



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2021 No: 16

BETWEEN:

THE KING

And

RONALD KIRKLAND SIMMONS

RULING ON SENTENCE

Section 325(1)(a) of the Criminal Code (serious sexual assault)

Sentencing Hearing Dates: Tuesday 4 October 2022

Date of Ruling on Sentence: Tuesday 4 October 2022

Counsel for the Crown: Ms. Cindy Clarke for the Director of Public Prosecutions

Counsel for the Accused: Mr. Charles Richardson, Compass Law Chambers

RULING of Shade Subair Williams J

Introduction

1. The Accused, Mr. Ronald Kirkland Simmons, appears before the Court for sentence, upon his guilty plea entered on 21 June 2022, to the single Count on Indictment No. 16 of 2021 charging him with serious sexual assault, contrary to section 325(1)(a) of the Criminal Code.

Summary of the Facts

2. The facts of this case were outlined in the Summary of Evidence read to the Court. In short, the Accused, a total stranger to the Complainant, forcibly apprehended the Complainant at approximately 6:20am who forcibly and repeatedly penetrated the Complainant's vagina with his fingers.

Analysis:

Maximum Penalty

3. The offence of serious sexual assault carries a maximum penalty of thirty (30) years of imprisonment.
4. That said, section 54 of the Criminal Code provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Part IV (Sections 53-55) of the Criminal Code

5. Part IV of the Criminal Code requires this Court to have regard to the purpose and principles of sentencing. I have considered the objectives of sentencing under section 53 and the fundamental principle of proportionality under section 54.
6. This Court is duty bound to have regard to and to give proper weight to the nature and seriousness of the offence, including the physical or emotional harm done to a victim. In this case, a Victim Impact Statement was produced and I have had particular regard to the emotional and physical harm caused to the Complainant as a result of the Accused's violent conduct. (The Complainant suffers the long-term effects of the assault in that she no longer feels a sense of safety in her own home or in the streets and has felt the effects on her ability to intimately interact in her personal relationship).
7. It is also of note that the Accused has a criminal history of offences, two of which was of a violent nature and the other of which was sexual in nature. In 2006 he was convicted and sentenced in the Magistrates' Court for the offence of violently resisting arrest. He was also indicted and sentenced in 2007 for the offence of unlawful carnal knowledge of a girl under the age of 14 years. Finally, in 2013 he was convicted and sentenced for unlawful assault.

The Reports before the Court

8. On 21 June 2022, this Court ordered the remand of the Accused for assessment under section 329E of the Criminal Code. A Psychological Risk Assessment Report dated 27 September 2022 and authored by Dr. Emcee C. Chekwas was subsequently produced (“the Report”).
9. I have considered the Report placed before the Court and accept that the Defendant is a person who is at high risk of committing future sexual violent acts. I have also noted the concerns for the lack of resources in Bermuda to properly treat his sexual deviancies.

Mitigation

10. In sentencing the Accused, I necessarily had regard to his guilty plea and his expressions of remorse for which I credited him the full portion of the ordinary 30% discount.
11. As a matter of statutory obligation, I considered all lawful sanctions other than imprisonment as the Court is required to do under section 55 of the Criminal Code. However, only a custodial sentence was appropriate in this case. That was accepted by both the Prosecution and the Defence.
12. The DPP, referred to the previous case law, in particular the case of *Brittonie Taylor, Criminal Appeal 7 of 2012*; where a sentence of 16 years’ imprisonment on a guilty plea was reduced to 14 years’ imprisonment. The Crown submitted that the appropriate range of sentence in this case is between 14 and 16 years imprisonment followed by a 15 years period of supervision.
13. Mr. Richardson, on the other hand referred to the Court of Appeal decision on sentence in the case of *Martin v R* Criminal Appeal No. 9 of 2001 where a sentence of 11 years imprisonment was upheld for a serious sexual assault case after trial. Mr. Richardson also pointed to the case of *Fox v R* [2008] Bda LR 69 where the Court of Appeal upheld a sentence of 15 years imprisonment for a case of serious sexual assault which went to trial. Counsel suggested in his submissions that the more appropriate sentence would be 10-12 years imprisonment followed by maximum period of 14 years supervision. Counsel added that the Court’s powers to order a post-custodial supervision term is an enhanced sentencing tool which should be used to balance out the appropriate length of custodial terms.

Conclusion

14. In my judgment, the Accused would have likely been sentenced to a term of 15-16 years of imprisonment had this matter been tried by jury.

15. The temporary policy of additional sentencing discounts for unequivocal guilty pleas which I issued under Court Circular No. 6 of 2022 does not apply to offenders who commit serious sexual assaults. Therefore no further discount is available under that policy.
16. Applying the 30% discount for the Accused's guilty plea the Defendant is entitled to serve no more than 11 years imprisonment.
17. Additionally, the Accused shall be the subject of a 15 year period of supervision upon his release pursuant to section 329E(d) and 329(4A) of the Criminal Code.

Dated this 4th day of October 2022

THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE