IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: C 82 of 2022

BETWEEN

THE KING

and

JEFFERY GILLETT

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel for the Crown.

Mr. Norman Rodriguez for the Prisoner.

.

2023: July 26th and 27th;
September 12th, 27th and 29th;
October 13th;
December 1st;
2024: January 30th;
February 6th;
March 1st, 15th, 18th, 25th and 25th.

UNLAWFUL SEXUAL INTERCOURSE-SENTENCING

[1] Jeffrey Gillett. ("the prisoner") was convicted after trial by judge alone, pursuant to section 65A(2)(g) of the **Indictable Procedure Act**[1] ("the IPA") on 13th October 2023 for the offence of unlawful sexual intercourse, contrary to section 47(1) of the **Criminal Code**[2] ("the Code"). The offending, in brief, is that on 21st August 2021 the prisoner penetrated the anus of J who was then 12 years old.

[2] The Court requested various reports and information to attempt to construct a fair and informed sentence, and there was also delay occasioned by a change of counsel by the prisoner post-conviction.

The Law

[3] The offence at bar is defined in the Code, where relevant, and the maximum penalty is, as follows:

> *"47(1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life."*

[4] The ingredients of the offence, in the context of this case, are: (i) the prisoner had sexual intercourse with J; and (ii) J was under 14 years old.

[5] In determining the propriety or otherwise of a custodial sentence the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**[3],(the "PSRASA"). Unlawful sexual intercourse, however, has a sentence fixed by law in that there is a mandatory minimum sentence of 12 years imprisonment, making sections 28 and 29 of the PSRASA inapplicable.

---

[1] Chapter 96 of the Substantive Laws of Belize. Revised Edition 2020.
[2] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[3] Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25.

[6] The Court then considers section 160(2)(b) of the IPA:

> *"… the court may not sentence an offender who is eighteen years of age or over, to less than the prescribed mandatory minimum term, where the crime he has been convicted of is–… an offence under section… 47(1) (unlawful sexual intercourse with person under the age of fourteen years),…of the Code."*

[7] The Prisoner is currently 34 years old and this section would consequently be applicable.

[8] The Court then considers, generally, whether outside of the IPA, constitutionally[4], can it impose a sentence lower than the mandatory minimum. The decision of our Court of Appeal in **R v Zita Shol**[5] is instructive, per Bulkan JA:

> *"[12] Mandatory sentences have always created some tension and are justifiably viewed with caution. Sentencing is a quintessential judicial function, so the tension results from the fact that a fixed penalty forecloses judicial discretion. Nonetheless, it is conceded that every branch of government has a role to play in the criminal justice process, including that of punishments: the executive sets policy, the legislature implements that policy by enacting crimes with attendant penalties, and the judiciary administers justice in individual cases, including through the sentencing of offenders. Where a particular activity becomes a persistent or grave societal problem, as in the case of drug trafficking or gang activity, policy-makers and legislatures have resorted to mandatory penalties as one means of ensuring consistency in judicial approaches and ultimately eradicating the problem. For this reason, mandatory sentences have traditionally not been regarded as a usurpation of the judicial function or contrary to the principle of separation of powers, including by this Court.*

[4] See section 7 of the **Constitution**: "*No person shall be subjected to torture or to inhuman or degrading punishment or other treatment*."
[5] Criminal Application No. 2 of 2018.

…

[14]… In Aubeeluck v the State [2011] 1 LRC 627, another decision of the Privy Council on appeal from Mauritius, the issue for determination concerned the constitutionality of a mandatory minimum sentence for trafficking in narcotics. ***The Board noted that the effect of the constitutional prohibition on inhuman and degrading punishments (also contained in s. 7 of the Mauritius Constitution) is to outlaw "wholly disproportionate penalties". The Board then held that when confronted with a mandatory minimum sentence fixed by statute, there are three courses open to a court to ensure there is no violation of the constitutional protection*** *– to invalidate the law providing for the mandatory sentence; to read it down and confine the mandatory penalty to a particular class of case only****; or simply to quash the sentence in the case under consideration if to impose the full mandatory period of imprisonment would be disproportionate in those specific circumstances****. In this case, the Board rejected the more expansive routes and opted for the third one. In striking down the sentence of 3 years' imprisonment that had been imposed on the appellant for trafficking in narcotics, their Lordships factored in that he was dealing with only a small quantity just barely over the limit that raises the presumption of trafficking and that he hitherto had a clean record.* ***The significance of this approach is that it attempts to accommodate the legislative intention as far as possible, in that mandatory sentences are not automatically invalidated in all cases. Not only is there the possibility of reading them down, but also a court can depart from them on an individual basis where the circumstances demand****.*

[15] This 'proportionality' approach was followed by this Court in Bowen v Ferguson (Cr App 6/2015, decision dated 24 March 2017), where the sole issue for determination was the constitutionality of a sentence of 3 years' imprisonment and a fine of $10,000.00 for possession of 1.3 grams of cocaine with intent to supply. This was a mandatory sentence required for

possession of more than 1 gram of cocaine, so the appellant became subject to it because he had .3 grams over the threshold. ***In a majority judgment, this court held that the mandatory sentence was grossly disproportionate, given the small amount of cocaine in the appellant's possession alongside his previously unblemished record****. The majority reasoned that if a mandatory sentence is found to be grossly disproportionate or such as to outrage the standards of decency, it would violate the constitutional prohibition on inhuman and degrading punishments.* ***Relying on Aubeeluck, the court held that the three courses identified by the Privy Council in that case were likewise available to it and opted merely to quash the sentence of 3 years' imprisonment. In other words, instead of invalidating the entire section providing for the mandatory sentence, the majority accepted the Aubeeluck approach that it could simply quash the specific sentence in the appeal before it, thereby leaving the mandatory sentence intact for possible future application****.*

…

[18] The upshot of all this is that ***the trial judge was clearly entitled to follow the Aubeeluck approach of departing from the mandatory sentence in the specific case before him, as it had most recently been adopted by this court in Bowen v Ferguson****." (emphasis added)*

[9] The Court interprets the guidance in *Shol* to be that though the Court is to have considerable regard to the intention of the National Assembly in creating a mandatory minimum sentence if on the facts of this particular case the Court finds that the mandatory minimum so disproportionate as to be inhuman and degrading punishment then the Court is obliged to depart from it in protection of the prisoner's rights at section 7 of the **Constitution.**

[10] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the "CCJ"), in the Barbadian case of **Teerath Persaud v R**[6] on the issue or the formulation of a just sentence, per Anderson JCCJ:

> *"[46]* ***Fixing the starting point is not a mathematical exercise****;* ***it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences.*** ***Arbitrary sentences undermine the integrity of the justice system****.* ***In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender****.* ***Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point****.* ***Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should then be a discount for a guilty plea****.* ***In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentence imposed****." (emphasis added)*

[11] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**[7] on this issue, per Barrow JCCJ:

---

[6] (2018) 93 WIR 132.
[7] [2022] CCJ 4 (AJ) GY.

"[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that ***sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean****.*

[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. ***These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society****.*

[18]… ***to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases (usually from the territorial court of appeal).*** *" (emphasis added)*

The Facts

[12] On the morning of 21st August 2021 J woke up to some text messages from the prisoner, who was his tutor. The text messages asked if he was ready. J was confused so he told the prisoner no. J ignored the messages and about 15 minutes later the prisoner showed up at his house. The prisoner told J to let them both go to his house. J felt pressured but still went. When they got there, it was about 10 a.m. J went into the house and into the prisoner's bedroom. J sat on the bed for about 30 minutes. The prisoner came up with an offer for J to have intercourse with him for "gems" on a game called "Freefire". The way the game worked was that a person would have to spend money to purchase

"gems" which could then be used to obtain characters, gun skins, and other items in the game. J wanted the "gems", so he took the offer. J came up with the idea of setting a timer on his phone for the intercourse which would set a limit of 2 minutes.

[13] J pulled down his own pants and felt the erect penis of the prisoner inside his, J's, anus. J turned around and saw the prisoner from his abdomen to his face. The prisoner was about an arm's length from him. J was flat on the bed with his chest on the bed and his feet were on the ground. J did not feel any pain from the penetration while the penis was inside for 2 minutes. J testified that he felt the prisoner's penis go halfway into his anus.

[14] The prisoner, later that day, brought another deal to J of "gems" for the prisoner to have intercourse with J. J took the offer again and went in the prisoner's room. J pulled down his own pants and felt the erect penis of the prisoner inside his, J's anus. J again turned around and looked at the prisoner. J set a 3-minute timer during the second occasion. J adopted the same position, and similarly the penis of the prisoner only went in halfway, but this time for 3 minutes.

[15] After the second occasion J went home around 2:30 p.m. J wanted the "gems" because for all the years he had played "Freefire" he had never been able to get them. After the intercourse J received the "gems" from the prisoner.

[16] The prisoner had been engaged in chats with J, which was tendered as agreed evidence, over 30 pages long with hundreds of messages from 5th July- 21st August 2021 from the wee hours of the morning to very late at night, daily. Many of those messages were inappropriate for a man in his 30's and a 12-year-old boy, including proclamations of love for J, that he wanted to be more than friends with J, asking J to save himself up for him, while J had to plead with the prisoner that he does not, "do those stuff with boys".

Analysis

[17] In considering the construction of an appropriate sentence the Court is guided by the conceptual framework for sentencing sexual offences against children discussed by the CCJ in **Linton Pompey v DPP**[8], per Jamadar JCCJ:

> *"[45] Children are vulnerable. They need to be protected. Children are developing. They need to be nurtured. Children are precious. They must be valued. Society has these responsibilities, both at private individual levels and as a state. Sexual offences against children, of which rape may be one of the most vicious, and rape by a person in a relationship of trust in the sanctity of a family home the most damaging, is anathema to the fabric of society. The idea of it is morally repugnant. Its execution so condemned, that the State has deemed, as an appropriate benchmark, imprisonment for life as fit punishment in the worst cases.*
>
> *[46] The Universal Declaration of Human Rights asserts as its first principle, that all humans are born free and equal in dignity and rights. Children, minors, and all vulnerable young persons are owed a special duty of protection and care, by both the society at large and the justice system in particular, to prevent harm to and to promote the flourishing of their developing and often defenceless personhoods. They, no less than, and arguably even more than, all others, are entitled to the protection and plenitude of the fundamental rights that are guaranteed in Caribbean constitutions…Thus, just as an accused must be afforded all rights that the constitution and the common law assure, so also must care be taken to ensure that victims, especially those that are children, minors, and vulnerable, are also afforded the fulness of the protection of the law, due process and equality."*

[8] [2020] CCJ 7 (AJ) GY.

[18] The Court would, as is the prescribed procedure under *Persaud*, consider the aggravating and mitigating factors of the offending and then individualise the sentence by adjusting, if appropriate, by considering those factors vis a vis the offender.

[19] The Court finds instructive the identification of the aggravating and mitigating factors of both the offending and offender for this type of offence in the "**Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Sexual Offences"**[9](the "ECSG"). This offence would fall under the guideline for, "Aggravated Unlawful Sexual Intercourse."[10]

[20] The Court considers the harm caused by this offending as high because in its view there was serious psychological harm caused to J and his family. J noted in his victim impact statement ("VIS") that:

> *"Every day since Jeffrey Gillett took away my innocence has been a constant battle in my mind. It has left a negative impact on me. I was so depress (sic) that I began overthinking to the point where I started blaming myself for what I went through…My everyday struggle started to affect me in school, I was once an honor (sic) roll student and ever since that incident I have never made the honor (sic) roll list… I began turning my pain into anger. I found it very hard to get my words out and so sometimes I would lash out on my family as much as I don't want to…I also found it very hard to trust people anymore because I would get flashbacks of the incident. It took a lot out of me to gain the courage to attend court and face the person who caused me so much damage and hurt but I did it to set an example for anyone going through the same thing as I did."*

[21] J's mother, JA, also stated in her VIS that she had sleepless nights wondering if her son was ever going to be okay. She wondered whether she was a bad mother for letting the prisoner into her son's life when her only intention was to help better his education. J's

[9] Re-Issue, 8th November 2021.
[10] ECSG p 19.

sister, JG, said that she walks around with a pain in her chest that she did not intervene earlier to save her brother and dreams the impossible dream that she could turn back the hands of time to prevent this incident from ever happening.

[22] The Court also finds that the seriousness of this offending can be ranked as high owing to the following aggravating factors:

i. Abuse of a position of trust- On the evidence in this case the Court is constrained to describe the prisoner as a predator. He would have engaged J's mother to have J come to his home and when rebuffed found a weak spot where he could gain access to J through the artifice of tutoring. He abused the trust of both J and his family for his own depraved ends. To quote J's mother in her VIS, "I took Jeffrey into my home like family, I fed him, had conversations with him, I let my guard down and allowed him to tutor my child, with nothing but high hopes and good intentions."

ii. Significant degree of planning, including grooming or enticement- The immediate enticement that led to the offences in this case, the offering of "gems" for sex again revealed the prisoner's predatory nature. He knew J had an addiction to videogames and he took the opportunity to exploit this for his pleasure. This was bad enough. However, what makes this offending significantly worse is the length of time, and the more than 30 pages of messages, the prisoner used to manipulate J, gaining dominance over him and trying to break down his resistance as a wolf would hunt a lamb. The intensity of the communication over such a long period, his insistence in demanding J's affection is deeply troubling. To the Court this is a very significant aggravating factor.

iii. Significant disparity of age- The prisoner was 32 years old at the time of this offending while J was 12 years old. That is an age difference of 20 years, which would have allowed the prisoner a significant mental advantage over a child of such tender years.

[23] In terms of a range of sentence, to set an appropriate starting point, the Court is unaware of any local appellate authority which sets one for this offence. In that regard the Court would makes four observations. Firstly, the CCJ, in the Guyanese case of **AB v DPP**[11] noted that, "Child abuse casts a shadow the length of a lifetime." In that case they found life sentences with a minimum term of 20 years imprisonment for sexual activity with a child were neither excessive nor severe. Secondly, they highlighted the significance of the factor of the abuse of trust as exists in this case. The Court, thirdly, takes notice of the National Assembly's intention as to the appropriate sentence for this offence by setting a mandatory minimum term and there is nothing on this offending to trigger the Court's constitutional discretion to go under that minimum. The Court must also have regard to the totality principle outlined by the CCJ in *Pompey* as the prisoner is being sentenced for two offences against J, which as they arise out of the same incident the Court would sentence them concurrently. The global sentence must however mark the overall criminality perpetrated by the prisoner, per Saunders PCCJ:

> *"[33] So far as the totality principle is concerned, in cases where it is necessary to sentence someone for multiple serious offences, before pronouncing sentence the judge should:*
> *(a) Consider what is an appropriate sentence for each individual offence;*
> *(b) Ask oneself whether, if such sentences are served concurrently, the total length of time the prisoner will serve appropriately reflects the full seriousness of his overall criminality;*
> *(c) If the answer to (b) above is Yes, then the sentences should be made to run concurrently. If the answer is No and it is felt that justice requires a longer period of incarceration so that the sentences should run consecutively, test the overall sentence against the requirement that it be just and proportionate;"*

[11] [2023] CCJ 8 (AJ) GY.

[24] After considering the above principles and the facts of this case, in particular the abuse of trust and the exceptional level of grooming in this case the Court would choose a starting point of a determinate sentence of 25 years imprisonment.

[25] A general mitigating factor of the offending was that there was no violence done to J. The Court would give minimal credit for this mitigating factor as the prisoner's plan of attack was not ever physical, but by invidious psychological manipulation. The Court would give a nominal reduction of 6 months, leaving a term of 24 years and 6 months imprisonment.

[26] The Court would now individualize the sentence.

[27] An aggravating factor in relation to the offender is his lack of remorse. The Court is reminded of the words of Sosa P sitting in the Court of Appeal, where he opined on the issue of remorse in **Edwin Hernan Castillo v R[12]:**

> *"[23] The appellant made sure to mouth an expression of remorse early on in his statement at the sentencing phase. But he also kept on insisting, despite the verdict of the judge, that he was not the deceased's killer and that Amir Garcia, the chief Crown witness at trial, 'lied and got away with it', thanks to the shortcomings of his (the appellant's) counsel.*
>
> *…*
>
> *[28] It should come as no surprise that, given the remarks already made at para [23], above, the Court finds it impossible to accept as genuine such expressions of remorse as were articulated by or on behalf of the appellant in the present case**. It does not lie in the mouth of an offender to claim to be remorseful when he steadfastly insists that he is innocent of the crime of which he has been convicted. Implicit in a feeling of remorse is an acceptance of one's guilt. A false claim of remorse made before a sentencing court is a most reprehensible display of utter disrespect for that court. That said, however, the Court will not treat the***

[12] Criminal Appeal No 11 of 2017.

appellant's claim of remorse as an aggravating feature in the present case. That is not to suggest that in a future case the advancement of such a claim will be met with the same, or any, degree of indulgence*."*
(emphasis added)

[28] In this matter the prisoner was called by his counsel to, seemingly, express remorse in mitigation but instead took the opportunity to advise the Court on why its ruling was wrong, and then had to be cautioned that his forum to launch his appeal was not the instant one. The prisoner then begrudgingly, to the Court, after discussion with his counsel said that he would apologize, however he never accepted responsibility. In the Court's mind, it is perfectly fine for a person who insists on innocence post-conviction to remain silent on the issue of remorse and let it neither aggravate nor mitigate his sentence. However, to offer faux remorse in the cynical hope to 'fool the judge' and reduce the blow of sentence is another matter entirely. The mitigating factor of remorse is specially reserved for those who accept that they have done wrong and want to begin the long walk down the road to rehabilitation. To feign remorse, as Sosa P opined, is a reprehensible display and the Court would punish it by increasing the sentence by 6 months taking it to 25 years imprisonment.

[29] A mitigating factor in relation to the offender is his effective good character. The prisoner has a 2012 previous conviction for drug possession however the Court is prepared to sentence him as a person of good character and would deduct 1 year from the sentence, leaving a sentence of 24 years imprisonment.

[30] Another mitigating factor in relation to the offender is his positive Social Inquiry Report ("SIR") and the testimonials on his behalf. The prisoner is of sound mind with no history of mental illness. A picture emerged of the prisoner in his SIR as being a hard worker, respectful, mature and responsible. He has been described as honest, family oriented, a good father who is there for those who need him. His sister Shayla Gillett, his ex-common law wife Modesty Montero, his former teacher Michael Morkutso, and others testified in person to those facts as well as to his protective and helpful nature. In that

regard the prisoner deserves credit for the good he has done in his life and the Court has to consider his prospects of rehabilitation.

[31] The Court would in that regard reduce the sentence by 3 years leaving a final sentence of 21 years imprisonment. Following *Pompey*, as the two offences arose out of one incident the sentences for both would be made to run concurrently.

[32] Pursuant to the Court's powers under section 162 of the IPA as considered in **R v Pedro Moran**[13] the Court would order the sentence to run from 13th October 2023.

DISPOSITION

[33] . The sentence of the Court is as follows:

i. On Count 1 of the indictment for unlawful sexual intercourse the sentence is 21 years imprisonment.
ii. On Count 2 of the indictment for unlawful sexual intercourse the sentence is 21 years imprisonment.
iii. Both sentences are to run concurrently with effect from 13th October 2023.

[34] The Court also makes the following orders:

i. The Court orders, pursuant to section 65(1)(a) of the Code, that the Prisoner undergo mandatory counselling, medical and psychiatric treatment as the appropriate prison authorities deem necessary to facilitate his rehabilitation.

ii. The Court orders, pursuant to section 65(1)(b) of the Code, that the Prisoner on his release shall not change his residence without prior notification to the Commissioner of Police and to the Director of Human Development in the Ministry responsible for Human Development, Women and Youth, and

[13] Criminal Application No. 1 of 2017 at para. 38.

shall comply with such other requirements as the Commissioner of Police may specify for the protection of the public.

[35] The Court notes by way of post-script that the indictment in this matter was filed on 22nd September 2022 and the trial began on 26th July 2023, less than 1 year apart. Indeed, this was less than 2 years from the date of charge. This is consistent with the CCJ's "**Needham's Point Declaration, Criminal Justice Reform: Achieving A Modern Criminal Justice System"** with the time frame for the hearing of indictable trials in the transitional period, at paragraph 19. The Court wishes to thank the Crown and the Defence, inclusive of trial counsel, Mr. Leeroy Banner, for their co-operative spirit to help reach that target which can only operate to the benefit of the fair trial rights of defendants and the public of Belize.

Nigel Pilgrim
High Court Judge
Dated 25th March 2024