



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 44 OF 2023**
5
6

7
8 **R**

9
10 **V.**
11

12 **SAMUEL MCLAUGHLIN-ESCUADERO**
13
14

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

17
18 **Mr. Richard Barton for the Defence**
19

20 **Before:** **The Hon. Justice Cheryll Richards KC**
21

22 **Submissions Heard:** **24th November 2023**
23

24 **Sentence Judgment:** **11th December 2023**
25
26
27

28 **HEADNOTE**
29

30 ***Criminal Law - Defilement, Child under 16 years, Young Offender, Sentencing, Application***
31 ***of the Cayman Islands Sentencing Guidelines***
32
33
34
35



SENTENCE JUDGMENT

PREAMBLE

1. Section 12 of the *Youth Justice Act* (2021 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. Section 31 of the *Criminal Procedure Code* (2021 Revision) states as follows: “Anonymity of complainants in rape etc. cases:

“31. (1) *After a person is accused of a rape 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.*

...

(5) *If any matter is published or broadcast in contravention of subsection (1), the following persons —*

(a) *in the case of a publication in a newspaper or periodical, the proprietor, editor and publisher of the newspaper or periodical;*

- 1 (b) in the case of any other publication, the person who
2 publishes it;
- 3 (c) in the case of a broadcast, any person having functions,
4 in relation to the programme in which it is made,
5 corresponding to those of an editor of a newspaper,
6 commit an offence and are each liable on summary conviction to
7 a fine of one thousand dollars.”

8

9 3. For the avoidance of doubt: It is the Court’s view that the charges against this defendant, based
10 on the particulars of the offence, fall within this section of the law by virtue of the use of the word
11 “etc.” and therefore it is ordered that there be no identification of the victim in this case.

12

13 4. In pursuance of the sections of the *Acts*, this Judgment has been anonymized to protect the
14 identity of the victim.



15

16 **INTRODUCTION**

17

18 5. The defendant is before the Court for sentencing following his guilty plea to Counts 1
19 and 3 of the Indictment. These charge him with two offences of Defilement of a girl under
20 sixteen contrary to s.134 (1) (b) of the *Penal Code* (2019 Revision).

21

22 6. **The particulars of Count 1** are that he, on a date unknown in August 2021 within the
23 jurisdiction of the Cayman Islands had unlawful carnal knowledge of [X] a girl between
24 the ages of 12 and 16 years.

25

26 7. **The particulars of Count 3** are that he on or about the 18th day of December 2021,
27 within the jurisdiction of the Cayman Islands, had unlawful carnal knowledge of [X], a
28 girl between the ages of 12 and 16 years.

29

30 8. The maximum penalty for the offence of Defilement of a child of this age is 12 years
31 custody.

1 9. Given his pleas to these two counts, the prosecution offers no evidence against him in
2 respect of Count 2 of the Indictment. A formal verdict of not guilty is entered on this
3 Count and the defendant is discharged thereon.



4
5 **BASIS OF PLEA/AGREED FACTS**
6

7 10. The defendant has provided a signed Basis of Plea which is accepted by the prosecution.
8 This Basis also sets out the agreed facts. It reads as follows:
9

- 10 i. "The defendant and the complainant's older brother attended the same school and
11 had been best friends for over five (5) years. The defendant visited the
12 complainant's home approximately three times weekly and was included in family
13 functions and holiday celebrations.
14
- 15 ii. The defendant and the complainant initially became friends in October 2020, during
16 a dance group practice that they both participated in. They would both go out to
17 places together with their mutual friends and family and eventually started a
18 relationship.
19
- 20 iii. On 25 December 2020, the defendant asked the complainant's parents for
21 permission to date the complainant and subsequently asked the complainant to be
22 his girlfriend on 9 January 2021.
23
- 24 iv. From the 9 January 2021 to the 25 December 2021, the defendant and the
25 complainant maintained a relationship. The defendant was seventeen (17) years
26 old, and the complainant was twelve (12) years old at the time of the relationship.
27
- 28 v. In August of 2021, the complainant snuck the defendant into her parent's house,
29 through her bedroom window. At Approximately 2:00am the defendant had sexual
30 intercourse with the complainant.



- 1 vi. On 18 December 2023, the defendant again had sexual intercourse with the
2 complainant. On this occasion the pair had sex in a silver Honda Accord owned
3 by the defendant, that was parked in a secluded area in West Bay.
4
- 5 vii. On 25 December 2021 the defendant attended the complainant's home address. The
6 complainant accessed the defendant's cellphone and accused him of cheating. The
7 complainant ended the relationship and instructed the defendant to leave the
8 premises.
9
- 10 viii. On 26 December 2021, the complainant, accompanied by her family, attended the
11 West Bay Police Station, and made a formal report against the defendant. He was
12 later arrested on suspicion of defilement of a girl under 16 years of age and taken
13 to the detention center.
14
- 15 ix. On 31 January 2021, the defendant was interviewed under caution and offered no
16 comment to the questions asked. The defendant was released on unconditional bail.
17 On 27 August 2023 charges were filed against the defendant.
18
- 19 x. The defendant received a summons to attend Court. On 9 May 2023, the defendant
20 appeared in the Summary Court and the matter was committed to the Grand Court."
21
- 22 11. At the time of the offending in August of 2021, the defendant was 17 years and nine
23 months of age. At the time of the offending in December 2021 the defendant was 18
24 years old. The victim was 13 years and 7 months at the time of the first offence and just
25 under 14 years at the time of the second offence. The difference in their ages was 4 years
26 and 2 months.
27
- 28 12. The defendant first appeared in the Grand Court on the 26th May 2023. His Counsel
29 sought time to take instructions. At the defendant's next appearance on the 23rd June
30 2023, defence Counsel indicated that a guilty plea would be forthcoming and a basis of

1 plea was to be provided to the prosecution for review. At his next appearance on the 10th
2 July 2023, guilty pleas were entered. It is accepted by the prosecution that the defendant
3 is entitled to the full one third discount.



5 VICTIM IMPACT REPORT

6
7 13. The Department of Community Rehabilitation (“DCR”) with the assistance of the
8 Department of Children and Family Services has provided a Victim Impact Report
9 (“VIR”) dated 30th August 2023 and an updated Report dated 27th September 2023.

10
11 14. The victim provided details of how the relationship with the defendant began and
12 developed. She stated that the defendant used guilt in order to make her feel awful for
13 not wanting to engage in sexual activity. She reported that after she spoke out about what
14 was happening there was a physical altercation between members of the two families.
15 This resulted in her father and brother being arrested, charged and sentenced to two years’
16 probation. She stated that since the offences her emotional and mental health as well as
17 her sense of self-worth has suffered.

18
19 15. The Social Worker records the following: -
20

21 *“[X] revealed that she was overwhelmed for an extended amount of time after*
22 *offences were reported and how the accused made her feel, which has an adverse*
23 *effect on her schoolwork. [X] also disclosed that she attempted suicide, experienced*
24 *on-going panic attacks, and experienced flashbacks about the events, had*
25 *depression that had to be managed with medication, and engaged in self-harm in*
26 *the form of cutting herself. [X] revealed that she spent three (3) days in the intensive*
27 *care ward at the [Hospital], followed by more than a week in mental health ward at*
28 *the hospital after making an unsuccessful suicide attempt. [X] said she makes an*
29 *effort not to think about the alleged victims’ mistreatment and now only does so*
30 *when her memories are triggered.”*



1 16. The Social Worker recommends a sexual harm prevention order.

2
3 17. The conclusion of the Probation Officer is that it is evident that the victim was most
4 impacted at the emotional level and that her parents and brother were also impacted
5 because they too shared a close relationship with the defendant.
6

7 **ANTECEDENT HISTORY**

8
9 18. The defendant has no previous convictions recorded against him.
10

11 **SOCIAL INQUIRY REPORT**

12
13 19. The DCR has provided a Social Inquiry Report (“SIR”) with respect to the defendant
14 which is dated 18th October 2023. The defendant is now 19 years old. He is the oldest of
15 three children for his parents. He reports growing up in a loving and supportive
16 environment. He obtained a high school diploma with honours. Following high school,
17 he has been attending two tertiary institutions where he is enrolled in a degree programme
18 and a certificate course. He has been employed at various summer jobs since 2019 and
19 formally employed since May 2021. The Probation Officer notes that he places a high
20 value on being gainfully employed. He is involved in various sporting activities and is
21 said to be a responsible, respectful, and hard-working individual.
22

23 20. Under Assessment/Evaluation, the Officer states that he expressed the desire to apologise
24 and showed empathy towards the victim. He accepted that his stated ignorance of the law
25 does not excuse him from it being his responsibility to know a person’s age of consent.
26 The Officer also states that the offences appears to be outside of his general character
27 and upbringing based on all the information received.
28

29 21. The defendant’s risk of sexual re-offending was assessed as medium. His risk of general
30 re-offending was assessed as very low with none of the eight criminogenic factors in the



1 medium to high levels. The Officer states that despite his being of adult age,
2 consideration should also be given to his level of maturity or lack thereof.

3
4 **THE SUBMISSIONS**

5
6 22. The prosecution submitted that under the *Cayman Islands Sentencing Guidelines*, the
7 offending falls into Category 1 Harm because of the presence of what can be considered
8 severe psychological harm to the victim. It is therefore submitted that the offending
9 should attract a starting point of 6 years with a sentence range of 4 to 7 years.

10
11 23. Counsel for the prosecution cited the case of *R. v. Taylor*¹ with reference to the dicta of
12 Lawton LJ. The learned Judge referred to the difference between a virtuous relationship
13 such as that of a young person and a girl under 16 and an exploitative relationship such
14 as that where advantage is taken of a child by a person in a supervisory capacity. For a
15 virtuous relationship which ends in unlawful sexual intercourse, it may be inappropriate
16 to pass a sentence of a punitive nature. The learned Judge stated: -

17
18 *“It is clear from what the learned trial Judge said that there is doubt amongst many,*
19 *at the present time, as to what is the proper way of dealing with these cases. What*
20 *does not seem to have been appreciated by the public is the wide spectrum of guilt*
21 *which is covered by the offence known as having unlawful sexual intercourse with*
22 *a girl under the age of sixteen. At one end of that spectrum is the youth who stands*
23 *in the dock, maybe sixteen, seventeen or eighteen, who has had what started off as*
24 *a virtuous friendship with a girl under the age of sixteen. That virtuous friendship*
25 *has ended with them having sexual intercourse with one another. At the other end*
26 *of the spectrum is the man in a supervisory capacity, a school-master or social*
27 *worker, who sets out deliberately to seduce a girl under the age of sixteen who is in*
28 *his charge. The penalties appropriate for the two types of case to which I have just*
29 *referred to are very different indeed. Nowadays, most Judge would take the view,*

¹ [1977] 64 Cr. App. R. 182

1 *and rightly take the view, that when there is a virtuous friendship which ends in*
2 *unlawful sexual intercourse, it is inappropriate to pass sentences of a punitive*
3 *nature. What is required is a warning to the youth to mend his ways. At the other*
4 *end, a man in a supervisory capacity who abuses his position of trust for his sexual*
5 *gratification, ought to get a sentence somewhere near the maximum allowed by law,*
6 *which is two years' imprisonment. In between there comes many degrees of guilt."*
7

8 24. Counsel for the prosecution submits that it is accepted that the facts in this case are akin
9 to the "virtuous relationship" type of case as described by the learned Judge.

10
11 25. Three additional cases were drawn to the attention of the Court.

12
13 26. In **R. v. Woods**², the offender was 19 years old and had been in a relationship with a 13-
14 year-old girl for several months. Despite the warnings of her mother he continued the
15 relationship and had sexual intercourse with her. He pleaded guilty to the offence of
16 Defilement before the Grand Court. On sentencing the Grand Court referred to the case
17 of **R. v. Taylor** and concluded that the relationship was based on a virtuous friendship
18 and since they were of similar ages, a non-punitive sentence was appropriate. The
19 offender was sentenced to a Probation Order for two years.

20
21 27. In **R. v. Bryan Powell**³ the defendant pleaded guilty to Defilement. He was 18 years old
22 at the time of the offence and the victim was 14 years of age. The Court was satisfied
23 from the circumstances that the act was committed by young people similar in age and
24 was consensual. As in the case of **Woods**, the Court imposed a Probation Order with
25 conditions as recommended by the probation officer.



² [2008] CILR Note 13

³ Ind 29/2012, Unreported Grand Court Judgment of the 22nd August 2012



- 1 28. In the case of *R. v. Kevin McField*⁴ the defendant received a sentence of probation for
2 one year and 100 hours of community service. He was 18 years old and the girl was 14
3 years old. He was found at night hiding in her bedroom closet.
- 4
- 5 29. The defence submit that under the *Guidelines*, this is a Category 2, Culpability B case
6 and the appropriate starting point is one of 3 years with a sentence range of community
7 service order to 5 years.
- 8
- 9 30. Counsel submits that the defendant is genuinely remorseful, he attended the police station
10 willingly and co-operated with the officers. He is of good character. Counsel produced a
11 letter of apology from the defendant in which he states his deepest remorse for his actions
12 and the harm caused to the victim. He says that his conduct was unacceptable and extends
13 apologies to all who have been affected by his actions. He says that he understands that
14 his actions have serious consequences and is committed to doing everything to address
15 the harm that he has caused.
- 16
- 17 31. The Court has also been provided with five-character references⁵. These describe the
18 defendant as a well-mannered young man who excels at whatever he puts his mind to.
19 He is said to be involved in various community organisations and to be known for his
20 strong work ethic and dependability. He is described as being of strong character,
21 integrity and honesty with good values. There is also a letter from his current employer
22 which attests to his continued employment.
- 23
- 24 32. The VIR refers to an incident where the defendant allegedly visited the victim's work
25 place and appeared to be taunting her and the effect upon her of this. However, defence
26 Counsel produced an excerpt from the victim's Achieving Best Evidence interview
27 where she described the encounter as not "*really anything big cause it is a public place*
28 *so he can go there.*"

⁴ Unreported Grand Court Judgment June 2006

⁵ Redver Ebanks dated 23rd October 2023, Goodman J. Powery dated 13th October 2023, Javier Contreras dated 23rd October 2023, Dr. Jeremiah Ransome dated 26th Coober 2023 and Ismaray E. Perez undated.

1 33. Upon the Court’s inquiry as to the reason that this case was not before the Court earlier,
2 Counsel for prosecution advised that the reason for the delay was that additional
3 information was sought, including include phone records. Defence Counsel submitted
4 that the constitutional right of the defendant to access justice in a timely manner had to
5 be counterbalanced against the delay. Counsel noted that since the offending the
6 defendant has enrolled in tertiary studies.

7
8 34. Defence Counsel submitted that the psychological harm reported is not sufficient to move
9 the offence to a Category 1 offence. Counsel also submitted that while the defendant was
10 an adult for the purpose of the law, the Court should consider his lack of maturity which
11 was referenced in the SIR. Counsel submitted that this was a virtuous relationship as
12 described in the cited cases.



13
14 **THE CAYMAN ISLANDS SENTENCING GUIDELINES**

15
16 35. The *Cayman Islands Sentencing Guidelines* with respect to sexual offence states this: -

17
18 *“The circumstances in which offences are committed will vary greatly which will*
19 *require flexibility in the approach to sentencing. The presence of aggravating or*
20 *mitigating factors particular to the offence or the offender is likely to be especially*
21 *significant.”*

22
23 36. In relation to offences against a child the *Guidelines* state: -

24
25 *“... the greater the age gap between the offender and the victim, the higher the*
26 *sentence is likely to be. However, the youth and/or immaturity of the offender will*
27 *also need to be taken into account.”*



1 37. At paragraph 15 of the **Guidelines**:

2
3 *“15. These guidelines apply only to adult offenders. Where a court is sentencing a*
4 *youth, in taking account of these guidelines and adjusting them to reflect the youth*
5 *of the offender, it will consider the welfare of the young person, the age of the child*
6 *or young person (chronological, developmental and emotional), the seriousness of*
7 *the offence, the likelihood of further offences being committed and the extent of*
8 *harm likely to result from those further offences.”*

9
10 38. The **Guidelines** therefore recommend that the sentences be adjusted in relation to the
11 youth of the offender.

12
13 **THE SENTENCE**

14
15 39. It is accepted that this began as a virtuous relationship in the sense referred to in the cited
16 cases. The defendant and the victim were boyfriend and girlfriend for close to a year.
17 However, this does not excuse his conduct. The law says that a girl under the age of 16
18 years cannot consent and is to be protected. The defendant well knew her age and was
19 specifically warned by her parents not to have sexual intercourse with her. He
20 disregarded these warnings. While his actions do not amount to a betrayal of trust in the
21 formal sense, he clearly betrayed the confidence which had been placed in him by the
22 two families. The result is that serious harm has been done to the victim. As detailed in
23 the SIR, she has been driven to the point of not only contemplating but attempting to
24 commit suicide. The offending is serious, and in the Court’s view firmly passes the
25 custody threshold.

26
27 40. The **Guidelines** reflect the seriousness with which offences of this kind are viewed.
28 Given the high level of psychological harm which has been caused to the victim, this is
29 a case of Category 1 Harm. None of the Culpability A factors are present, this is therefore
30 a Culpability B case. The starting point for a Category 1 offence where there is severe

1 psychological or physical harm for an adult is 6 years. This offending in the Court's view
2 does fall into Category 1 offending. However, because of the defendant's age and lack
3 of maturity at the time of the offending the Court will follow the *Guidelines* and adjust
4 that starting point to one of 4 years.

5
6 41. From that starting point of 4 years there are no aggravating factors to be taken into
7 account.

8
9 42. In mitigation the Court takes into account everything which has been written and said in
10 favour of the defendant. As urged by defence Counsel, account is taken of his young age
11 and lack of maturity and the fact that he has no previous convictions. He is genuinely
12 remorseful and is of good character. This offending is said to be entirely out of character
13 for him. He has good personal circumstances as outlined in the reports, character
14 references and by his Counsel. Also taken into account is the delay on the part of the
15 prosecution in bringing proceedings which is very likely to have caused strain during the
16 waiting period.

17
18 43. From a starting point of 4 years or 48 months, all of these taken together serve to reduce
19 the sentence by 16 months to one of 32 months imprisonment.

20
21 44. He is given the full one third discount for a sentence of 17 months imprisonment on each
22 count to run concurrently.

23
24 45. Given his personal circumstances and the level of risk of re-offending, a sentence of
25 immediate custody is not unavoidable. Consequently, the sentence is suspended for 2
26 years.

27
28 46. Pursuant to s.21 of the *Alternative Sentencing Act*, (2008 Revision) a supervision order
29 is made for two years. The conditions are that he is: -

- 30
31
- to be of good behaviour to the victim and in general;



- 1 • to participate in any other program deemed necessary by his Probation Officer;
2 and
3 • Not make any direct or indirect contact with the victim and her family if seen in
4 the community or via a third party.

5
6 47. In addition, and as recommended by the Probation Officer, pursuant to s.42 of the *Penal*
7 *Code*, the defendant is to complete 240 hours of community service during the two-year
8 period.



9
10 **SEXUAL HARM PREVENTION ORDER**

11
12 48. The prosecution applies for a Sexual Harm Prevention Order on the basis that the victim
13 is in need of protection. Defence Counsel did not object and stated in response that it is
14 accepted that such an Order would be a natural part of the process.

15
16 49. The draft order which was provided suggests that this should be made for a period of 5
17 years. Having considered all the circumstances, the Order is made for a period of 3 years
18 from today in the other terms set out in the draft. They are that: -

- 19
20 i. You shall have no direct or indirect contact with the victim, [X] or any member
21 of her family. This includes via any means which utilizes social media such as
22 Text Messages, WhatsApp, Facebook, Instagram or other electronic means of
23 communication.
24
25 ii. You shall not be within 100 metres of the victim [X] other than: -
26
27 a. That which is inadvertent and not reasonably avoidable in the course of
28 lawful daily life; or
29 b. By order of a Judge of the Grand Court.

1 iii. You shall not attend any place in which she is employed and if you do so
2 inadvertently, you are to leave such location immediately.

3
4 iv. In the event of a change to your residence or telephone number, you shall do
5 the following: -

6
7 a. Notify by calling a police officer of the rank of Sergeant or above, who
8 is attached to the, Protective Services Unit of the Royal Cayman Islands
9 Police Service. The number to call for the Unit is [number redacted];
10 and

11
12 b. Notify in writing the Inspector of the Protective Services Unit of the
13 Royal Cayman Islands Police Service. The address for service is: -

14
15 Inspector of the Protective Services Unit,
16 The Royal Cayman Islands Police Service,
17 69 Elgin Avenue
18 George Town
19

20
21 **Dated this the 11th day of December 2023**

22 

23 **The Hon. Justice Cheryll Richards KC**
24 **Judge of the Grand Court**