

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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5 INDICTMENT NO: 0021/2016
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7
8 THE QUEEN
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10 V
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12 MARLON RICARDO PORTER
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16 **Appearances:** Mr. Scott Wainwright for the Crown
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18 Ms. Amelia Fosuhene of BRADY Attorneys at
19 Law for the Defendant
20
21 **Before:** Mr. Justice Alastair Malcolm (Actg.)
22 **Jury Trial:** 25th September 2017 – 9th October 2017
23 **Guilty Verdict:** 10th October 2017
24 **Written Submissions & Medical Reports:** Received on varying dates
25 **Sentence Submissions heard:** 20th February 2018
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29 **HEADNOTE**

30 *Criminal Law – Rape, Assault Causing Actual Bodily Harm, Intentional*
31 *Harassment, Alarm or Distress – Sentence – The Statement on Tariffs and Guidelines*
32 *for Sentencing for Certain Offences (2002) – England and Wales Sentencing*
33 *guidelines for Rape – Cayman cases – Starting point – Previous convictions – Mental*
34 *Health Assessments.*
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SENTENCE JUDGMENT

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1. On the 10th October 2017 the jury convicted you of Rape, Assault occasioning Actual Bodily Harm and Intentionally Causing Harassment Alarm and Distress. All the offences stem from the events that occurred on the night of the 22nd/23rd January 2016.

2. You offered to give the complainant a lift from Archie’s Bar to a gas station so that she could buy food. Instead of taking her to get food you took her to a secluded spot where you had oral sex and sexual intercourse without her consent. The complainant says she made it clear she was not consenting and indeed demonstrated that by, amongst other things, trying to run away on two occasions. Before the intercourse took place whilst she was resisting, you offered her \$200. At the end you dragged her from the car towards the sea – threatening to drown her. You then drove off leaving her partially clothed.

3. Later she was seen by a government truck driver making her way from where you had left her. She was not wearing any shoes or trousers and her blouse was torn. She told the driver that she had been raped.

4. When examined at the Hospital she had extensive bruising her left buttock, and abrasions to left elbow. She said this occurred as you dragged her towards the water

5. I have considered the following material supplied to me before today’s hearing:



- 1 (a) Prosecution Note on Sentencing;
2 (b) List of Antecedents;
3 (c) Social Inquiry Report (SIR) dated 25th May 2016 in relation to Mr Porter's
4 last conviction;
5 (d) Psychiatric report by Dr McGill dated 16th January 2018;
6 (e) Psychological Report by Dr von Kirchenheim dated 9th February 2018;
7 (f) Defence Sentencing Submissions;
8 (g) 2 certificates from and proof of employment in Northward Prison;
9 (h) Photographs of Mr Porter's children;

10 6. In considering the length of the inevitable prison sentence I have considered:

- 11 (a) The 2002 Statement of Tariffs and Guidelines;
12 (b) *R v. Dilbert*¹;
13 (c) England & Wales Sentencing Guidelines for Rape;
14 (d) *R v Rohan Gidarising*².

15 7. Clearly in accordance with the Statement of Tariffs and *R v Dilbert*, the starting point
16 in this case is 10 to 12 years' imprisonment. As the Cayman Islands Court of Appeal
17 (CICA) said in *R v Dilbert*, the England & Wales Sentencing Guidelines are of no
18 assistance as to the starting point, but can be of assistance in considering aggravating
19 and mitigating factors.



¹ Criminal Appeal No 3 of 2008

² Ind. 101/2014

1 8. After you had driven her against her will to a secluded spot, this was a prolonged and
2 terrifying attack on the complainant, albeit no weapon was used.

3 9. You have a previous conviction for violence against a woman as recently as 2015. I
4 accept that you were sentenced for that. However the nature of that offence is such that
5 it would be an aggravating factor under the England & Wales Sentencing Guidelines
6 for Rape.

7 10. Under those guidelines there are the following further aggravating factors:

8 (a) Location of offence

9 (b) Time of offence

10 11. Having considered all the submissions the least sentence I can pass is:

11 (a) Count 1. (Rape) 13 years

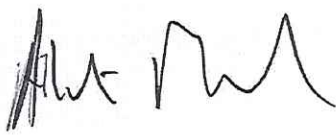
12 (b) Count 2. (ABH) 2 years

13 (c) Count 3. (Harassment) 1 year

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15 12. All those sentences will be concurrent and time served on remand both before and after
16 conviction shall count.

17 **Dated this the 20th February 2018**

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19 **Mr. Justice Alastair Malcolm Q.C.**
20 **Acting Judge of the Grand Court**

