



**Neutral Citation: [2025] CIGC (Crim) 11**

**IND0031 OF 2021**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL DIVISION**

**R**

**-V-**

**C**

Coram: Hon. Justice Marlene Carter  
Appearances: Mr. Kenneth Ferguson for Crown  
Ms. Amelia Fosuhene for Defendant  
Sentence Hearing: 29 January 2025  
Sentence Judgment: 25 February 2025

*Criminal Law – Judge Alone Trial – Sentence – Indecent Assault on a Female – s.132 (1) of the Penal Code (2019 Revision) - Gross Indecency – s. 134A (1) of the Penal Code (2019 Revision)*

**SENTENCE JUDGMENT**

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

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

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

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



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

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

3. Section 31 of the ***Criminal Procedure Code (CPC)*** (2019 Revision) deals with the Anonymity of complainants in rape etc. cases and states:

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

4. For the avoidance of doubt: It is the Court’s view that the charges of Indecent Assault and Gross Indecency fall within this section of the *Act* by virtue of the use of the word “*etc.*” and therefore I herein make an order in the terms of the wording of s.31(1) of the *CPC* as above.

5. The names of all participants in this case will be anonymized. It is also ordered that the name of the Defendant is anonymized for this judgment to protect the identity of the Complainant.

6. On 11 May 2023, the Defendant was found guilty on Indictment 32/2021 of all seven counts on the indictment, six counts of offences of Indecent Assault and one count for Gross Indecency.

7. The Defendant was tried by Judge Alone. Justice Micheal Wood Q.C (Actg.) presided over that trial and returned the guilty verdicts. Unfortunately, Acting Justice Wood is now deceased. This Court has had the benefit of the verdict judgment delivered by Acting Justice Wood and the submissions of the Crown and Defence Counsel who were both the attorneys at the trial on this sentencing exercise.

8. The verdict judgment outlines, in detail, the circumstances of the offending in relation to each count. There is no need for this Court to delve into the minutiae of the facts giving rise to the verdict. These were allegations of inappropriate touching of a child between the ages of 7 and 11 years old. In determination of the



appropriate sentence, I have carefully confined myself to the facts as outlined by the court in its verdict Judgment.

### **Sentencing Submissions**

#### **Indecent Assault**

9. The Crown has submitted that for the purposes of the Cayman Islands Sentencing Guidelines on Sexual Offences, (“The Guidelines”) as they apply to the offence of Indecent Assault, these are Category 2A offences.
10. The harm is said to be Category 2 on the basis that the evidence revealed repeated touching of the victim’s genitalia by the Defendant. The Crown’s submission that this is the appropriate classification of harm is also based on what was stated to be *“an indication that she has been encountering some psychological harm as a consequence of being subjected to this type of sexual assault over the course of the almost five-year period of offending.”* Crown Counsel also referred to a case status report prepared by the Department of Community Rehabilitation (“DCR”) in support of this submission. I will return to the report below when I consider the Victim Impact Report.
11. Regarding the level of the Defendant’s culpability, the Crown submitted that it should be at Category A on the basis that this offending involves an abuse of trust. The Court is being asked to consider evidence at trial that the Complainant regarded the offender as a father figure, and that he regarded her as he would a daughter. The relationship was such that the Defendant knew the Complainant from birth and that his family and the victim’s mother had been friends for many years. In such circumstances, Crown Counsel submitted that there was here an *“egregious breach of trust as the young victim was entitled to believe the offender should be protecting/guarding her welfare and not abuse her trust over these years of offending.”*
12. Counsel for the Defendant submitted that the more appropriate categorization for the offences of Indecent Assault should be Category 2B. Counsel contended that there was no evidence before this Court of the level of psychological harm suffered by the Complainant. Counsel noted that there was no actual psychological or psychologist report in relation to the child before the Court and that there was nothing to indicate that the views of the victim’s psychologist were at the time of sentence.
13. She argued that the views expressed by the Department of Children and Family Services (“DCFS”) did not amount to evidence of harm to the victim such that the court could find that there was anything beyond the harm inherent in an offence of this sort in light of the age of the victim. It was submitted that there was nothing before the court to sustain a finding of severe psychological harm.



14. Regarding culpability, Counsel submitted that there was no evidence presented at trial that the child was placed particularly in the Defendant's care when she went to the Defendant's household or that the Defendant was "*specifically entrusted with responsibility for that child*". Counsel submitted that breach of trust normally arises out of a specific position, for example, teacher, social worker or priest and that it was not simply in cases where a mother asks a neighbour to look after their child. Counsel argued that this was a distinction that impacted on the level of culpability. Apart from breach of trust, with none of the other factors for Category A present, Counsel submitted that culpability should be at B.

#### Gross Indecency

15. In respect of the count of Gross Indecency, stemming from the evidence accepted at trial that on one occasion the offender rubbed himself against the buttock of the victim after she had taken a shower, the Crown submitted that this was also a Category 2A offence.
16. For the Defendant, it was contended that the same issues regarding harm should be considered here. Counsel for the Defendant stated, in addition to her previous arguments on this issue, that there was nothing to indicate to the Court that the Complainant was particularly vulnerable and stated that this should be considered a Category 3B offence.

#### The Victim Impact Report

17. A Victim Impact Report ("VIR") was ordered to be prepared for the purpose of sentence. The DCR referred to remarks from the Deputy Director of DCFS in which the Deputy Director noted that the department did not consider that it would be in the Complainant's best interest to be reinterviewed for a VIR. The Deputy Director stated that the Complainant's psychologist supported this decision. He went on to state as follows:

*"When [the complainant] was previously interviewed, she experienced significant trauma, resulting in a prolonged recovery period. Given the delays in the court process, her progress in therapy has been slow but steady. Reintroducing her to the traumatic event through another interview could disrupt this progress, potentially retraumatizing her."*

18. There is no report from the Complainant's psychologist for the Court's attention.

#### The Social Inquiry Report

19. The Defendant was born in the Cayman Islands. He moved with his parents to Honduras when he was six years old and returned when he turned eighteen years



old. The Social Inquiry Report (“SIR”) records that the Defendant was brought up in an extended family environment with uncles, aunts and cousins. He stated that he was not exposed to substance misuse or violence within his family home. The Defendant described having positive and supportive relationships with all his family members. He stated that they had been unwavering in their support of him since his arrest and conviction.

20. The Defendant has never been involved in the criminal justice system. After the Defendant returned to the Cayman Islands, he obtained employment and remained with the same organization for several years. He has been married since 2003 and shares two children with his wife. The Defendant did not disclose any ongoing physical or mental health issues and informed that he has never used or experimented with illegal drugs. Various persons were interviewed, apart from the Defendant's wife, for the completion of the SIR. The Defendant was described as a gentleman, very family oriented and very respected within the community. One of his family friends informed that he had known the Defendant since he was eighteen years old, he stated that the Defendant was friendly and warm and an overall good father to his children.
21. Regarding his attitude towards the offense, the Defendant continued to deny that he had committed the offences. He stated that he is upset about being before the court and having been found guilty of these charges; he stated that he has never and would never hurt a child and has never condoned such behavior. He maintained that although he was initially upset with the Complainant for what he says are false allegations, he has now forgiven her but hopes she would understand eventually how this has impacted him and his family.
22. The Defendant was assessed as at low risk of reoffending for a sexual crime and at low risk of reoffending for a non-sexual violent crime.

### **Aggravating Factors**

23. The following are the aggravating factors:
  - i) The location of the offences - All the offending is said to have occurred either at the offender’s home or the home of the victim. In all instances, these are places where the victim was entitled to feel safe.
  - ii) The age of the victim - The Complainant was between ages 7 and 12 when these offences occurred. The Complainant could be considered particularly vulnerable.
  - iii) The disparity between the age of the victim and that of the offender –\_At the time the first incident occurred the Complainant was 7 years old and the Defendant 36.



- iv) The fact that this was not one occasion of indecent assault but that the indecent assaults took place six times over the course of five years.

### **Mitigating Features**

24. The mitigating factors are as follows:
- i) The offender's lack of previous convictions.
  - ii) Rehabilitation – The Defendant has committed no further offending before or since these matters have been before the Court. Counsel submitted that this shows a degree of rehabilitation on the part of the Defendant.
  - iii) Delay - One of the factors that counsel for the Defendant advanced for further mitigation is the delay in this matter, delay in the matter coming to trial and further delay in sentence after the unfortunate passing of Wood J. (Actg.). This matter was transmitted to the Grand Court in May 2021. The trial did not take place until April 2023. The factors which led to delay are not attributable to the Defendant.

### **The Court's Considerations**

25. The maximum sentence for an offence of Indecent Assault, contrary to section 132 (1) of the Penal Code (2019 Revision) is one of ten (10) years imprisonment.
26. The maximum sentence for an offence of Gross Indecency, contrary to section 134A (1) of the Penal Code (2019 Revision) is one of twelve (12) years imprisonment.
27. This Court has previously dealt with the issue of psychological harm. In *R v Chall*<sup>1</sup> it was held that expert evidence is not a necessary precondition to a court finding a victim has suffered severe psychological harm.

*“The judicial assessment may, in some cases, be assisted by expert evidence from a psychologist or psychiatrist. However, we reject the submission that it is always essential for the sentencer to consider expert evidence before deciding whether a victim has suffered severe psychological harm. On the contrary, the judge may make such an assessment and will usually be able to make such an assessment, without needing to obtain expert evidence.”*

28. In *R v Forbes*<sup>2</sup>, the Court stated:

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<sup>1</sup> [2019] EWCA Crim 865; [2019] 2 Cr App R (S) 44

<sup>2</sup> [2016] EWCA Crim 1388



*“In assessing whether the psychological harm in a particular sexual case is severe, a judge must keep in mind that the levels of sentence which the sexual offences guideline sets out already take into account the psychological harm which is inherent in the nature of the offence.”*

29. In this case this Court has not had the benefit of having heard the evidence of the Complainant. There is no expert evidence for its consideration on this issue. I bear in mind that, with respect to the Guidelines, the starting point noted therein reflects the essential gravity of the offence of indecent assault on a female under 16 years old. There is no evidence to support a finding of severe psychological harm.
30. This Court must emphasize that the Court moves to sentence on the facts found and relied upon by the trial Judge. Any matters relating to conduct of the proceedings at trial are for an appellate court. These do not have a bearing on this sentence.
31. There is some disagreement regarding whether the court should view the Defendant as holding a position of trust in relation to the Complainant. In *WVF*<sup>3</sup>, the Attorney General sought to challenge an 18-month sentence imposed on a mother who had been found to have sold indecent photographs of her 12-year-old daughter and incited the child to engage in sexual activity. At issue was whether, in order to find that there was an abuse of trust, there needed to be something more before a parent was guilty of breach of trust in sexual offending against children.
32. In that case, the court found that a breach of trust was clearly established, and this resulted in an increase to the sentence on appeal. However, the court also noted that in some instances “...for example, an older sibling has looked after a younger sibling and committed a sexual offence ...that might colloquially be considered to be an abuse of trust but was not the situation aimed at by the reference to “abuse of trust” in the culpability sections of the relevant Guidelines.”
33. The court referred to *Forbes*, in which the Court of Appeal dealt with a number of related issues which arose in sentencing for historic sexual offences. The court referred to applicable general principles. Regarding culpability, the court notes as follows:

*“15. The guidelines make clear the factors that are to be taken into account, as aggravating or mitigating factors. It is essential that the court avoids double counting, by bearing in mind that the starting points will reflect the essential gravity of the offence in question. As we explain in the next paragraphs, taking advantage of a relationship to commit an offence may have already been taken into account in the*

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<sup>3</sup> [2023] EWCA Crim 65



*selection of the starting point; something more is therefore required to establish abuse of trust as a separate aggravating factor or to justify placing the offense in a particular category of culpability.”*

34. Regarding abuse of trust, it was stated as follows:

*“17. Whilst we understand that in the colloquial sense the children’s parents would have trusted a cousin, other relation or a neighbour ... to behave properly towards their young children, the phrase “abuse of trust”, as used in the guideline, connotes something rather more than that. The mere fact of association or the fact that one sibling is older than another does not necessarily amount to breach of trust in this context. The observations in [54] of R v H should be read in this light.”*

35. The court emphasized that there must be *“a close examination of the facts and clear justification given if abuse of trust is to be found.”*

36. I do not find that there is an abuse of trust established in the circumstances of this case so as to increase culpability, which, on the facts, is at Category B.

37. After consideration of the above, I find that as per the Guidelines, the offences of Indecent Assault are Category 2B offences with a starting point of four (4) years custody and a sentencing range of 3-7 years. The Cayman Islands Sentencing Guidelines provide that concurrent sentences will ordinarily be appropriate where, as in this case, there is a series of offences of the same or similar kind especially when committed against the same victim. Where concurrent sentences are passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offence, and thus, the court may increase the sentence of the principal offence to reflect the gravity of the conduct. I therefore increase the starting point within the sentencing range to five (5) years custody. Taking account of the aggravating and mitigating factors outlined above, that sentence is increased to 5 ½ years custody.

38. For the delay not occasioned by the actions of the Defendant, there will be a further deduction of 15 months to the sentence. For personal circumstances, 6 months is deducted from the sentence to take the sentence to 3 years and 9 months custody. The sentence for each offence of indecent assault is to run concurrently to Count 1 on the indictment.

39. For the offence of Gross Indecency, the sentence of the Court is 3 years custody. This sentence will run concurrent to the sentence for Indecent Assault at Count 1.



### Conditions curtailing liberty

40. The Defendant has been subject to bail conditions. The Cayman Islands Sentencing Guidelines allow for a reduction in sentence for time spent on remand and subject to conditions curtailing liberty.

41. The Cayman Islands Sentencing Guidelines at 12.2:

*“The court must consider whether credit should be given for time spent on bail where conditions have been imposed which curtail the liberty of the Defendant. This is most likely to be relevant where a Defendant has been subjected to a curfew, especially where compliance with that curfew can be verified through electronic monitoring.”*

42. It is accepted that the time that the Defendant has been on bail and subject to the wearing of an electronically monitored bracelet is a condition curtailing liberty. This Court must consider whether credit should be given to the Defendant after consideration of the following factors:

- i) The total length of time the defendant has been subject to a curfew;
- ii) The number of hours each day that curfew was imposed during the curfew;
- iii) Whether the curfew included daytime hours or was solely a nighttime curfew recognizing that being indoors at night during for example normal sleeping hours may be less of a curtailment of liberty than being indoors during the day; and
- iv) Any breach of the conditions of curfew.

43. The courts in the Cayman Islands have considered this issue in a number of cases. In *The Crown v. Tibbets*<sup>4</sup>, the defendant was on bail subject to a curfew and electronic monitoring for 596 days. Dobbs J. accorded him a 4.5-month reduction in sentence. In *The Crown v. Rankin*<sup>5</sup> this court awarded a three-month reduction to sentence where the electronic tag was worn for 436 days and where there had been a breach of curfew. In the case of *Rivers, McGuinness & Moore*<sup>6</sup>, the defendant, Moore, was subject to curfew with an electronic tag for 780 days he was accorded a reduction in sentence of 6 months.

44. There are two more recent cases which are of relevance on this issue of the electronic tag. The first is *The Crown v. Palinda Dissanayake*<sup>7</sup>. In that case, a judgment of Richard J. KC, the Defendant was sentenced for one count of indecent

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<sup>4</sup> Indictment 71/2015

<sup>5</sup> Unreported. *R v Rankine (Antascio Terrell) Ind. 108/16*

<sup>6</sup> 2021 (2) CILR 641

<sup>7</sup> Ind. 94-95 of 2023



assault for an assault on a 15-year-old girl which occurred on a public bus. The defendant was found to have touched the complainant on her lower leg and rubbed his hand up to her thigh three to five times. The defendant was a person of previous good character. A social inquiry report determined that he was at a low risk of sexual and general reoffending. The court took into account his personal circumstances and the fact that incarceration in the Cayman Islands would mean prolonged absence from his family, who were residents in his home country.

45. The court assessed the circumstances of the offence at Category 2 and lower culpability with a starting point of four years custody, and sentencing range of three to seven years. In that case, without aggravating factors present, and taking account of the mitigating factors referred to above, the court found a sentence of 29 months' imprisonment was appropriate. The defendant, at the time of sentence, had been on an electronic monitor for 163 days with curfew hours between 11:30 PM and 8:00 AM. The court found that his daily movements were not restricted to a significant extent. However, after taking account of this factor and applying the discretionary principles outlined at Section 12 of the Sentencing Guidelines, Richards J. accorded the defendant a credit of 50% of the total number of days that the defendant was on curfew with the electronic monitor.
46. In the case of *The Crown v. Josepeter*<sup>8</sup>, the defendant was before the court for one count of indecent assault. The inappropriate touching related to a young girl; seven years old. The nature of the assault was that the defendant had made contact with her by placing his hands over and beneath her swimsuit. The defendant was convicted was sentenced to a term of 16 months' imprisonment. The defendant was given credit for the time that he had been on bail with an electronic monitor. the court described the period under which the defendant had been subject to the electronic monitor with other bail conditions as "onerous" and, for this reason, applied a discount of 50% to the number of days during which the defendant had been on the electronic monitor and subject to curfew.
47. In this case, there has been a much more egregious imposition on the liberty of the Defendant and as such a more significant discount must be accorded to the Defendant. The Defendant has been subject to a curfew from 16 November 2020 to present. He was fitted with an electronic monitor from that date.
48. From 16 November 2020, the Defendant was on bail with conditions that included a curfew between 5:00 PM to 6:00 AM on weekdays and 24 hours during the weekends. From 21 May 2021 to 3 March 2022, the Defendant was on curfew, which included restrictions between the hours of 3:00 PM to 10:00 AM on weekdays, a 24-hour curfew on all weekends, and a 24-hour curfew to be observed when schools were on break. During the time the Defendant was subject to 24-

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<sup>8</sup> Ind. 16 of 2018

hour curfews during school breaks, these periods encompassed at least one Easter vacation, one summer vacation and one Christmas vacation.

49. Between 1 April 2022 to the present, the Defendant's bail conditions were varied so that the curfew hours were limited to 7:00 PM to 7:00 AM daily. Conditions regarding the 24-hour curfew were lifted.
50. There have been minor variations of the curfew to enable the Defendant to be out later or for a few days during the time that his wife was ill and hospitalized. There has been no breach of the conditions of the curfew by this defendant during the period 16 November 2020 to today's date.
51. The Defendant was subject to a curfew between 16 November 2020 and 30 March 2022, with electronic monitor and 24-hour curfews during all weekends and during the period of school holidays. That period amounts to 499 days. For the period of 1 April 2022 to the present, the Defendant was under a 7:00 PM to 7:00 AM curfew with electronic monitor. That period amounts to 1044 days.
52. I find that the length of time that the Defendant was subject to the curfew while wearing the electronic monitor is significant enough that he should receive credit for this curtailment of his liberty within the meaning of Section 12 of the Cayman Islands Sentencing Guidelines. For the period 16 November 2020 to 30 March 2022, 499 days, the Defendant shall have a reduction in sentence to equate to 75% of those days. For the period 1 April 2022 to the present, some 1044 days, the Defendant shall have a reduction in sentence of 50% of those days.
53. Any time that the Defendant has spent in custody is to be deducted from this sentence.
54. The Crown has applied for a Sexual Harm Prevention Order (SHPO) following the Defendant's release from prison for the protection of the public. This Court is satisfied that a SHPO is necessary for the protection of the victim and the public. That Order is granted for a period of 4 years.



Hon. Justice Marlene I. Carter  
Judge of the Grand Court

