

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

VBI No.99/3/2024

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

CASHARD SMITH

Before: The Honourable Madam Justice Renae McKay
Appearances: Ms. Tameka Roberts for the Convict
Ms. Janessa Murray and Danielle Capron for the Prosecution
Hearing Dates: 19th March 2026 and 1st May 2026

DECISION ON SENTENCING

1. Cashard Smith (hereinafter referred to as Smith or the Convict) was charged with four counts of unlawful sexual intercourse contrary to section 11(1)(a) of the Sexual Offences Act, Chapter 99.
2. Between October 2023 and March 2024, Smith engaged in unlawful sexual intercourse with [REDACTED] (“the Virtual Complainant”), then aged 14. The Convict’s unlawful sexual encounters with the Virtual Complainant occurred while she was living with her mother and stepfather, and continued after she moved in with her father and stepmother.
3. A jury was empanelled on 31st August 2025, and the trial commenced on 1st September 2025. On 4th September 2025, after instructing counsel that he wished to change his

plea the Convict was re-arraigned and pleaded guilty to all four counts. The matter was thereafter adjourned to 4th November 2025 for a sentencing hearing, and a probation report was ordered on his behalf.

4. On 1st May 2026, I heard submissions from both Counsel for the Prosecution and the Convict and reserved my decision herein.

The Law

5. **Section 11(1)(a) of the Sexual Offences Act, Chapter 99** outlined the sentence for unlawful sexual intercourse with a person between fourteen and sixteen years as follows:-

(1) Any person who —

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

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

Sentencing Provision

6. **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.”

Probation Report

7. On 5th December 2025, Ms. Tabitha Hanna of the Department of Rehabilitation and Welfare Services prepared a probation report in respect of the Convict.
8. The report contained information obtained from the Convict, his mother, Mrs. Loretta Smith, his father, Mr. Clifton Smith, his former employer, Mr. Sherman Johnson, and the Virtual Complainant’s father, Mr. Patrick Ferguson.
9. The Convict’s mother described him as quiet, observant, kind-hearted, and industrious. She stated that he shared a close bond with his family and had been an obedient child.
10. His father similarly described him as quiet, helpful, industrious, and respectful. He indicated that the Convict was not problematic and did not associate with bad company.

11. Mr. Johnson, who supervised the Convict prior to his incarceration, described him as a pleasant, helpful, respectful, and well-groomed individual. He further stated that the Convict was a good worker.
12. Mr. Ferguson, the Virtual Complainant's father, stated that his daughter had become quieter and was reluctant to discuss the sexual encounters with the Convict. He also indicated that she expressed remorse for the ordeal he endured. Further, he stated that the Virtual Complainant had not exhibited behavioural issues at home or at school, and that her grades had not declined.
13. The Convict was employed as a forklift operator prior to his conviction. He stated that he and the Virtual Complainant were in a romantic relationship and that he believed she was of the age of consent. He further stated that, had he known she was underage, he would not have entered into a relationship with her.

Submissions by Defense Counsel

14. Ms. Tamika Roberts, Counsel for the Convict, submitted that the Convict pleaded guilty shortly after the trial commenced and should receive credit for his guilty plea. Relying on paragraph 36 of **Prince Hepburn v R SCCrApp No. 79 of 2013**, Counsel emphasised the Court's duty to individualise the sentence by considering the particular circumstances of the offence and the offender.
15. Counsel further submitted that the authorities relied on by the Prosecution for sentencing were distinguishable from the Convict's case. In **Dwight Bethel v R SCCrim App No. 58 of 2015**, the offender had sexual intercourse with his stepdaughter, engaging in a relationship of trust arising from his marriage to the child's mother.
16. In **Albert Whyley v R SCCrApp & CAIS NO. 184 of 2012**, the 30-year sentence followed a rape conviction involving a repeat offender who had previously been convicted of rape and had again broken into a home.
17. **R v Oscar Ingraham No. 54/2/2013** involved the rape of a tourist, burglary of the tourist's home, robbery, and violence. By contrast, the present Convict has no previous convictions; there was no familial or trust relationship, and the aggravating features present in those cases are absent in his case.
18. Counsel further relied on **Steve Luciano Bain v DPP SCCrApp. No. 51 of 2022**, where, after a full trial, a nine-year sentence was imposed for an incestuous relationship with Bain's niece and indecent assault. The Court of Appeal upheld that sentence. Also,

in **Chervin Brown v DPP SCCrApp No. 124 of 2022**, following a trial, an eight-year sentence was imposed after the offender lured a child through Facebook under the pretence of getting a tattoo and then had unlawful sexual intercourse with her.

19. Ms. Roberts submitted that those cases were far more egregious than the present case. Also, given the Convict's previous good character, absence of prior convictions, and prospects for rehabilitation, a lesser sentence was warranted.
20. In conclusion, Counsel invited the Court to impose a hybrid sentence of five years in total, with 3 years' imprisonment and 2 years' probation.

Submissions by Prosecution Counsel

21. Ms. Janessa Murray, Counsel for the Prosecution, acknowledged the following mitigating factors in relation to the Convict:-
 - He is 34 years of age;
 - He has no previous convictions; and
 - He entered a guilty plea.
22. Counsel submitted, however, that those mitigating factors were outweighed by the seriousness of the offence and the aggravating features present in the case. In particular, Counsel relied on:-
 - The seriousness of the offence;
 - The age of the Virtual Complainant;
 - The prevalence of sexual offences in The Bahamas;
 - The manner in which the offences were carried out, including that the Convict and the Virtual Complainant met at night in the wash house in her backyard;
 - The fact that the offending occurred in the context of a relationship;
 - The Convict's lack of remorse and his constructive maintenance of innocence; and
 - The impact of the offending on the Virtual Complainant.
23. Counsel relied on **Benjamin v R (1964) 7 WIR 459**, in which Wooding CJ identified the principal objectives of sentencing: retribution, deterrence, prevention, and rehabilitation.
24. By reference to the Trinidadian case of **Edwin Farfan v R CrApp No. 34 of 1980**, Counsel submitted that the weight to be attached to each sentencing objective depends on the circumstances of the particular case.

25. Ms. Murray submitted that unlawful sexual intercourse is properly treated as a rape offence for sentencing purposes, as it involves sexual intercourse with a minor who, in law, cannot consent. In support, Counsel relied on **Dwight Bethel v R** (supra), where Isaacs JA observed that Parliament intended to protect victims of unlawful sexual intercourse and recognised the offence as being in the nature of rape. Counsel also referred to **Attorney General's Reference (No. 66 of 2010) R v W**, particularly the observations of Lord Judge on the gravity of rape.
26. Counsel further referred to **R v Oscar Ingraham** (supra), in which Charles J (as she then was) described rape as an abomination and a grave violation of personal integrity and autonomy. Similarly, in the British Virgin Island case of **Franklyn Huggins v R BVIHCR 2009/001**, she described rape as the ultimate violation of self.
27. Counsel also relied on several sentencing authorities to demonstrate the seriousness with which the courts have treated sexual offences, particularly those involving children. These included **Albert Whyley v R** (supra), where a sentence of 30 years was substituted for unlawful sexual intercourse with a 9-year-old girl. In **Dwayne Gordon v R SCCr App & CAIS No. 74 of 2014**, a sentence of 25 years was imposed for incest. In **Franky Eugene v R SCCr App No. 221 of 2015**, the offender received 12 years' imprisonment for abducting and raping the Virtual Complainant. In **R v Frederick Green No. 115/5/2013**, a sentence of 20 years was imposed for the rape of a 16-year-old girl at gunpoint.
28. In conclusion, Counsel for the Prosecution submitted that a sentence in the range of 12 to 20 years' imprisonment was appropriate. She submitted that such a sentence was necessary to reflect the seriousness of the offence, to deter the Convict and others from similar conduct, and to send a clear message to the wider community that sexual offences against minors will not be tolerated.

Purpose of Sentencing

29. 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 respect for the law and order, maintain a peaceful and safe society, and discourage crime by the imposition of sanctions. Sentencing should also aim at the offender's rehabilitation so that he may reform his ways and become a contributing member of society. Such sanctions for breach of the law are provided by law for sentencing purposes.

30. The four classical principles of sentencing propounded by **Wooding CJ in Benjamin v R** (supra) guide me in imposing an appropriate and just sentence on any offender, namely:-
- 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 society; and
 - iv. **Rehabilitation:** aimed at assisting the offender to reform his ways so as to become a contributing member of society.
31. I take judicial notice of the prevalence of sexual offences against children. As children represent the nation's future, they are entitled to the fullest protection of the law against the predatory conduct of offenders and potential offenders.
32. Parliament's intention to treat unlawful sexual offences involving children with the utmost seriousness is reflected in the imposition of a life sentence on guilty offenders. That maximum penalty underscores the need for punishment, deterrence, abhorrence and public protection.
33. However, I must conduct an individualised sentencing exercise, taking into account the facts and circumstances of these offences, as well as the relevant aggravating and mitigating factors.
34. In determining the appropriate sentence to be imposed on the Convict, I have considered the guidance provided by comparable authorities herein. I am mindful, however, that no two cases are identical and that each sentence must be tailored to the particular facts and circumstances of the case. The relevant mitigating and aggravating factors are therefore central to determining a sentence that is just and proportionate in all the circumstances.

Decision

35. The Convict is 34 years old and has no prior convictions. He is a Bahamian citizen who, prior to his incarceration, appeared to be a contributing member of society. His parents and former employer spoke positively about his character.
36. The probation report further indicates that, since his incarceration, the Convict has not committed any disciplinary infractions. These matters weigh in his favour. Having considered them, I am satisfied that the Convict can be rehabilitated.

37. These mitigating factors must, however, be weighed against the seriousness of the offence.
38. The Convict's relationship with the Virtual Complainant was secretive. He knew, or ought to have known, that the Virtual Complainant, being a child, could not, in law, consent to the sexual acts in which they participated.
39. The Convict was well acquainted with the Virtual Complainant's mother and stepfather, who were his friends. He also slept at their home. On the occasions when he slept at the home of the Virtual Complainant's mother and stepfather, he engaged in unlawful sexual intercourse with the Virtual Complainant.
40. At some point in November 2023, the Virtual Complainant's thord parties informed her mother that they suspected she and the Convict had "something going on," as they appeared to be too close. Thereafter, the Convict ceased visiting the Virtual Complainant's mother and stepfather's residence, but they continued to communicate via WhatsApp text messages.
41. Sometime in late December 2023, the Virtual Complainant began residing with her father and stepmother. Despite that change in residence, the Convict continued the secretive and unlawful sexual relationship with the Virtual Complainant.
42. The sexual encounters occurred at the residences of the Virtual Complainant's mother and stepfather, and her father and stepmother. This is a significant aggravating factor.
43. Each encounter took place when an adult was not present. That circumstance increased the Virtual Complainant's vulnerability and enabled the Convict to take advantage of her when she was away from the protection and supervision of responsible adults.
44. At the tender age of 14, the Virtual Complainant was particularly vulnerable. Rather than exercising the restraint and responsibility expected of an adult, the Convict exploited that vulnerability for his own sexual gratification.
45. As an adult, and particularly as someone who knew the Virtual Complainant's mother and stepfather well, the Convict ought to have protected the Virtual Complainant. Instead, he abused the circumstances of trust and access that existed.
46. I also have regard to the impact of the offence. Sexual offences against children are grave, not only because of the physical violation involved, but also because of the emotional and psychological harm that generally follow.

47. The psychological effects of these encounters are likely to be long-lasting and profound for the Virtual Complainant.

48. Accordingly, I am of the view that a custodial sentence is appropriate herein. Accordingly, with respect to the four counts of unlawful sexual intercourse with a minor, I impose a sentence of twelve (12) years' imprisonment on each count. The sentences on all counts shall run concurrently.

49. I shall further recommend that the Convict be exposed to carpentry and auto mechanics.

Dated this 22nd day of June, 2026

**Renaë McKay
The Honourable Madam Justice**