



# In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2025: No. 39

**BETWEEN:**

**BRIAN BENNETT**

**Appellant**

**-and-**

**JEROME ASTWOOD**  
**(Police Sergeant)**

**Respondent**

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**Before:** **The Hon. Mr. Justice Juan P. Wolffe**

**Appearances:** Ms. Elizabeth Christopher for the Appellant  
Mr. Daniel Kitson-Walters for the Respondent

**Dates of Hearing:** 13<sup>th</sup> April 2026

**Date of Ruling:** 17<sup>th</sup> July 2026

**Date of Reasons:** 24<sup>th</sup> July 2026

## **JUDGMENT**

*Appeal against sentence – Accessing Child Pornography - Whether sentence manifestly excessive*

**WOLFFE J:**

1. On the 20<sup>th</sup> May 2025 the Appellant pleaded guilty to two (2) counts of Accessing Child Pornography, contrary to section 182H(1) of the Criminal Code Act 1907 (the “Criminal Code”).

2. On the 24<sup>th</sup> November 2025, after hearing submissions from Mr. Daniel Kitson-Walters for the Prosecution and Ms. Elizabeth Christopher for the Defence, the Worshipful Magistrate Ms. Auralee Cassidy (the “Learned Magistrate”) sentenced the Appellant to two (2) years imprisonment for each count with one (1) year of each of those sentences to be suspended for one (1) year. Both sentences were to run concurrently.
3. The Appellant was additionally sentenced to probation for a period of one (1) year with the following conditions: to refrain from use of alcohol and illicit substances; to comply with urine screening when directed by the Department of Court Services (“DCS”); to be assessed for and to complete programming as directed by DCS; not to associate with individuals engaged in illegal activity; not to attend any environments where illegal activity occurs; and, not to use any computers or any other electronic device in order to access websites that depict child pornography, child abuse material, bestiality images, and/or videos/images of sadism.
4. The Learned Magistrate also ordered that the Appellant’s name and address be entered in the sex offender register pursuant to section 329FA(2) of the Criminal Code.
5. By way of a Notice of Appeal dated 24<sup>th</sup> November 2025 the Appellant appealed the said sentence on the grounds that:
  - (i) The Learned Magistrate failed to apply her mind to the principle of “good reason” in the context of a suspended sentence.
  - (ii) There was good reason for the Learned Magistrate to suspend the period of incarceration.
  - (iii) The Learned Magistrate ought to have properly considered Community Service as a sentencing option.
  - (iv) The sentence of the Learned Magistrate was manifestly excessive.
  - (v) The decision of the Learned Magistrate was wrong in law.

- (vi) The Learned Magistrate made an error on the face of the record.
  - (vii) The decision of the Learned Magistrate was manifestly unreasonable.
- 6. Many of the grounds of appeal are essentially the same or overlap together and therefore, for the sake of efficiency, I have addressed some of them together.
  - 7. On the 17<sup>th</sup> July 2026 I dismissed the Appellant's appeal thereby upholding the Learned Magistrate's sentences. Set out below are my reasons for doing so.

### **Summary of the Evidence and Chronology of the matter**

- 8. The Summary of the Evidence, which presumably was put before the Learned Magistrate, is covered from page 21 of the Appeal Record and it states that the Bermuda Police Service ("BPS"), together with overseas partners, engaged in an ongoing investigation to identify online users who were accessing, downloading and sharing indecent images of children. This information revealed that between 27<sup>th</sup> December 2017 and 13<sup>th</sup> March 2018 an internet address in Bermuda accessed and downloaded files portraying child sexual exploitation. As a result of the information received, a search warrant was obtained for a search of the Appellant's residence on the 20<sup>th</sup> June 2018. Thereupon, police officer seized several electronic devices and eventually the Appellant and his wife were arrested on suspicion of accessing and downloading indecent child images. On the same day the Appellant's business premises were searched and several electronic devices were also seized from there.
- 9. The electronic devices seized from the Appellant's residence and business were forensically examined and the following were found:
  - (i) A total of 2,836 images/videos which were "Categorized as A" meaning that they depicted penetrative sexual images, images involving sexual activity with an animal, and images involving sadism.
  - (ii) A total of 1,022 images which were "Categorized as C" meaning that they depicted images that did not fall within Category A and Category B.

A total of 3,856 images depicting child pornography was recovered from the Appellant's electronic devices.

The Sentencing Council Guidelines in the United Kingdom lends some assistance as to the types of images which may fall under the headings "Category A", Category B", and "Category C". Category A and Category C are images as described directly above, and Category B images are those involving non-penetrative sexual activity.

10. On the 15<sup>th</sup> June 2023, five (5) years after the Appellant was initially arrested in June 2018, he was charged with three (3) offences of accessing child abusive material. This 5-year gap between the date of the offences and the date the Appellant was arrested for the second time is pertinent to this appeal.
11. On the 3<sup>rd</sup> July 2023 the Appellant appeared in the Magistrates' Court and he pleaded not guilty to three (3) offences of accessing child pornography. The Appeal Record seems to indicate that the matter journeyed through lengthy stages of case management which were punctuated by hearing and trial dates being adjourned due to a number of issues, such as: the unavailability of Mr. Kitson-Walters and/or Ms. Christpoher; protracted discussions taking place between Mr. Kitson-Walters and Ms. Christopher; and the obtaining of medical and psychological reports for the Appellant. It does not appear that any of the delay could be attributed to the Appellant.
12. On the 20<sup>th</sup> May 2025, approximately seven (7) years after he was initially arrested in June 2018 and about two (2) years after he first appeared in Magistrates' Court in July 2023, the Appellant pleaded guilty to two (2) of the offences of accessing child pornography (the Prosecution offered no evidence on the remaining offence).
13. On the 24<sup>th</sup> November 2025, approximately seven and a half (7½) years after the Appellant was initially arrested by the police, he was sentenced by the Learned Magistrate.

## Decision

14. Section 182H of the Criminal Code provides that any person who knowingly accesses child abusive material or child pornography is liable on indictment to imprisonment for five (5) years and on summary conviction for three (3) years. Having been sentenced in the Magistrates' Court the maximum sentence to which the Appellant was liable was 3 years imprisonment.
15. At the sentencing hearing before the Learned Magistrate (and in her submissions before me) Ms. Christopher, in addition to the delay point, rightly referred to the following:

- (i) Thirteen (13) treatment sessions which the Appellant had with a Dr. Gemma Harris (a chartered clinical psychologist at a wellness center called "Solstice") shortly after he was charged with the offences.

Unfortunately, Dr. Harris passed away before she was able to produce a final report but her records were reviewed by another psychologist at Solstice.

- (ii) An Adult Comprehensive Assessment and Reporting Tool report dated 21<sup>st</sup> May 2025 ("ACART") and produced by a Dr. Patrick Prince (a Forensic/Clinical Psychologist).
- (iii) A Social Inquiry Report dated 11<sup>th</sup> September 2025 ("SIR").

16. In respect of Dr. Harris' report, she said that the Appellant first started treatment in July 2023 and that while the Appellant was unclear about his intentions for therapy, such that there was "conflicted or ambiguous engagement", he demonstrated his commitment to attending therapy and discussing difficult material. As to her conclusions, Dr. Harris stated that the Appellant presented with a "*complex history of loss, attachment, and as a child victim of sexual abuse*". Further, that the Appellant's attitude towards the offence indicated "*quite a mixed picture*" and that there was "*some evidence of shame and regret*". Notably, Dr. Harris observed that there were some "complexities" in the Appellants' attitude towards the offence and that "*these include minimizing (using images rather than direct physical assault), limited victim empathy (not readily*

*identifying those in the images as victims) and justifying/accepting limited personal responsibility (for example, blaming his actions on the limited sex life with his wife, and stating that the police shouldn't allow such websites to remain available)". Dr. Harris added that "these are cognitive distortions that are known to be associated with sexual offending".*

17. As to any progress or risk factors, Dr. Harris noted that the Appellant showed a willingness to attend therapy, and that material from the "Mirrors" and "Scars" programs helped him understand sexual abuse more clearly. She concluded by saying that the Appellant would benefit from ongoing therapy.
18. In respect of Dr. Prince's ACART report, he concluded that the Appellant had "high propensity" for rehabilitation/reintegration and that the Appellant had "very low risk" of re-offending. Dr. Prince also recommended that based on the Appellant's diagnostic results, that supervision, case management, and aftercare would be necessary.
19. In respect of the SIR, it stated that the Appellant readily accepted culpability and expressed genuine remorse for his offending behaviour. The SIR report writer concluded that the Appellant's level of risk/need for services was "very low" however he could benefit from programming and counselling services that can best assist him in addressing the issues which contributed to his offending behaviour.
20. Ms. Christopher also focused on (i) parts of Dr. Harris' report and the SIR which stated or alluded to conclusions that the offences arose out of "radical and impulsive decisions" which were triggered by a road traffic accident involving the Appellant and his family, and on (ii) Dr. Harris and the SIR stating that the Appellant reported that he did not have any interest in children.
21. Ms. Christopher also noted that since 2018 there have been no reports of offending behaviour by the Appellant.
22. In passing her sentence of (a) 2 years imprisonment with 1 year suspended for 2 years and (b) probation for 1 year, the Learned Magistrate stated that she took into consideration the following (see pages 44 to 46 of the Appeal Record):

- Sections 53 to 55 of the Criminal Code i.e. the Purpose and Principles of sentencing.
- The Appellant's guilty plea and his expression of "clear" remorse. Further, that the Appellant was apologetic.
- The Appellant's previous good character.
- The volume and type of images which are the subject matter of the offences.
- The contents of the SIR, ACART, and Solstice reports.
- That the Appellant voluntarily participated in counselling services before he first came into the Magistrates' Court in July 2023 to answer to the charges.
- That the Appellant was a victim of child abuse himself.
- The 5-year delay between the date of the offences and the date when the Appellant first appeared in the Magistrates' Court.

23. From all of this, the Learned Magistrate concluded that:

*"[The Court] is satisfied the custody threshold has been passed and that a period of imprisonment is proportionate in the unique circumstances of this case and that such a period of imprisonment must be coupled with rehabilitation element."*

24. The upshot of Ms. Christopher's submissions before me was that the Learned Magistrates' treatment of the seriousness of the offence of accessing child pornography was heavy handed and that this resulted in the Learned Magistrate only suspending part of the Appellant's sentence. In this regard, Ms. Christopher sought to persuade me that (i) the offence of "accessing" child pornography under section 182H of the Criminal Code is lesser in severity than the offence of "possession" of child pornography under section 182G of the Criminal Code, and therefore, presumably,

that sentencing for the offence of accessing child pornography should be treated with less severity than for the offence of possessing child pornography; and (ii) that the Appellant's particular character was such that he was not criminogenic or pedophilic but instead he only accessed the child pornography to cope with the stressors and pressures of his life. Ms. Christopher relied on the authorities of Morelli [2010] 1 RCS 253 and Quested (2019) BCPC 95 to advance these points, but I found those authorities and her submissions to be unpersuasive.

25. Firstly, the offences of accessing child pornography and possessing child pornography attract the exact same maximum sentences, thereby registering Parliament's equal treatment of both offences. It therefore cannot be sustainably argued that the Prosecution "chose the lower threshold of accessing child pornography" and therefore the Appellant should have been sentenced on the lower threshold. Parliament did not contemplate such a distinction between the seriousness of accessing child pornography and possessing child pornography, and nor do I.
26. Further, Morelli does not assist Ms. Christopher in the way that she conveyed to the Court. While Morelli draws a distinction between "accessing" and "possession" in the sense that the latter involves an evidential element of "control" which must be proven by the prosecution beyond a reasonable doubt (such as when offending material is downloaded onto a hard drive), the authority does not go further to suggest that the accessing offence is less serious than the possession offence.
27. Secondly, whether a person accesses or possesses child pornography, the exploitative effect is the same. The significant common denominator between the two offences is the exploitation of children for sexual gratification by the perpetrator and so the culpability is the same. Especially since, the production or distribution of child abusive material or child pornography by someone (which arguably would be more serious than accessing or possessing child pornography) would not take place if there was no one to access or possess the despicable content. The Learned Magistrate was therefore absolutely correct when she said that "*The accessing of such material can be seen to encourage those who create it and further perpetuate the harm cause [sic]*".

28. Thirdly, while I accept that the offences committed by the Appellant could have been far worse if he would have distributed the images which he accessed, and while I accept that this is not a case involving the direct sexual exploitation or molestation of children, it is still a matter which represents a gross perpetuation of the victimization of our most vulnerable members of society. Along the spectrum of seriousness of all types of offences that could be committed against children accessing child pornography offences may not be the most repugnant of offences and they may not lie at the higher rungs of seriousness (that would be reserved for cases where there was actual physical sexual exploitation), but they also would not be at the lower end of the spectrum either. In essence, while those who access child pornography are not directly and physically assaulting children sexually, they are vicariously living, feeling or imagining themselves being involved in what is being depicted. There is therefore still the devastating impact that children are being victimized.
29. It is also not lost on me that when the Appellant spoke with Dr. Harris that he minimized the seriousness of what he done by drawing a distinction between accessing the child pornography and directly and physically sexually assaulting children. I accept that the Appellant may have gained better insight into his behaviour through the work of Dr. Harris and others, and so I will give him the benefit of the doubt that through the passage of time he may no longer holds these views. If this is so, then this was not communicated to Ms. Christopher who, in her submissions to this Court, seemed to also minimize what the Appellant did by comparing it to offences involving the direct physical sexual assault of children. Again, the terrible victimization of children is the same whether one is accessing child pornography which depicts the direct physical sexual assault of children or whether one is actually directly physically and sexually assaulting children.
30. So contrary to Ms. Christopher's submissions, I find that the Learned Magistrate's treatment of the severity of the offences committed by the Appellant appropriate. Moreover, the Learned Magistrate's treatment of the offences was consistent with the law and the level of seriousness in which other matters which have come before the Court have treated such offences. In passing her sentence on the Appellant the Learned Magistrate stated that *"the nature and serious [sic.] of the offence.....must reflect society's rejection of this form of conduct and that sentence must send a clear message*

*that children must be protected and these types of offences will result in an immediate period of time in custody*". These words are not much different from the words of Ward JA in the Bermuda Court of Appeal case of R v. Melvin Martin [2010] CA (Bda) 10 Crim. The appellant in Martin was sentenced to one (1) year in prison by the sentencing judge for accessing child pornography and on appeal the sentence was confirmed by the Court of Appeal. In his written decision Ward JA said: "*In the western world, of which we are a part, child pornography is condemned in all civilized societies*". In respect of the maximum sentences set out in the Criminal Code for accessing child pornography (whether summarily or on indictment), Ward JA went on to say: "*Those heavy penalties indicate the seriousness with which the Legislature regards these offences and a clear message must be sent to the deviant members of society who might be tempted to commit similar offences*".

31. I therefore find that the Learned Magistrate cannot be faulted for approaching the factual matrix of the case-at-bar with the degree of severity that she did or for adopting the reasoning that she did when sentencing the Appellant. Her words were rightly an unequivocal reflection of the feelings of disgust of the community in respect of offences related to child pornography, whether accessing such or possessing such. I therefore find that the Learned Magistrate treated the offences charged with the level of seriousness that they deserved.
32. This leads me to segue to the issue as to whether the Learned Magistrate fell into error by sentencing the Appellant as she did.
33. It is trite that the Court has the power to suspend periods of imprisonment in whole or in part if the Court is satisfied that "it is appropriate to do so in the circumstances". Section 70K of the Criminal Code is the statutory foundation for such power and the well-covered authorities of R v. Garth Bell [2016] Bda LR 104 and the more recently decided Larry Benjamin v. R [2025] CA (Bda) 19 Crim make it abundantly clear that the Court may suspend a period of imprisonment where there is "good reason" to do so, and, that delay between the date of the offence and the date of sentencing could constitute a good reason.
34. In Bell, the appellant pleaded guilty to unlawful wounding contrary to section 306B of the Criminal Code and received a sentence of imprisonment for 18 months suspended for

18 months. Baker P conveyed some instructive guidance as to what may constitute “good reason” when he said:

*“There was, in our judgment, good reason for the judge to suspend the sentence in the present case. In particular, there was little likelihood of the respondent reoffending; it was two years since the offence had been committed and he had shown himself to be leading a good and law abiding life since then and the offence itself, albeit serious, a very much one off incident.”*

35. Before me, Ms. Christopher stated that she informed the Learned Magistrate that prior to the sentencing hearing in the Magistrates’ Court that she and Mr. Kitson-Walters reached an “agreed position” that the appropriate sentence should be 2 years imprisonment suspended for 2 years. To this, it is clear from the Appeal Record that Mr. Kitson-Walters utilized *Benjamin* to underpin his position that the entirety of the 2-year imprisonment should be suspended due to the 5-year delay between the date of the offence and the date when the Appellant appeared in Magistrates’ Court to answer to the offences charged (Mr. Kitson-Walters did not resile from this position when he addressed me but he also did not exhibit much gusto in supporting Ms. Christopher’s submissions either).
36. However, it is not so clear as to whether Ms. Christopher endorsed the position taken by Mr. Kitson-Walters’ in the Magistrates’ Court as the Learned Magistrate’s notes seems to indicate that Ms. Christopher suggested that a sentence of “community service” would be the “best option”. Be that as it may, at this Appeal Ms. Christopher advocated that the proper sentence should be one of 2 years’ imprisonment suspended for 2 years coupled with 2 years’ probation (which belies the ground of appeal that the Learned Magistrate should have considered as an option a sentence of Community Service).
37. Grounds 1 and 2 of this appeal complain that the Learned Magistrate failed to apply her mind to the principle of “good reason” in the context of a suspended sentence and that there was good reason for her to do so. By virtue of her sentence of 2 years imprisonment with 1 year suspended for 2 years, it is obvious that the Learned Magistrate did apply her mind to the principle of “good reason” (*Benjamin* was cited to her). Strictly speaking, on this basis alone grounds 1 and 2 should fail. Having said this, and after having heard Ms. Christopher at this appeal, it would appear that the Appellant’s actual ground of appeal is that the Learned Magistrate erred by not suspending the whole of the 2-year

sentence as there was good reason to do so, and therefore, the Learned Magistrate's sentence was manifestly excessive. It is in this vein that I will address the Appellant's appeal.

38. While the Learned Magistrate did not specifically quote the words of Baker P in Bell she obviously had Bell-like principles in mind when sentencing the Appellant. In addition to other mitigating features, she took into account that: there was little likelihood of the Appellant re-offending; that it was 5 years since the offence had been committed; and, that the Appellant voluntarily underwent counselling and psychological intervention. The only factor which the Learned Magistrate did not appear to take into consideration was that over the 5-year period that the Appellant led a law-abiding life since the date of the offences.
39. So, it was not that the Learned Magistrate did not apply her mind as to whether there were any good reasons to suspend any period of incarceration. She did apply her mind to such, and it appears to me that the Learned Magistrate was of the concluding view that the seriousness of the offences far outweighed the good reasons needed to suspend the 2-year term of imprisonment in full. She was quite justified in reaching that view and it was quite proper for her to use the earlier stated words that "*the nature and serious [sic.] of the offence.....must reflect society's rejection of this form of conduct and that sentence must send a clear message that children must be protected and these types of offences will result in an immediate period of time in custody*". This is perfectly in line with section 53 of the Criminal Code which, *inter alia*, seeks to meet the objectives of: protecting the community; reinforcing community-held values by denouncing unlawful conduct; and, deterring the Appellant and other persons from committing child pornography related offences.
40. Moreover, the Learned Magistrate's approach to sentencing the Appellant was not adopted in a vacuum. Consistent with the Appellant's cited authorities of R v. Kwok [2007] OJ No. 457 and Jongsma (2021) ONSC 796 the Learned Magistrate properly honed her attention onto the mitigating and aggravating features of the case-at-bar. In respect of the mitigating factors the Learned Magistrate considered that: the Appellant pleaded guilty to the offences; the Appellant genuinely express regret and remorse for his actions; the Appellant was of good character; the Appellant was a victim of abuse

himself; through his voluntary participation in counselling the Appellant has shown insight into his problem; that the Appellant was and still is willing to submit to treatment and counselling; the extent to which the Appellant has suffered as a result of his crime; and, that the Appellant was of a low risk of re-offending. As stated earlier, the Learned Magistrate also took into account the 5-year delay between the date of the offences and the Appellant's appearance for the first time in Magistrates' Court.

41. In respect of the aggravating features, the Learned Magistrate gave equal regard to: the significant size of the collection of images accessed by the Appellant (a total of 3,856 images depicting child pornography); and, the nature of the collection (that is, images involving relative depravity, bestiality, and sadism).
42. It is pellucidly obvious to me that in reaching her sentence the Learned Magistrate placed all of the mitigating and aggravating factors into the balance and decided that while the mitigating factors (including the delay) provided good reasons for there to be suspension of some of the 2-year sentence of imprisonment they were not, individually or collectively, good enough for her to suspend all of the 2 years. To be clear, suspending 50% of a term of imprisonment is not insignificant. In fact, in the circumstances of this matter suspending half of the imprisonment imposed is quite considerable and a legitimate argument could even be made that it was too much of a suspension. *Martin* and cases in other jurisdictions are adamant that offences of any kind involving children, our most vulnerable members of society, should be treated with the utmost harshness. And while a suspended sentence is available for just about every type of crime (no matter how serious it may be) one can forcefully posit that child related offences should constitute those species of offences where the suspension of the entirety or most of the period of imprisonment should be granted sparingly.
43. Moreover, while Ms. Christopher retreated from submitting that the Learned Magistrate erred by not considering community service as a sentencing option, in the circumstances of this case and considering the authorities, it would be unconscionable to sentence the Appellant to community service as a stand-alone sentence. This is not to say that in some instances, such as where the number of images accessed are small, are not grotesquely depraved, and where access on only one occasion, there may be scope for a community-based sentence. But even then, one would think that the Court would be hard pressed to

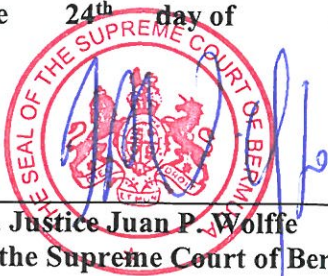
impose community service considering the consternation that it would likely and rightly cause to civil society.

44. I therefore unreservedly concur with the Learned Magistrate when she said that the maximum sentence of 3 years imprisonment for summary conviction for accessing child pornography is “*woefully inadequate for the level of harm caused to a vulnerable section of society*”. I would go further and say that these words should also be applied to the offence of possessing child pornography. It cannot be understated that offences which may directly or indirectly threaten or even decimate the innocence of children, or which may directly or indirectly result in children living a life which is controlled by psychological/psychiatric trauma, should attract the harshest of sentences. Offences involving the possessing or accessing of child abusive material or child pornography (sections 182G and 182H of the Criminal Code respectively) are such offences. Therefore, it may behoove those in Parliament to seriously consider upwardly adjusting the maximum sentences for the offences of possessing and accessing child abusive material or child pornography. This, in my opinion, would be consistent with civil society’s extremely dim view of such repulsive conduct.

### **Conclusion**

45. In the circumstances, I confirm my decision to dismiss all of the grounds of the Appellant’s appeal and accordingly I uphold the sentence imposed by the Learned Magistrate.

Dated the 24<sup>th</sup> day of July 2026

The Hon. Justice Juan P. Wolfe  
Judge of the Supreme Court of Bermuda