

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION

2020
CRI/VBI/190/10/

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

AND

RASHAD JOHNSON

Convict

Before: The Honourable Madam Justice Mrs. Cheryl Grant-Thompson

Appearances: Ms. Cordell Frazer along with Mrs. Karine MacVean for the Prosecution - Director of Public Prosecutions

Mr. Damian White & Mr. Ian Cargill-Counsel for the Convict

Date of Hearing: 30 November, 2022; 2nd February, 2023.

SENTENCING JUDGMENT

Convicted of Assault with Intent to Rape (1 count);

Prior Convictions for Indecent Assault; Convict 36 years old

GRANT-THOMPSON J

BACKGROUND

1. On 26th July, 2022, the Convict Rashad Johnson was convicted of one count of Assault with Intent to Rape, contrary to Section 6(c) of the Sexual Offences Act, Chapter 99 with a unanimous count of 9-0 Guilty.

THE FACTS

2. The facts as posited by the Crown, accepted by the Defence read as follows:

1. On Sunday the 20th September, 2020 the Convict, Rashad Johnson entered the home of the Virtual Complainant, 18 years old “**SP**” to purchase cigarettes. Her mother ran a small mom & pop shop from her residence, well known in the neighborhood. The virtual complainant received the Convict’s order and his money. The Complainant went inside to get the cigarette. She observed that the Convict had proceeded inside her home, without her consent.
2. The Virtual Complainant was then thrown onto her sofa, where the Convict crawled on top of her attempting to remove her clothing, namely, a jumpsuit. It was at that time the Convict pulled out a black gun. He pointed the same at the Virtual Complainant’s head demanding that she gives him what he wants.
3. “**SP**” repeatedly told the Convict to stop, but he refused. He went further, attempted to remove her clothing, while laying on top of her for at least twenty (20) minutes. The Convict was unmasked. “**SP**” could see his face clearly without any obstruction. Eventually, she was

able to get the Convict off. Subsequently, he left the home.

4. The Virtual Complainant immediately reported the traumatic events to her mother. “SP” provided a detailed description of her assailant. Matching the description her mother was able to provide the police with a photo of the person her daughter described. The mother recognized him from the neighborhood as someone she went to school with. The virtual complainant was not present when her mother produced the photograph to the police.
5. The matter was reported to the police. The Virtual Complaint positively identified the Convict in a twelve-man photo line-up as the person who assaulted her with the intent to rape her. The Convict was arrested and charged with the offence of **Assault with Intent to Rape contrary to Section 6(c) of the Sexual Offences Act, Chapter 99**.
6. The Convict's trial commenced on the 18th of July, 2022. The trial ended on the 26th July, 2022. The jury returned a unanimous verdict of Guilty on one count of **Assault with Intent to Rape contrary to Section 6(c) of the Sexual Offences Act, Chapter 99**.
7. A probation report was requested on behalf of the Convict. The matter duly adjourned for Sentencing Hearing until the 1st September, 2022. The probation report was not ready. Therefore, the matter was further adjourned to the 9th November, 2022 for sentencing hearing. The parties were directed to submit sentencing submissions by the 30th September, 2022. (Counsel for the Convict failed to do so).

8. The Convict was thereafter remanded to Bahamas Department of Correctional Services pending receipt of the probation report and sentencing hearing.

THE VERDICT

4. On the 26th of July, 2022 the jury returned a unanimous verdict of guilty on one count of Assault with Intent to Rape contrary to s. 6(c) of the **Sexual Offences Act, Chapter 99**.

- **Guilty 9-0**

THE LAW- ASSAULT WITH INTENT TO RAPE

5. Section 6(c) of the Sexual Offences Act, Chapter 99 provides as follows:

“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 imprisonment for life.”

I agree the obiter dicta comments of my sister The Honourable Madam Justice Indra Charles in the Supreme Court decision of **Regina v. Oscar Ingraham No. 54/2/2013** who observed relative to **Rape** at paragraph 26 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.*”

6. Further in **Franklyn Huggins v. The Queen BVIHCR 2009/001** (as cited in **Oscar Ingraham op. cit**) at paragraph 17, Justice Charles went on further to state:

"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."

7. In **R v. Puru (1985), LRC [Crim] 817** (as cited in **Oscar Ingraham op. cit**) the Court stated:

"In exercising their sentencing responsibilities, judges must balance various critical considerations. While society's condemnation of rape is a paramount consideration, sentences should also seek to protect women, to deter future offences and to punish the offender justly with regard to his case and by reference to other cases."

8. In my No Case Ruling in the instant case I observed at paragraph 30 as follows:

"In the instant case, the decision of this court is that approximately twenty (20) minutes or more of touching up someone's body as they lay on you, in my view is sexual. It entails rubbing against the Virtual Complainant's breasts and genitalia. Unless the person has an illness which prevents them from feeling being touched from the neck down, they would easily be able to feel their body being pinned down by another person for some twenty minutes and their intimate parts rubbed on even through clothing. In my view the touching is sexual

in nature. It was an uncomfortable, unfortunate, unwelcoming state of affairs that the Virtual Complainant quite properly described as feeling “violated”.

9. It was submitted that although the instant case does not involve the actual offence of Rape the principle espoused by the above are equally applicable. As assault with intent to rape “*belongs to a class of indignities against a person that cannot be fully righted and that diminishes all humanity*” the seriousness of this offence is reflected in the maximum penalty provided for by Parliament as being that of life imprisonment.

10. Consequently, in the instant case, the principles of sentencing to be applied would be deterrence, retribution and rehabilitation. In passing a determinate sentence, this Court must examine both the mitigating and aggravating factors. It is submitted that the aggravating factors far outweighs the mitigating factors identified above. My aim in this matter is one of deterrence to prevent this type of offence occurring again.

11. In the present case, the Virtual Complainant was 18 years old when the Convict entered her home, threw her onto her sofa, placed a firearm to her head and attempted to take off her clothes for twenty (20) minutes whilst laying on top of her. I reiterate that the VC stated in her evidence that she felt violated.

12. The circumstances of the Convict case is further exacerbated by his antecedents. He was serving an eight (8) months sentence for Indecent Assault, which is a similar offence to the present case, when charged with this matter. When one considers the manner in which this present offence was carried out, the

sentence passed should act as both deterrence and retribution.

13. In the Court of Appeal decision of **Kenyatta Leslie Lewis v The Attorney General SCCrApp No. 19 of 2014**, the Appellant was sentence by the lower court to Fifteen (15) years imprisonment for the offence of Assault with Intent to Rape. The appeal by the Appellant was on the ground that the sentence passed was unduly harsh.

The Court of Appeal allowed the appeal against sentence, substituted the Appellant's sentence to one of seven (7) years. What the Court took into consideration in reducing the Appellant's sentence was the fact that the victim was an older woman, she voluntarily got into the Appellant's truck, she was handicapped, that although physical violence was used, no weapon was used; and lastly that this was the Appellant's first offence. I find all of these factors as distinguishing from the instant case, here the Virtual Complainant was young, of sound mind, the Convict was rough, used a firearm and this was not his first offence of a similar nature.

14. The Learned Trial Judge in passing the sentence of 15 years took into consideration the lack of remorse, as well as the violence used in perpetrating the crime. Also taken into consideration was the seriousness of the offence. A gun was put to the head of the complainant in the instant case. She was groped relentlessly for twenty minutes. The mother recognized him as a former classmate and neighbour. The VC says she was traumatized by the incident.

15. In the instant case a firearm was used, our VC was young, only 18 years old.

The Convict trespassed and entered the VC's home without her consent. This is the Convict's second offence for a matter of similar nature. He had first completed the service of an eight month sentence for Indecent Assault.

16. In **Regina v. McKenzie [2014] 2 BHS J. No. 64**, dealing with the offence of Assault with Intent to Rape. The Bahamian Court in passing a sentence of Five (5) years took into account the fact that the Twenty –two (22) year old Convict did not have any previous convictions. The factual matrix of this case can be distinguished from the instant case, as in this case, the Convict entered the victim's room took off her panty and rubbed his penis on her thighs before she was able to successfully fight him off. No weapon was used in the commission of this offence.

RECOMMENDATIONS OF THE CROWN

17. In these circumstances, I applied the principles of sentencing, balancing the mitigating and aggravating factors in the instant case. The Crown recommended that a sentence within the range of 10 -15 years would be appropriate.

The Crown asked me to consider that this sentence will *“send a strong message to the community at large that if we are to advance as a society, this type of 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 minded to act in a similar fashion.”*

PLEA INMITIGATION OF THE COURT

18. Counsel on behalf of the Convict submitted as follows:

- Court asked to consider the Convicts time on remand;
- He was previously serving a sentence;
- Court asked to consider previous sentence for Indecent Assault.

Relevant Facts for the Courts Consideration

19. I find the following to be **mitigating factors**:

- Convict is presently 36 years old. He was 34 years at the time of the offence; and that
- The Convict was previously self-employed as a landscaper;

AGGRAVATING FACTORS

I find the following to be **aggravating factors**:

- The seriousness of the offence;
- The age of the Virtual Complainant at the time of the offence 18 years old;
- The prevalence of sexual offences of this nature in The Bahamas;
- The manner in which the offence was carried out, i.e. The Convict trespassed into the home of the Virtual Complainant forced her onto the sofa with the intent to rape her;
- Violence/Force was used to carry out the assault (a gun was placed to the VC's head);
- The weapon was never retrieved;
- The Convict has not shown any remorse. He continues to maintain his innocence. The Virtual Complainant had to endure the trauma of reliving the incident at trial;

- Possible psychological effects on the VC (in her evidence the VC states that she felt violated) ; and
- The Convict has a previous conviction for a similar offence, at the time of his trial, the Convict was serving an Eight months' sentence for Indecent Assault.

The Court took these mitigating and aggravating factors into consideration.

SENTENCING PROVISIONS

20. 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.”

PURPOSE OF SENTENCING

21. 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.

22. 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 and thus protection of the society; and
- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

The Court is of the view that the Convict should be deterred from this type of offence and other members of society who are like minded should also be deterred.

23. The Probation officer Ms. Kishlyn Dean reported on the 26th October, 2022. Ms. Sonia Saunders Assistant Director approved her report.

At page 7 of the Probation Report she concluded as follows:

“Ms. SP”, the victim in the present matter, reported that she does not know the Concerned on a personal level, only from him patronizing the “petty shop” that her mother operated from their home. Reportedly, the Concerned came to purchase cigarettes on the day the offence occurred. She gave him the same and after she turned around he pushed her on the couch and attempted to remove her clothing. However, he was unsuccessful due to her putting up a fight. Consequently, he stood up and walked out. Ms. “P” stated that she was in such a state of shock that she was unable to speak,

while he was in the home. However as soon as he left she contacted her mother and informed her of what had transpired. Her mother then reportedly contacted the Police and reported the matter.”

24. *“Ms. “P” shared that since this incident her entire perspective of life has changed. Reportedly, she does not maneuver the way she did previously and is now more vigilant in her surroundings. She also reported that she now suffers from anxiety and shakes uncontrollably when feeling overwhelmed, which she attributes to her ordeal. She added that she has had thoughts of harming herself and experiences extreme depression, as the offence has stolen her peace of mind. Her wish is that the Concerned suffer the consequences for what he has done to her and is not allowed to hurt anyone else.*

Since his remand to The Bahamas Department of Correctional Services (BDOCS), the Concerned has been housed in the Remand Centre. According to his Prison records, he has not contravened any of the Prison’s rules and regulations thus far.

In reference to the present offence, the Concerned denied committing the same. He admitted to purchasing items from the store and claimed that this is how the Victim was able to identify him. Reportedly, he feels sorry for the Victim but repeatedly

denied committing the offence. According to his Criminal Records Antecedent Form, he was convicted of Vagrancy and Indecent Assault.”

The Court noted with approval that the Convict had committed no infractions in the Correctional Facility.

PROBATION OFFICER’S SUMMATION

25. “By all accounts, the Concerned was initially reared in a stable home environment with both of his parents, until they divorced when he was seven (7) years old. His mother was reportedly the disciplinarian and attempted to instill good values in all of her children. Despite this, the Concerned admitted to using marijuana and purportedly associated with negative peers. Fortunately, he was able to complete his high school education, consistently secured gainful employment and remained employed until he was incarcerated for the present offence.

The Concerned is single and the father of a nine (9) year old daughter, whom he reportedly supports financially and plays an active role in her life. He is not romantically involved with anyone at this time.

Family members interviewed described the Concerned as a loving individual who is sometimes aggressive, temperamental and displays violent behavior when he is in need of his medication or has a craving for marijuana. However, the general

consensus appears to be that he suffers from a drug/mental disorder and is unstable.

They all expressed shock to learn of his involvement in the present offence and believe he is innocent of the same. They also are of the belief that he has redeemable qualities.

On the other hand, the victim in this matter expressed that she suffers from anxiety and experiences extreme depression, as the offence “has stolen her peace of mind”.

Consequently, she wants him to be punished for what he did to her. It is unfortunate that the Concerned finds himself in this predicament. He expressed sympathy for the Victim but did not accept responsibility for the offence.”

The Court noted that the Convict has experienced no remorse. The conduct of the victim was noted by the probation officer.

26. *It is intended that the sentence will “send a strong message to the community at large that if we are to advance as a society, this type of behavior is not acceptable, the sentence of the court must be able to act as a deterrence to the Convict specifically and to any other person minded to act in a similar fashion.”* Having regard to the circumstances of the case. The Convict continues to express no remorse. I do not make that last observation with approval. He is not capable of Rehabilitation in in the view of the Court. There is no plausible explanation here

for the gross, unacceptable behaviour of this accused man. The Virtual Complainant was not allowed to innocently sell goods in her shop- her home and trust were violated by the harsh actions of this Convict who abused her at gunpoint. I find these factors to be exacerbating. I took his time on remand into consideration.

27. Mr. Rashad Johnson you are hereby sentenced to a term of **Fifteen (15) years** imprisonment starting from the 28th February, 2023. He was convicted on the 26 July, 2022. He was released from prison on the 25th January, 2023. His sentencing hearing was on the 9th November, 2022. He has not been in custody in respect of this matter, he was granted bail by Hilton J. (I took the time on remand into consideration).

28. I promised to put my reasons in writing this I now do.

Dated the 28th day of February, A.D., 2023.

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson