

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2010/1146

BETWEEN:

THE QUEEN

Claimant

and

SEBERIAN FRANCIS

Defendant

Appearances:

Mr. Stephen Brette for the Claimant
Mr. Jeannot-Michel Walters for the Defendant

2017: March 23.

JUDGMENT ON SENTENCING

[1] **CUMBERBATCH, J.:** The Virtual Complainant and the Defendant lived in close proximity to each other and are cousins. During the month of July 2010 when the Virtual Complainant was 11 years old her mother would send her to the Defendant's home to purchase cinnamon. On one such occasion the Defendant pushed the Virtual Complainant in his bedroom, removed his pants and her underwear and had sex with her. At that time the Defendant was 54 years old.

[2] This matter was reported to the police and the Defendant was charged and later indicted by the Director of Public Prosecutions for the offence of Sexual Intercourse with a Minor contrary to Section 126(1) of the Criminal Code 2008. At his trial the Defendant changed his plea to one of guilty.

THE PRE-SENTENCE REPORT

[3] The Defendant is a farmer and lived at his aunt's premises. He discloses that for some time he lived in the forest in a shack as a Rastafarian. He has a cordial relationship with his mother and takes care of her.

[4] Community residents and family members state that they have no complaints of the Defendant. Some state they were surprised to hear of his involvement in this matter. They consider this act to be out of character for him.

[5] I consider the following to be the aggravating and mitigating factors herein.

Aggravating Factors

1. The prevalence of this offence,
2. The Virtual Complainant was a mere 11 years old,
3. The victim was vulnerable because of her age,
4. The offence was planned and premeditated,
5. The substantial difference in ages of the Defendant and Virtual Complainant,
6. The Defendant's breach of trust by the Defendant who is his cousin,
7. The psychological effect of this offence on the Virtual Complainant as is evidenced by the victim impact statement in the Pre-Sentence Report.
8. The Defendant is not remorseful for what he has done to the Virtual Complainant.

Mitigating Factors

1. The Defendant's guilty plea.

[6] I have considered the submissions from counsel on both sides and the facts and circumstances of this case. I find that the aggravating factors outweigh the mitigating ones. Accordingly I find that a sentence of 8 years imprisonment is appropriate.

[7] This Defendant committed a most heinous offence. The commission of this offence on his young relative is reprehensible more so for someone of his age. His denial of involvement in this offence is indicative of the fact that he has not taken responsibility for his actions.

[8] This offence is prevalent in the jurisdiction to the extent that it has become a matter of national concern. Parliament has imposed a most draconian penalty for the commission of this offence that is life imprisonment. The Court must of necessity show its abhorrence for this type of conduct

especially when it involves persons in the Defendant's age group and victims of the age of the Virtual Complainant.

[9] The Court must take steps to have the Defendant rehabilitated and weaned *off* this type of heinous activity . The bald facts are that this 54 year old Defendant was attracted to and sexually aroused by his 11 year old cousin which places him in the category of a pedophile.

[10] Notwithstanding the charitable opinions of relatives and community residents the Court must impose a suitable sentence to deter this Defendant and others of similar ilk from committing this type of offence which as I have already stated is prevalent in the society.

SENTENCE

[11] In **Winston Joseph v Regina Sir Dennis Byron** suggested the following guidelines on sentencing an offender for unlawfully carnally knowing a female under age 13. He opines thus:

"Section 215

"Whoever unlawfully and carnally knows any female under thirteen years of age, whether with or without her consent, is liable indictably to imprisonment for life, and to flogging"

"In this category a wide range is likely. Starting at a minimum where the girl is not far from her thirteenth birthday and there are no aggravating factors at 8 years and going upwards. It scarcely needs to be said the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases". (underscoring mine)

[12] In imposing a suitable sentence I have taken into account the Defendant's guilty plea and the delay in bringing this matter to a stage of finality. Though the Defendant was on bail he would have had the proverbial sword of Damocles hanging over his head for almost 7 years.

[13] Thus the Defendant is sentenced to 8 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall also be placed on a program for his rehabilitation from pedophilia.

FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE