

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

3 **INDICTMENT NO: 3 of 2021**

4  
5 **THE QUEEN**

6 **V.**

7 **FRANCIS FERNANDO FERRON**



9 **Appearances:**

**Mr. Neil Kumar for the Prosecution**

10 **Mr. Oliver Grimwood for the Defence**

11 **Before:**

**Justice Cheryll Richards Q.C.**

12 **Sentence Hearing:**

**15<sup>th</sup> October 2021**

13 **Judgment:**

**15<sup>th</sup> October 2021**

14  
15 **HEADNOTE**

16 *Criminal Law - Section 228L of the Penal Code - Abuse of Trust*  
17 *- Mandatory minimum sentence - Whether proportionate to the offending.*  
18

19  
20 **SENTENCE JUDGMENT**



1     **PREAMBLE**

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

3                     “12. (1)        *In relation to any proceedings in any court, such court may direct*  
4                                     *[and this court so directs] that-*

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

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

15                                    (2)       *Whoever publishes any matter in contravention of subsection (1) is*  
16    *guilty of an offence and liable on summary conviction, in respect of*  
17    *each such offence, to a fine of five thousand dollars or to*  
18    *imprisonment for six months.*  
19

20     2.       Section 31 of the *Criminal Procedure Code (CPC)* (2019 Revision) states as follows:

21                     “Anonymity of complainants in rape etc. cases:

22                                    “31.       (1)       *After a person is accused of a rape offence, no matter likely*  
23    *to lead members of the public to identify a woman as the*  
24    *woman against whom the offence is alleged to have been*  
25    *committed shall be published in a written publication*  
26    *available to the public or be broadcast, except as*  
27    *authorised by a direction of the court.*

28                                    (2)        ...

29                                    (3)        ....

30                                    (4)        ...

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

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

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

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

14  
15 4. In pursuance of the section, this Judgment has been anonymized to protect the identity of the  
16 Complainant.



17  
18 **THE INDICTMENT & SUMMARY OF FACTS**

19  
20 5. The Defendant is before the Court for sentencing following his convictions after trial by  
21 Judge Alone on the 7<sup>th</sup> July 2021. He was convicted of two offences of Abuse of Position of  
22 Trust contrary to s.228 L (b) of the *Penal Code* 2019 Revision.

23  
24 6. The maximum sentence is one of twelve (12) years’ imprisonment, s.228 (3) of the *Penal*  
25 *Code* provides:

1 “(3) Notwithstanding sections 6(2) and 8 of the Criminal Procedure  
2 Code (2019 Revision), the court of summary jurisdiction or the  
3 Grand Court before which the individual pleads guilty or is  
4 convicted, shall —

5  
6 (a) in a case where the individual pleads guilty, impose  
7 a sentence of imprisonment for a term of at least  
8 five years; or

9  
10 (b) in any other case, impose a sentence of  
11 imprisonment for a term of at least seven years,  
12 unless the relevant court is of the opinion that there  
13 are exceptional circumstances relating to the  
14 offence or to the offender which justify its not doing  
15 so; and such exceptional circumstances shall be  
16 stated by the relevant court.”  
17



18  
19 7. The particulars of the first offence are that he, on a day between the 19<sup>th</sup> day of April 2020  
20 and the 11<sup>th</sup> November 2020 within the jurisdiction of the Cayman Islands being a person  
21 over the age of 18 years in a position of trust in relation to TG aged 12, engaged with that  
22 child in an activity that was sexual in nature.

23  
24 8. The second offence is in similar terms with the date of the offence being the 11<sup>th</sup> day of  
25 November 2020.

26  
27 9. The facts of the offences are detailed in the earlier verdict judgment of the 7<sup>th</sup> July 2021. In  
28 summary they are that TG is the niece of the Defendant. In respect of the first offence, while  
29 TG and her younger sisters were at the Defendant’s home after school, he held her down on  
30 his bed and attempted to remove her clothing. In respect of the second offence, in similar  
31 circumstances he again held her down on his bed and, this time, removed her clothing and  
32 touched her vagina. Her mother arrived at the house and on entering the bedroom, saw the  
33 victim in a state of undress.  
34

1 10. The Department of Community Rehabilitation (DCR) has provided a Victim Impact Report  
2 (VIR) dated 2<sup>nd</sup> August 2021. It details the previously close relationship between the victim,  
3 her sisters and the Defendant. The victim viewed the Defendant as another father figure, who  
4 was kind to her and to her sisters and with whom she was comfortable.

5  
6 11. She describes her disbelief and fright at the first incident and her initial lack of understanding  
7 as to why he was trying to take her clothes off. She states that after the first incident he  
8 returned to his normal self.

9  
10 12. She describes the period after the second incident as being particularly difficult for her. She  
11 had trouble sleeping and would awaken from sleep if a sound was heard. She was “*worried*  
12 *that someone would come into the house to harm her*” because he had been arrested. She  
13 was also worried about going to school because of the media reports about the incident which  
14 could have led to her being identified, and did not attend school for a week because of her  
15 anxiety.

16  
17 13. She was afraid to go out in public in case persons asked her about the incident and feared  
18 that she would see the Defendant. The family relationships have been impacted in that she  
19 no longer has a close relationship with her cousin, the son of the Defendant. In addition,  
20 there is now a poor relationship between the Defendant and her mother.

21  
22 14. A psychological assessment conducted by the Health Services Authority (HSA) in respect  
23 of the victim did not indicate any significant concern. The victim indicated that she did not  
24 wish to be in therapy as she wished to put the incident behind her.



1 15. Under Assessment and Evaluation the Probation Officer notes that the family relationship  
2 was such that mother reposed trust in the Defendant and allowed him direct access to her  
3 children.



4  
5 **SOCIAL INQUIRY REPORT**

6  
7 16. The DCR has provided a Social Inquiry Report (“SIR”) dated 14<sup>th</sup> September 2021. The  
8 Defendant is 43 years old. He is the father of two children, ages 17 and 15 years old.

9  
10 17. His background history raises issues of neglect as a child and physical and emotional abuse  
11 which is indicative of adjustment problems in his early years and possibly unresolved  
12 trauma. His education was not consistent and he exhibited behavioural difficulties. He did  
13 not graduate from primary or high schools and struggles with literacy skills. Despite this, he  
14 has been gainfully employed at various jobs since he was 16 years old. His current employer  
15 describes him as his best worker and as being honest and on time.

16  
17 18. The Probation Officer expresses the view that the offence caused serious harm not only to  
18 the victim but indirectly to other persons such as the son of the Defendant who formerly had  
19 a close relationship with his cousins.

20  
21 19. The Defendant was assessed using the Risk Matrix 2000 tool. His combined risk of sexual  
22 or violent offending was assessed as medium. He was also assessed using the LS/CMI  
23 instrument. His overall risk of re-offending was assessed as high. Of the eight (8)  
24 criminogenic factors, five were found to be in the high category. The Officer recommends  
25 that he be encouraged to participate in a sex offender treatment programme and receive  
26 individual counselling.



1   **THE SUBMISSIONS**

2  
3   20.     Defence Counsel accepts that there are no exceptional circumstances in this case and that the  
4           minimum term applies. It is further submitted on behalf of the Defendant that there are no  
5           reasons to impose a sentence above the minimum term and that the overall criminality in this  
6           case would be properly reflected by a concurrent rather than consecutive sentence.

7  
8   21.     Defence Counsel submits that in this case the single aggravating factor of ‘position of trust’  
9           is already reflected in the nature of the offence and the level of punishment. Despite the fact  
10          that there were other children in the house, they were not aware of what occurred or were  
11          too young to understand.

12  
13   22.     It is further argued that the instant case may be distinguished from the case of *Attorney*  
14          *General’s Reference No. 28 of 100<sup>1</sup>*, in which there were separate offences involving  
15          different children. The Prosecution agrees with the submissions of the Defence.

16  
17   23.     In mitigation, Defence Counsel submits that the Defendant is a man with no previous record  
18          of any offending, he has no history of sexual offending and this offence appears to have been  
19          out of character for him. He is a hardworking individual who is the sole carer for his son.

20  
21   24.     The *Cayman Islands Sentencing Guidelines* provides guidance on the general principles for  
22          sentencing. There are no specific guidelines for the offence of Abuse of Trust. Prosecuting  
23          Counsel has drawn the Court’s attention to the recent decision of the Grand Court in the case  
24          of *R. v. Rafael Hackett<sup>2</sup>* in which the Court imposed a sentence of 6 years’ imprisonment on  
25          a guilty plea to two counts of the said offence in circumstances where there was a single

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<sup>1</sup> [2010] EWCA Crim. 1996  
<sup>2</sup>Grand Court Ind. 16 of 2021, unreported judgment dated.....







1 31. Defence Counsel submits that although the latter period was only 5 hours, it amounted  
2 to a restriction on the only time away from work that the Defendant had. Counsel asks  
3 that the Court calculates these as remand days at a rate of 50% as if they were days as  
4 ‘qualifying curfew’ as in the statutory position in England and Wales.

5  
6 32. The *Cayman Islands Sentencing Guidelines* at paragraph 12 deals with reduction in  
7 sentence for time spent on remand subject to the conditions curtailing liberty. It states  
8 that the court should:

9  
10 *“Consider whether credit should be given for time spent on bail where conditions*  
11 *have been imposed which curtail the liberty of the defendant. This is most likely to*  
12 *be relevant where a defendant has been subjected to a curfew, especially where*  
13 *compliance with that curfew can be verified through electronic monitoring”*  
14

15  
16 33. The relevant factors to be taken into account in the exercise of discretion include:

- 17
- 18 • *The total length of time the defendant has been subject to a curfew;*
  - 19 • *The number of hours each day that curfew was imposed during the curfew*  
20 *period;*
  - 21 • *Whether the curfew included daytime hours or was solely a night time*  
22 *curfew (recognising that being indoors at night during, for example,*  
23 *normal sleeping hours may be less of a curtailment of liberty than being*  
24 *indoors during the day);*
  - 25 • *Any breach of the conditions of curfew.*

26  
27 34. The *Guidelines* further provide that in deciding how to exercise its discretion in the  
28 absence of statutory provisions in the Cayman Islands, the Court will bear in mind the

1 statutory provisions in England and Wales as set out in s. 240A of the *Criminal Justice*  
2 *Act (CJA)* 2003 as amended in relation to electronically monitored curfew.

3  
4 35. In the case of *R v. Nicholas Tibbetts*<sup>6</sup> the Grand Court stated:

5 “74. *I take the Cayman Islands Guidelines as a starting point. There is clearly a*  
6 *discretion as to whether, and to what extent, credit should be given. To*  
7 *adopt the defence submission that the practice of the Cayman Islands is to*  
8 *automatically deduct half the time on curfew, would take away the*  
9 *discretion clearly set out in the Guidelines. Each case has to be considered*  
10 *on its own facts – for example the conditions of the curfew will vary*  
11 *considerably in cases – some being more onerous than others.”*  
12

13 36. In this case the Court accepts the submissions of Defence Counsel that the Defendant  
14 was working and that the curfew period, whether day or night, was effectively the only  
15 time away from work that he had. The curfew period is credited at a rate of 50%. The  
16 deduction is therefore 165.5 days.

17  
18 37. The Prosecution made an application for a Sexual Harm Protection Order (SHPO) in  
19 respect of the Defendant. The Order was *not* opposed and there is agreement with respect  
20 to the proposed terms.

21  
22 38. Prosecuting Counsel drew the Court’s attention to the case of *R. v. Inches*<sup>7</sup> which in turn  
23 referred to a number of earlier cases which establish the general principles.

24  
25 39. In *R v. NC*<sup>8</sup> which dealt with the previous regime of such orders, the English Court of  
26 Appeal identified the essential questions as being:

27  

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<sup>6</sup> Grand Court, Ind. 71/2015 unreported judgment dated 16th December 2016

<sup>7</sup> 2020 EWCA Crim 373

<sup>8</sup> [2017] 1 Cr. App. R. (S) 13



- 1 a. Is the making of an order necessary to protect the public from sexual harm through  
2 the commission of scheduled offences?  
3 b. If some order is necessary, are the terms imposed nevertheless oppressive?  
4 c. Overall are the terms proportionate?

5  
6 40. In **R. v. Parsons**<sup>9</sup> the Court stated the principles as follows:

7 *“At the outset, we underline the following: (i) first, as with SOPOs, no order*  
8 *should be made by way of SHPO unless necessary to protect the public from*  
9 *sexual harm as set out in the statutory language. If an order is necessary,*  
10 *then the prohibitions imposed must be effective ; if not, the statutory purpose*  
11 *will not be achieved. (ii) Secondly and equally, any SHPO prohibitions*  
12 *imposed must be clear and realistic . They must be readily capable of simple*  
13 *compliance and enforcement. It is to be remembered that breach of a*  
14 *prohibition constitutes a criminal offence punishable by imprisonment. (iii)*  
15 *Thirdly, as re-stated by R v NC , none of the SHPO terms must be oppressive*  
16 *and, overall, the terms must be proportionate. (iv) Fourthly, any SHPO must*  
17 *be tailored to the facts. There is no one size that fits all factual*  
18 *circumstances.”*  
19

20 41. This Court is satisfied on a balance of probabilities that, given the very serious nature of  
21 the offending involving, as it does, sexual harm of a repeated nature on a young child,  
22 that a SHPO is necessary for the protection of children. An Order is therefore made.

23  
24 42. The Defendant should fully understand that the Court regards his offending conduct as  
25 being of the most egregious kind. It is inexplicable that he could have been a part of the  
26 growing years of the young victim having interacted with her as an uncle from she was  
27 at least 7 years old and then turn around and seek to engage in sexual activity with her.  
28 It is a breach of trust which must be strongly deprecated.



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<sup>9</sup> 2019 1 W.L.R. 2409

1 43. Moreover the conduct has the hallmark of predatory activity rather than impulse. The  
2 fact of repetition indicates not only a possible wait for a second opportunity but the  
3 beginnings of a course of conduct. It was fortunate that the mother arrived at the home  
4 when she did and also fortunate that she did not wait for a response after the knocking  
5 on the bedroom door before entering.

6  
7 44. The Defendant's conduct has caused harm, not least because of the distressing impact  
8 on the child, but also because it has destroyed the harmonious family relationships which  
9 existed among the wider family. It is hoped that the Defendant will one day come to a  
10 full realisation of the harmful nature of his actions and seek the counselling assistance  
11 which has been recommended by the Probation Officer.

12  
13 45. The custody threshold is firmly passed and the primary aims of sentencing in this case  
14 must be deterrence and punishment. The Court has given consideration to the fact that  
15 the Defendant is presently the sole carer for his sixteen year old young son and is mindful  
16 of the principles set out in the case of *Regina v. Rosie Lee Petherick*<sup>10</sup>.

17  
18 46. Firstly in that respect, the Court has been advised that arrangements have been made for  
19 the Defendant's son to be returned to the care of his mother. Secondly, given the gravity  
20 of the offending in this case, the applicable sentence of imprisonment does not appear to  
21 be disproportionate. It was stated by that Court:

22  
23 *“The likelihood, however, of the interference with family life which is inherent in a*  
24 *sentence of imprisonment being disproportionate is inevitably progressively*  
25 *reduced as the offence is the graver and M v South Africa is again a good example.”*  
26



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<sup>10</sup> No: 2012/3360/A1 Court of Appeal Criminal Division 3 October 2012 [2012] EWCA Crim. 2214

1        47.     The sentence is one of 7 years' imprisonment concurrent on each count with any time  
2                    served to be deducted as well as credit of 165.5 days.

3  
4        48.     A Sexual Harm Prevention Order is made for five years in terms of the draft provided to  
5                    take effect on the Defendant's release from Prison.

6  
7        **Dated this the 15<sup>th</sup> October 2021**



8  
9        **Honourable Justice Cheryll Richards Q.C.**  
10       **Judge of the Grand Court**  
11  
12