



**IND NO: 92 of 2022**

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

6 **THE KING**

8 **V.**

10 **RW**

14 **Appearances:** **Mrs. Nicole Petit, Senior Crown Counsel, Office of the Director of**  
15 **Public Prosecutions for the Prosecution**

16 **Mr. Crister Brady of Brady Law for the Defence**

19 **Before:** **Justice Cheryll Richards KC**

21 **Sentence Hearing:** **24<sup>th</sup> July 2024**

23 **Sentence Judgment:** **1<sup>st</sup> August 2024**

27  
28  
29 ***Criminal Law – Sentencing - Section 132A, 134A and 228J of the Penal Code, Assault by Penetration,***  
30 ***Gross Indecency and Engaging in Sexual Activity in the Presence of a Child, Cayman Islands Sentencing***  
31 ***Guidelines.***



## SENTENCE JUDGMENT

### PREAMBLE

1. Pursuant to s.12 of the *Youth Justice Act* (2021 Revision) and s.31 of the *Criminal Procedure Code* (2021 Revision), this judgment has been anonymised to protect the identity of the victim. It is ordered that there be no reporting which would lead to the identification of the victim in this case.

### INTRODUCTION

2. The defendant is before the Court for sentencing following his conviction after trial for three offences on an amended Indictment.
3. *Count One* charges him with Assault by Penetration, contrary to section 132A of the *Penal Code* (2019 Revision) (Specimen Charge). The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, at ..., in the jurisdiction of the Cayman Islands, for the purpose of obtaining sexual gratification, intentionally penetrated the vagina of VM, a child under the age of 16 years, with his finger. The maximum penalty for this offence is 10 years imprisonment.
4. *Count Two* charges him with Gross Indecency, contrary to section 134A of the *Penal Code* (2019 Revision) (Specimen Charge). The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, at ..., in the jurisdiction of the Cayman Islands, committed an act of gross indecency with or towards VM, a child under the age of 16 years, by licking VM's vagina with his tongue. The maximum penalty for this offence is 12 years imprisonment.

*Count Three* charges him with Engaging in Sexual Activity in the Presence of a Child, contrary to section 228J of the *Penal Code* (2019 Revision) The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, at ..., in the jurisdiction of the Cayman Islands, for the purpose of obtaining sexual gratification, intentionally engaged in an activity that was sexual in nature, namely masturbating his penis and ejaculating on to VM's slippers while in

1 the presence of VM, a child under the age of 16 years. The maximum penalty for this offence is  
2 12 years imprisonment.



3  
4 **THE FACTS**

- 5
- 6 5. The victim was 15 years old at the time the offending came to light. The victim's mother had  
7 been living in the Cayman Islands for almost all of the victim's life while the victim remained in  
8 their home country with her grandparents. Sometime in 2016 or 2017 the victim came to the  
9 Cayman Islands to reside with her mother and her mother's husband, the defendant.
- 10
- 11 6. The victim's evidence at trial was that shortly after her arrival on occasions when her mother was  
12 away from the home at work the defendant began touching her inappropriately. The first time he  
13 touched her inappropriately was when she was in Year 8 at her school.
- 14
- 15 7. As regards the three incidents charged as specimens, her evidence was that one afternoon after  
16 school while her mother was at work, the defendant came into her room, told her to take off her  
17 clothing, touched her breasts while she was naked and placed his finger inside her vagina.
- 18
- 19 8. On another occasion, he put his mouth on her private part. He was licking her belly and then he  
20 went down on her private part, used his finger and opened it and put his mouth on her. Nobody  
21 was there. This was always in the evening time because her mother was home at night.
- 22
- 23 9. On another occasion he masturbated in front of her and afterwards something came out of him,  
24 and it went on her slippers. She ran out and started to vomit and went to wash out her slippers at  
25 the back of the house.
- 26
- 27 10. She said that his conduct continued over and over. The last incident was after Father's Day or  
28 Mother's Day. It was when she was going to school in the morning and her mother did not come  
29 home that night because of work. She said that she took pills to try to kill herself.
- 30
- 31 11. Matters came to light when her teacher at school noticed that her behaviour had changed. Her  
32 mother also noticed that her behaviour had changed and spoke to the Vice Principal of the School  
33 the Vice Principal spoke to the victim and then reported the matter to the School Counsellor.
- 34



1 **VICTIM IMPACT REPORT**

2  
3 12. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report  
4 dated 30<sup>th</sup> May 2024, (“VIR”). The Probation Officer states that the anticipation of the victim in  
5 coming to live here in 2016 or 2017 was that the relationship with her mother would be  
6 strengthened. When the incidents began she did not confide in her mother because she did not  
7 know her well and having only recently joined the family unit did not want to be the cause of  
8 breaking it up.

9  
10 13. In describing the impact of the offence to the Probation Officer, the victim shared that the  
11 offences took place over an extended period of time. As they continued she found it difficult to  
12 cope with the stress so she tried to overdose on prescribed medication as she wanted to be done  
13 with life.

14  
15 14. The victim also reported that after the matter came to light, her mother did not want to be  
16 involved, and she felt that her mother did not give her any emotional support. The victim felt that  
17 she was to be blamed while it continued as she did not report it to the authorities. The Officer  
18 further states that the victim shared that she also became afraid of the dark and began sleeping  
19 with the light on throughout the night. This caused some tension with her mother who was  
20 concerned about the electricity bill. After the victim returned to her native country she found it  
21 difficult to sleep and would walk around the house at nights. She was withdrawn and was not  
22 eating or talking to her grandparents.

23  
24 15. The Officer’s view is that the defendant’s actions impacted the victim at all levels. She had not  
25 been close to her mother and was hoping to have a closer relationship with her. Instead, after the  
26 incidents were reported their relationship deteriorated. Her relationship with her mother  
27 continues to be tense and there is no communication with her older sister to whom she had  
28 reported the first incident.

29  
30 16. The Officer also notes that the victim’s education was interrupted when she migrated back to her  
31 home country. She had to repeat a year of high school. She experienced a loss of self-identity.  
32 There were mental health issues and the inability to function in the way she used to prior to the

1 offence. The impact of this was compounded by the fact that she had very limited emotional and  
2 social support.



3  
4 **ANTECEDENT HISTORY**

5  
6 17. The defendant has no previous convictions recorded against him.  
7

8 **SOCIAL INQUIRY REPORT**

9  
10 18. The DCR has provided a Social Inquiry Report in respect of the defendant dated 18<sup>th</sup> June 2024,  
11 (“SIR”). The Court has read the report in its entirety and takes into account everything said  
12 therein in favour of the defendant. He is 51 years old. He is re-married with two adult children  
13 who are resident overseas.  
14

15 19. He describes a childhood in a loving and supportive environment although there were economic  
16 problems for the family. He attended school up to year 10 but was unable to complete his studies  
17 due to the financial situation of his family. After leaving school he was employed as a farm  
18 worker until he migrated to the Cayman Islands in 2007 for work purposes. He has lived here  
19 ever since. He worked up until the time of his arrest for these offences in 2021. He is actively  
20 involved in the life of his church. Following the allegations against him, his relationship with the  
21 mother of the victim, his second wife with whom he had been married for 16 years ceased when  
22 she left the home to leave the country. He has recently re-married since April 2024.  
23

24 20. A community contact who has known him for over ten years describes him as a respectful person,  
25 hardworking and jovial who is heavily involved as a volunteer in the church. The offending is  
26 believed to be out of character for the defendant.  
27

28 21. The Probation Officer states that the defendant expressed no remorse towards the victim and  
29 states that *“her mother forced her to tell these lies”*.  
30

31 22. The Officer notes that the offences appear to be outside of the defendant’s general character and  
32 upbringing and that from all the information received he was raised in a stable household with  
33 strong Christian fundamentals and values.



1       23. The defendant was assessed to be at low risk of sexual re-offending and at medium risk of general  
2       re-offending. It is recommended that should a custodial sentence be imposed that the defendant  
3       be assessed for inclusion in the Sex Offender Treatment Programme.  
4

#### 5       **THE SUBMISSIONS** 6

7       24. Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for the offences  
8       of Assault by Penetration and Gross Indecency. There are no specific guidelines for the offence  
9       of Engaging in Sexual Activities in the Presence of a Child.  
10

11       25. For the offence of Assault by Penetration the *Guidelines* provide for three categories of Harm  
12

13       Category 1 Harm has one factor: -

- 14       • The extreme nature of one or more category 2 factors may elevate to category 1.  
15

16       For Category 2 Harm, the factors are

- 17       • Severe psychological or physical harm
- 18       • Penetration using large or dangerous objects
- 19       • Additional degradation /humiliation
- 20       • Abduction
- 21       • Prolonged detention/sustained incident
- 22       • Violence or threats of violence beyond that which is inherent in the offence
- 23       • Forced uninvited entry into victims' home
- 24       • Victim is particularly vulnerable due to age and personal circumstances.  
25

26       26. Culpability A factors include abuse of trust.  
27

28       27. The prosecution submits that the Harm is at the level of Category 1 because of the extreme impact  
29       caused by a combination of Category 2 factors, namely the impact on the victim as a result of the  
30       incidents and her vulnerability due to her age. It is submitted that the Culpability is at level A  
31       because of the abuse of trust.  
32

- 1 28. The starting point for a Category 1, Culpability A offence is 9 years custody with a range of  
2 sentence of 8 to 10 years.  
3
- 4 29. The defence disagree with the submission of the prosecution. Defence Counsel submits that the  
5 offending is at the level of Category 2 Harm and Culpability A. It is accepted that this is a  
6 Culpability A case because of the abuse of trust, given that the defendant was her stepfather, but  
7 it is submitted that the Harm is not at the extreme level. For a case at the level of Category 2  
8 Harm and Culpability A, the starting point is 7 years custody with a range of sentence of 5 to 8  
9 years.  
10
- 11 30. As to the offence of Gross Indecency, the prosecution submits that this is also a case of Category  
12 1 Harm because of the extreme impact of a combination of Category 2 factors. It is said to be  
13 Culpability A because of the abuse of trust. The starting point is 10 years custody with a range  
14 of sentence of 8 to 12 years.  
15
- 16 31. Defence Counsel submits that the offending falls into the lower level of Category 2 Harm and  
17 Culpability A with a starting point of 8 years and a range of sentence of 6 to 9 years.  
18
- 19 32. Defence Counsel asks the Court to consider the degree of proportionality to the gravity of the  
20 offending and the totality principle. Counsel referred the Court to a number of cases which are  
21 set out below. Counsel submits that while each case will be looked at in terms of the facts and  
22 circumstances relative to each, the age of the victims, and whether pleas were entered thereby  
23 avoiding a trial and the personal circumstances of each offender, these cases may be of assistance  
24 in arriving at a sentence in this case.  
25
- 26 33. Counsel submitted that in the case of *R v DeAnthony Russell*<sup>1</sup>, the defendant touched the bottom  
27 of an eight-year-old female for a few short seconds and masturbated. This occurred in the victim's  
28 home, while there were other children in the home. He was related to the victim. He was not of  
29 previously good character and was on probation at the time. He had committed other offences  
30 unrelated to the sexual assault whilst on probation. Following trial, he was sentenced to 3 years'  
31 imprisonment by the Grand Court.

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<sup>1</sup> Grand Court Ind. 52/2021- Unreported Judgment dated 26<sup>th</sup> May 2022



- 1 34. In *R v Tony O'Connell Ebanks*<sup>2</sup>, the defendant touched and penetrated the naked vagina of a  
2 five-year-old child with his finger. The defendant was convicted following a trial and was  
3 sentenced to 8 years' imprisonment. There had been evidence of significant psychological impact  
4 on the five-year-old victim. The defendant had a number of previous convictions for sexual  
5 offences including a conviction for rape in 2009 and for sexual assault on an eleven year old in  
6 2016.
- 7
- 8 35. In *R v Elbert McField*<sup>3</sup>, the defendant touched the breast of the fifteen-year-old complainant who  
9 was his stepdaughter while she was in her bed in the home which he shared with the victim's  
10 mother. He had no previous relevant convictions. Following an initial not guilty plea and later a  
11 guilty plea, he was sentenced to 18 months imprisonment.
- 12
- 13 36. In *R v Valiysveetil Josepeter*<sup>4</sup> the defendant touched the vagina of a six-year-old child, over her  
14 clothing while pretending to lift her with his hand between her legs. He was sentenced to 8  
15 months' imprisonment.
- 16
- 17 37. In *R v Henry Dagala Jabines*<sup>5</sup> in 2019, the defendant was charged under section 145(1) of the  
18 *Penal Code* (2019 Revision) with Indecent Assault against a male child whose testicles he had  
19 squeezed after approaching him in a bathroom at a hotel on the Brac, after showing him  
20 pornographic images on his phone. The victim had gone into the bathroom to escape mosquitos  
21 while waiting on his parents and had gone to sit in a stall in the hotel bathroom and was playing  
22 on his phone. The defendant had changed his plea on the day of trial and received a 20% discount.  
23 He was sentenced to 10 months imprisonment.
- 24
- 25 38. Counsel noted that in sentencing Carter J(Actg.) considered the United Kingdom Sentencing  
26 Guidelines at the time and referenced the provisions which state that: *'In determining the gravity  
27 of an offence of indecent assault or other sexual offence, the sentencing court should take account  
28 of the same general considerations as in the case of rape. Those are, (i) the degree of harm to  
29 the victim (ii) the level of culpability of the offender and (iii) the level of risk posed by the offender*

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<sup>2</sup> Grand Court Ind. 40/2021- Unreported Judgment dated 17<sup>th</sup> February 2022

<sup>3</sup> Summary Court Charge 00338/2020 Unreported Judgment dated 7<sup>th</sup> April 2021

<sup>4</sup> Grand Court Ind. 16/2018- Unreported Judgment dated 24<sup>th</sup> July 2019

<sup>5</sup> Grand Court Ind. 24/2019- Unreported Judgment dated 3<sup>rd</sup> October 2019



1 to society - the offender's age and the fact that the offender might only be a danger to the members  
2 of the family with whom he had the relationship would be relevant in determining whether there  
3 was a reduced risk of offending'.

- 4  
5 39. In ***R v Conrad Clint Mendoza***<sup>6</sup>, the defendant was sentenced to 4 years following trial by judge  
6 alone where the defendant was convicted of sexually touching the complainant over a period of  
7 some eight months, including on her bare breasts. He was a close friend of the complainant's  
8 family and in a position of trust.



9  
10 **SUBMISSIONS IN MITIGATION**

- 11  
12 40. Counsel for the defence submitted that the defendant has had this case hanging over his head  
13 since 2021 and has been faithful in attending Court. It has taken a toll on him. He has been  
14 unemployed since his arrest. Counsel submits that no sentence that this Court can impose could  
15 be worse than the embarrassment and *“fall from grace that the defendant endured since his*  
16 *arrest, charge and conviction”*.

- 17  
18 41. Counsel said that the defendant will face significant difficulties in the foreseeable future in terms  
19 of his ability to travel and work. He faces almost certain deportation after his sentence and a  
20 return to his home country where he has not lived in 20 years.

- 21  
22 42. Counsel asked the Court to consider that the defendant will never be able to offend in these  
23 Islands again and that a lengthy sentence will not have the same effect that it would have had if  
24 the defendant were to be released to continue to live in this country.

- 25  
26 43. Counsel submitted that the defendant is 51 years old and of good character. There is shock and  
27 surprise at his conviction among those who know him. He has maintained his innocence  
28 throughout the case and continues to deny the offences for which he has been charged. Counsel  
29 submits that while the Court will no doubt be concerned about the defendant's denial of the  
30 offending, absence of remorse ought not to be treated as an aggravating factor.

31  

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<sup>6</sup> Grand Court Ind. 92/2021- Unreported Judgment dated 2<sup>nd</sup> December 2022

1 44. Counsel submits that while a custodial sentence will be inevitable, the Court is asked to balance  
2 justice with mercy for the defendant who is convicted of a serious offence but who has never  
3 been before a court anywhere before. Counsel said that his life has been on hold for the last three  
4 years and he craves finality to these proceedings so that he can begin to rebuild his life and take  
5 stock of his future.



6  
7 **THE SENTENCE**  
8

9 45. This defendant, who was in a position of trust towards the young victim, being her stepfather  
10 carried out multiple sexual assaults on her person. Instead of parental protection of her, it was the  
11 very opposite. As described by the victim, he was alert to opportunities when her mother was  
12 away from home. These included occasions when the victim arrived home from school in the  
13 afternoons when no one else was home. At trial the victim's despair and confusion was evident.  
14 She said that these incidents would stop during her monthly cycles, and they would start again  
15 just after. She did not know how he knew. Plainly the defendant must have been watching her  
16 in the home with some alertness and criminal intent. This was not a one-off incident but continued  
17 over a period of time such that the victim was driven to attempt suicide, afraid to sleep in the  
18 dark, trapped in a cycle of abuse where she at her young age could see no way out other than to  
19 end her life. A more serious case of betrayal of trust would be difficult to find.

20  
21 46. The offending is serious and firmly passes the custody threshold. The defendant's low risk of  
22 sexual reoffending is noted as are all his personal circumstances. Everything said and written in  
23 his favour is taken into account. In the Court's view there is nothing in those personal  
24 circumstances which would make a sentence of immediate custody avoidable.

25  
26 47. A number of the cases cited by defence Counsel pre-dated the *Guidelines* or are clearly  
27 distinguishable. Some of these were one-off incidents, did not involve breaches of trust and the  
28 impact of the offences on those victims is not clear. Here there was repeated offending in respect  
29 of a stepchild with evident severe psychological consequences.

30  
31 48. In respect of the first offence of Assault by Penetration, the Court accepts the submission of the  
32 defence that the Harm is at the level of Category 2, severe psychological or physical harm. In the

1 Court's view to fall into Category 1, it is considered that some more definitive evidence may well  
2 be needed to show that the harm was beyond severe and at the level of extreme.

3  
4 49. The level of Culpability is at level A for the reason agreed by both Counsel. The starting point is  
5 7 years or 84 months custody. There are no aggravating factors. The defendant's lack of remorse  
6 is not such a factor.

7  
8 50. In mitigation, the Court takes into account everything said and written in the defendant's favour.  
9 He has no previous convictions and is of good character. His personal circumstances are noted.  
10 By all accounts he was a hard worker through to the date of his arrest both at his regular work  
11 and as a volunteer in his church community. This conviction will change his life in that it may  
12 affect his right to live and work in the Cayman Islands and lead to his return to a country where  
13 he has not lived for 20 years. All the circumstances taken together will serve to reduce his  
14 sentence by 18 months. An additional factor is taken into account. This is the extent of the delay  
15 between his arrest and now. This is not the fault of the defendant. Very likely this period of  
16 waiting would have been extremely stressful for him. An additional reduction of 6 months is  
17 afforded to him as a result of this.

18  
19 51. The sentence on Count One is therefore one of 60 months.

20  
21 52. For the offence of Gross Indecency, the Court accepts the submission of the defence that the  
22 Harm is at the level of Category 2, severe psychological or physical harm. The culpability is at  
23 Level A. The starting point is 8 years or 96 months custody. Similar decisions are made for  
24 mitigating factors, 18 months and for delay 6 months for a total sentence of 72 months.

25  
26 53. In respect of the third offence of Engaging in Sexual Acts, while there is a difference in the nature  
27 of the offending the maximum sentence is the same as for the offence of Gross Indecency, one  
28 of 12 years. The Court therefore applies the same guideline factors, starting point and mitigating  
29 factors for a total sentence of 72 months.

30  
31 54. Paragraph 6 of the *Cayman Islands Sentencing Guidelines* with respect to concurrent and  
32 consecutive sentences provides as follows:

33  
34 **"6.1 Concurrent Sentences**



1 *It is wrong in principle to impose sentences to run consecutively where those*  
2 *offences, though distinct in law, arose out of a single act so that the overall*  
3 *criminality for the offender can be represented by concurrent sentences.*

4  
5 *Concurrent sentences will ordinarily be appropriate where:*

6 *a) Offences arise out of a related incident or facts.*

7 *b) There is a series of offences of the same or similar kind especially*  
8 *when committed against the same victim.*

9 *Where concurrent sentence are passed, the sentence should reflect the overall*  
10 *criminality involved. The sentence should be appropriately aggravated by the*  
11 *presence of the associated offences and thus the court may increase sentence for*  
12 *the principal offence to reflect the gravity of conduct.*  
13

## 14 **6.2 Consecutive Sentences**

15 *Consecutive sentences will ordinarily be appropriate where:*

16 *a. Offences arise out of unrelated facts or incidents.*

17 *b. Offences are of the same of similar kind but where the overall*  
18 *criminality will not sufficiently be reflected by concurrent*  
19 *sentences for example:*

20 *i. Where offences are committed against different victims.*

21 *ii. Where sexual offences or domestic violence are*  
22 *committed against the same individual.*

23 *iii. Where the offender commits the same or similar offence*  
24 *after being arrested for the original offence.”*  
25

26 55. In this case the Court considers it appropriate that the sentences run concurrently.

27  
28 56. Consideration has been given to the totality principle and to whether the proposed sentence of 72  
29 months is proportionate to the gravity of the offending. The Court considers that it is. This was  
30 repeat offending over a prolonged period and was a breach of trust. The primary aims of  
31 sentencing in this case are punishment, deterrence and rehabilitation. While in custody as  
32 recommended by the Probation Officer, the defendant is to receive assessment for the Sexual  
33 Offender Treatment programme.

34  
35 57. The sentences are therefore 60 months on Count One, 72 months concurrent on Count Two and  
36 72 months concurrent on Count Three. Time served is to be taken into account.



1 **SEXUAL HARM PREVENTION ORDER**

2

3 58. The prosecution applies for a Sexual Harm Prevention Order (“SHPO”) which is not opposed by  
4 the defence. The location of the victim is a factor that has been considered. Defence Counsel  
5 noted that while such an order is inevitable, it is unlikely to have the effect it would otherwise  
6 have, were the defendant to be eventually released to live and work here.

7

8 59. This Court is satisfied that a SHPO is necessary for the protection of the victim and children and  
9 makes an order in terms of the draft as amended for a period of five years following the  
10 defendant’s release from Prison. The defendant is advised of the nature of the order and the  
11 possible consequences of any breach.

12

13 **Dated this the 1<sup>st</sup> August 2024**



14

15 **The Hon. Justice Cheryll Richards KC**  
16 **Judge of the Grand Court**