

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**(CENTRAL SESSION)**

**(Tuesday, 24<sup>th</sup> May 2022 – Wednesday, 25<sup>th</sup> May 2022)**

**THE KING**

**v.**

**ALFONSO PEREZ**

**-**

**RAPE OF A CHILD**

**BEFORE** The Honourable Mr. Justice Ricardo O. Sandcroft

Appearances: Mr. Riis Cattouse, Crown Counsel for the Crown  
Accused in Person

Held on: October 10, 2022.

**SENTENCE JUDGEMENT**

## **Background**

[1] Alfonso Perez, ('the Accused') stands charged as follows:

### Count 1 Statement of Crime

Rape of a Child, contrary to section 47(A) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011, as amended by the Criminal Code (Amendment) (No. 2) Act, No. 12 of 2014.

### Particulars of offence

Alfonso Perez, on the 30<sup>th</sup> day of January 2019 at Belize City, in the Belize District, in the Central District of the Supreme Court, penetrated the mouth of [AW], a child under the age of sixteen years, to wit, three years of age, with his penis.

[2] On the 27<sup>th</sup> of June 2022, the Accused pleaded not guilty, and the trial proceed before me, sitting as a judge alone. The Accused elected to forgo legal representation and instead to represent himself.

## **The Prosecution's Case**

[3] The Prosecution called the victim's (AW's) sister, RB. She testified that she was 12 years of age at the time of the offence, living with her mother, step-father and little brother (AW). At the time of the trial RB would have been approximately 15 years of age. Her evidence was recorded as follows:

"A. I see Mr. Rebel and my brother. [AW], he was at the little left side

Q. ...

A. Mr. Rebel and AW was sucking Mr. Rebel penis.

Q. ...

A. I saw AW on his knees. Mr. Rebel was sitting down on a tyre.

Q.

A. Mr. Rebel never had on no shirt, no pants. He was wearing no boxers. I told my brother to move away from him but he did not listen. Then my cousin Melissa comes and shove him.

Q.

A. AW.

A. Mr. Rebel grabbed my foot when I told my brother to move and tell me that I got something fi tell you. I used my foot and kicked him; I did not do anything after that. He did not do anything. It was dark. The moon made me able to see. I saw him for about two minutes.

Q. Was there anything blocking your view from seeing him?

A. No.

Q. What parts of his body were you able to see?

A. I could see his chest, his foot, his toes. I was not able to see any other part. I was able to see his face that is why I know it was Mr. Rebel. I knew Mr. Rebel before that night. About two months. I could see Mr. Rebel sometime in the night and sometimes day time. I would see him once a day. I would see him in the streets, verandah. We have a veranda on the right side of the house at Handyside St., No. 11.

Q. What was the average distance between you and Mr. Rebel and you saw him?

A. About 10 feet.

Q. How long would you see him when you see him?

A. About two minutes.

Q. What would be the lighting condition when you would see him?

A. Day.

Q. What parts of him would you be able to see?

A. His arms and his face.

Q. Would there be anything blocking your view from seeing him?

A. Cars on the street when cars passing, I would see him.

Q. If you were to see Mr. Rebel again, would you be able to recognize him?

A. Yes.

Q. Can you look around and point him out if you see him?

A. [Witness points to Mr. Rebel sitting in the dock] In a green shirt.

A. Mr. Rebel went in his house. He was trying to run away but same time the police come and arrest him. When police came and arrest Mr. Rebel, I was three feet away from him.

Q. What was the lighting condition

A. It was dark but I was able to see him because of the moon. I had Mr. Rebel in my sight for about 5 minutes. Nothing was blocking my view from seeing him. His head, arms and his knees; his eyes, both sides of his head. AW was sucking Mr. Rebel's penis with his mouth. I was able to see Mr. Rebel's hands. He was holding behind AW's head shoving it down.

## **The Defence's Case**

[4] The Accused elected to give an unsworn statement from the dock. He stated as follows:

"On this night, I went home from work; it was about 8:00 pm that is the time I usually go home. I went in my house didn't have any electricity and it was hot so I just took off my clothes and nobody was around that time. Around that time I gone outside smoking a cigarette sitting on the tyre that they use to hang up clothes; clothes line, meanwhile smoking my cigarette on the tyre, I heard children coming up but I did not pay them no mind. They come and attack me, meaning they ask me weh di money deh and started rub me down and I said if I had my pants on with my wallet and phone, I would have been robbed. It happen so fast that as they attack me, the others were coming upstairs too, so when the other people come upstairs, them leave me alone and went to their room and then the police come and arrest me. They said they had a report on me. I went to jail for seven (7) months and they sent me to jail in a different name of Adolfo Perez. I could not get anyone to sign for me for bail. I got bail afterwards; a co-worker signed for me. That's basically it, Your Honor.

Honestly, I never have nobody eh slick me as normal I gone home from work and it would have been around 8:00 pm. Place was hot and I went outside. I only go home and sleep and get up in the morning and go to work. Some of the other tenants, I assist them when it comes to light and switch. I help the majority of them on that building. I try not to be negative. I got stab up there.

I don't understand why they would tell a lie pon me. That ah no my principle. I have my girlfriends; I raise three boys and one daughter. I am responsible for my children. I am not the worst person. My oldest son is a coast guard.

I am innocent, Your Honor, it is a big lie. I do not understand why they want to frame me like this. I am a Christian too."

## Sentence Judgment

1. The court in considering an appropriate sentence must have regard, and take into consideration the aims of punishment, which are deterrence, retribution, rehabilitation and prevention. During the sentencing process the court should never lose sight of the element of mercy. In **S v Rabie** 1975 (4) SA 855 A.D. at 862 D- F Holmes JA said the following in this regard:

**“[...] with particular reference to the concept of mercy-**

- (i) It is a balanced and humane state of thought.**
- (ii) It tempers one’s approach to the factors to be considered in arriving at an appropriate sentence.**
- (iii) It has nothing in common with maudlin sympathy for the accused.**
- (iv) It recognises that fair punishment may sometimes have to be robust.**
- (v) It eschews insensitive censoriousness in sentencing a fellow mortal, and so avoids severity in anger.**
- (vi) The measure of the scope of mercy depends upon the circumstances of each case.”**

2. The court further has to strive to balance, which means it has to consider all the facts, factors and circumstances evenly for the attainment of the aims of

punishment as set out above. These facts, factors and circumstances should furthermore include the personal circumstances of the accused; the offence, taking into account all the things which had been committed (which includes the circumstances under which it had been committed); as well as the interest of society. In considering the aforementioned factors, the court, should at all times strive to impose a proportionate sentence without over or under emphasising any of these circumstances at the expense of the other.

3. Also by way of introduction, in **S v Mhlakazi**<sup>1</sup>, the Supreme Court of Appeal stated the following in respect of the object of sentencing:

**“The object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. It remains the Court’s duty to impose fearlessly an appropriate and fair sentence even if the sentence does not satisfy the public.**

**Given the current levels of violence and serious crimes in this country, it seems proper that, in sentencing especially such crimes, the emphasis should be on retribution and deterrence. Retribution may even be decisive.”**

4. To this must be added the following stated by Lewis JA in **S v Nkomo**<sup>2</sup> namely:

**"But it is for the court imposing sentence to decide whether the particular circumstances call for the imposition of a lesser sentence. Such circumstances may include those factors traditionally taken into account in sentencing - mitigating factors - that lessen an accused's moral guilt. These might include**

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<sup>1</sup> 1997 (1) SACR 515 (SCA).

<sup>2</sup> 2007 (2) SACR 198 (SCA) at 201E-F.

**the age of an accused or whether or not he or she has previous convictions. Of course these must be weighed together with aggravating factors. But none of these need be exceptional."**

5. Additionally, this division in **S v Obisi**<sup>3</sup> states that:

**"It is true that traditionally mitigating factors, including the fact that the accused is a first offender, are still considered in the determination of an appropriate sentence. .... The nature of the crime, the brazenness, the callousness and the brutality of the appellant's conduct show that he attaches no value to other people's lives, or physical integrity, or to their dignity."**

6. Regard is also to be had to the weighing and balancing of the "triad" of primary sentencing considerations formulated by the then Appellate Division in **S v Zinn**<sup>4</sup> These are: (i) the crime, (ii) the offender, and (iii) the interests of society.

7. Equally instructive is the then Appellate Division decision in **S v Khumalo**<sup>5</sup> which states:

**"Punishment must fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances."**

8. Per Goldstein J in **S v Ncheche**:<sup>6</sup>

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<sup>3</sup> 2005 (2) SACR 350 (WLD).

<sup>4</sup> 1969 (2) SA 537 (A) at 540G.

<sup>5</sup> 1973 (3) SA 697 (A).

<sup>6</sup> (A1261/04, A1261/04) [2005] ZAGPHC 21 (23 February 2005) at paras [35] and [38].

**“Rape is an appalling and utterly outrageous crime, gaining nothing of any worth for the perpetrator, and inflicting terrible and horrific suffering and outrage on the victim and her family. It threatens every woman, and particularly the poor and vulnerable. In our country it occurs far too frequently and is currently aggravated by the grave risk of the transmission of Aids. A woman’s body is sacrosanct and anyone who violates it does so at his peril and our Legislature, and the community at large, correctly expect our courts to punish rapists very severely. In this case, the complainant lived in a shack, without the security enjoyed by many citizens in more affluent circumstances. Unfortunately, very many people in our country still live in these circumstances and are entitled to look to the courts for protection.**

...

**The word must go out to the cities and to the suburbs, to the towns and to the townships, and to the countryside that Parliament has directed the courts to punish the perpetrators of gang rape and child rape as heavily and severely as the law will allow in the absence of substantial and compelling circumstances dictating otherwise, and that the courts will not shrink from their duty of carrying out this directive however painful it may be to do so.”**

9. More recently, per Opperman J in **Mazivi v S**:<sup>7</sup>

**“Rape of a child under the age of 16 is a heinous and abhorrent crime, which is why the lawmaker has placed this type of rape in the category of crimes**

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<sup>7</sup> (A8/2018) [2018] ZAGPJHC 443 (20 June 2018).

**attracting a life sentence in the absence of substantial and compelling circumstances.”**

### **The absence of substantial and compelling circumstances**

10. On particularly the question of the rape of MC, the defendant was convicted of a serious crime for which the legislature has found it necessary to promulgate a minimum sentence of life imprisonment/fifteen (15) years, unless the trial court finds that substantial and compelling circumstances exist which oblige the court to deviate from imposing such a sentence.
11. This court also considered the circumstances impacting on the defendant and balanced them against the legitimate interests of society. This court understandably found that there were no substantial and compelling circumstances, and the defendant, despite invitation by this court and being legally represented, failed to assist. There is nothing substantial and compelling in the defendant's circumstances.
12. If anything, there are various aggravating circumstances underscoring the appropriateness of this court's imposition of the legislated minimum sentence. They also strongly militate against the presence of substantial and compelling circumstances. These, separately and cumulatively and in no specific order of importance, include:

the defendant is a friend of the uncle of the virtual complainant and father figure— a trusted and privileged position which he abused;

his insistence that the virtual complainant be put through the traumatic experience of the trial, being cross-examined therein, having her honesty impugned and then her having to suffer the accompanying stigma that ordinarily follows as a complainant in a criminal trial of this nature – “[i]n effect, he victimised her again;

his lack of remorse, both during the trial and in the sentencing proceedings;

the unavoidable conclusion that appellant poses a grave danger to society;

there is nothing to suggest any contrition on his part or any prospect of rehabilitation; and

there is nothing that diminishes the appellant’s moral blameworthiness.

### **The personal circumstances of the Accused**

13. The convict is 54 years of age. He was born and grew up in Rancho Dolores Village, with his mother. At a later stage, he moved to Belize City and came to live on his own. He is the eldest of several children and has no contact with his father.

14. The convict is the father of four (4) children that were born to him. He states in his Social Inquiry Report that he was employed as an electrician for over

twenty-five years (25) and that he has been working all his life to support his mother and siblings.

15. All things considered, the defendant had no regard for the complainant's tender age, nor the physical and emotional integrity, and dignity of the complainant. He selfishly robbed him of his innocence. The evidence of the complainant understandably reflects shock and sadness at the fate her brother suffered, but, at the same time, an admirable respect for justice and our courts. It is incumbent upon the judicial system to maintain this respect.
16. The accused has shown no remorse for his actions, in respect of all the offences he has committed. In **S v Matyityi**,<sup>8</sup> Ponnann JA had the following to say on this aspect:

**14 “There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions.”**

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<sup>8</sup> 2011 (1) SACR 40 (SCA) para 13.

17. None of these circumstances and facts are applicable because the accused has steadfastly refused to take responsibility for his actions especially in regard to the deceased. In both instances, the violence was perpetrated towards a woman and a girl child. And in considering an appropriate sentence, the court takes into consideration what Wallis JA said in **Director of Public Prosecutions, Western Cape v Prins and Others**:<sup>9</sup>

**“No judicial officer sitting in South Africa today is unaware of the extent of sexual violence in this country and the way in which it deprives so many women and children of their right to dignity and bodily integrity and, in the case of children, the right to be children; to grow up in innocence and, as they grow older, to awaken to the maturity and joy of full humanity. The rights to dignity and bodily integrity are fundamental to our humanity and should be respected for that reason alone. It is a sad reflection on our world, and societies such as our own, that women and children have been abused and that such abuse continues, so that their rights require legal protection by way of international conventions and domestic laws, as South Africa has done in various provisions of our Constitution and in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (the Act).”**

18. Life imprisonment is the heaviest sentence a person can be legally obliged to serve. Accordingly, an accused must not be subjected to the risk that substantial and compelling circumstances are, on inadequate evidence, held to be absent. At the same time the community is entitled to expect that an offender will not escape life imprisonment - which has been prescribed for a very specific reason - simply because such circumstances are, unwarrantedly, held to be present.

19. The defendant’s circumstances are outweighed by the gravity of the offence. In respect of the rape of a child, the minimum sentence provisions

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<sup>9</sup> 2012 (2) SACR 183 (SCA) para 1.

recognise the gravity of the offence and the public's need for an effective sanction. As stated by other jurisdictions, cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. There is also, as already mentioned, nothing apparent that reduces the defendant's moral blameworthiness.

20. As regards the interests of society, the courts are inundated with mounting number of cases involving rape of minors by adult men. Society is pleading with the courts to impose stiffer sentences in order to deter would be offenders. Rape cases not only leave the victims permanently traumatized but also the family members of the victims as well as the family members of the perpetrators. I am sure that your children are deeply disappointed with what you have done. You will be separated from them for a considerably long time. They will grow without a father figure around them.

21. In response to the society's cry, the courts have been doing their best to address the scourge of rape. In this connection with respect to the offence of rape, the Supreme Court said the following in **S v Libongani**<sup>10</sup> at para 26:

**'[26] I associate myself with the sentiments above, rape and the murder of women, wherever the crimes rear their ugly faces, should be visited with severe punishments. Our society is undoubtedly embarrassed by the killing and raping of women and children on a daily basis. The promulgation of the Combating of Rape Act is a serious effort the legislature undertook in an attempt to arrest the scourge. The courts should join that fight, in some cases where possible, should show no mercy.'**

22. I should mention in this regard which, I consider as a notorious fact for this court to take notice of without extraneous evidence, the fact that Parliaments,

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<sup>10</sup> S v Libongani 2014 (1) NR 187 (SC).

as the representatives of various societies, debated several amendments to their Sexual Offences legislations in their societies with the intention to increase the prescribed minimum sentence of 15 years to a higher limit. That is being done in response to the constant demand by society for the increase of sentences in rape cases. In this connection courts are thus expected to 'join that fight' in order to address the tide of the rape cases in our community.

23. I fully associate myself with the view expressed by the Supreme Court of Namibia in the two mentioned judgments and will adopt the approach dictated by the said Supreme Court when considering an appropriate sentence with regard to the offence of rape of a child for which you have been convicted, in order to reflect the interests of society in the sentence. Mr Alfonso Perez, quite apart from the fact that the minimum sentence of 15 years applies in your case for the reasons I will state later, I am of the view that, it would be in the interest of society that you be removed from society for a long period so as to prevent you from committing sexual exploitation of minor boys. I hope that by the time you will be released, you will have lost the appetite for committing those heinous crime.

24. Society demands that wanton criminal acts as displayed by the accused should not be left unpunished. It demands of the courts to send out a clear and strong message that such acts of criminality will not be countenanced and further demands that the strictest and severest punishment should be meted out to individuals such as the accused. It is also for these reasons that the law has prescribed certain sentences that the court should impose in cases like these.

25. In order to inform its sentencing discretion this court has heard from both the convict in person and the prosecution through emotional submissions as well as oral argument in court. However, on the persuasive authority of **Rep v. Nkhoma (Confirmation Case No. 3 of 1996 (3 of 1996) [1996] MWHC 7** the court is reminded and the court bears in mind the distinction between sentencing principles and the purposes for sentencing. In that decision the judge emphasized that the sentencing court cannot attain any of the purposes of sentencing (such as retribution, deterrence, incapacitation, reformation and rehabilitation) at the expense of the sentencing principles. In that regard it has further been highlighted that an appropriate sentence must achieve proportionality, equality as well as restraint.

26. My very learned brother Prof Kapindu, J in **Fabiano Maliko-v-Rep**, Criminal Appeal No. 13 of 2020 (unreported) where the court articulated some very sound and expansive principles which courts must apply in dealing with cases of child abuse and defilement specifically. In his usual judicial eloquence, the learned judge outlined the gravity of the offence of defilement from physical, physiological as well as psychological perspectives.

27. It was the view of that court that such petty arguments have the risk of trivializing what is otherwise a very serious occasion, bearing in mind the nature and gravity of the offence of defilement itself. In the final analysis the court underscored the principle that the seriousness of the offence was reflected in the maximum penalty set out in the law (which is life imprisonment). It was the conclusion of the court in **Fabiano Maliko** that the sentencing court should properly account for such social revulsion to defilement by imposing correspondingly meaningful penalties upon

conviction. With reference to what was described as a reasonable estimation of expected life span of the offence, a sentence of 40 years was imposed on Fabiano Maliko.

28. In the considered opinion of this court, the argument from the defendant misses the whole point of sentencing: in this instance an underage child (whom the law has deemed incapable of consenting to sexual acts) was taken advantage of by a family friend. The victim is the boy child. No such culture or belief would be countenanced as somehow diminishing the responsibility which the offender bore in that scenario; that some would even suggest displays the real depth of vulnerability such girl children are exposed to in our jurisdiction. In considering the appropriate penalty this court would rather mete out an order that clearly says to the offender that one cannot hide behind such gross and abusive values to plead for mercy or lenience when the law has finally caught up with them.

29. This court is not convinced that there are substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment in respect of the offences for which such a sentence prescribed. Given the totality of the circumstances of this case which includes his personal circumstances as well as the circumstances relating to the offence and the interests of society, the only appropriate sentence, the court can impose is one of long-term imprisonment which would have the effect to permanently remove the convict from society. In fact in cases like this, retribution and deterrence to come to the fore, whilst rehabilitation, will play a relatively smaller role.

30. Based on all these considerations, it is the determination of this court that a penalty of 20 years imprisonment effective would be appropriate. Thus Alfonzo Perez is hereby condemned to serve a term of 20 years imprisonment for his conviction for the offence of rape of a child contrary to section 46 (1) of the Criminal Code of Belize. The penalty will run from 8<sup>th</sup> June 2022, the date of his conviction. He is to serve 15 years before eligible for parole by the parole Board.

Dated the 10<sup>th</sup> day of October, 2022

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**RICARDO O. SANDCROFT**  
**Justice of the Supreme Court**