

IN THE CAYMAN ISLANDS COURT OF APPEAL

CACR002/2015

IND 9/14

#00001/2014

BETWEEN:

Shankino William Ebanks

APPELLANT

and

HER MAJESTY THE QUEEN

RESPONDENT

BEFORE:

**The Rt Hon Sir Bernard Rix, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Alan Moses, Justice of Appeal**

Appearances: Michael Snape of Priestleys for the Appellant and Kenneth Ferguson for the Director of Public Prosecutions.

JUDGMENT

**Revised from transcript of oral judgment 16 November 2015 and Approved
Released 5 January 2017**

MOSES, JA (Orally)

1. This is an appeal against sentence of defilement of a girl under the age of 16 contrary to section 134(1)(b) of the Penal Code (2010 Revision).
2. This appellant, on the 3rd of November 2014, pleaded guilty to one count of this offence and was sentenced on the 27th of January 2015 by Quin J to a term of imprisonment of three years seven months. He pleaded guilty at the start of the trial.
3. The essential argument advanced on behalf of this appellant by Mr. Snape is that the judge approached the case with far too great a rigidity as to the guidelines and the categories in which the case was put and failed to heed sufficiently the difficult

background that this appellant had, which explained both his actions and his attitude to them.

4. The facts were sadly all too familiar of a man substantially older than the victim who was under 16. She was about 15 and a half, in fact 15 and seven months. He was 29, and it is just that disparity in age, across which the relationship occurs, that this law is designed to prevent.
5. He had met this girl who had willingly entered into a relationship, in so far and to the limited extent to which it could ever be said that where there is such a great disparity of age the relationship is one that is willing or vulnerable, but to that limited extent it was. They had met and had sexual intercourse earlier at a time when the appellant did not know that she was under 16. But on a second occasion when they met by arrangement in a cave on the island, the offence took place and involved penetration.
6. The appellant was, as we have said, some 14 years older. He had had a very difficult background of being abused himself and unfortunately was in the habit of taking drugs and had a difficult relationship with a woman by whom he had had three children.
7. Despite these difficulties, he had never before been accused, let alone guilty of any sexual offence.
8. The judge in very full reasons, Quin J, referred to this difficult background. But also referred to the fact that this appellant's attitude to these offences showed a lack of remorse, and in particular a lack of understanding of the difficulties and dangers of anyone of his age entering into a sexual relationship with a young girl, blaming the young girl for the fact that this had taken place. We agree with the judge that that shows a complete misunderstanding of the vice of this sort of offence and the dangers to which it gives rise.
9. The judge properly referred to the Cayman Islands guidelines and importantly the starting point on this island for offences of this sort which are, understandably and rightfully, regarded as more serious than they might be regarded in other jurisdictions. He rightly referred to the starting point of five years and in particular the decision of this court in Douglas. We refer in particular to the decision of this court in its judgment 21st of November 2014 in *R v McLean and Douglas* CICA (Crim) 10 & 19/2014 which this court endorsed the view that the starting point for this type of offence, consistent with the

2002 guidelines, is five years and the importance of retaining flexibility, bearing in mind that they are only guidelines, in a case which in fact the sentence was substantially higher than five years.

10. We note that there are to be guidelines taking the same form as United Kingdom sentencing guidelines in the future, and this court should emphasise that we welcome those guidelines and would underline their importance in future consideration of sentences. We have no doubt that they will not be applied in a mechanical, rigid way and will always allow for flexibility so that appropriate sentences, either higher or lower than given starting points, of course will apply.

11. In this case, it was submitted that the judge applied too rigid an approach. We disagree. Whilst there undoubtedly was mitigation in the background of this appellant and in particular in explaining his wholly wrong attitude to the responsibility for initiating such relationships and their outcome, nonetheless the judge did show flexibility by reducing his starting point to one of four years' imprisonment and giving his reasons for it. He then reduced the sentence further to take into account the late plea. We, therefore, reject the ground of appeal based upon the fact that the judge did not give sufficient attention to the difficulties of this background.

12. The other point relates to the plea of guilty. It was late, but it was submitted that the judge failed to pay sufficient weight to the cause of the lateness of that plea which derived, so he said, from the fact that it was only late in the day that the full circumstances were revealed by the complainant and it became apparent that it was only on the second occasion of sexual intercourse that this appellant appreciated that she was under 16. Earlier than that, that had not been the evidence, and it was only that which triggered the plea of guilty.

13. We accept that that may have been the reason for the late plea, but nonetheless it was a late plea. It was not at the earliest opportunity, and this appellant knew better than anyone else what the true facts were and that he had no answer to the charge as made against him. In those circumstances, we do not agree that the small discount given was inappropriate. For those reasons we dismiss this appeal.

Rix JA

Field JA

Moses JA