

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

3  
4 **INDICTMENT NO: 19 of 2020**  
5

6  
7 **THE QUEEN**



8  
9 **v.**  
10

11 **MALDINI DEMATIO WILLIAMS**  
12

13 **Appearances:**

**Mr. Scott Wainwright for the Crown**

14 **Mr. Crister Brady of Brady Attorneys at Law**  
15 **for the Defendant**

16 **Before:**

**Justice Cheryll Richards Q.C.**

17 **Sentence Hearing:**

**27<sup>th</sup> May 2020**

18  
19 **Sentence Judgment:**

**3<sup>rd</sup> July 2020**  
20

21 **HEADNOTE**

22 ***Criminal Law – Defilement – Section 134(1)(b) of the Penal Code (2017 Revision)***  
23 ***Cayman Islands Sentencing Guidelines– Principles on Sentencing – Custody threshold.***  
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29 **SENTENCE JUDGMENT**  
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1           1.       Section 12 of the **Youth Justice Law** (2019 Revision) states:

2                           “12. (1)        In relation to any proceedings in any court, such court may direct  
3                           [and this court so directs] that-

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

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

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

18  
19                           For the avoidance of doubt: An order pursuant to s.12(1)(a) and (b) above is herein made  
20                           – with the consequences set out in s.12(2) to follow should there be a breach of this  
21                           Order.

22  
23           2.       Section 31 of the **Criminal Procedure Code (CPC)** (2019 Revision) deals with the

24                           “Anonymity of complainants in rape etc. cases and states:

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

30



1 For the avoidance of doubt: It is the Court's view that the charge of Defilement falls  
2 within this section of the law by virtue of the use of the word "etc." and therefore I herein  
3 make an order in the terms of the wording of s.31(1) of the *CPC* as above.

4 3. The Defendant is before the Court for sentencing on Indictment 19 of 20, which charges  
5 him with a single count of Defilement contrary to s.134(1)(B) of the *Penal Code* (2019  
6 Revision).

7  
8 4. The particulars are that he, on a day unknown in September 2019, within the jurisdiction  
9 of the Cayman Islands, had unlawful carnal knowledge of "XY", a girl between the age  
10 of 12 and 16 years.

11  
12 5. The Defendant's first appearance in the Grand Court was on the 20<sup>th</sup> of March 2020, on  
13 which date he was arraigned and entered a plea of guilty. It is accepted by all parties  
14 that his plea was entered at the first reasonable opportunity.

15  
16 6. The facts, as outlined by the Crown, are not disputed by the Defence. The victim in this  
17 case, is "XY" and her date of birth is in 2006. At the relevant time she was 13 years of  
18 age.

19  
20 7. The victim and the Defendant met at a local church sometime in February 2019. They  
21 began to talk during meetings there. He knew how old she was because she told him.  
22 They would discuss her schooling. During the summer of 2019 they exchanged phone  
23 numbers. Thereafter, he began to text her, telling her that he liked her and wanted to  
24 have a relationship with her. She told him that as she was underage she would get into  
25 trouble and he told her that age was just a number.



1 8. On a date unknown, in September 2019, he drove to her house during the evening. Her  
2 mother was out for the evening. He parked his car outside her house. She got into the  
3 front passenger seat and they both then got into the back seat and began kissing. They  
4 then had vaginal sex. He used a condom. The victim states that this went on for about  
5 three minutes, and that it was hurting. She told him it was hurting and she believes that  
6 is why he stopped. She then went back inside.

7  
8 9. They continued to go out together in his car, but, on the victim's version of events,  
9 nothing further of a sexual nature occurred.

10  
11 10. On the 17<sup>th</sup> of November 2019 the victim told her mother that she had sex with the  
12 Defendant on one occasion while she, that is, her mother, was out for the evening. The  
13 matter was then reported to the police.

14  
15 11. The Defendant was arrested and interviewed under caution. Initially, he stated that no  
16 sexual contact had taken place between himself and the victim; that they were just  
17 friends. He claimed at that time that he believed her to be 16 years of age. He was then  
18 challenged with incriminating communications recovered from the victim's phone.  
19 These communications were of a sexual nature and proved that the Defendant was aware  
20 of the victim's true age. He then accepted that he knew that she was 13 years of age. He  
21 went on to accept that they had sexual intercourse in his car on three separate occasions.

22  
23 **VICTIM IMPACT REPORT**



24  
25 12. The Department of Community Rehabilitation (DCR) has provided a Victim Impact  
26 Report ("VIR") dated the 20<sup>th</sup> of May 2020.

1 13. The Probation Officer concludes that the incident continues to negatively impact the  
2 victim even after it occurred and that there are indications that her self-esteem has been  
3 compromised and that she is coping in a way which can cause her to become more  
4 vulnerable and lead to much riskier behaviours. The Officer states that the victim blames  
5 herself and feels that she is being blamed by others for what has happened, when, in  
6 actuality, she was taken advantage of.

7  
8 14. The victim states that she is okay and does not need professional counselling. However  
9 from interview observations by the Officer, her emotional presentation indicates  
10 otherwise. The Officer states that the victim needs to engage in counselling which would  
11 help her feel less isolated, address her level of denial, and deal with current issues that,  
12 if left unattended, will be the root cause of possible behavioural problems in the future.

13  
14 **SOCIAL INQUIRY REPORT**

15  
16 15. The DCR has also provided a Social Inquiry Report (SIR), dated the 19<sup>th</sup> of May 2020,  
17 which gives details as to the personal circumstances of the Defendant.

18  
19 16. He is 21 years old, with a date of birth of September 1998. He is a Jamaican national  
20 who relocated to the Cayman Islands in 2019 in order to live and work with a maternal  
21 aunt. He has been gainfully employed while being here. He is described as a jovial,  
22 well liked, and social person. There is evidence, says the Probation Officer, to suggest  
23 that he is immature.



1 17. Under attitude towards offending: The Defendant told the Probation Officer that he met  
2 the victim at church services which he attended with his aunt. He said that he was aware  
3 that the victim was 13 years old at the time. They exchanged numbers, at the instigation  
4 of the victim, he says, and began what he describes as an innocent and friendly exchange.  
5 After a month they began to communicate daily. He said that he understands that he did  
6 something wrong because of her age and because she could have been his sister.

7  
8 18. He was assessed using the LS/CMI Risk Need Assessment tool. His overall risk of  
9 re-offending was assessed as low. Of the eight criminogenic factors, two were assessed  
10 as medium; five low or very low; except for pro-criminal attitude or orientation which  
11 was assessed as high. In explaining this, the Probation Officer states that despite  
12 apologising to the victim's family, he has, in some instances, minimised his actions and  
13 demonstrated a lack of victim empathy. In order to determine the likelihood for  
14 re-conviction for a sexual offence, another assessment tool, the Risk Matrix 2000, was  
15 used. This tool cannot predict who will or will not offend, but it can tell whether  
16 someone has similar characteristics to a group of offenders who have a higher or lower  
17 rate of known re-offending. It does not account for all the factors that can affect an  
18 individual's offending behaviour and it does not account for changes in circumstances or  
19 reveal what caused the offending to happen.

20  
21 19. The Defendant was assessed as being at medium risk of re-conviction for a sexual crime.  
22 This means, says the Officer, that he has some of the characteristics that are associated  
23 with raised risk of re-conviction in sexual offenders.



1 20. The most recent figures indicate that two percent (2%) of medium-risk offenders were  
2 re-convicted of a sexual offence within two years of release from custody or the start of  
3 a community sentence; (only) 32 percent of offenders will be placed in a higher-risk  
4 group than this Defendant; and 37 percent in a lower-risk group. Medium-risk offenders  
5 need more treatment and supervision than low-risk offenders, but would not be at the  
6 highest level of treatment.

7  
8 21. The Officer found that the Defendant appeared to appropriate blame to the victim and  
9 minimise his actions when he spoke of the events. He reported to her, that is, the Officer,  
10 that the victim said that she was sorry for what happened to him and that she was willing  
11 to talk to the police to explain that it was a mistake. This, said the Officer, is what may  
12 indicate a lack of remorse and victim empathy.

13  
14 22. The Officer also reports that it appears that he groomed the victim by presenting a  
15 friendly façade, but there is no indication from his local community contacts that he has  
16 ever acted inappropriately with any other female and he has no previous convictions.

17  
18 23. The Officer concludes by noting that, given that he is a foreign national with no legal  
19 ties to the Cayman Islands, he would not therefore be suitable for a community-based  
20 order.

21  
22 24. By s.134 of the *Penal Code*, the maximum sentence for this offence is 12 years'  
23 imprisonment.





1   **SUBMISSIONS**

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25.   The Crown submits that, under the newly-published *Cayman Islands Sentencing Guidelines*, this offence falls into category B of ‘culpability’ because none of the category A factors are present, and, into category 2 harm because none of the category 1 factors of harm are present. The Crown has also asked the Court to consider whether an element of grooming may have been present in the way that the Defendant initially befriended the victim and obtained her phone number.

26.   There is also mention in the VIR that he initially gave her fifty dollars (\$50.00), which money he later took back from her. This money was not mentioned in her ABE interview. The Defendant denies any giving of such money and denies grooming. He says that this was a friendship and expresses regret through his Counsel at the extent to which it developed over time.

27.   Category B/2 offences, which are offences committed where the age of the victim is between 12 years and 16 years, have a starting point of 3 years' custody with a sentencing range of a community order to 5 years' custody.

28.   Defence Counsel submitted that it is not in dispute that they did schoolwork and watched movies in the Defendant's car nearby her home when the victim would leave her house at night, in secret, to meet with him; that they had become boyfriend and girlfriend; that it is accepted that intercourse of a relatively brief duration occurred one night in the Defendant's car in October 2019; that they continued to be close for months thereafter, still meeting and texting regularly, but not engaged in intercourse until the victim was observed missing from her home by her aunt one night, and it was then that the association came to light.

1 29. Counsel submitted that it appears that after that single occasion the parties returned to  
2 being platonic friends and that the position remained thus until his arrest.

3  
4 30. Counsel submitted that the Defendant entered his plea at the earliest opportunity; that he  
5 is a young man who is remorseful and ashamed and that he seeks the leniency of the  
6 Court. Counsel asks the Court to note that there was no force or coercion used on the  
7 victim and that there are no particular aggravating features.

8  
9 31. Counsel referenced a number of unreported cases and submitted that the sentences which  
10 had been passed by these Courts reflect the particular circumstances of each case,  
11 notwithstanding declarations by the Court of deep concern about the increasing  
12 prevalence of such offending.

13  
14 32. Counsel referred to the March 2016 matter of *R v Mark Charles Bodden*<sup>1</sup>, in which His  
15 Lordship Mr. Justice Malcolm (Actg.) quoted from a 2014 ruling by His Lordship Mr.  
16 Justice Charles Quin in which he stated:



17  
18 *"It is my view that the Grand Court should take judicial notice of the deeply*  
19 *disturbing fact that the offence of defilement of a girl under 16 is becoming*  
20 *increasingly prevalent."*  
21

22  
23 33. Counsel referred to the facts in that case. Mr. Bodden was ten years older than the  
24 victim, who was in her early teens, and the offending had taken place at the victim's  
25 home. Expert evidence had been provided that the defendant was vulnerable to any  
26 female who expressed an interest or attraction to him, and that his concrete thought  
27 processes and problem-solving techniques could predispose him to impaired decision  
28 making. That defendant, having pleaded guilty at the first opportunity, was sentenced

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<sup>1</sup> Ind. 109/2012 – Judgment dated 15<sup>th</sup> March 2016.

1 to a total of 16 months' imprisonment after being given a one-third discount for his early  
2 guilty plea.

3  
4 34. Counsel also referenced the case of *R v Kevin Edwardo McField*<sup>2</sup>. That defendant was  
5 18 years old and he was sentenced by Henderson J., to one year probation with a curfew,  
6 100 hours of community service, and ordered to attend counselling. In that case, the  
7 victim was four years younger, at age 14, and the parties had been in a relationship as  
8 boyfriend and girlfriend. The defendant had been found in a closet of the bedroom of  
9 the victim at 2:30 one morning.

10  
11 35. In the case of *R v Randy Michael McLean*<sup>3</sup> he was 23 years old at the time and the  
12 victim was 13 years old. The parties were confirmed to have been in a  
13 boyfriend/girlfriend relationship and the Defendant was sentenced by Harrison J (Actg.)  
14 to 2 years' imprisonment, suspended for 2 years, and 50 hours of community service.  
15 Some years later, in 2014, that same Defendant, then aged 31, had defiled another victim,  
16 and he was thereafter sentenced by Henderson J<sup>4</sup> to 5 years 4 months' imprisonment, a  
17 sentence which was subsequently upheld by the Court of Appeal.

18  
19 36. Defence Counsel asks this Court to consider the particular circumstances of this case  
20 and to consider whether a community service order or a suspended sentence would  
21 reflect the gravity of the offending, taking into account the distinguishing features which  
22 are present.



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<sup>2</sup> Sentenced 16<sup>th</sup> June 2006 in the Grand Court – (Associated Summary Court Charge Number #2266/2006).

<sup>3</sup> Sentenced 2<sup>nd</sup> September 2008 in the Grand Court – Ind. 24/2007 (Associated Summary Court Charge Number #5894/2006)

<sup>4</sup> Ind. 48/2013

1 37. The Cayman Islands Sentencing Guidelines provides general guidance as to the aims of  
2 sentencing, assessing the seriousness of an offence, the custody threshold and the  
3 principle of proportionality. The Court reminds itself of this guidance, including, that  
4 in sentencing an offender the Court has to balance a number of competing interests and  
5 objectives and to tailor the punishment to the individual circumstances of the offender,  
6 while ensuring that it is in line with the seriousness of the offence. The Court should  
7 consider which of the aims which govern the sentencing process would be best served  
8 by the sentence to be passed. The aims, which are set out in the *Alternative Sentencing*  
9 *Law 2008*, include deterrence, punishment, rehabilitation and restitution. The  
10 Guidelines also provide that a custodial sentence should not be passed unless the offence  
11 is so serious that no other sentence can be justified for the offence. Custody should be  
12 reserved for the most serious offences. Even where the custody threshold is passed,  
13 custody can still be avoided in light of personal mitigation or if there is a suitable  
14 community intervention which would meet the aims of punishment and rehabilitation.

15  
16 38. In considering whether the custody threshold has been passed in this case, consideration  
17 has been given to the personal circumstances of the Defendant and to whether there is a  
18 suitable community intervention which would provide a sufficient restriction by way of  
19 punishment, while addressing rehabilitation issues.

20  
21 39. The serious nature of the offence in this case is an important factor. The notes to the  
22 offence-specific Guidelines provide that the offence of Defilement covers a very wide  
23 spectrum of conduct and that, in assessing seriousness, the Court will consider, in  
24 particular, the age gap between the offender and the girl. The greater the gap, the more  
25 serious the offence is likely to be.



1 40. In this case there was an age gap of eight years. Having considered the age gap and the  
2 emotional impact on the victim, as described in the VIR, the nature of the offending and  
3 all the circumstances, the Court considers that the offence is serious such that the custody  
4 threshold is passed.

5  
6 41. The factual circumstances suggest that there may well have been an element of  
7 grooming. However, the Defendant denies grooming and he denies giving her money.  
8 While the Probation Officer refers to the friendly façade which he presented to her, his  
9 personality is also described as generally jovial and it is said that he is a well-liked and  
10 social person.

11  
12 42. The Court gives the Defendant the benefit of the doubt on the fact of grooming and any  
13 such suggestion is not held against him. Such a factor, if found, would have placed this  
14 matter in the band of culpability A rather than culpability B.

15  
16 43. The Court accepts the submissions of the Crown that, in applying the Guidelines, this  
17 matter would fall into category 2/B.



18  
19 44. From a starting point of 3 years' custody, there are no aggravating factors such as would  
20 serve to increase the sentence.

21  
22 45. In mitigation there are a number of factors. He is very remorseful and has apologised to  
23 the victim's family for his actions. He is relatively young, at only 21 years of age. He  
24 lacks maturity. He has no previous convictions and is of good character. These are all  
25 significant factors in mitigation. Additionally, he has been gainfully employed. He is  
26 of low risk of re-offending in general, and at medium risk for sexual matters.

1 46. Taking into account all these factors, together with his detailed personal circumstances  
2 as outlined in the SIR and by Counsel on his behalf, the mitigating factors would serve  
3 to reduce the sentence from the starting point of 3 years' by 14 months to 22 months'  
4 custody.

5  
6 47. He has pleaded guilty at the earliest opportunity and, when this is factored in, the  
7 sentence will be further reduced to one of 15 months' imprisonment.

8  
9 48. The Court has considered whether this sentence should be suspended. It is noted that  
10 his conduct was deliberate. Despite knowing her age, he told the victim that he wished  
11 to have a relationship with her. When she tried to stop him by telling him that as she  
12 was underage she would get into trouble, he persisted and told her, in complete disregard  
13 for the laws of the Cayman Islands, that age was just a number. These laws are in place  
14 to protect young girls from being subjected to underage sexual activity. The Defendant  
15 must face the consequences of his deliberate actions which have had such a devastating  
16 effect on this young girl. Other persons must be deterred from such actions.

17  
18 49. Standing back and considering all the circumstances of this case, including the personal  
19 circumstances of the Defendant as have been detailed, the Court considers that the least  
20 sentence which would meet the seriousness of this case and which would meet the justice  
21 of the case by satisfying the elements of deterrence, punishment and rehabilitation is one  
22 of immediate imprisonment.

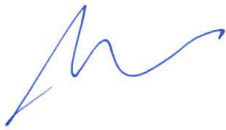


1        50.     The sentence is therefore 15 months' immediate imprisonment. In accordance with the  
2                recommendations of the Probation Officer, whilst in prison he should engage in  
3                Department of Community Rehabilitation prison services as well as services and  
4                programs offered by the Prison in order to address his risk/need level. Time served is to  
5                be taken into account.

6  
7        51.     The sentence is one of 15 months' imprisonment, with time served to be deducted.

8

9     **Dated this 3<sup>rd</sup> July 2020**

A handwritten signature in blue ink, appearing to read 'Cheryll Richards', is positioned above the judge's name.

10

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