



**IN THE SUPREME COURT OF  
THE TURKS AND CAICOS ISLANDS**

**CR 37-38/21**

**REGINA  
AND  
DERRICK MILLER**

**BEFORE:-**

**THE HON. JUSTICE LOBBAN JACKSON**

**APPEARANCES: -**

**MS. LARA MAROOF FOR THE DEFENDANT**

**MS. TAMIKA GRANT FOR THE CROWN**



**DELIVERED: MAY 12, 2022**

**HEADNOTE**

*Sentence-Criminal Law- Sections 3 and 7 of the Sexual Offences Ordinance 2020-Rape-Attempted  
Rape- Principles of Sentencing-Level of Culpability-Vulnerable Victims-Aggravating Factors-  
Mitigating Factors-Sexual Harm Prevention Order*

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## **SENTENCING REMARKS**

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### **Introduction**

1. The Defendant is before the Court for sentencing following his guilty pleas on March 4, 2022 to two counts of attempted rape and one count of rape with respect to D.R, a child under the age of sixteen (16) years; and five counts of rape with respect to S.P, a child under the age of thirteen (13) years old, contrary to sections 3 and 7 respectively, of the *Sexual Offences Ordinance* 2020 (the Ordinance).
2. The maximum sentence under sections 3 and 7 of the Ordinance is a term of imprisonment for life.

### **Summary of Facts**

3. The Defendant met S. P and D.R. sometime in 2014 at the Salvation Army Church in Providenciales, where he was a Pastor up to the time of his arrest for the offences before the Court. At the time he met the complainants, S.P was six years old and D.R was 8 years old. However, at the time of the offences S.P was 11 years (first offence) and D. R was 14years old, the girls were best friends.
4. The Complainant arose on Friday May 21, 2021 when S. P's older brother received a call from her school to report that a phone she was using in class had been confiscated. S. P's brother received the iPhone 11 examined it, and discovered a conversation of a sexual nature on WhatsApp between his sister and the Defendant. He confronted S.P about the messages, reported the matter to the Police and handed over the said phone to them.

5. On the same day of the report, S.P was taken to the Safeguarding and Public Protection Unit where a video recorded interview was done with her. The interview revealed that the Defendant had been having sexual encounters with S.P for a period of time commencing sometime after March 25, 2020. The sexual acts took place at his home in Blue Hills, or at the Salvation Army Church building in Plantation Hills. On two occasions,<sup>1</sup> the Defendant took S.P and D.R to his home and had sexual intercourse with S.P in the presence of D.R, and on a separate occasion,<sup>2</sup> the Defendant asked S.P to suck his penis and he ejaculated in her mouth. Yet another occasion<sup>3</sup> the Defendant had anal intercourse with S.P.
6. On May 25, 2021, the Police interviewed D.R at the Safeguarding and Public Protection Unit. In that interview D. R disclosed that in 2020 and 2021, there were occasions when the Defendant would take her to school and sometimes buy her toiletries. Then one day in January of 2021, after Church he informed her that he had been having sex with S.P and invited her to join them. The Defendant then took D.R to his home and attempted to have sex with her, however, he was unsuccessful.<sup>4</sup> He then penetrated her mouth in an act of oral sex.<sup>5</sup>
7. On another occasion the Defendant took both girls to his house and attempted to have intercourse with D.R again. However, due to the pain she experienced, she

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<sup>1</sup> Counts 5 and 6 of the Information

<sup>2</sup> Count 7 of the Information

<sup>3</sup> Count 8 of the Information

<sup>4</sup> Count 1 of the Information

<sup>5</sup> Count 2 of the Information

refused to continue,<sup>6</sup> the Defendant then proceeded to have intercourse with S.P. in the presence of D.R.

### **Submissions by the Prosecution**

8. The Prosecution submitted that if this court were to find that the offences fell within category 2, culpability A of the UK Sentencing Council Guidelines on for Rape of a Child Under 13 years (SCG), with a starting point of 13 years' custody and category range of 11-17 years custody; that the upper limit of 17 years is just a suggestion and that this court is not bound by those guidelines. Further that they are not suited for the particular realities of the Turks and Caicos Islands (TCI).
9. The Prosecution directed this Court's attention to the sentencing guidelines for the Cayman Islands and Jamaica where the category ranges for the same offences are 15-24 and 15 to 20 years respectively. It was submitted that the size and sociological make up of those jurisdictions are closer to the TCI, than the UK.
10. It is the Prosecution's submission that the Defendant engaged in deviant sexual behavior with the complainants in that he engaged in several types of sexual acts, including anal and group sex and that this occurred over a period of two years.
11. The aggravating factors submitted by the Prosecution are as follows:
  - (i) The age difference between the Defendants who were 11 and 12 at the time the relationships began.
  - (ii) The vulnerability of both victims with regard to their socio-economic status and S.P as a victim of previous sexual abuse, coupled with the Defendant's knowledge and exploitation of these factors

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<sup>6</sup> Count 3 of the Information

- (iii) Premeditation of the offences
- (iv) Exposure to semen and other bodily fluids
- (v) Participation in deviant sexual behavior with children
- (vi) Attempts to conceal evidence by asking the complainants to delete WhatsApp messages from their phones.
- (vii) The Prevalence of the offence in the community.
- (viii) Abuse of a position of trust.
- (ix) The length of the sexual relationship.
- (x) Grooming
- (xi) Emotional and psychological abuse.

12. The mitigating factors identified are the guilty pleas and previous good character.

13. The Prosecution also made an application for a Sexual Harm Prevention Order pursuant to section 97 of the Ordinance.

### **Submissions by the Defence**

14. The Defence submitted that the **UK Sentencing Council Guidelines for Rape of a Child under 13** are relevant to these proceedings.

15. It was submitted that the offences for which the Defendant pleaded guilty, fall within "*Harm Category 2*" given that children were particularly vulnerable due to extreme youth and personal circumstances. It was also conceded that the offending falls within "*Culpability A*"<sup>8</sup> as the Defendant was in a position of trust as the pastor

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<sup>7</sup> UK Sentencing Council Guideline on Rape of a Child Under 13

<sup>8</sup> UK Sentencing Council Guideline on Rape of a Child Under 13

of the Salvation Army Church which the victims and their families attended. That trust was breached in the commission of the offences. There was also evidence of grooming with respect to S.P and D.R.

16. The Defence submitted that, if the Court determines that the offences fall within Culpability A-Category 2, the starting point is 13 years custody with a category range of 11-17 years.

17. The Defence identified the following aggravating factors:

- (i) Ejaculation
- (ii) Location of the offence
- (iii) The presence of other children (both victims present)

18. The mitigating factors were identified as:

- (i) The Defendant has no previous convictions
- (ii) Good character, as referenced is the pre-sentence report

19. The Defence submitted that the Defendant pleaded guilty at the earliest opportunity and that this saved the victims from having to testify at trial and from the likely distress this may have caused. In the circumstances a one- third discount on sentence is appropriate for such pleas.

### **Victim Impact Statement**

20. As a result of being one of the victims in this case, S.P has been separated from her family and placed in a safer environment. This aspect has apparently had the most devastating effect on her. She blames "Captain Miller" who was her Godfather, an indication of the high regard in which he was held by her family.

21. S.P says that she feels bad about what happened and *“want Captain Miller to know that he is a bad person and need to stay in prison for the rest of his life because I do not want this to ever happen to any other child”*<sup>9</sup>.
22. S.P, who has been receiving counselling, says she is often sad and has trust issues, especially around men. However, she feels safer knowing that the Defendant is in prison. In summary and in her own words S. P said: *“ I want Captain Miller to stay in Jail forever, I believe Captain Miller is a danger, he should remain in prison for a long time because of the things he has taken away from me.”*<sup>10</sup>
23. D.R. opted not to write a victim impact statement but shared that she feels terrible about what transpired.<sup>11</sup>

### **Pre-Sentence Report**

24. The Pre-Sentence Report disclosed that the Defendant is 48 years old, was raised in a good home, his father was an Assistant Commissioner of Police and His mother a school principal. He spent the majority of his formative years attending Church and categorized his childhood in positive terms.
25. The Defendant who is married, received a high school diploma at North Georgetown High School in Guyana, He attended the Salvation Army Training College in Jamaica, where he completed several training courses including “Safe & Sound,” a program designed for the protection of children and vulnerable adults. He also enrolled in the Jamaican Theological Collage where he pursued a Bachelor’s Degree in Theology.

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<sup>9</sup> Victim Impact Statement -Emotions or Feelings Related to the Crime page 3

<sup>10</sup> Victim Impact Statement -Summary

<sup>11</sup> Pre-Sentence Report page 4

26. Family members and colleagues of the Defendant expressed shock at his involvement in the current offences. The Salvation Army Divisional commander described his actions as “*totally out of character*”, and noted that “*grown adults interfering with children cannot be taken lightly*”.
27. The Defendant was assessed as being “*articulate, manipulative and charismatic; all traits he used for his benefit to achieve his desired goals. .... given his charming personality and the help he provided to the victims and their families, it was easy for an attachment to form. Mr. Miller is well knowledgeable about the various psychosocial aspects of vulnerable children and families. He performed many functions which made it easy to cross boundaries and have sexual interactions with the victims*”.<sup>12</sup>
28. Based on the Static-99R instrument, the Defendant is assessed at risk level III, an average risk of sexual re-offending and a sentence away from the community was recommended.

### **Principles of Sentencing**

29. In his discussion on sentencing in ***R v. Clement***<sup>13</sup> Morrison P said at para 20 of the Judgement:

*“It is a commonplace of modern sentencing doctrine that, in choosing the appropriate sentencing option in each case, the sentencing judge must always have in mind what Lawton LJ characterized, in his oft-quoted judgment in ***Rv. Sergeant***<sup>14</sup>, as the four ‘classical principles of sentencing’ These are retribution,*

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<sup>12</sup> Pre-Sentence Report-Conclusions page 4

<sup>13</sup> (2016) 88 WIR 449

<sup>14</sup> (1975) CR. App Rep 74 at 77



*deterrence, prevention and rehabilitation .’In **R v. Dunkley**<sup>15</sup> P Harrison JA( as he then was)explained that it will be necessary for the sentencing judge in each case to apply these principles, ‘or any one or a combination of....[them], depending on the circumstances of the particular case.’ And ultimately, taking these well established and generally accepted principles into consideration, the objective of the sentencing judge must be, as Rowe JA ( as he then was) explained in **R v. Beckford**<sup>16</sup>, ‘[to] impose a sentence to fit the offender and at the same time fit the crime’.*

30. The following paragraph (21) of the said judgment is also instructive. Morrison P, went on to say:

*“But in arriving at the appropriate sentence in each case, the sentencing judge is not at large. The view that ‘[u]ltimately every sentence imposed represents a sentencing judge’s instinctive synthesis of all the various aspects involved in the punitive process’<sup>17</sup>has now given way to a recognition of a need for greater objectivity, transparency, predictability, and consistency in sentencing”*

### **Application of the Principles**

31. In applying the principles outlined above and bearing in mind that the Court has to balance a number of competing interests and objectives; and therefore to tailor the sentence to suit the offence(s) and the offender, while maintaining a level of transparency; I now turn to the guidance provided by the UK(SCG).

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<sup>15</sup> (RMCA No 55/2001) (5 July 2002, unreported) p3

<sup>16</sup> (1980) 17 JLR 202 at 203

<sup>17</sup> **Williscroft v R** [1975] VR 292-300 (Supreme Court of Victoria)

## Harm and Culpability

32. Under the **UK Sentencing Council Guidelines (SCG) for Rape of a Child Under 13**, Step 1 of the sentencing exercise requires the Court determine the category of offence with reference to harm and culpability.

33. Under the SCG there are three categories of harm and culpability which are set out below:

“HARM

### Category 1

- *The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1.*

### Category 2

- *Severe psychological or physical harm*
- *Pregnancy or STI as a consequence of the offence*
- *Additional degradation/humiliation*
- *Abduction*
- *Prolonged detention/ sustained incident*
- *Violence or threats of violence*
- *Forced uninvited entry into victim's home*
- *Child is particularly vulnerable due to extreme youth and/or personal circumstances*

### Category 3

- *Factors in categories 1 and 2 not present*

### Culpability A

- *Significant degree of planning*
- *Offender acts together with others to commit the offence*
- *Use of alcohol/ drugs on the victim to facilitate the offence*
- *Grooming behavior used against the victim*
- *Abuse of trust*
- *Previous violence against the victim*
- *Offence committed in the course of a burglary*
- *Sexual images of the victim recorded, retained, solicited or shared*

- *Commercial exploitation and/or motivation*
- *Deliberate isolation of the victim*
- *Offence racially or religiously aggravated*
- *Offence motivated by, or demonstrating hostility to the victim based on his or her sexual orientation*
- *Offence motivated by, or demonstrating, hostility to the victim based on his disability (or presumed disability)*

**Culpability B**

- *Factor(s) in category A are not present”*

34. Using the listed factors as a guide, I have determined that the offending falls in Category 2 due to the vulnerability of the victims, as a result of extreme youth and personal circumstances; and Culpability A, due to the Defendant’s abuse of the trust reposed in him as the Pastor of the Church which the victims attended. Evidence of grooming behavior towards the victims also places the offending at Culpability A.

35. The SGC Category 2/ Culpability A, has a starting point of 13 years custody and a category range of 11-17 years custody at the upper limit. Applying the full discount on the guilty pleas to the 13 years starting point, the sentence is adjusted downwards to 9 years imprisonment.

36. Having determined the category of the offence, I go on without double counting the factors previously used to arrive same, to adjust the sentence upwards using aggravating factors (ejaculation in the mouth of one victim, the presence of two victims at the same time during the commission of two the offences, and the location of the offence –at the Church) and downwards giving weight to the mitigating factors (previous good character and no previous convictions).

37. However, before doing so I consider the following questions:

- i. Has the custody threshold been passed?
- ii. if so, is it unavoidable that a custodial sentence be imposed?
- iii. if so, can that sentence be suspended?

38. Custody should be reserved for the most serious of cases and even if the threshold has been met, custody can be avoided in the appropriate case due to factors such as the offender's personal circumstances.

39. In relation to the first question, I have formed the view that the custody threshold has been met in this case and it would be wholly inappropriate to suspend the sentence.

40. Religious and community leaders are entrusted with children and the vulnerable for their care and protection, not for that trust or for the children to be used and abused. The innocence of these girls have been taken away by some who clearly had enough training to know better, but who used that training for the fulfillment his own unlawful desires.

41. Persons in the community have come to admire, look up to and respect religious leaders, and when those in positions of trust abuse that trust, it damages not only victims but also has a negative impact on the community.

### **Sentence**

42. Taking all of the above circumstances and principles of sentencing, including the totality principle into account, the sentence of the Court is 9 years imprisonment on each count of attempted rape (counts 1 and 3) and 11 years imprisonment on each count of rape (counts 2, 4, 5, 6, 7 and 8).

43. The sentences are to run concurrently and time spent on remand is to be taken into account.

### **Sexual Harm Prevention Order**

44. In addition to the term of imprisonment, I have considered the application made by the Prosecution for a Sexual Harm Prevention Order pursuant to section 97 of the Ordinance, and the Defendant's submissions in response. I have determined firstly, that this Court has the jurisdiction to make such an order and also that in the circumstance of this case and this offender, it is necessary to do so.

45. I therefore make an Order, the terms of which are attached to this decision and read in open court.

Dated this 12<sup>th</sup> day of May 2022

*/s/ T. Lobban Jackson*

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The Hon. Justice Lobban Jackson  
Judge of the Supreme Court

