

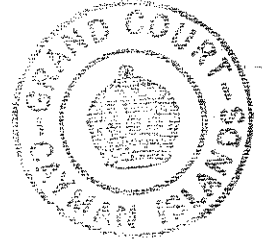
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0009/2014**

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8 **THE QUEEN**

9
10 **V**

11 **SHANKINO WILLIAM EBANKS**



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16 **Appearances:**

Mr. Kenneth Ferguson for the Crown

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18 **Mr. John Furniss for the Defendant**

19
20 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

21 **Submissions heard:**

15th January 2015

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23 **Preamble**

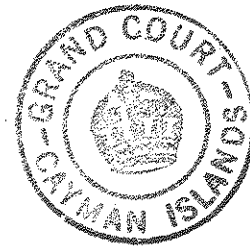
24 *This Ruling is distributed with the strict understanding that, in any report of it, the*
25 *anonymity of the Complainant, who is also the victim, must be strictly preserved,*
26 *that is, the victim may not be identified by name, school, location, or by her family*
27 *members.*

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29 **SENTENCE RULING**
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1 1. On the 7th March 2014 the Defendant, Shankino William Ebanks, was arraigned and
2 pleaded not guilty to the charge of Defilement of a Girl between the age of twelve
3 and sixteen years of age contrary to s.134(1)(b) of the Penal Code (2010 Revision).
4 Some 8 months later, on the day this case was set for trial – the 3rd November 2014
5 – the Defendant was re-arraigned at the request of Defence counsel and he pleaded
6 guilty to the charge.

7 2. The particulars of the offence are that the Defendant, on a day unknown between
8 the 9th November 2012 and the 8th May 2013 at Rebecca’s Cave, Southside,
9 Cayman Brac, Cayman Islands, had unlawful and carnal knowledge of a girl
10 between the ages of 12 and 16 years, who was at the time age 15 years.

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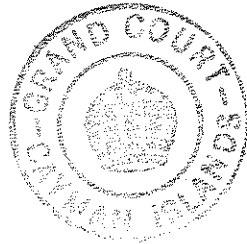
SUMMARY OF FACTS

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3. The Complainant's date of birth is the 7th day of June 1997 and the Defendant's date of birth is the 15th day of November 1984, therefore, at all material times relating to the period specified in this Indictment, the Complainant was 15 years old and the Defendant was 29 years old.

4. The information provided to this Court records a discrepancy in the month and year when the Complainant met the Defendant, however, this discrepancy is not a factor in the matters related to sentencing on the charge of defilement – committed in the period identified in the Indictment – as pleaded to by the Defendant.

5. After the Complainant had first met the Defendant through acquaintances of her older brother, they chatted and eventually exchanged BBM PIN numbers. Following that, they continued to correspond via BBM and they were casual friends for the first three weeks. During this period, the Complainant told the Defendant she was 16 years of age. The Complainant states that she does not know why she lied about her age. The Complainant and the Defendant decided to begin dating and, about 3 weeks after that, the Complainant decided, of her own free will, to make love to the Defendant. Though the Defendant did not know the Complainant's correct age, he knew the Complainant was a High School student. The Complainant is not sure if the Defendant knew the grade she was in at school.



1 6. At around the beginning of February 2013, sometime during the night, the
2 Complainant and the Defendant had sexual intercourse at a cave in the Southside of
3 the Island. The Complainant had made an arrangement for the Defendant to meet
4 her at the cave. When the Complainant got to the cave she saw the Defendant but
5 she cannot say how he got there. Whilst at the Cave the Defendant told the
6 Complainant he did not want to have sex with her but, she told him everything was
7 okay and no one would discover that they were having sexual intercourse. They
8 then had sexual intercourse using a condom.

9 7. About a week after that incident the Defendant discovered the Complainant's
10 correct age and confronted her about it. The defendant told the Complainant he
11 knew she was not sixteen and asked her whether she knew that he would get into
12 trouble for that. In response the Complainant told the Defendant that he should not
13 worry because she was not going to let him get into trouble.

14 8. On another occasion, in the middle of February 2013, the Complainant sent the
15 Defendant a BBM telling him to meet her by the same cave. He told her that he
16 would meet her but they would not have sex and the Complainant agreed. When the
17 Defendant arrived at the cave the Complainant begged the Defendant to have sex
18 with her. Again they had intercourse with a condom.

19 9. The Complainant said she had sexual intercourse with the Defendant because she
20 had feelings for him and that "*...everyone made her feel that if you love someone*
21 *you have to please them.*"



CROWN'S SUBMISSIONS

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10. Crown counsel submits that the Defendant and the Complainant were “casual friends” – corresponding by BBM and the like – for the first three weeks after meeting. Crown counsel acknowledges that during this period the Complainant told the Defendant that she was 16 years of age when in fact she was 15 and that also, before the Defendant knew the Complainant’s correct age, the Complainant had sexual intercourse with the defendant of her own free will. However, Crown counsel points out that on a later date, the Defendant found out about the Complainant’s age and yet, nonetheless, the Defendant had sexual intercourse with her again.

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11. Crown counsel highlights the disparity in age – that is, the Defendant is some 13 years older than the Complainant. Crown counsel also highlights the fact that the Defendant knew that the Complainant was not 16 and proceeded to have sex with her. Crown counsel submits that the Defendant’s behaviour was unacceptable and that he should face a custodial sentence.

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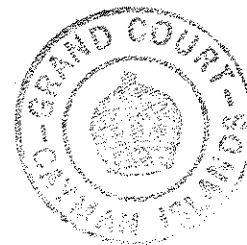
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12. Crown counsel highlights the fact that the Cayman Islands Penal Code states that the maximum sentence for Defilement of a girl who is under 16 years of age is 12 years’ imprisonment, whereas the maximum sentence in England and Wales for the corresponding offence of Sexual Activity with a Child is 14 years’ imprisonment.

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VIR AND SIR

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13. The Court has read the Victim Impact Report (VIR) dated the 12th January 2015 and the Social Inquiry Report (SIR) dated the 15th January 2015.

14. The Department of Children and Family Services (DCFS) had received an anonymous call on the 8th May 2013 that the Complainant and the Defendant were seen outside the Defendant's home. On that day the school counsellor spoke with the Complainant and the Complainant revealed to the counsellor that she had been in a relationship with the Defendant for 3 months and that they had had sexual intercourse. A medical examination which followed revealed that the Complainant's hymen was not intact.

15. The Complainant stated that on the first occasion that they had sexual intercourse the Defendant told her he loved her, asked her if she wanted to make love to him and she agreed to have sex with him. The victim said the Defendant had said to her that he could get in trouble for this and she told him she would not tell anyone what happened. The victim said they had another sexual encounter but she could not recall all the details.

16. The VIR confirmed that the offences against the victim occurred when she was 15 years of age.



1 17. The social worker states that these offences against the victim were carried out
2 when the victim would be experiencing emotional, physical and psychological
3 changes. The VIR stated that even though the victim had “very good support from
4 her parents,” the whole experience was “traumatic and embarrassing for her at the
5 time.”

6 18. Additionally, the Complainant has stated that the Defendant once told her that “*she*
7 *will not like it*” if he is sent to prison and, therefore, she is fearful for her life if the
8 Defendant should go to prison.

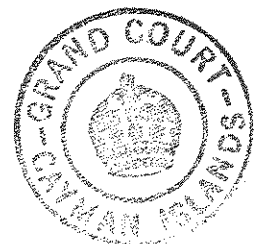
9 19. Regrettably, apart from feeling fear the Complainant went through feelings of
10 misplaced guilt as the Complainant has stated that friends and family members of
11 the Defendant have not spoken to her, and they have behaved in a manner that
12 suggests that she, the victim, had physically harmed the Defendant. Because of
13 these feelings of guilt, it is reported that the Complainant would “cry for days,
14 which affected her health and her sleeping pattern and appetite...”

15 20. The social worker states that fortunately, it is now almost two years since the
16 incident occurred and the Complainant is now sleeping better and “coping with
17 life.”

18 21. The DCFS officer states that it is important to note that the Defendant was aware
19 that the Complainant was a minor and he knew that if he had sex with her he would
20 be charged.

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DEFENCE CASE

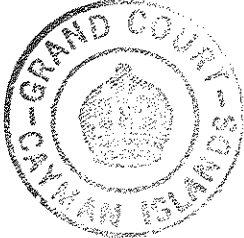
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24. Defence counsel highlights the fact that the Defendant acknowledged some guilt in his interview taken on the 17th May 2013 when the Defendant stated that when he found out that she was 15 he had a negative attitude towards her and that was when he told her that he would get into trouble. When asked “what kind of trouble” the Defendant told her that because she is under age “*that’s a jail sentence ... I have seen people get in trouble for young girls already.*”

25. Defence counsel asks the Court to take into account the Defendant’s acknowledgment of his guilt, together with the guilty plea which he entered on the date his trial was set to commence – 3rd November 2014.

26. Defence counsel, Mr. Funiss, also submits that, although the Complainant’s behaviour is not a factor – because of the strict liability nature of the offence – there is evidence that the Complainant was promiscuous and was a willing participant in the sexual intercourse.

27. Defence counsel highlights the difficult upbringing the Defendant had – living in New York when under 10 years of age and being sexually abused by an older woman.



1 *THE LAW*

2 28. Section 134 of the Penal Code (2013 Revision) reads:

3 *“134. (1) A person who unlawfully and carnally –*

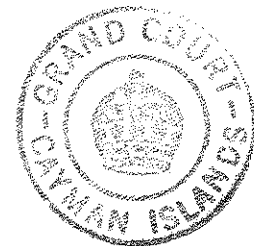
4 *(a) knows any girl under the age of twelve years commits an*
5 *offence and is liable to imprisonment for twenty years; or*

6 *(b) knows any girl between the ages of twelve and sixteen years*
7 *commits an offence and is liable to imprisonment for twelve*
8 *years.”*
9

10 29. The Chief Justice’s Sentencing Guidelines¹ (the Chief Justice’s Guidelines) sets the
11 basic tariff at 5 years, where the offender knew the victim was under 16 years of
12 age. At the time the Chief Justice’s Guidelines were prepared, the maximum
13 sentence was 7 years and now the maximum sentence is 12 years’ imprisonment.

14 30. In England and Wales the corresponding offence is now described as Sexual
15 Activity with a Child pursuant s.9 of the Sexual Offences Act (2003). In England,
16 the maximum sentence is 14 years’ imprisonment.

17 31. Under the UK Sentencing Guidelines this is a Category 1 offence involving
18 penetration of the vagina. The Court has to bear in mind that in England the
19 maximum sentence is higher, and that under Category 1 there is a starting point of
20 five years’ custody for a person who pleads not guilty and is found guilty after a
21 trial.

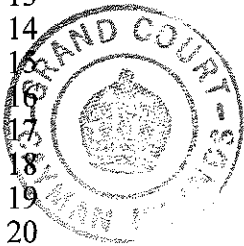


¹ Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002

1 32. The difference between the maximum of 14 years' imprisonment for the UK
2 offence of Sexual Activity with a Child, and the maximum of 12 years'
3 imprisonment for the offence of Defilement of a girl Under 16 years – pursuant to
4 s.134 of our Penal Code – is only 2 years' imprisonment, and, consequently, *de*
5 *minimis*.

6 33. The Grand Court has previously cited and followed the classic dicta of Lawton LJ
7 (as he then was) in the English Court of Appeal decision of *R v. Taylor*²:

8 *“What does not seem to be appreciated by the public is the wide spectrum of*
9 *guilt which is covered by the offence known as having unlawful sexual*
10 *intercourse with a girl under the age of sixteen. At one end of that spectrum is*
11 *the youth who stands in the dock, maybe sixteen, seventeen or eighteen, who*
12 *had what started off as a virtuous friendship with a girl under the age of*
13 *sixteen. That virtuous friendship has ended with having sexual intercourse with*
14 *one another. On the other end of the spectrum is the man in a supervisory*
15 *capacity, a school master or social worker who sets out deliberately to seduce a*
16 *girl under the age of sixteen who is in his charge. The penalties appropriate for*
17 *the two types of cases to which I have just referred are very different indeed.*
18 *Nowadays most judges would take the view, and rightly take the view, that*
19 *when there is a virtuous friendship that ends in unlawful sexual intercourse it is*
20 *inappropriate to pass sentences of a punitive nature. What is required is a*
21 *warning to the youth to mend his ways. At the other end a man in a supervisory*
22 *capacity who abuses his position of trust for sexual gratification, ought to get a*
23 *sentence somewhere near the maximum allowed by law.”*



24
25 34. In *R v. Ron Christopher Douglas*³ the Defendant was in a position of trust – being
26 the football coach for the juvenile football team of which the Complainant was a
27 member. In *Douglas* the Defendant was 16 years' older than the victim. In that
28 case, due to the serious aggravating breach of a position of trust the appropriate
29 sentence was found to be seven (7) years. The Court gave a 33 1/3% discount in
30 recognition of the Defendant's guilty plea at the first reasonable opportunity and,
31 accordingly, a sentence of 4 years and 8 months' imprisonment was imposed.

² [1977] 1 W.L.R. 612 at letter C on page 615

³ Indictment 71 of 2013 dated the 3rd June 2014

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CONCLUSION

35. It is my view that the Grand Court should take judicial notice of the deeply disturbing fact that the offence of Defilement of Girls Under 16 years of age is becoming increasingly prevalent. Accordingly, I consider 5 years' imprisonment to be the appropriate starting point for an offender with no previous convictions and after a trial. However, before I can arrive at the appropriate sentence in this case I must consider all the relevant mitigating and aggravating factors.

36. In this case the Defendant was not a coach, teacher or in a position of trust, but neither was he, to use Lawton LJ's words: "a youth of sixteen, seventeen or eighteen." The Defendant was approximately 13 years older than the Complainant and on the second occasion on which sexual intercourse took place knew that the Defendant was under 16 years of age.

37. The Court accepts that the Defendant has pleaded guilty – although he did wait until the date of his trial. The Court notes that the Defendant has previous convictions for drug offences and for failure to surrender to custody, but no previous convictions for sexual offences.

38. As far as the issue of the Complainant's initial consent to have sex with the Defendant is concerned, as Mr. Justice Henderson stated on the 24th April 2014 in *R v. Randy McLean*⁴:

"...defilement is carnal knowledge of a girl under 16 and it is no defence to show that she consented."

Justice Henderson pointed out:

⁴ Indictment 48 of 2013



1 *“The whole underpinning of the statutory provision was to the effect that the*
2 *girl’s views did not matter very much because she was not of the age of*
3 *consent. It did not matter what she thought about him being punished or not*
4 *because the law protects her absolutely.”*

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6 39. Regrettably I can find very few mitigating factors, save for the fact that the
7 Defendant pleaded guilty and used a condom.

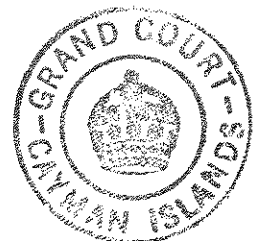
8 40. This is not a case in which the Defendant and the victim are similar in age. It is not
9 a case where two young people are in a virtuous friendship which ends in sexual
10 intercourse. The Defendant was a mature older man who, significantly, was married
11 with young children of his own.

12 41. The abuse of this young victim’s innocence is serious. The victim may have viewed
13 the Defendant with some affection because of the companionship he provided in
14 their discussions. However, the Defendant is the father of children himself. The
15 Defendant should have fully realised how impossible it would be that there could be
16 anything right, proper, normal or legal about a sexual relationship with this young
17 girl.

18 42. There is sadly, a distinct lack of remorse on the part of the Defendant and, quite
19 extraordinarily, the Defendant seems to blame young girls like this Complainant for
20 his actions.

21 43. I have taken into account the submissions of both counsel, and I also take into
22 account the helpful SIR and VIR.

23



1 44. There is disturbing evidence that there is an increase in offences of this nature
2 within the Cayman Islands. The law exists for situations like this – to protect young
3 girls.

4 45. A signal must be sent out to others like this Defendant that behaviour like this is
5 unacceptable and will always be and must be punished by a custodial sentence.

6 46. Having considered all the facts and circumstances put before me I find that the
7 appropriate sentence in this case is 4 years' imprisonment.

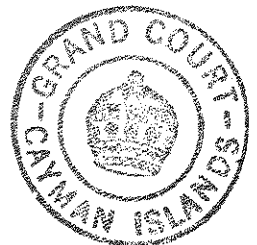
8 47. In England the reduction of sentence for a guilty plea is provided for by the
9 Criminal Justice Act of 2003. We do not have corresponding legislation in the
10 Cayman Islands. However both the Court of Appeal and the Grand Court have
11 adopted *The Reduction in Sentence Guidelines for a Guilty Plea* as promulgated
12 by the Sentencing Guidelines Council - published in 2004 and revised in 2007. At
13 page 5, under the heading "Determining the Level of Reduction", the SGC
14 Guidelines state at paragraph 4.1:

15 *"The level of reduction should be a proportion of the total sentence imposed,*
16 *with the proportion calculated by reference to the circumstances in which the*
17 *guilty plea was indicated, in particular, the stage in the proceedings. The*
18 *greatest reduction would be given where the plea was indicated at the "first*
19 *reasonable opportunity".*

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21 48. The greatest reduction would be normally one-third where the guilty plea is made,
22 or there is an unequivocal indication that there will be a guilty plea at the first
23 reasonable opportunity.

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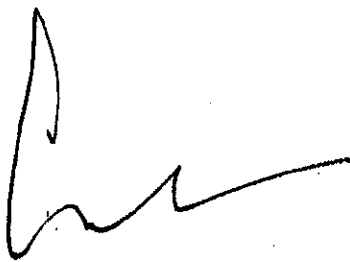
1 49. At paragraph 4.2 the SGC recommends that the level of the reduction will be
2 gauged on a sliding scale ranging from a recommended one-third – where the guilty
3 plea was entered at the first reasonable opportunity – reducing to a recommended
4 quarter , where a trial date has been set, and finally, to a recommended one-tenth,
5 for a guilty plea entered at the door of the Court or after the trial has begun.

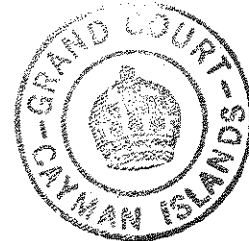
6 50. Therefore, I take into account that the Defendant entered his guilty plea on the day
7 his trial was set to commence, and, accordingly, I grant a 10% reduction and
8 therefore impose a sentence of 3 years and 7 months' imprisonment.

9 51. Although the Defendant has been on bail since the 20th January 2014, he was
10 remanded in custody after the sentence hearing on the 15th January 2015.
11 Accordingly, I also order that time spent in custody is to be taken into
12 consideration.

13

14 **Dated this the 27th January 2015**

15 



16 **Honourable Mr. Justice Charles Quin Q.C.**
17 **Judge of the Grand Court**