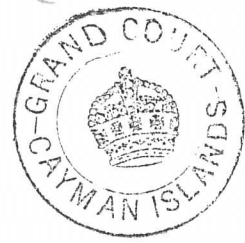


8-MAR-10  
(CD)



IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

IND. NO: 87B OF 2008

REGINA

VS

KIRKLAND HENRY

IN OPEN COURT  
BEFORE THE HON. CHIEF JUSTICE SMELLIE  
THE 8<sup>TH</sup> DAY OF MARCH 2010

APPEARANCES: Ms. Cheryl Richards QC, Solicitor General, and Mrs. Kirsty-Ann Gunn, Senior Crown Counsel for the Crown  
Mr. Ben Tonner for the Defendant

**REASONS FOR SENTENCE FOR THE OFFENCES OF ABDUCTION, ROBBERY AND RAPE,**

1. A particular challenge in the approach to sentencing in this case is the requirement to separate the offences for which the defendant Henry must now be sentenced, from the killing of the deceased, which followed in a sequence of events inextricably connected to these offences for which sentences must now be imposed. This is a challenge which must be strictly met because the offences are, in law, each different from that of murder, for which the defendant Henry is already convicted and sentenced.
2. With that stricture in mind, I turn to consider the offences of rape, robbery and abduction.
3. Mrs. Estella Scott-Roberts was forcibly overpowered, slashed to her hand by a knife and abducted in her car whilst she was subdued, in the dead of night to a place where she was

gagged, tied and raped more than once by the defendant and his accomplice. She was taken from that location to another where she was further assaulted and robbed. This was done after the defendant and his accomplice Ricketts must have carefully premeditated and planned.

4. I repeat here a relevant aspect of the findings from the judgment of the 22nd February on the related indictment number 87A in relation to the defendant Henry at paragraph 197.

*"I find that the defendant Henry acted from the very onslaught [of the attack upon Mrs. Estella Scott Roberts in the car park] in concert with his accomplice. He continued even after he was aware of the presence of the knife and that his accomplice would, if necessary, inflict serious injury upon their victim to assist in overpowering and subduing her. Having gagged and tied her up with duct tape, which they must have planned in advance to use, they acted in concert in the sexual assault upon her."*

5. In the circumstances of this case, there can be no question that each offence (on this indictment) must be considered to be of the most serious of its kind.
6. As to the approach to sentencing for the offence of rape, there is comprehensive guidance from the Court of Appeal given upon the conjoined appeals in *The Queen v Dilbert*, and *The Queen v Christopher Omar Samuels* *Crim. Appeals 3 of 2008 and 17 of 2009, judgment delivered on 8<sup>th</sup> December 2009.* Both of those cases involved the use of violence, the threat of a knife and the putting of the victims in fear for their lives.
7. They were cases of rape at nearly the most extreme degrees of seriousness. In *R v Dilbert* a sentence of 15 years' imprisonment was imposed after a trial. In the case of *Samuels*, 12

years' imprisonment after a guilty plea. Neither case was however in my view, as far to the extreme end of seriousness as the present case.

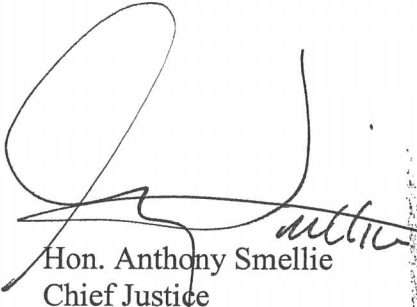
8. Another very aggravated case but still not quite as extreme as this is to be found in the appeal in *The Queen v Whittaker Crim. Appeal 14 of 2006, judgment delivered on 8<sup>th</sup> December 2009*. Whittaker's sentence was reduced from 25 to 20 years for the offence of abduction which also involved repeated indecent assaults upon his victim whom he held hostage at knife point and whom he forced to perform oral sex upon him. Whittaker had a previous conviction for rape.
9. In all of those cases, the Court of Appeal emphasised the concerns about the prevalence of sexual offences against women and of violent rape, in particular, in this jurisdiction; and the principle that aggravating features always serve to increase the sentence, such as to elevate sentences above the tariff level where the circumstances so dictate. *R v Whittaker* was itself a stark example of a case requiring of that treatment.
10. The \_\_\_ offences on the instant indictment are offences for which the law prescribes a maximum of life imprisonment. The decided cases have all but served to prohibit the imposition of the maximum of life imprisonment in other than cases of psychopathic offenders, that is: offenders who exhibit "*gross personality disorders, whose psychiatric condition is such that they could not be expected to respond to a deterrent sentence of shorter duration by ceasing and desisting from anti-social behaviour*" - dictum as approved by the Court of Appeal in *R v Whittaker* (above). But for such limits imposed by the case law, this in my view, is a case that would have indicated the considered suitability of life imprisonment.

11. With the forgoing factors and principles in mind, the circumstances of this case dictate a sentence for the offence of rape at the starting point of 25 years. I take into account, however, the three mitigating factors identified by Mr. Tonner on behalf of the defendant:
  1. His relatively young age of 27, having no previous convictions.
  2. Although only after being confronted by the damning fact that the deceased's property – her cell phone and computer – had been linked to him, the defendant did give a relatively early confession, and after conclusive DNA evidence was obtained, pleaded guilty at the start of the trial.
  3. His assistance to the police which led to the arrest and conviction of his accomplice Ricketts.
12. I regard those factors together as justifying a discount of five years in relation to the offence of rape. The sentence for the offence of rape will be 20 years' imprisonment.
13. The sentence for the offence of robbery begins at the starting point of 16 years, having regard to all the circumstances, and as the case law suggests; but having regard to the same mitigating factors, the sentence will be 13 years.
14. In *The Queen v Spence(1983) 5 Cr. App. R (S) 413*, Lord Chief Justice Lane advised that where abductions are planned and the victim used as a hostage for money, sentences would seldom be less than eight years. Very longer sentences would, however, be imposed in such cases where violence or firearms are used or where the victim is detained over a long period of time.
15. Here, too, this case falls into the most serious category where sentences of 15 years (or even 20 years as in *R v Whittaker* (above)) have been imposed. Taking account of the mitigating

factors, the sentence which I regard as suitable in this case for this offence is 15 years imprisonment.

16. Accordingly, the sentences are as follows in the order of the indictment:

- (i) for abduction, you will be sentenced to 15 years imprisonment;
- (ii) for robbery 13 years imprisonment;
- (iii) for rape 20 years imprisonment;
- (iv) the sentences will run concurrently.

  
Hon. Anthony Smellie  
Chief Justice



March 8, 2010