



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

3
4 **INDICTMENT No. 33/2022**

5
6
7
8 **THE KING**

9
10 **v.**

11
12 **ORVILLE ANTHONY MCPHERSON**

13
14
15
16 **Appearances:** **Mr. Scott Wainwright, Assistant Director of Public**
17 **Prosecutions for the Crown**
18
19 **Mr. Oliver Grimwood, of Samson Law for the Defendant**

20 **Before:** **Justice Marlene I. Carter (Actg.)**

21 **Date of Hearing:** **26 May 2023**

22
23 **Date of Sentence:** **16 June 2023**

24
25 **Written Reasons released:** **21 June 2023**
26
27

28 **HEADNOTE**

29 ***Criminal Law – sentence – indecent assault***
30

31 **SENTENCE JUDGMENT**

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34 1. Section 31 of the *Criminal Procedure Code (2014 Revision)* deals with the “Anonymity of
35 complainants in rape etc. cases and states:

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37 “31.(1) *After a person is accused of a rape [etc.] offence, no matter likely to lead*
38 *members of the public to identify a woman as the woman against whom the*
39 *offence is alleged to have been committed shall be published in a written*
40 *publication available to the public or be broadcast, except as authorised by*
41 *a direction of the court.”*



1 2. I will therefore refer to the woman against whom the offence has been committed as “the victim”
2 to protect her identity.

3
4 3. The defendant was convicted after trial on an indictment that contained a single count
5 alleging the offence of Attempted Rape contrary to section 127(1) of the Penal Code (2022
6 Revision). The prosecution was granted leave to add a second and alternative count to the
7 indictment alleging the offence of Indecent Assault, contrary to section 132(1) of the Penal
8 Code (2022 Revision). The defendant was unanimously acquitted on the count of
9 Attempted Rape, and unanimously convicted of Indecent Assault. The defendant falls to
10 be sentenced for Indecent Assault.

11
12 4. The circumstances of the offence: The defendant and the victim were known to each other.
13 On the date of the incident, the defendant went to the victim’s home. The defendant
14 attempted to kiss the victim as they sat on a couch in her living room. The victim resisted
15 these advances. The defendant went to the kitchen area and picked up a knife. The
16 defendant subsequently forced the victim into her bedroom. By this time, the defendant
17 was no longer in possession of the knife. He held one of the victim’s arms behind her back
18 and had one hand around her neck while forcing her into the bedroom. The victim
19 attempted to stop his advance to the bedroom by placing her hand on the door jamb to
20 indicate that she did not want to go in. He moved the victim’s arm from the door jam. He
21 held the victim against the side of her bed. He attempted to kiss her. He pulled down her
22 top and touched her breast with his hands. He tried to use his mouth on her breasts. The
23 defendant attempted to take off the victim’s underwear but was unsuccessful. The
24 underwear was however ripped in the struggle to take it off. The victim eventually pushed
25 the defendant off and he left the bedroom. The victim made a report of the incident later
26 that day and the defendant was subsequently arrested for the offences before the court.

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28
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Sentencing guidelines

30 5. The maximum sentence for an offence of Indecent Assault, contrary to section 132(1) of
31 the Penal Code (2022 Revision), is one of ten years imprisonment. The Crown submits



1 that applying the Cayman Islands Sentencing Guidelines on Sexual Offences, this offence
2 of Indecent Assault is a Category 1B offence.

3
4 6. The harm is said to be at Category 1 based on threats of violence having been made. The
5 Crown submits that the defendant made a repeated threat to kill the victim after having
6 picked up a knife from the kitchen area. The Crown concedes that the defendant was not
7 in possession of the knife at the time of the indecent assault, however it is submitted that
8 the knife would doubtless have been operating on the mind of the victim at that time.

9
10 7. Both the Crown and the defence agree that the level of the defendant's culpability is at
11 Category B on the basis that none of the factors set out in Category A are present in the
12 instant case.

13
14 8. On the Crown's submissions, a Category 1B offence of indecent assault has a starting point
15 of six years custody with a sentencing range of five to nine years custody.

16
17 9. Regarding the categorization of Harm suggested by the Crown, Counsel for the defendant
18 did not accept that the evidence presented to the jury was of threats made by the defendant.
19 It was submitted that the victim did not suggest that the defendant had made such threats.

20
21 10. It is accepted by the defence that there was in the commission of this offence "*a degree of*
22 *physicality*". However, counsel asked the court to consider that these acts: "*took the form*
23 *of one person resisting the attempts by the other party to remove underwear or to make*
24 *contact with more intimate parts of their body. This is not uncommon for an offence of this*
25 *nature and is the type of feature that can adequately be expressed within the sentencing*
26 *range of a category rather than lifting an offence into to a higher category.*"

27
28 11. In all the circumstances the defence submits that there is not, on these facts, the strong
29 evidential basis necessary to maintain the level of Harm at Category 1 and instead invited
30 the court to find that this was a Category 2 Harm case.

1 12. I have considered the evidence presented at trial regarding threats to the victim during the
2 incident. The victim's evidence was that at the point that her underwear was ripped during
3 her struggle with the defendant she said: "... if you are going to do this you might as well
4 kill me." At that point, the victim's further evidence was that the defendant repeated these
5 words, saying: "I am going to kill you then...."

6

7 **Aggravating features**

8 13. The factors identified by the Crown as additional aggravating features as set out in the
9 Guidelines are as follows:

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i) *"The location of the offence. This offence took place in the victim's own home, a place where she was entitled to feel safe:*

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18

ii) *The use of a weapon or other item to frighten or injure. The defendant took up a knife from the kitchen area. It is submitted that this can only have been done to frighten the victim into compliance. However, as conceded above, it was not in his possession at the time of the indecent assault."*

19

20 **Mitigating features**

21 14. The sole mitigating feature that the prosecution point to is the defendant's lack of previous
22 convictions.

23

24 15. The defence also ask the court to consider the following as further mitigating factors:

25

26

27

(i) That the defendant has no history of sexual offending and has not faced allegations of this nature before. Counsel invited the court to consider this offence as being one that can be said to be out of character.

28

29

30

(ii) A lack of intention to cause harm. Counsel for the defendant submitted that *"There was no intention to cause harm, but rather to obtain sexual gratification and force some form of consent from [the Victim]. The pair had been in a relationship that*



1 *was increasingly intimate and one where sex had been discussed. [The Victim] had*
2 *indicated that the relationship would progress to intercourse. As was intimated by*
3 *Crown Counsel to the Jury this may have been a situation where the defendant was*
4 *becoming frustrated with waiting and so after having his advances that morning*
5 *rejected decided instead to force himself upon the Victim instead.”*

6 (iii) That the offence seems to have been impulsive.

7 (iv) The risk of future harm for future sexual offending is likely low. Counsel submitted
8 that while the author of the Social Inquiry Report (“SIR”) does not provide the
9 outcome of this assessment, only the finding that the defendant is of medium risk
10 of general criminal reoffending; his criminal history speaks of a very low risk of
11 reoffending, and his family situation speaks of a low risk.

13 **The Social Inquiry Report**

14
15 16. The defendant completed his formal education in Jamaica. Before coming to the Cayman
16 Islands, he was variously employed as an entrepreneur, and as a Décor Coordinator. He
17 gained employment in Cayman with a Janitorial company after the pandemic in October
18 2021.

19
20 17. The defendant stated to the Probation Officer that the court process and trial has caused
21 him to identify that *“he needs counselling and greater self-awareness and of relationships*
22 *with females. With regards to the victim, it has also caused him to question his actions”*.
23 The Probation Officer noted: *“As it relates to the current offence, it appears that despite*
24 *standing by his innocence he has gained some understanding that he “might have done*
25 *wrong.” He admitted that during the entire incident the victim was not receptive to any of*
26 *his attempts to “get her in the mood” such as “rubbing her shoulder or kissing her.” Mr.*
27 *McPherson also admitted that he “pushed” her on the bed and that her underwear*
28 *“ripped” while the victim was moving in attempts to close her legs and “cover her*
29 *breasts”*.

30
31 18. The defendant’s overall risk of re-offending was assessed as Medium on the LSCMI
32 Risk/Need scale. The Probation Officer recommended that as part of the sentence in this

1 case the court may consider whether this defendant should be ordered to complete the Sex
2 Offender Treatment Programme, *a group focused on addressing emotional regulation,*
3 *relationships and sexual issues link to offending and relapse prevention, while also*
4 *targeting offending behaviours and seeking to restructure cognitive distortions.*

- 5 19. A character reference submitted by the defendant attested to him being a responsible and
6 goal-driven individual with exceptional leadership skills and emphasized his
7 professionalism and Christian values.

8
9 **The Victim Impact Report**

- 10
11 20. The victim related to the Probation Officer that prior to the offence being committed, she
12 trusted the defendant, and this is why she readily welcomed him into her home on the
13 morning of the incident. She described that at the point that the defendant had forced her
14 into her bedroom: *“My thoughts were all over the place because I did not know what his*
15 *intentions were. The fact that he had his hand under my throat. It was terrifying; it was*
16 *scary. I had thoughts about my daughter...what would happen to her.... I just don't know*
17 *what would happen.”*

- 18
19 21. Physically, the victim suffered bruises on her left hand, bruises on her neck and the
20 aggravation of a previous leg injury.

- 21
22 22. The victim indicated that since the incident she has experienced sleeplessness, heightened
23 fear and further impacts on her state of mind:

24
25 *“...even now there are days when I lock the door and don't want to talk to*
26 *anybody. My life has changed from a safety standpoint. I rarely go out; just*
27 *from work to home. I do not go out because I do not know if he will be in*
28 *the vicinity and sees me but I do not see him. When I do I am looking over*
29 *my shoulder if someone is watching.... It's not a good feeling.”*

30
31 **Court's considerations**
32



- 1 23. This is an offence which involved a defendant who was not blind to the fact that this victim
2 did not welcome his advances on the morning of the 2nd May 2022. He wholly disregarded
3 the victim's words and actions in rejecting him and continued to attempt to impose himself
4 upon her when it should have been clear that the victim was not at all receptive to him.
5 This was a violation of the victim and of her home.
6
- 7 24. The maximum sentence for this offence is ten years imprisonment. I am satisfied that this
8 is a 2 B offence. There is some ambiguity in the evidence as to whether the threats were
9 made to the victim or whether the defendant was repeating the victim's words. In any
10 event I do not find that evidence sufficient to cause the matter to be elevated to a Category
11 1 Harm offence in all the circumstances.
- 12
- 13 25. While the evidence of verbal threats is such that the court will err in the defendant's favour
14 and not take his statements noted above as being sufficient to amount to repeated threats to
15 kill in the circumstances in which the words were uttered, this was undoubtedly a very
16 physical indecent assault as described at paragraph 4 herein. The result of this assault,
17 described by counsel for the defendant as involving "a *degree of physicality*" can be
18 gleamed from the physical effects described by the victim. The victim suffered bruises on
19 her left hand from using it to brace on the door jam, bruises on her neck, where the
20 defendant had his arm around her neck as he forced her into her bedroom and a previous
21 injury to her left leg was aggravated when the victim hit the leg on a chair during the
22 incident causing her to experience severe pain.
- 23
- 24 26. The unchallenged evidence is of the defendant taking a knife from the kitchen area, an act
25 that counsel for the defendant conceded may have had some effect on the victim, although
26 the knife was not in the defendant's possession by the time the main assault took place in
27 the victim's bedroom. The brandishing of the knife beforehand, which I say that he did,
28 given how the defendant himself described his actions with the knife before he forced the
29 victim into the bedroom cannot be ignored: "*when I picked it up [the knife] I was leaning*
30 *on the counter...I was holding it and moving it around. I was talking to her. She was*
31 *standing. She come close and stretch out her hand to the knife. She was saying Orville*



1 *Anthony McPherson what are you going to do with the knife and I said nothing.”* The
2 defendant’s actions in this regard were obviously of some concern to the victim. The
3 proximity of these actions to the commission of the offence concerns the court.

4
5 27. As per the Sentencing Guidelines, the starting point for a 2B offence is 4 years custody
6 with a sentencing range of 3-7 years. Adopting a starting point of 4 years and taking into
7 account the aggravating and mitigating factors referred to above, the starting point is
8 increased to 5 years custody. I find this to be the appropriate sentence in this case. For the
9 avoidance of doubt, this sentence of 5 years reflects the court’s finding that the peculiar
10 circumstance of a heightened degree of physicality merits an upward movement within the
11 range of a 2B offence. This sentence also takes account of submissions relating to the
12 defendant’s personal circumstances and reflects what the court views as positive
13 pronouncements from the defendant regarding a need to change his attitude towards
14 women.

15
16 28. The time that the defendant has spent on remand before trial shall be taken into account
17 and deducted from the final sentence. The defendant was on remand at HMP Northward
18 from May 3, 2022, to December 23, 2022 when he secured a surety for his bail.

19
20 29. Upon the grant of bail on 23rd December 2022, conditions of bail were imposed. The
21 defendant was subject to a 24-hour curfew, seven days a week and he was also subject to
22 electronic monitoring during this time by way of an ankle monitor. His bail conditions
23 were subsequently varied to allow the defendant time outside this curfew between 10.30
24 am to 2 pm Monday to Fridays. He continues to be subject to 24-hour curfew on the
25 weekends. There is no evidence that the defendant has committed any violations of these
26 conditions of bail.

27
28 30. The Cayman Islands Sentencing Guidelines allow for a reduction in sentence for time spent
29 on remand and subject to conditions curtailing liberty. It is accepted that the time that the
30 defendant has been on bail and subject to the wearing of an electronically monitored



1 bracelet is a “*condition curtailing liberty*”¹. The court must consider whether credit should
2 be given to the defendant considering the following factors:

- 3 i. The total length of time the defendant has been subject to a curfew.
- 4 ii. The number of hours each day that curfew was imposed during the curfew period.
- 5 iii. Whether the curfew included daytime hours or was solely a night-time curfew
6 (recognising that being indoors at night during, for example, normal sleeping hours
7 may be less of a curtailment of liberty than being indoors during the day).
- 8 iv. Any breach of the conditions of curfew.

9
10 31. The period of curfew 23 December 2022 to present totals 175 days.

11
12 32. I consider that the length of time that the defendant was subject to the curfew while wearing
13 the electronic monitor is significant enough that he should receive some credit for this
14 curtailment of his liberty as per the Guidelines.

15
16 33. In *R v Tibbetts*² the defendant was on bail, subject to a curfew and electronic monitoring
17 for 596 days. Dobbs J. accorded him a 4.5-month reduction in sentence. In *R v Rankine*³,
18 this court awarded a 3-month reduction in sentence where the electronic tag was worn for
19 436 days and where there had been a breach of the curfew.

20
21 34. In *R v Rivers, McInness and Moore*, the defendant Moore was subject to curfew with the
22 electronic tag for 788 days and was accorded a reduction in sentence of 6 months.

23
24 35. In the instant case I will accord the defendant a reduction in sentence to of 2 months.
25

26 **Sentence**

27 36. In conclusion the sentence imposed is as follows:

¹ as per the Cayman Islands Sentencing Guidelines at 12.2

² Indictment 71/2015

³ Unreported. *R v Rankine* (Antascio Terrell) Ind. 108/16



- 1 (i) Indecent Assault: 5 years imprisonment.
2 (ii) Time in custody on remand before trial to be deducted from the sentence at (i)
3 (iii) There is a further reduction in sentence of 2 months for time on curfew with
4 electronic monitor.

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Marlene I. Carter (Ag.)

Hon. Justice Marlene I. Carter
Judge of the Grand Court (Ag.)