

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION

2023
CRI/VBI/99/3

B E T W E E N

JASON LYNES

Convict

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Pro Se- For The Convict

Mr. Uel Johnson– Respondent Counsel for the Director of Public
Prosecutions

Date of Hearing: 16th November, 2023.

SENTENCING JUDGMENT- Incest- Convict 39 years old- Convictions - Guilty Plea; *Section 13(1)(a) of the Sexual Offences Act, Chapter 99; Dwight Bethel v. Regina SCCrivApp No. 58 of 2015; Albert Alexander Whyley v. Regina SCCrivApp & CAIS No. 184 of 2012; R v. Puru (1985), LRC [Crim] 817; R v Ingraham BS 2016 SC 24; Franklyn Huggins v. The Queen BVIHCR 2009/001; Richard George Campbell v. AG SscrApp No 30 of 2004; Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014;*

GRANT-THOMPSON J

BACKGROUND

1. The Convict, Mr. Jason Lynes, charged with the offence of **INCEST (1 count)**, contrary to Section 13(1)(a) of the Sexual Offences Act, Chapter 99. On the 16th of November, 2023, the Convict pled guilty before this Honourable Court. He was convicted of the offence.

THE FACTS

2. The facts as posited by the Crown, accepted by the Convict read as follows:
 - i. On Sunday 29th January, 2023, sometime around 12:30am the Virtual Complainant (“VC”) was staying by her grandmother’s house in Pinewood Gardens, The Bahamas. The Convict who is the uncle of the VC called for her to come to him. He resides at the Virtual Complainant’s residence. Whilst there he called the VC. He requested that she sit next to him on the sofa. The Convict asked the Virtual Complainant if she had seen her period. He further inquired if she had hair growing between her legs.
 - ii. After the Convict stopped asking the VC questions, he got up, went on his knees- facing the VC- instructed her to lift her legs up. The VC did as she was asked. The Convict proceeded to pull her panties to the left. He inserted his fingers into her vagina. The VC kicked the Convict in his stomach which resulted in him falling back. The VC got up and ran to Shadiamond’s (her cousin) room where she told her cousin everything which had transpired. Following this, the cousin Shadiamond carried the Virtual Complainant to the Police Station.

THE LAW

Incest

3. Section 13(1)(a) of the Sexual Offences Act, Chapter 99 provides as follows:

*“(1) 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, for life;...”

4. Support for the position that the offence of Incest (which has been classified as Unlawful Sexual Intercourse) is a Rape offence can be gleaned from the Court of Appeal decision of **Dwight Bethel v. Regina SCCrApp & CAIS No. 58 of 2015**. In this case Court of Appeal Justice Mr. Isaacs JA stated at paragraph 23 that:

*“It is clear that it was Parliament’s intention to provide protection to victims of unlawful sexual intercourse. **Unlawful Sexual Intercourse is in essence a rape offence** as it is a sexual intercourse with a minor who by law cannot consent to the act.”*

5. Further, Justice of Appeal Crane- Scott stated in the case **Dwight Bethel (supra)** at paragraph 53 that:

“The word “Rape” is defined in the Merriam-Webster dictionary broadly to mean: “unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against the

will usually of a female or with a person who is beneath a certain age or incapable of valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception”

6. In the Court of Appeal decision of **Albert Alexander Whyley v. Regina SCCrApp & CAIS No. 184 of 2012**, the Appellant was sentenced to life imprisonment for the Unlawful Sexual Intercourse of a nine (9) year-old girl. The Appellate Court found that a determinate sentence was more appropriate. Allowing the appeal, the Court of Appeal reduced the sentence to thirty (30) years due to the offender’s antecedent history. The Learned President stated beginning at **line 24, page 2**:

“We believe that we owe it to the 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...”

A young female relative, in the instant case, the relationship being that of a niece to an uncle, is a child deserving of protection, anywhere in the society but certainly within the confines of her family home. For the Convict to question her about her pubic hair growth or sexual maturity is inappropriate. To touch her in the most intimate parts of her body is a violation of her innocence which she can never regain. All of this from an elder family member whom she trusted. She immediately knew it was wrong and raised a “hue and cry”, but these were events that should have never occurred. As an adult the Convict should have known better. He should never have sought to penetrate the vagina of his young niece.

7. In R v. Puru (1985), LRC [Crim] 817 (as cited in R v. Ingraham BS 2016 SC 24) 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. At paragraph 28 in the case of R v Ingraham BS 2016 SC 24 Justice Charles relied on the case R v. William Christopher Milberry et al [2003] 2 Cr. App. R. (S.) 31. In this case Lord Lane, C.J., referred to the general guidelines of sentencing for Rape. Lord Lane stated that:

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an 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 emphasise public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case”

These are sentiments with which this Court agrees.

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

"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.”

10. Lastly, Lord Sawyer P. stated in **Richard George Campbell v. AG SccrApp No 30 of 2004**, that:

“In our judgment, where a person who is a mature person is convicted of a sexual offence with a minor-whether or not there is any relationship of trust-the only question is not whether or not they would go to prison, but for how long. Where they are in a relationship of trust with a minor, there can be no doubt that imprisonment is the only method of punishment for that type of offence. We say that without doubt at all. Children are not things. They are not objects. They are to be protected. They are not to be abused in any form, let alone sexual forms. That is something they must try to decide when they are of mature age, whether or not they wish to yield to a particular person. It is not for the person in a position of trust to breach that trust by corrupting them before they can handle the effects of such actions.”

11. Although the instant case does not involve the actual offence of Rape the principle espoused by the above cases are equally applicable. As asserted by Justice Charles in the case of **Franklyn Huggins (supra)** the offence of Incest and any other forms of sexual assault “*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, it is the ultimate indignity.

12. 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. The aim of this Court in the matter at hand is one of deterrence to prevent this type of offence occurring again.

AGGRAVATING FACTORS

13. The aggravating factors against the Convict namely, Mr. Jason Lynes, are as follows:

- i. **Previous Convictions-** the Convict has a previous conviction for Possession of Unlicensed Firearm and Possession of Ammunition;
- ii. **Age of the Victim-** the Virtual Complainant was eleven (11) years old;
- iii. **Breach Trust-** the Convict was the uncle of the Virtual Complainant, she deserved protection and trust not sexual abuse;
- iv. **The seriousness of the offence;** and
- v. **Prevalence of Sexual Offences in The Bahamas.**

MITIGATING FACTORS

14. The Convict a thirty-nine (39) year old, male (at the time of the committing this offence he was thirty-eight (38) years old). The following can be identified as **Mitigating Factors**:

- The Convict was extremely remorseful in his demeanour;
- The Convict pled guilty to the offence at the earliest opportunity; and

- The Convict did not subject the victim nor her family to trial or having to recount these events in a Courtroom.

CROWN'S SUBMISSIONS ON SENTENCING

15. Under all of these circumstances, applying the principles of sentencing, the guidelines from the cited authorities along with balancing the mitigating and aggravating factors in the instant case, the Crown suggested that a sentence of twenty (20) years is appropriate as the aggravating factors outweighed the mitigating factors. The Crown submitted 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 deterrence to the Convict specifically and to any other person minded to act in a similar fashion.
16. In their submissions, Counsel for the Prosecution relied on the case of **Dwayne Gordon v Regina SCCrApp & CAIS No. 74 of 2014**. In this case Defendant had been convicted of committing ten acts of Incest against his fifteen (15) year old daughter. The Appellant Court in this matter stated that *“The law considers incest a most serious offence given the maximum sentence of life which the law prescribes for that offence. In considering whether the judge was correct in imposing a sentence of 25 years and whether this court ought to interfere, we must determine whether the court's decision was outside the ambit of reasonableness or whether she was so plainly wrong that the only reasonable conclusion is that she erred in exercising her discretion in sentencing the appellant as she did”*. After considering the evidence before it

the Court of Appeal dismissed the appeal and affirmed the sentence of 25 years.

RECOMMENDATION FROM THE PROSECUTION

17. It was humbly recommended that this Court should sentence Mr. Jason Lynes to a term of imprisonment of twenty (20) years for **INCEST**, contrary to Section 13(1)(a) of the Sexual Offences Act, Chapter 99.

PLEA IN MITIGATION

18. On 16th November, 2023, Mr. Jason Lynes made a plea in mitigation on his behalf. Mr. Jason Lynes stated to this Court that he is truly sorry for his actions. He implored this Court to show mercy upon him. Further, Mr. Lynes stated that he would never commit this offence again.

SENTENCING PROVISIONS

19. 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.”

SENTENCE OF THE OFFENDER

20. In determining the seriousness of the offences, the Crown submitted that the range of sentence should be as follows:

- i. The **most serious** of offences are those in which a weapon is used resulting in serious injury;

- ii. The offences which are of **medium seriousness** are those in which a weapon is used, however, there is either no injury or very minor injury; and
- iii. The **least serious** of offences are those in which no weapon is used, or despite there being a weapon, mere threat or minimal force it used.

21. The Crown respectfully, submitted that this offence fell within the lower spectrum of the sentencing scale, i.e. of the least serious type of offence.

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 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.

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 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. However, this Court believes that this Convict is capable of **rehabilitation**. In these circumstances and applying the general principles of sentencing, the Court of Appeal guidelines as stated above along with balancing the mitigating and aggravating factors in the instant case, the Crown proposed that a twenty (20) year sentence is appropriate.

25. This Court takes express notice of the principles outlined within the case of **Dwayne Gordon (supra)**, where the Defendant was sentenced to a term of twenty-five (25) years imprisonment. In that case the Defendant had been convicted of ten acts of Incest against his biological daughter of fifteen (15) years. Conversely, in this matter Mr. Lynes committed one act of Incest against his eleven (11) year old niece- though in the eyes of this Court it is a very serious matter. Therefore, in balancing the Court's goal of implementing a stern, yet fair punishment for the Convict in this matter, this Court finds that a period of fifteen (15) years imprisonment to be reasonable. The Courts reasons are that:

- i. The Virtual Complainant was a young and a relative of the Convict;
- ii. The VC was in her grandmother's house which is a place where she should feel protected. Not assaulted and abused;

- iii. The Convict was her relative – an older uncle. The VC should have been able to look up to 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 eleven (11) year old girl is emerging sexuality (a time she herself was probably confused by the changes of her body) is unacceptable. The Convict sought to abuse and breach the VC'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. His remorseful attitude and early plea are appropriate under the circumstances. The Court must say from his very demeanor he looked ashamed, as he should under all of the circumstances; and
- vii. The breach of trust, abuse of authority and sexual violation of the VC is highly aggravating, however, the Court will temper justice and will show mercy on the Convict. This Court will not impose the sentence the Crown is requesting. In the view of the Court, for the reasons stated Fifteen (15) years is appropriate.

26. 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 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'. Having regard to the circumstances of the case I am of the view that it does so.

27.Mr. Jason Lynes you are hereby sentenced to a term of imprisonment of Fifteen (15) years, for the offence of **INCEST**. I have already taken your time on Remand into consideration in reducing the sentence. Your sentence will run from the date of conviction which is the 16th day of November, 2023.

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

Dated the 27th day of November, A.D., 2023.

The Honourable Madam Justice Mrs. Cheryl Grant-Thompson