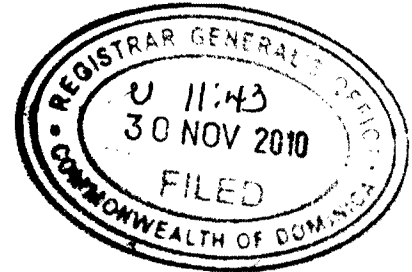


Commonwealth of Dominica
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)



CASE NO. 24 of 2010

BETWEEN:

THE STATE
and

DEVERIL BENJAMIN

Before the Hon. Justice Birnie Stephenson-Brooks

Appearances:

Mr Wayne Norde for the State with him was Mr Gene Pestaina DPP and Mr Clement Joseph
Mr Darius Jones for the Defendant

2010: October 11, 12 and 13
November 25

JUDGMENT ON SENTENCING

1. **STEPHENSON-BROOKS J:** The facts of this case are not complicated. The Defendant on the morning of the 27th October 2008 at Cochrane in the parish of St George in the Commonwealth of Dominica did have sexual intercourse with an animal to wit a cow.
2. The case for the Prosecution was based to a large extent on the testimony of the eyewitness, Ralph George. Mr. George's evidence was that on the morning in question he saw the Accused at Chemin Bois in Cochrane "sexing" the cow, which we came to know, was called Sally. The Accused raised the defence that he did not do it.
3. After approximately 1 hour and 20 minutes of deliberation, the jury returned a unanimous verdict of guilty of bestiality. The Court now has to turn its attention to the sentencing of Mr Benjamin for the offence for which he has been found guilty.

Sentencing

4. Section 17(1) of the Sexual Offences Act No 1 of 1998 Laws of the Commonwealth of Dominica provides that the maximum penalty for the offence of bestiality to be 10 years.
5. This is an offence of a sexual nature, there appears to be no benchmark period in the approach to sentencing of accused persons in cases of bestiality within the Eastern Caribbean Supreme Court and a review of the Archibald's Criminal Pleading, Evidence and Practice, Forty-third edition, available to the Court offers no sentencing guidance that could be derived from English jurisprudence.
6. The seriousness of the offence of bestiality can be gleaned by the recommended sentence in the legislation. The actual sentence imposed will depend upon the existence and evaluation of aggravating as well as mitigating factors.

Aggravating Factors

7. The following factors have been recognized as aggravating factors in this case namely:
 - i The not guilty plea of the Accused.
 - ii The Accused does not have a clean record. Although this Court considers it now spent, the defendant has been convicted of criminal offences though not this type of offence some twenty four years ago.

Mitigating Factors

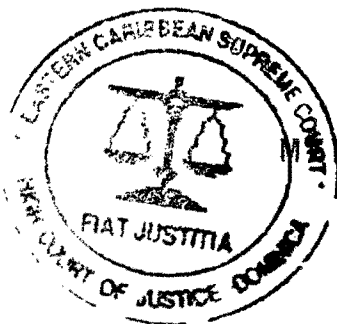
8. In my opinion, the mitigating factors are:
 - i That he has lived the last 26 years a clean life that is a life free of criminal convictions.
 - ii The Accused is a man is involved in community activities to wit being part of the Cellos Combo which is a group involved in Creole cultural activities.


iii That he also claims to be the sole breadwinner for some of his children and a contributor to his household.

9. In considering the appropriateness of sentence, I must have regard to the culpability of the accused by taking into consideration the seriousness of the offence. I am obligated to carry out an evaluative process as well before I arrive at the actual sentence to be imposed. It seems to me from the eloquent plea in mitigation presented by your lawyer that there is some remorse and I also take into consideration the stigma that you will now carry in your community.

The sentence

10. Having taken all factors into consideration and the fact that I am empowered to make a compensation order in this matter and that I have heard evidence on oath from the virtual complainant as to nature of his loss to wit that Sally the cow was acquired by him for breeding purposes and that he was compelled to have her killed as a result of the Defendant's act. That she weighed 800 pounds at her death and was worth \$3,200.00 and taking into consideration the loss of income suffered by the virtual complainant taking into consideration the vicissitudes of life; the sentence of the Court is that the Accused, Deveril Benjamin is sentenced to 3 years imprisonment suspended for three years and the Accused is ordered to pay compensation to the Virtual Complainant in the sum of \$12,000 to be paid in the following terms: the sum of \$4,000.00 to be paid forthwith and then the monthly sum of \$800 commencing the 30th day of November 2010 and continuing every month end thereafter until the total sum is paid off. Failure to make any of the payments as ordered you will be committed to Stock farm state prison for a period of three for every payment that is missed.




Birnie Stephenson - Brooks
High Court Judge