances of this case.

Principles of Sentencing

21. In **Benjamin v R (1964) 7 WIR 459**, Wooding C.J. identified the classic principles of sentencing as follows:-

- i. **Retribution**: in recognition that punishment is intended to reflect society's and the legislature's abhorrence of the offence;
- ii. **Deterrence**: to deter potential offenders and the offender himself from recidivism;
- iii. **Prevention**: aimed at preventing the offender, through incarceration, from offending against the law and thereby protecting society; and
- iv. **Rehabilitation**: aimed at assisting the offender to reform his ways so as to become a contributing member of society.

20. Those objectives remain the accepted judicial purposes that guide me in determining a just, proportionate, and appropriate sentence.

21. In **Prince Hepburn v R SCCrApp. No. 79 of 2013**, Adderley JA stated at paragraph 36:-

In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator... 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 crime 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.

22. In determining the appropriate sentence, the Court must weigh the aggravating and mitigating factors, have regard to the recognised objectives of sentencing, and ensure that the sentence imposed is fair, proportionate, and tailored to the particular facts of the offence and the offender.

23. Comparable authorities may provide guidance and promote consistency in sentencing. They do not, however, displace the Court's duty to impose a sentence that accords with principle and achieves justice in the individual case.

24. In determining the appropriate sentence, I have considered previous cases involving unlawful sexual intercourse with a female under the age of 14 years and the sentences imposed in those cases.
25. In **DPP v Chervin Guepson Brown SCCrApp. No. 124/2022**, which I adjudicated, the defendant was in his late twenties when he had sexual intercourse with a 13-year-old girl. The matter proceeded to trial, and the jury unanimously found him guilty. He was sentenced to 8 years' imprisonment. That sentence was subsequently upheld by the Court of Appeal as appropriate and not excessive.
26. In **DPP v Quincy Edgecombe CRI/VBI/123/4/2024**, the convict, who was 24 or 25 years old at the time of the offence, engaged in unlawful sexual intercourse with a 13-year-old female. He had a pending unlawful sexual offence matter before the Court and previous convictions. Having pleaded guilty at the first reasonable opportunity, he was sentenced to 10 years' imprisonment.
27. These authorities are instructive as to the range of sentences imposed in cases of this nature. They also underscore that the sentence must ultimately be tailored to the facts and circumstances of the individual offender and the particular offence.
28. Unlawful sexual offences of this nature attract a maximum sentence of life imprisonment, reflecting Parliament's clear intention to mark the gravity of such offences. That maximum sentence also reflects society's abhorrence of such offending and the need for deterrence and denunciation in respect of sexual offences against innocent and vulnerable children.
29. In **Albert Whyley v R, SCCRApp & CAIS No. 184 of 2012**, Allen P substituted a determinate sentence of 30 years' imprisonment for a life sentence imposed on an offender with a prior conviction for an offence of a similar nature. In doing so, Her Ladyship observed:
- “We believe that we owe it to our 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...”**
30. While unlawful sexual intercourse with a minor is a distinct statutory offence, the underlying violation of the child's bodily integrity and autonomy is grave. The law recognises that a child under 14 is incapable of consenting to sexual intercourse. The absence of legal capacity to consent is central to the offence's seriousness.
31. I also draw guidance from **R v Oscar Ingraham No. 54/2/2013**, where Charles J (as she then was) commented on the offence of rape and the violation of the female. At paragraph 26, her ladyship stated:-

“...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 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.

Decision

32. The facts of this case are serious. The Virtual Complainant’s grandmother stated that the Convict was “like a son” to her. He also knew the Virtual Complainant’s aunt and cousins. He often visited the home where the Virtual Complainant lived and sometimes slept there. He was, in fact, the best friend of the Virtual Complainant’s cousin.
33. At the time of the offence, the Virtual Complainant was between 12 and 13 years old. She was a child of tender years and legally incapable of consenting to sexual intercourse with the Convict. The Convict was 19 years old when the unlawful sexual relationship began. He knew, or must have known, that the Virtual Complainant could not, in law, consent to sexual intercourse.
34. In those circumstances, the Convict abused his access to and familiarity with the Virtual Complainant. He took sexual advantage of her and engaged in sexual intercourse with her on numerous occasions at her grandmother’s residence. As a result, the Virtual Complainant became pregnant, and the Convict is the child’s biological father.
35. I also take into account the adverse and potentially enduring effects that the unlawful sexual encounters may have on the Virtual Complainant. At a tender age, she was placed in the position of assuming the responsibilities of motherhood, albeit with support from family members.
36. I regard the Convict’s exploitation of the Virtual Complainant’s vulnerability, the repeated nature of the offence, the age and surrounding circumstances of the unlawful sexual intercourse, and the resulting pregnancy as serious aggravating factors.
37. The sentence must therefore reflect the need for punishment, deterrence, abhorrence, and denunciation. This is particularly so where the Virtual Complainant was a child who should have been protected from the Convict’s predatory conduct.

38. I have also carefully considered the mitigating factors. The Convict is now 23 years old. He remains a young man and appears capable of rehabilitation. From the probation report, I take into account his expressions of remorse, his stated desire to be involved in his son's life and to be a positive role model.
39. I also take into account that, during his incarceration, the Convict's mother, who had assisted the Virtual Complainant with their son's upbringing, suddenly passed. He also had a difficult upbringing, having never known his father and having dropped out of school in grade nine.
40. Since his incarceration, the Convict has not committed any further offences. These considerations do not diminish the gravity of the offences, but they are relevant considerations.
41. I have also considered the Convict's previous convictions, albeit summary in nature.
42. Balancing the aggravating and mitigating factors, and having regard to the seriousness of the offences, the Virtual Complainant's age and vulnerability, the repeated nature of the offence, the resulting pregnancy, the Convict's guilty plea, his youth and personal circumstances, and the need for a just and proportionate sentence, I am satisfied that a custodial sentence is appropriate.
43. Accordingly, the Convict is sentenced to eleven (11) years' imprisonment on each count, to run concurrently, less time served on remand.

Dated this 26th day of May A.D. 2026

Honourable Madam Justice W. Renae McKay