

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3  
4 **IND NO: 0025/2020**

5  
6  
7 **REGINA**



8  
9 **v.**

10  
11 **JAY TYSON TYSON CHANTILOPE**

12  
13  
14  
15 **Appearances:**

**Mr. Greg Walcolm for the Crown**

16  
17 **Mr. Oliver Grimwood of Samson Law for**  
18 **the Defendant**

19  
20  
21 **Before:**

**Justice Roger Chapple (Actg.)**

22 **Heard:**

**20<sup>th</sup> May 2021**

23  
24 **Judgment delivered:**

**22<sup>nd</sup> June 2021**

25  
26 **HEADNOTE**

27 *Criminal Law – Rape – s.127 of the Penal Code - Guilty Pleas*

28  
29  
30  
31 **SENTENCE JUDGMENT**

1           1.       Section 12 of the **Youth Justice Act** (2019 Revision) states:

2                           “12. (1)        In relation to any proceedings in any court, such court may  
3                           direct [and this court so directs] that-

4                           (a)       no published report of or comment on the proceedings  
5                           shall reveal the name, address or school, or include any  
6                           particulars calculated to lead to the identification, of  
7                           any young person concerned in the proceedings, either  
8                           as being the person by, against or in respect of whom  
9                           the proceedings are taken, or as being a witness in the  
10                          proceedings; and

11                          (b)       no picture shall be published as being or including a  
12                          picture of any young person so concerned in the  
13                          proceedings.

14                          (2)       Whoever publishes any matter in contravention of subsection  
15                          (1) is guilty of an offence and liable on summary conviction, in  
16                          respect of each such offence, to a fine of five thousand dollars  
17                          or to imprisonment for six months.

18  
19                          For the avoidance of doubt: An order pursuant to s.12(1)(a) and (b) above is herein  
20                          made – with the consequences set out in s.12(2) to follow should there be a breach  
21                          of this Order.

22  
23           2.       Section 31 of the **Criminal Procedure Code (CPC)** (2019 Revision) deals with the

24                          “Anonymity of complainants in rape etc. cases and states:

25                          “31. (1)        After a person is accused of a rape [etc.] offence, no matter  
26                          likely to lead members of the public to identify a woman as the  
27                          woman against whom the offence is alleged to have been  
28                          committed shall be published in a written publication available  
29                          to the public or be broadcast, except as authorised by a  
30                          direction of the court.”

31  
32                          For the avoidance of doubt: I herein make an order in the terms of the wording of  
33                          s.31(1) of the **CPC** as above.



1 3. The defendant has pleaded guilty to, and now falls to be sentenced for, two offences  
2 of rape. The offences took place on 27<sup>th</sup> March 2020. The victim (hereafter referred  
3 to as Ms D), was then 19 years of age; the defendant was 24 years of age. They were  
4 known to each but as nothing more than acquaintances.

5  
6 4. Needless to say, all offences of rape are serious. There are features present in this  
7 case that are very troubling and features which make these offences particularly  
8 serious.

9  
10 5. At about 8 or 9 o'clock in the evening on 27<sup>th</sup> March, Ms D was walking home alone.  
11 It seems clear that the defendant was lying in wait for her. They had met earlier in a  
12 bar. He ran towards her, grabbed her by the throat and pushed her towards the beach  
13 adjacent to the road. He forced her to the ground and threatened her – that she would  
14 be harmed if she resisted him. She submitted through fear. As to what happened  
15 thereafter, I can do no better than to quote from the comprehensive Basis of Plea  
16 (BOP) signed by the defendant, dated 4<sup>th</sup> August:

17  
18 *“The defendant then proceeded to perform oral sex on the complainant whilst*  
19 *she was lying on the ground on her back. He then went on to have sexual*  
20 *intercourse with her against her will, both in her vagina and her anus. He also*  
21 *inserted his finger into her anus during the ordeal. After the ordeal, the*  
22 *complainant was able to run away from him and ran straight to a close by home*  
23 *where she immediately told the residents that the defendant had raped her.”*

24  
25 6. I make it clear that I approach the sentencing exercise I have to perform accepting  
26 all that is said in that Basis of Plea.



1 7. The defendant was arrested later the same night and interviewed by the police the  
2 following day. In the course of that interview the defendant accepted that intercourse  
3 had taken place but asserted that this was consensual, adding that he and the victim  
4 were in a relationship.

5  
6 8. The starting point in this sentencing exercise is the recently issued (April 2020)  
7 ***Cayman Islands Sentencing Guidelines for Sexual Offences***. Prosecution and  
8 defence are agreed that this is a Category 2B offence, within the meaning of those  
9 guidelines.

10  
11 9. I have considered at length a Victim Impact Report (VIR), dated 23<sup>rd</sup> October 2020,  
12 prepared by Ms Morrison of the Department of Community Rehabilitation (DCR),  
13 from which it is clear that these offences, unsurprisingly, have had a profound effect  
14 upon Ms D. I do not need to repeat here the contents of that report.

15  
16 10. Ms D has waited a long time to see the end of this case. She has attended most of  
17 the many hearings in this case by zoom with Ms Morrison. I hope that the conclusion  
18 of this case will assist her in reaching some closure of this traumatic episode in her  
19 life. Whilst I have no expert evidence on the point, it is clear and it is not disputed  
20 that she has suffered psychological harm. The violence and threatened violence were  
21 beyond that which is inherent in an offence of rape. The victim thought she was  
22 going to be killed. This places these offences in Category 2.

23  
24 11. There are additional aggravating features:

- 25 a. The defendant subjected Ms D to both vaginal and anal rape;  
26 b. He did not wear a condom;  
27 c. He ejaculated in her anus.

28



1 12. Both rapes were part of the same attack, therefore concurrent sentences are  
2 appropriate. But the fact that there was both vaginal and anal penetration is a  
3 substantial aggravating feature.

4  
5 13. At the time of these offences, the defendant had no convictions recorded against him,  
6 but it further aggravates these offences that they were committed whilst he was on  
7 bail for a number of offences, including:

8  
9 a. An allegation of indecent assault – albeit that eventually the prosecution offered  
10 no evidence in that case; and

11  
12 b. Offences of behaving in a manner likely to cause harassment alarm or distress  
13 towards a 15-year-old girl. The defendant pleaded guilty to these offences on  
14 22<sup>nd</sup> February 2021.

15  
16 14. The *Cayman Islands Sentencing Guidelines* suggest, for a Category 2B offence, a  
17 starting point of 15 years’ imprisonment, with a sentencing range of 10–19 years’  
18 imprisonment.

19  
20 15. It is clear that the defendant suffers from mental health problems. Reference is made  
21 to this in the comprehensive Social Inquiry Report (SIR) dated 20<sup>th</sup> October 2020  
22 prepared by Ms Sonica Chin Nelson. I also have a psychiatric report from Dr.  
23 McGill dated 23<sup>rd</sup> November 2020 and a short psychological assessment dated 27<sup>th</sup>  
24 April 2021 from Dr von Kirchenheim. Dr McGill concludes in her paragraph headed  
25 “**I**mpression” that the defendant:



26  
27 “... is a young man who is suffering from a poly substance dependence  
28 and may be suffering from a pervasive developmental disorder and  
29 traumatic brain injury. He will need a psychological evaluation and

1 *MRI to confirm the extent of his disorder....The history ... suggests that*  
2 *he was under the influence of drugs at the time of the incident based on*  
3 *the frequency and compulsiveness of his drug use. Bizarre experiences*  
4 *and behaviour can be present in LSD use and can be a long-term*  
5 *consequence after desisting use of the drug. Mr Chantilope’s social*  
6 *skills may be in question as well and so his ability to judge the impact*  
7 *of his behaviour on someone else may be impaired especially under the*  
8 *influence of a drug. This would imply the possibility of similar behaviour*  
9 *in the future under the influence of substances.”*

10  
11 16. Mr Grimwood told me that no MRI scan had yet been carried out.

12  
13 17. Dr. von Kirchenheim concluded that the defendant:



14 *“... shows significant neuropsychological impairment, affecting his behaviour.*  
15 *Unless he continues to comply with treatment and seeks additional support, he*  
16 *is at relatively high risk for recidivism.”*

17  
18 Dr. von Kirchenheim had earlier noted that:

19 *“His cognitive ability when it comes to abstraction, planning, impulse control,*  
20 *and other higher cognitive or executive functions, is severely below*  
21 *expectations.”*

22  
23 18. Mr Grimwood confirmed that the defendant continues to take his anti-psychotic  
24 medication but is otherwise not receiving any treatment. According to the SIR, the  
25 defendant has spent periods in the Mental Health Unit (MHU) and about six months  
26 in a treatment facility in Jamaica, but on his return again started to abuse alcohol and  
27 illicit drugs. He also started committing offences.  
28

1 19. On 21<sup>st</sup> December 2017, he took a hatchet to his mother's car, having become angry  
2 because she would not take him to buy some cigarettes. His mother called the police.

3  
4 20. On 29<sup>th</sup> January 2018 he took a motor vehicle without consent. He drove it at high  
5 speed, lost control of it and collided with a palm tree. As a result of the collision, he  
6 was propelled through the driver's window, sustaining fractures to his leg and  
7 shoulder.

8  
9 21. On 26<sup>th</sup> June 2018, he again took a motor vehicle without consent.

10  
11 22. The offences I have already mentioned of causing harassment, alarm or distress to a  
12 15-year old girl took place between April and September 2017. The defendant has  
13 pleaded guilty to all these offences in the Summary Court.

14  
15 23. I mention them at this stage since they go to paint a picture of the defendant's  
16 behaviour in the relatively recent past.

17  
18 24. The files have been passed to me by the Summary Court since it makes obvious  
19 sense that all outstanding matters against this defendant be dealt with together. As  
20 held by Dobbs, J in *R v Perez-Ruiz and others*<sup>1</sup>, a justice of the Grand Court is vested  
21 with and can exercise the powers of a Magistrate.

22  
23 25. From the information available to me it is impossible to say with any certainty  
24 whether - and if so, to what extent - the defendant's culpability for these offences  
25 was reduced by reason of his mental health problems, although it seems to me likely  
26 that those problems, in all likelihood exacerbated by drink and/or illicit drugs,  
27 contributed to his actions.

28



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<sup>1</sup> 29<sup>th</sup> March 2019, particularly paragraph 5 of her judgment



1 26. Dr von Kirchenheim’s observations bear repeating:

2  
3 *“His cognitive ability when it comes to abstraction, planning, impulse control,*  
4 *and other higher cognitive or executive functions, is severely below*  
5 *expectations.”*

6  
7 27. That said, it is clear from the reports that the risk of the defendant committing further  
8 serious offences is presently high. According to the SIR, the combined risk of sexual  
9 and violent offending is “very high”. Ms Nelson makes this observation:

10 *“Though not justifying his actions, it would appear that Mr Chantilope’s mental*  
11 *instability, in addition to his alcohol dependence and substance misuse might*  
12 *have resulted in the current offences. The gravity of the offences he committed*  
13 *is very serious, which would warrant incarceration. In addition there are serious*  
14 *concerns regarding public safety if he was granted a community-based sentence*  
15 *to return to Cayman Brac.”*

16  
17 28. I am satisfied that as matters stand at the moment, the defendant presents a high risk  
18 of committing serious offences if he were to be at liberty to do so. He presents a high  
19 risk of harm to the public.

20  
21 29. The defendant initially pleaded *not* guilty to these offences and the case was fixed  
22 for trial. After the jury was empanelled, on 27<sup>th</sup> July 2020, as a result of something  
23 said by the defendant, proceedings were adjourned. Thereafter, on 4<sup>th</sup> August he  
24 changed his pleas to ‘guilty’ on counts 1 and 2. Those pleas were accepted by the  
25 Crown – with Counts 3 and 4 to lie on file at sentencing. Subsequently, the defendant  
26 indicated that he wanted to vacate his guilty pleas. Legal representation was changed  
27 for that application to be pursued. Following further instructions, Mr Grimwood told  
28 the court that the application to vacate pleas was not to be pursued.

1 30. Had all other things been equal, the defendant would have all but exhausted any  
2 credit for pleading guilty. However, Mr Walcolm suggests that in the particular  
3 circumstances of this case, a reduction in sentence of 25% would be appropriate,  
4 recognising that Mr Chantilope's mental condition, and, therefore, his questionable  
5 ability fully to process the proceedings, may well have accounted for these  
6 vacillations. That is what I propose to do. His guilty pleas have saved Ms D from  
7 having to relive her ordeal by giving evidence before a jury. I also bear in mind the  
8 expressions of remorse Mr Chantilope conveyed to me this afternoon through Mr  
9 Grimwood. I do take his pleas of guilty as an expression of the contrition he now  
10 feels for his behaviour.

11  
12 31. The aggravating features I have mentioned above, and particularly the fact that here  
13 there was both vaginal and anal penetration, justify an appreciable increase in the  
14 15-year starting point sentence suggested by the sentencing guidelines.

15  
16 32. The defendant's mental health, and the likely reduced culpability on that account,  
17 justify a reduction from that increased starting point.

18  
19 33. In the end, I conclude that the correct starting point is a sentence of 15 years'  
20 imprisonment.

21  
22 34. I then reduce that sentence by 25% to reflect the defendant's guilty pleas, resulting  
23 in a sentence of 11 years' and 3 months' imprisonment. That is the sentence upon  
24 both count 1 and count 2. Those sentences will run concurrently.

25  
26 35. I order that counts 3 and 4 of this indictment will lie on the file - marked not to be  
27 proceeded with without the leave of this court or the Court of Appeal.





1 36. I now address the various outstanding cases in the Summary Court, exercising my  
2 powers as a Magistrate of that Court. Whilst not diminishing the gravity of these  
3 offences, on the grounds of totality, the sentences I impose will not increase the time  
4 the defendant will spend in custody. The sentences are as follows:

5

BC00005/2018	Using an ICT network to abuse, annoyed, threatened or harass Using abusive or insulting words or dishonest or disorderly behaviour	3 months' imprisonment 3 months' imprisonment
BT00011/2018	Taking and driving a conveyance without the consent of the owner Careless driving Driving without being licensed Driving without insurance	2 months' imprisonment 1 month imprisonment 1 month imprisonment 1 month imprisonment, disqualified from driving for 12 months
BC00022/2018	Causing fear or provocation of violence	3 months' imprisonment
BT00076/2018	Taking and driving a conveyance without the consent of the owner Driving without being licensed Driving without insurance	2 months' imprisonment 1 month imprisonment 1 month imprisonment 1 month imprisonment, disqualified from driving for 12 months
BC00022/2020	Breach of curfew	1 month imprisonment

6  
7  
8 37. All sentences of imprisonment will run concurrently with each other, and  
9 concurrently with the sentences imposed in respect of counts 1 and 2.

10  
11 38. The periods of disqualification from driving (24 months in total) are mandatory and  
12 will take effect from today. Whilst I understand I have power to order  
13 disqualification to begin on the defendant's release from prison, that release will not  
14 happen until either he has served the full sentence or the Conditional Release Board  
15 are satisfied that it is safe for him to be released. At that stage, he must begin to  
16 adjust to life in the community. Lengthy orders of disqualification from driving are  
17 unlikely to assist in that process.

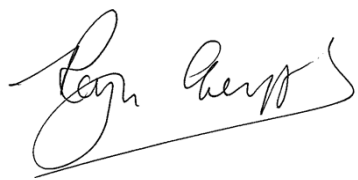
1           39.     I order that all time the defendant has spent in custody thus far shall count towards  
2                   the serving of these sentences.

3  
4     **Sexual Harm Prevention Order (SHPO)**

5  
6           40.     Mr. Chantilope: In addition, I make a Sexual Harm Prevention Order, pursuant to  
7                   s.45A of the *Penal Code*, as I am satisfied that such an order is necessary to protect  
8                   the public from sexual harm from you. The terms of that order are as discussed and  
9                   agreed at the last hearing. A copy will be provided to you. The order will be for a  
10                  period of 7 years, as from the date of your release from prison. If you were to fail to  
11                  comply with any of the terms of that order, you could be brought back to this court  
12                  and dealt with – the powers of the court if a breach were proved include a further  
13                  term of imprisonment.

14  
15          41.     I express the firm hope that the defendant’s mental health problems will be  
16                  comprehensively addressed as soon as possible whilst he is serving the sentence of  
17                  the court. It is to be hoped that with treatment, the risk that the defendant currently  
18                  poses to the public will be reduced.

19  
20  
21     **Dated this the 22<sup>nd</sup> day of June 2021**

22     

23     **Justice Roger Chapple**  
24     **Acting Judge of the Grand Court**  
25