

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

3 **INDICTMENT NO: 51 of 2020**

4
5
6 **THE QUEEN**
7 **V.**
8 **KAYSON RICARDO HOLNESS**
9



10 **Appearances:** **Mr. Kenneth Ferguson for the Prosecution**
11 **Mr. Crister Brady for the Defence**
12 **Before:** **Justice Cheryll Richards Q.C.**
13 **Submissions on Sentencing:** **10th December 2021, 3rd February 2022**
14 **Sentence Judgment:** **3rd February 2022**

15
16 **HEADNOTE**

17 ***Criminal Law – Possession (of child pornography) for the Purpose of Publication contrary to***
18 ***s.228B (1) (a) of the Penal Code - Transmitting Child Pornography contrary to s.228B(1)(b)***
19
20
21

22 **SENTENCE JUDGMENT**



- 1 1. The defendant is before the Court for sentencing following his guilty pleas on the 24th
2 August 2021 to three offences.
- 3
- 4 2. Count 1 of the Amended Indictment charges him with the offence of **Possession for the**
5 **Purpose of Publication** contrary to s.228B (1) (a) of the *Penal Code* (2019 Revision).
6 The particulars are that he, between the 30th day of April 2020 and the 26th day of June
7 2020 in the jurisdiction of the Cayman Islands, had in his possession for the purpose of
8 publication, videos containing child pornography – [Exhibit JD/1A 4] – Category A and
9 Category B.
- 10
- 11 3. Count 2 charges him with **Transmitting Child Pornography** contrary to s.228B(1)(b)
12 of the said *Code*. The particulars are that he, within the same time period, transmitted
13 videos containing child pornography via WhatsApp Messenger – [Exhibits JD/1A/4 and
14 JD/1A/5 lines 9,10,27,37,44,45,47 &48] - Category A and Category B videos.
- 15
- 16 4. Count 3 is a second charge of **Transmitting Child Pornography** contrary to
17 s.228B(1)(b) of the said *Code*. The particulars are that he, on the 26th day of June 2020,
18 on an occasion other than as alleged in Count 2, transmitted a video containing child
19 pornography via Facebook Messenger – [Exhibit JD/1A/4], –a Category B video.
- 20
- 21 5. The defendant first appeared before the Grand Court on the 20th August 2021. He was
22 not arraigned. There was a legal aid application which was outstanding and time was
23 said to be required for discussions between Counsel. At that time the defendant faced an
24 Indictment which contained 13 counts. Following the discussions between Counsel, the
25 Indictment was amended to the three counts detailed above. The Prosecution’s position
26 is that these three counts reflect the overall criminality.



- 1 6. The Prosecution is in agreement with the Defence that the plea was entered at the first
2 reasonable opportunity and that the defendant is therefore entitled to full credit.
- 3
- 4 7. The Prosecution has provided a Summary of Facts which is not disputed by the Defence.
- 5
- 6 8. On the 20th June 2020, the Family Support Unit (FSU) of the Royal Cayman Islands
7 Police Service (RCIPS) commenced an investigation into a Facebook posting from a
8 Facebook page under the name of “*Djfreshlink Holness*”. The investigation commenced
9 as a result of an e-mail which was sent to the Commissioner of Police by a local news
10 organisation. The e-mail provided a link to the Facebook page. There was a screen shot
11 of the page which showed a male having sexual intercourse with a child. The posting
12 was dated 19th June 2020.
- 13
- 14 9. When contacted, the news organisation provided a copy of the screen shot which had
15 been sent to it by a member of the public and which screen shot had alerted it to the
16 posting. The administrator of the entity had downloaded a copy of the video before it
17 was removed from the Facebook page and provided this copy to the police together with
18 the details of the Facebook account of the defendant who had circulated the video.
- 19
- 20 10. Another member of the public who had seen the posted video also provided the Police
21 with a copy of it. The matter was reported to Facebook authorities who then removed
22 the video and made contact with the defendant.
- 23
- 24 11. The Police were able to identify the defendant from his Facebook account. He was
25 arrested on the 26th June 2020. His Samsung mobile phone and other electronic devices
26 were seized for forensic analysis. He was interviewed under caution on the said day in
27 the presence of his attorney. In that interview he admitted downloading the video from

1 Facebook and sharing it through the same medium. He said that he did this because he
2 thought that the family of the child would see it and notice that their child was being
3 abused. He admitted that his name on Facebook is *Djfreshlink Holness*. He said that
4 there was no speech on the video just the baby crying. He said that prior to being
5 contacted by Facebook as to the fact that the video had been removed as it was
6 inappropriate, he did not know that it was illegal to share those images.

7
8 12. A forensic analysis of the defendant's Samsung phone found a number of other videos
9 of child pornography Category A and B which had been on the phone for the period 30th
10 April 2020 to 26th June 2020.

11
12 13. The analysis also showed that the defendant had transmitted these videos during the
13 period 30th April and 12th June 2020 via WhatsApp Messenger service and one Category
14 B video of child pornography via Facebook on the 26th June 2020.

15 **THE PENAL CODE**

16
17 14. Pursuant to s.228B(1)(d)(i) & (ii) the maximum sentence for possession of child
18 pornography is 15 years' imprisonment. The maximum sentence for transmission of
19 child pornography is 25 years' imprisonment.

20
21 **SOCIAL INQUIRY REPORT**



22 15. The Department of Community Rehabilitation (DCR) has provided a Social Inquiry
23 Report ("SIR") in respect of the Defendant which is dated 3rd December 2021. The Court

1 has read and considered the entirety of this report and takes it into account. Some aspects
2 are summarised herein.

3
4 16. The defendant is 33 years old. He has 2 children, ages 15 and 13 years old, one of whom
5 is a daughter. They reside in another jurisdiction. He has been resident and gainfully
6 employed in this jurisdiction as a barber for the past 2 years and has some 15 years'
7 experience working in this field. His employer describes him as a trustworthy, humble,
8 hardworking, honest and patient employee. He is said to have impressive work ethic and
9 excellent customer service skills, such that he was promoted to a supervisory position
10 shortly after he was employed. He has no previous convictions in this jurisdiction and
11 no previous convictions in his home jurisdiction.

12
13 17. He had a stable childhood and there are no issues identified during that period. Under
14 Assessment/Evaluation, the Probation Officer states:

15 *“Furthermore, the community/functioning information does not point to any*
16 *sexual deviancy on his part regarding females and in particular children.*
17 *Additionally, no information was unearthed that Mr. Holness was a victim of*
18 *inappropriate sexual experiences including sexual grooming/conditioning and*
19 *childhood victimization. Moreover, there was no indication of social isolation*
20 *at any stage of his psycho-social development with failed adult or intimate*
21 *relationships which are possible markers for paedophilic interests.*

22
23
24 *Consequently, this writer could not link any life experiences that could provide*
25 *a possible explanation to a seemingly penchant on the part of Mr. Holness*
26 *regarding images of children being sexually exploited.*





1 *Mr. Holness has postulated that his intent for reposting the video on Facebook*
2 *was to alert the public to take action and have the perpetrator punished. He*
3 *gave the same reason for posting the images (which were unrelated to the*
4 *Facebook posting) to his WhatsApp contact. There are questions as to why he*
5 *did not delete the images from his phone after he sent the images to reinforce*
6 *his disgust, as based on his information this was his intent. He further explained*
7 *that he forgot that the images were there. There is also a concern regarding*
8 *what motivated him to save/download images on his phone which he claims to*
9 *find repulsive.*

10
11 *The circumstances as outlined in the Summary of Facts seems to categorize Mr.*
12 *Holness as Opportunistic and a Collector based on a designation associated*
13 *with Adult Male Child Pornographers. The Opportunistic Child Pornographer*
14 *typically has no criminal record and is well adjusted. These persons tend not to*
15 *act on any deviant sexual fascination as there is some amount of impulse control.*
16 *The latter [designation] is associated with persons who accumulate [a] large*
17 *collection of child pornography which indicates a possibility of having plans or*
18 *will seek opportunities to sexually offend.”*

19
20 18. The Probation Officer notes that there are limitations in the reporting given that the
21 defendant is not a national of the Cayman Islands and that more information as to his
22 formative years was not available.

23
24 19. Given the limitation in the information that is available, there is no definite conclusion
25 reached as to the appropriate designation, particularly in circumstances where the
26 defendant has never indicated having sexual deviancy. It is said however that the
27 Summary of Facts is suggestive that the latter designation (“Opportunistic”) is applicable
28 “*when an overall decision is being arrived at during the sentencing phase, with a*
29 *consideration for rehabilitation.*” The Officer also states:

1 “Note has been taken that Mr. Holness’ denial to any liking, fantasy, yearning
2 and desire regarding sexual ideation involving children. His action however
3 seems indicative of someone who has at least a sexual curiosity towards children
4 and perhaps a sexual obsession with children.”

5
6 20. The defendant was assessed as being at medium risk of reconviction of a sexual crime.
7 The Officer explains that this means that he has some of the characteristics associated
8 with a moderate risk of sexual re-conviction observed among sex offenders.

9
10 21. His overall risk of re-offending is assessed at medium level meaning that he possesses a
11 low possibility of general re-offending.

12
13 22. The Probation Officer expresses the view that given that the defendant kept the images
14 on his phone and transmitted such images more than once, this could be seen as a
15 possible sexual pre-occupation regarding minors and that there are additional factors
16 which, if left unaddressed, could increase his risk of re-offending. However his level of
17 co-operation and admission of responsibility “suggests a motivation to adjust his moral
18 compass and that he has taken active steps to prevent commission of further offences”.

19
20 **CASES ON SENTENCING**

21 23. Prosecuting Counsel refers the Court to three recent local cases. In the case of **R v.**
22 **Trevorne Daley**¹, the Defendant was sentenced by the Summary Court following his
23 guilty plea, to a sentence of 2 years’ imprisonment in respect of 100 indecent videos of
24 children found on his laptop and phones.



25

¹ Unreported Summary Court, 2017

1 24. Defence Counsel invites the Court to consider the distinction between that case and this
2 case, in that, the defendant Trevor Daley possessed a significantly higher number of
3 indecent images (100), compared with the two indecent images in the instant case.

4
5 25. It is noted that the images possessed in the instant case included moving pictures.
6 However, Counsel submits that additionally and significantly the defendant Daley had
7 also been involved in inappropriate communication with a minor and was actively
8 pursuing a friendship.

9
10 26. In the case of *R v. Pierre Rameau*² the Defendant was sentenced by the Grand Court to
11 3 ½ years' imprisonment after guilty pleas to 12 counts of possession of indecent
12 photographs of children, Categories A to C.

13
14 27. In the case of *R v. Donato Hervias Jr.*³ the defendant pleaded guilty to two counts of
15 possession of indecent photographs of children. He was sentenced to concurrent
16 sentences of 22 months' imprisonment with a suspended sentence supervision order. The
17 evidence was that he had the material on his phone for one day.

18
19 28. While these cases have been cited, there are no reported judgments and it is unclear
20 whether the factual circumstances are other than broadly similar. For example in respect
21 of the case of *Daley* the nature of the material distributed and the apparent ages of the
22 children is unknown.



² Unreported, Grand Court, Ind 9 of 2018

³ Unreported, Grand Court, Ind 40/2020



1 **SENTENCING GUIDELINES**

2 29. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the
3 approach to sentencing. In the absence of offence-specific guidelines, both Counsel have
4 referred the Court to the *United Kingdom Sentencing Council Guidelines*. The Court
5 accepts that these provide a helpful framework for categorisation of the offending
6 behaviour in this case.

7
8 30. There are differences between the two jurisdictions in that, by s.6 of the *Protection of*
9 *Children Act 1978*, the maximum sentence for possession of an indecent photograph or
10 film in the United Kingdom is 10 years' imprisonment.

11
12 31. Under the *United Kingdom Sentencing Council Guidelines* the starting point for
13 possession of Category 'A' child pornographic material is 1 year custody with a sentence
14 range of 26 weeks' to 3 years' custody.

15
16 32. The starting point for distribution of Category 'A' child pornographic material is 3 years'
17 custody with a sentence range of 2 to 5 years' custody.

18
19 33. The starting point for distribution of Category 'B' material is 1 year custody with a
20 sentence range of 26 weeks' to 2 years' custody.

21
22 34. The *Guidelines* state that in most cases the intrinsic character of the most serious of the
23 offending images will initially determine the appropriate category provided that it is
24 representative of the offender's conduct.

25
26 35. The list of possible aggravating factors in the *Guidelines* includes the following:

27

- 1 a. Age or vulnerability of the child depicted.
- 2
- 3 b. Discernable pain or distress suffered by the child depicted.
- 4
- 5 c. High volume of images possessed, distributed or produced.
- 6
- 7 d. Collection includes moving images.

8
9 36. The Prosecution submits that there are five aggravating factors in the instant case as
10 follows:

- 11 a. The age of the child in one of the videos in respect of count 1 is estimated by
12 Intelligence Officer, Joanne Delany to be between 4 months to 18 months;
- 13
- 14 b. The video clearly shows the baby being penetrated and crying incessantly;
- 15
- 16 c. In the case of possession of the Category A and Category B material in count 1,
17 it was found that the defendant had the material on his mobile device for
18 approximately 26 days.
- 19
- 20 d. In the case of the transmission of the Category A and Category B material in
21 count 2, it was found that the defendant transmitted these materials 8 times over
22 a 12-day period.
- 23
- 24 e. In respect of the Category B material in count 3, the defendant transmitted the
25 video once on Facebook on June 26, 2020.
- 26
- 27



1 37. The Defence do not disagree with the submissions of the Prosecution as to the
2 categorisation of the material and the applicable maximum penalties in the Cayman
3 Islands.

4
5 38. There is disagreement as to the possible aggravating factors. Defence Counsel submits:-

6
7 *“It would be difficult to argue otherwise than that offending videos which form*
8 *the subject matters of counts 1 and 2 may be identified as Categories A and B*
9 *respectively as they contain moving penetrative images of a sexual nature with*
10 *children and the transmission of the said moving images. Count 3 is properly a*
11 *Category B and related to transmitting the offensive material only.”*

12
13
14 39. With respect to the aggravating factors Defence Counsel submitted that two of the
15 factors put forward by the Prosecution may amount to double counting. It is said with
16 respect to the age of the child shown in the video, that a picture of a similar act to a child
17 older than 18 months would have been equally reprehensible and, additionally, that even
18 if the child were not crying in the video it would be no less reprehensible. It is said that
19 crying is a natural reaction to pain. Counsel stressed that the defendant is a distributor
20 and not the maker of the video. Counsel also argues that the length of time that the videos
21 remained on the defendant’s phone is not a true and helpful picture of an aggravating
22 factor because there is no measure of how many times within those days the material
23 had been viewed by him. Consequently this ought not to be treated as an aggravating
24 factor.





1 **SUBMISSIONS IN MITIGATION**

2 40. In mitigation Defence Counsel submitted that the defendant accepts that his actions were
3 unlawful - notwithstanding that he had good intentions to bring attention to the victims.
4 It is also submitted that he appreciates the seriousness of the offending and now knows
5 that it is not appropriate to transmit such material in the hope that someone would assist.
6 Counsel also submitted that the defendant’s background as described in the SIR is not
7 one that would usually lead to offending of this nature. He is a young man who became
8 a father at age 18 years and has been present in his children’s lives. He has no previous
9 convictions and is remorseful and embarrassed. His guilty plea was entered at an early
10 stage. The offending is unlikely to be repeated.

11
12 **ANALYSIS**

13 41. In accordance with the *Cayman Islands Sentencing Guidelines*, this Court has given
14 consideration to whether the custody threshold has been passed in this case, whether it
15 is unavoidable that a custodial sentence be imposed and whether there is suitable
16 community intervention if such a sentence is unavoidable.

17
18 42. The nature of the offending is serious involving, as it does, possession of moving images
19 of activity harmful to children and the transmission of images of such activity. The
20 defendant’s explanation is that the material was transmitted by him in order to assist the
21 family of the child. The defendant used a medium to transmit the images which, on his
22 own account, he was conscious that it would ensure wide viewing.

23

1 43. This Court notes that one would have expected his concern as to the harm to the child to
2 have led to him reporting the matter to the authorities rather than to ensure wider
3 circulation.

4
5 44. Defence Counsel asked the Court to bear in mind that the defendant is not the maker of
6 the video.

7
8 45. This is accepted. No doubt there would have been entirely different charges before the
9 Court had this been the case. The makers of such videos circulate and publish them
10 seeking a willing audience. A willing audience indirectly supports the harm done to
11 children and perpetuates such harm by being open to watching and further distributing
12 such videos. As is evident from the applicable sentences, such conduct is at the higher
13 end of the spectrum of seriousness.

14
15 46. Secondly, the defendant's explanation and expression of concern for the child in the
16 video must be viewed in the context of the entirety of the offending, which has been
17 accepted. The evidence is that this was not a singular act and, neither was it of limited
18 duration. There were multiple transmissions of such material. There were images of a
19 similar nature on his phone. Possession of such images was over an extended period of
20 26 days. In the Court's view, the custody threshold is firmly passed in this case.

21 **COUNT 2**

22 47. Count 2, the transmission or distribution of the video containing Category A material is
23 the most serious aspect of the offending in this case.



1 48. The starting point in the United Kingdom for distribution of Category A material is 3
2 years' custody where the maximum sentence is 10 years. Some upward adjustment is
3 required given the significantly higher maximum in the Cayman Islands, where the
4 sentence of 25 years is more than twice that in the United Kingdom. Respectfully
5 adopting the words of the Court of Appeal in the case of *R v Robert Aspinall*⁴, albeit in
6 the context of a different offence, "*the higher maximum in the Cayman Islands is an*
7 *explicit statutory direction as to how seriously*" offences of this kind are regarded in the
8 Cayman Islands. It is therefore proposed to adopt a starting point of 5 years rather than
9 3 years.

10
11 49. With respect to the age and or vulnerability of the victim the *United Kingdom*
12 *Guidelines* state that this:

13
14 *"... should be given significant weight. In cases where the actual age of the*
15 *victim is difficult to determine, sentencers should consider the development of*
16 *the child (infant, pre-pubescent, post pubescent)."*
17

18
19 50. From this guidance it is plain that the fact that the child is an infant, assessed as between
20 4 months and 18 months in age, is a significant aggravating factor in this case. The fact
21 that the child was crying indicates that she was in clear distress. The images were
22 transmitted 8 times over a 12-day period. However the Prosecution has not provided the
23 specific number of images transmitted.

24
25 51. The Court accepts that there are two (2) aggravating factors in relation to this offence -
26 the apparent age of the child and the discernable distress suffered by the child. While



⁴ CICA Appeal 16 of 2016 , 6th December 2016

1 giving significant weight to the apparent age of the child, these two factors serve to
2 increase the sentence to one of 5 years and 8 months, or 68 months' imprisonment.

3
4 52. In mitigation, the Court takes into account everything that has been said in the
5 defendant's favour in the SIR and by Counsel on his behalf. In particular, account is
6 taken of the following: The defendant has no previous convictions, he is remorseful, he
7 made early admissions and he co-operated with the investigators throughout. His
8 background as outlined in the SIR raises no concerns or issues and portrays a man who
9 is gainfully employed and by all accounts has been a productive member of society to
10 date. He has two children in his home jurisdiction and is present in their lives.
11 Incarceration in this jurisdiction will be difficult for him as a non-national as he will be
12 away from his family. There has also been some delay in respect of this matter which is
13 not the fault of the defendant.

14
15 53. All these factors serve to reduce the sentence to one of 4 years and 2 months or 50 months
16 imprisonment.

17
18 54. He is entitled to one-third discount in respect of his guilty plea, thus reducing the
19 sentence to one of 33 months' imprisonment.

20 **COUNT 1**

21 55. With respect to count 1 - Possession of Category A material: The starting point of 3 years
22 is adopted.



1 56. The aggravating factors are the extended period over which the material was possessed,
2 almost a month and that the collection included moving images. These serve to increase
3 the sentence to one of 3 years and 6 months or 42 months.

4
5 57. The factors in mitigation as outlined above would serve to reduce the sentence to one of
6 24 months imprisonment.

7
8 58. Credit in respect of his guilty plea would reduce the sentence by one-third to one of 16
9 months' imprisonment.



10 **COUNT 3**

11 59. With respect to count 3, transmission of Category B videos, a starting point of 3 years is
12 adopted. In respect of this count the material was transmitted once on the 26th June 2020
13 on Facebook.

14
15 60. There are no aggravating factors submitted by the Prosecution in respect of this
16 offending.

17
18 61. The factors in mitigation as outlined above serve to reduce the sentence to one of
19 eighteen months imprisonment. Credit is afforded for his guilty plea of one-third thus
20 the sentence is reduced to 12 months' imprisonment.

21
22 62. While the Defendant is said to be at low and medium risk of reoffending and is
23 remorseful, given the serious nature of the offending including the time period over
24 which it occurred, there is nothing in his personal circumstances which suggests that a

1 custodial sentence is unavoidable. The primary aims of sentencing in this case must be
2 not only rehabilitation but deterrence and punishment.

3 **SUMMARY OF SENTENCES**

4 63. The sentences are thus:

- 5
6 a. On Count 2 - 33 months' imprisonment;
7
8 b. On Count 1 - 16 months' imprisonment;
9
10 c. On Count 3 - 12 months' imprisonment

11
12 64. The three counts arise out of similar circumstances. Given the principle of totality, the
13 sentences are to run concurrently.

14
15 65. Any time served is to be taken into account.



16
17 **SEXUAL HARM PREVENTION ORDER**

18 66. The Prosecution applies for a Sexual Harm Prevention Order (SHPO) pursuant to s.45A
19 of the *Penal Code*. At the time of the sentencing submissions no draft was available as
20 to the terms sought. The matter was adjourned for a draft to be provided to the Defence
21 and for the outcome of discussions.

22
23 67. By way of further submissions Defence Counsel submitted that this is not an offence for
24 which the requested order is necessary.

25

1 68. It was submitted that the defendant uses his cell phone for work and that giving the police
2 access to his phone which he also uses for work would be impractical and would also
3 limit his privacy with respect to his adult partners.

4
5 69. An amended draft order has been provided and subject to further amendment to the
6 language to ensure that any risk management software to be installed is specific to risks
7 relative to children, there is now broad agreement with its terms.

8
9 70. This Court is satisfied, given the circumstances of this case, including that the defendant
10 is at medium risk of sexual re-offending that an SHPO is necessary for the protection of
11 children, and that the terms proposed are not oppressive and are proportionate to the
12 offending.

13
14 71. An SHPO is therefore made in terms of the revised draft for a period of five years
15 following the defendant's release from custody.

16

17 **Dated this 3rd day of February 2022**

18 

19 **Honourable Justice Cheryll Richards Q.C.**
20 **Judge of the Grand Court**