

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0029/2012

5
6 THE QUEEN

7
8 V

9
10 BRYAN CASHAN POWELL



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13 **Appearances:**

Mrs. Tanya Lobban-Jackson for the Crown

14
15 **Mr. John Furniss for the Defendant**

16
17 **Before:**

The Hon. Mr. Justice Charles Quin

18 **Sentencing Submissions Heard:**

22nd August 2012

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20 **SENTENCE RULING**
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- 22 1. On the 6th July 2012 the Defendant pleaded guilty to Defilement contrary to
23 s.134(1)(b) of the Penal Code Law (2010 Revision).
- 24 2. The particulars of the offence are that, on a date between the 1st and the 31st March
25 2010, at North Side, Grand Cayman the Defendant had unlawful carnal knowledge
26 of Aaliyah Johnson, a girl under the age of sixteen years.
- 27 3. At the time of the offence the victim was 14 years of age and the Defendant was 18
28 years of age.
- 29 4. On Tuesday the 13th July 2010 mother of the victim, who is the Complainant,
30 reported that she received information that her 14 year old daughter, Aaliyah
31 Johnson, was seen exiting the Defendant's vehicle. Coupled with this, the
32 Complainant reported that over the two weeks prior to the 13th July 2010, she had

1 observed her daughter vomiting and she was of the opinion that her daughter could
2 be pregnant.

3 *THE FACTS*

4 5. On the 15th July 2010 the victim told the police that she first met the Defendant
5 when she started attending George Hicks High School, in “Year 8”. She stated that,
6 at the time, the Defendant was attending John Gray High School, however, because
7 they had to take the same school bus, they would see each other and say hello.

8 6. The victim said that it was not until November 2008, some four months after they
9 first met, that the Defendant first asked her to go out with him and she agreed. The
10 victim stated that in November 2008 she was 13 years old and, from that time on,
11 she communicated with the Defendant via phone, text, and email.

12 7. The victim told the police that sometime in March 2010 she received a text message
13 from the Defendant in which he asked if he could see her, and her response to him
14 was yes. The victim said the Defendant asked her what she wanted to do and she
15 said she told the Defendant she wanted to “talk.” The victim stated that the
16 Defendant then asked her if she wanted to have sex and she said that her response
17 to the Defendant was that she was not too sure about having sex.

18 8. The victim said that around noon on that day the Defendant came to North Side to
19 see her, but he parked at a location some distance from her home, and she had to
20 ride her bicycle to where he was parked.

21 9. The victim said the Defendant was in a vehicle which was brown in colour, and she
22 went to the driver’s door of the vehicle and *she* asked the Defendant if he wanted to
23 have sex and he said:

1 “Yes.”

2 The victim stated that she then rode her bicycle a little further to a secluded location
3 into the Hut Road, and the Defendant drove beside her and then parked his vehicle.
4 The victim stated that she then got off her bicycle and sat in the Defendant’s
5 vehicle.

6 10. The victim said that when she sat in the vehicle the Defendant asked her if she was
7 ready and she told him,

8 “Yes.”

9 11. The victim stated that the Defendant next took off his pants and his boxers. The
10 victim said that was when she asked the Defendant if they were

11 “*Going to do it protected,*”

12 and the victim said the Defendant’s reply was

13 “*No.*”

14 12. The victim said she then took off her pants and her underwear and asked the
15 Defendant,

16 “*What will happen if I get pregnant?*”

17 to which the Defendant replied,

18 “*Nothing, I will be there.*”

19 13. The victim said she then climbed over to the Defendant, in the driver’s seat, and she
20 inserted his penis into her vagina.

1 14. Sometime in July the victim was found to be pregnant and, it was as a result of this
2 discovery that the victim's mother, the Complainant, reported the matter to the
3 police.

4 15. On the 27th July 2010 the police received information from the Complainant that
5 she was at the George Town Hospital with her daughter, the victim. The police
6 attended the hospital and they were told that the victim had had a miscarriage.

7 *ANALYSIS*

8 16. The Court has been greatly assisted by a Social Inquiry Report (SIR) prepared by
9 Probation Officer, Tricia Smith, on the 16th August 2012, together with an
10 Assessment Report from the Department of Counselling Services dated the 7th
11 August 2012.

12 17. The SIR reveals that the Defendant's early childhood years were spent in a single-
13 parent family with his mother – as his father did not honour his paternal obligations.

14 The Defendant was exposed to love, support and socially acceptable behaviour in
15 his early childhood years by his mother.

16 18. When the Defendant was five years old the Defendant's mother met and established
17 a relationship with another man, whom she later married.

18 The Defendant's stepfather made it clear that he did not want the Defendant in their
19 home and the Defendant was never accepted as part of the family from that time on.

20 The SIR reveals that the Defendant has suffered from feelings of neglect and
21 abandonment for most of his life. The Defendant has consistently felt that he was
22 abandoned by his mother, who had to choose between her new husband and him

1 and chose her new husband. In addition, the Defendant carries with him the
2 understanding that he was totally rejected by both his paternal father as well as his
3 stepfather.

4 19. The SIR reveals that the Defendant has demonstrated clear tendencies towards
5 socially unacceptable behaviour throughout his teenage years which the SIR reveals
6 have been the result of parental neglect. In addition, the SIR reveals that the
7 Defendant has not been successful academically.

8 20. Fortunately, the Defendant's maternal grandmother, Mrs. Dawn Powell,
9 endeavoured to give the Defendant love and support during his teenage years.

10 21. In relation to the offence of Defilement, there is evidence to support the
11 Defendant's contention that he did not realise that the victim was 14 years of age.
12 However, it is fair to say that both the victim and the Defendant were involved in,
13 what has been described as, a friendly, virtuous relationship. The sexual intercourse
14 was consensual in nature and it is clear from the evidence put before the Court that
15 the Defendant was fond of the Complainant.

16 22. The Court has been impressed by what is clearly a long period of care and support
17 the Defendant has received from his maternal grandmother.

18 23. The Court is dismayed and disappointed by the fact that the Department of
19 Community Rehabilitation's efforts to contact the Defendant's mother proved
20 futile, and she made no effort to support the Defendant, especially during this
21 period when he is facing a criminal charge. This is yet another example of a child
22 being left to fend for himself for all his formative years.

1 faces – this Court deems that community rehabilitation will be able to make a
2 significant and positive impact in the days and years ahead for this Defendant.

3 34. Accordingly, as in *R v. Woods*, this Court imposes a sentence of a probation order,
4 pursuant to the Alternative Sentencing Law, for a period of two (2) years.
5 Furthermore the Court imposes the conditions recommended by the Probation
6 Officer, that is the Defendant is:

- 7 a) To attend and actively participate in the Anger Management
8 Group at the Department of Community Rehabilitation;
- 9 b) To continue with the Relapse Prevention Programme offered
10 by the Counselling Centre;
- 11 c) To submit random drug testing;
- 12 d) Not to enter any liquor licenced premises;
- 13 e) To enrol in school or make clear efforts to secure permanent
14 employment within three months.
- 15 f) To attend any other group/programme deemed necessary by the
16 Probation Officer/Counsellor.

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18 Dated this the 4th day of September 2012

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21 **Honourable Mr. Justice Charles Quin**
22 **Judge of the Grand Court**

