

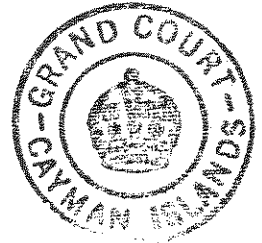
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0071/2013**

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8 **THE QUEEN**

9
10 **V**

11 **RON CHRISTOPHER DOUGLAS**



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16 **Appearances:**

Ms. Laura Manson for the Crown

17
18 **Ms. Fiona Robertson of Samson & McGrath**
19 **for the Defendant**

20
21 **Before:**

The Hon. Mr. Justice Charles Quin

22 **Submissions heard:**

22nd May 2014

23
24 **Preamble**

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

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30 **SENTENCE RULING**
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- 32 1. On the 14th February 2014 the Defendant pleaded guilty to Count 1 and Count 4 on
33 this 5-count Indictment – pleas which have been accepted by the Crown.

1 2. Count 1 is the charge of Defilement of a Girl Under Sixteen Years contrary to
2 s.134(1)(b) of the Penal Code (2010 Revision). Count 4 is the charge of Possession
3 of an Indecent Photograph of a Child contrary to s.228A of the Penal Code (2010
4 Revision), that is s.228A as found in the Penal Code (Amendment) Law (2012).
5 Both offences occurred on the 3rd March 2013 at Room 1, 77 Buttonwood Drive,
6 off Orange Drive, Prospect, Grand Cayman.

7 3. In relation to Count 1 the Defendant pleaded guilty to having unlawful carnal
8 knowledge of a girl between the ages of 12 and 16 years, and of having in his
9 possession an indecent film of a child.

10 Crown counsel highlights the fact that the maximum sentence for Defilement of a
11 girl under 16 years of age under the Cayman Islands Penal Code is 12 years'
12 imprisonment, whereas the maximum sentence in England and Wales for the
13 corresponding offence of sexual activity with a child is 14 years imprisonment.

14 4. The maximum sentence for Count 4 – the possession of the indecent photograph –
15 is 15 years under the Cayman Islands Penal Code, whereas in England and Wales
16 the maximum sentence for the corresponding offence is 10 years' imprisonment.

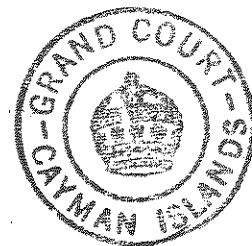
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THE FACTS

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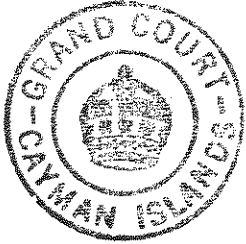
5. At the time of the offence the victim was 13 years of age and she is now 15 years of age.

6. On the 3rd March 2013 an incident occurred at the victim's home which led to her disclosing to her parents that she had engaged in sexual activity with the Defendant at his home earlier that day. The victim's parents immediately contacted the police.

7. The victim was interviewed by the police on the 7th March 2013. She described an incident of sexual intercourse with the Defendant at his home on the 3rd March 2013. She stated that she had consented to the intercourse – believing herself to be in a loving relationship with the Defendant, and that they would inform everyone of this fact when she turned 16 years of age.

8. Crown counsel pointed out that when the Defendant became aware of the allegation he surrendered himself to the police on the 4th March 2013. The Defendant was arrested and cautioned for the offence of Defilement. He consented to providing a buccal swab and to completing a forensic medical examination.

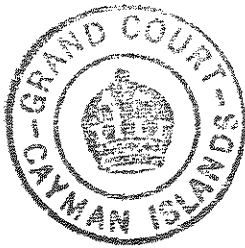
9. During his first interview with the police the Defendant made no comment but, during his second interview, the Defendant admitted to having sexual intercourse with the victim on the 3rd March 2013 and to knowing that, at that time, she was 13 years of age.



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10. The Defendant's cell phone was examined and a video of two persons having sexual intercourse was found. The Defendant admitted that the two persons were himself and the victim. Crown counsel stated that the victim was unaware that these images were taken and she said she did not consent to the same.

11. The Defendant has no previous convictions.



CASE FOR THE DEFENCE

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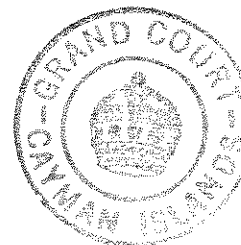
12. Counsel on behalf of the Defendant stated that her client accepted full responsibility for the offence and did not wish to diminish what had happened.

13. Ms. Robertson pointed out that the incident was consensual and the Defendant, like the victim, had considered their relationship to be real.

14. Ms. Robertson accepted that the photograph of the victim and the Defendant was, itself, the subject of Count 4 and an aggravating feature of Count 1. However, there was no evidence of distribution of the photograph, it was not a graphic photograph and it did not depict nudity of either party. It was not a sophisticated photograph, it was of very poor quality and, additionally, the photograph was removed as soon as the Defendant realised the significance of having the photograph in his possession.

15. Defence counsel pointed out that the Defendant himself had harrowing experiences in his early years, as he had been the victim of sexual and physical abuse. Accordingly, the Defence submits that this is a classic case of the abused becoming the abuser.

16. Defence counsel, whilst accepting that there has been a breach of trust, adds that the Defendant genuinely wanted to help by being a companion for the victim as she was going through a difficult time. Counsel accepts that the Defendant's conduct went too far and it led to "a monumental error of judgment" that will cost him his job, his family life and his reputation.



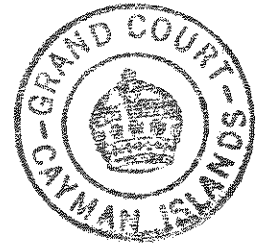
1 *ANALYSIS*

2 17. In relation to Count 1 the Chief Justice’s Statement on Tariffs and Guidelines for
3 Sentencing composed in 2002 sets the basic tariff at five years, where the offender
4 knew the victim was under 16 years of age. At the time of the Chief Justice’s
5 Statement, the maximum sentence was 7 years. Under the UK Guidelines this is a
6 Category 1 offence for the corresponding offence of “Sexual Activity With a Child”
7 and the starting point is 5 years’ custody, with a range of 4 to 10 years’
8 imprisonment.

9 18. In relation to Count 4 this is the first case brought under s.228A of the Penal Code
10 (Amendment) Law 2012.

11 19. The relevant case in relation to Count 4 to which both counsel have referred is *R v.*
12 *Oliver*¹ which sets out the levels of seriousness of the different types of images as
13 follows:

- 14 i. Images of erotic posing – no sexual activity;
- 15 ii. Non penetrable sexual activities between children, solo masturbation by a child;
- 16 iii. Non penetrable sexual activity between adults and children;
- 17 iv. Penetrable sexual activity involving a child or children or both children and
18 adults;
- 19 v. Sadism or involving the penetration of or by an animal.



¹ [2003] 2 Cr. App. R. (S) 15

1 20. The Court of Appeal of England and Wales stated that a custodial sentence of
2 between 6 and 12 months would generally be appropriate for showing or
3 distributing a large number of images at Level 2 or 3 or possessing a small number
4 of images at Level 4 or 5. Sentences longer than 3 years would be reserved for
5 cases where images at level 4 or 5 had been shown or distributed.

6 21. For simple possession without distribution it would appear that the starting point is
7 one year's custody, with a range of 26 weeks to 3 years.

8 22. The Court has been greatly assisted by the Social Inquiry Report (SIR) of Beharti
9 Veja, Probation Officer, dated the 20th May 2014. In addition, the Court has read
10 Victim Impact Statement dated the 4th April 2014 which represents the views of the
11 Complainant's mother and father.

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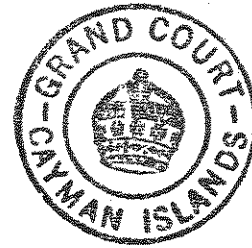
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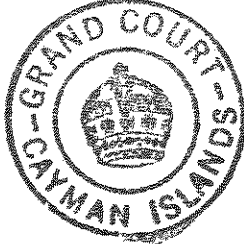


VICTIM IMPACT STATEMENT

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23. Although the Court has to be wary of acting on the representations made by victims and their families, as they may vary from one extreme to another in terms of their reactions to the offence, it appears that the victim has been the subject of some bullying and unpleasant behaviour in the aftermath of this incident, which has forced her to leave the Football Club. She greatly misses being part of the team and the fact that she has heard it said that the culpability for this incident is hers as well, has caused her distress and confusion. In addition, it is quite clear that the victim’s parents have suffered significant distress and are strongly of the view that *“the Defendant’s actions are not acceptable”*.

24. The Court regrets to note that, in the wake of this incident, the victim’s grades have fallen to such an extent that her parents now worry that the government’s scholarship funding on which the victim is attending school in the United States may be withdrawn. Additionally, because of the victim has to attend school overseas alone whilst on sleep medication and seeing a school psychologist, the victim’s parents have had to incur the cost of additional air fares to fly the victim back home more frequently – which costs deplete the parents’ financial resources in relation to funds that should be spent on their other two children.



SIR

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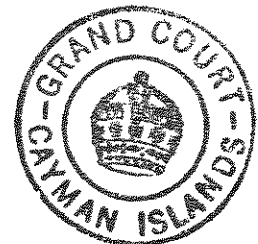
2 25. The SIR reveals that the Defendant had a very neglected and deprived upbringing.
3 His father played no part in his young life and his father is currently serving a long
4 prison sentence in Northward. The Defendant's mother was a drug addict and, what
5 is particularly tragic is that, between the ages of 9 and 11, the Defendant himself
6 was sexually abused by one of his mother's drug dealers. His mother died because
7 of her drug use when the Defendant was only 16 years of age.

8 26. Despite the foregoing, the Defendant had a reasonably good school career –
9 achieving good levels of numeracy and literacy skills and never becoming the
10 subject of disciplinary measures.

11 27. The Defendant obtained full-time employment at a Security, Maintenance and
12 Installation firm immediately after leaving High School and he has retained the
13 same job up to now – as he is involved in coaching outside his working hours.

14 28. The Defendant excelled as a footballer and, in fact, had he shown a more
15 professional approach, he could have found himself playing football professionally
16 in either Belgium or Holland. He particularly recalls an incident with Coach
17 Winston Chung – one in which the Defendant's attitude and anger did not impress
18 the football scouts who were looking at him with a view to a professional contract.

19 29. I note that the Defendant has been involved in coaching and has coached the
20 Ladies' Football team for almost six years. It is therefore very regrettable that his
21 coaching of the juvenile girls has led him into this offence.



1 30. The Court also notes that the Defendant, in 2010, following a report made to the
2 police by a mother, was previously warned about his behaviour by the police in
3 relation to inappropriate text messages to a young girl.

4 31. The Court is extremely disappointed to note this in the SIR:

5 *“[The Defendant] admitted that whilst he was with his [adult] girlfriend he was*
6 *engaging in sexual relationships with others, including the victim in the current*
7 *matter.”*

8 Nevertheless the Court also notes that the report also states:

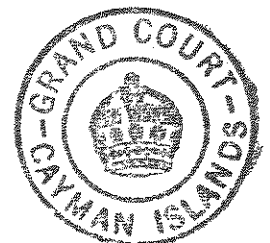
9 *“The night in question was the first and only occasion where they had met each*
10 *other and had sexual intercourse.”*

11 32. The Probation Officer highlights some areas of assessment and evaluation which
12 showed the following:

13 i. As the Defendant does not participate in any pro-social organized activities
14 outside of his coaching and weekend-parental commitments, the Defendant’s
15 risk of reoffending against this backdrop is high.

16 ii. As the Defendant continues to maintain that his “relationship” with this young
17 woman is “*mutual ... and caring*” he therefore shows a lack of understanding of
18 the impact of his behaviour on the life of the victim, and the Defendant’s risk of
19 reoffending against this backdrop is high.

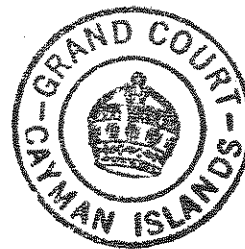
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1 iii. However, against the facts that the Defendant has a solid educational and
2 employment history; he has no previous convictions; he does not have a
3 substance abuse problem; and, he has no pattern of “troubled behaviours”, the
4 Defendant’s risk of reoffending against this backdrop is low.

5 33. The Probation Officer states that it is clear that the Defendant would benefit from a
6 sex offending intervention programme to reduce his risk of committing further
7 similar offences. However, the Probation Officer further states: “*No such*
8 *programmes are available in the prison or community of the Cayman Islands.*”

9 34. The SIR reveals that the Defendant himself is the victim of serious neglect from his
10 mother and sexual and physical abuse from his mother’s friend. All these
11 circumstances have had a very detrimental impact on the Defendant’s development.



1 **THE LAW**

2 35. The Court is grateful for the helpful review of the English authorities and Cayman
3 authorities by both Crown and Defence counsel.

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

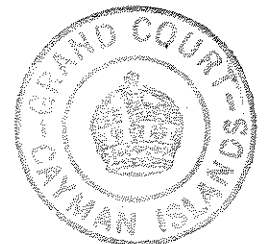
6 *“What does not seem to be appreciated by the public is the wide spectrum of*
7 *guilt which is covered by the offence known as having unlawful sexual*
8 *intercourse with a girl under the age of sixteen. At one end of that spectrum is*
9 *the youth who stands in the dock, maybe sixteen, seventeen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

22
23 37. Ms. Robertson has submitted that, based on a review of some English authorities
24 for breach of trust offences involving a significant age difference, a starting point of
25 three years after a trial is appropriate.

26 38. In England the corresponding offence under the Sexual Offences Act of 2003 is the
27 offence of “Sexual Activity with A Child” under s.10 of the UK 2003 Act. This
28 new offence replaced the old “Defilement of A Girl Under Sixteen” offence.

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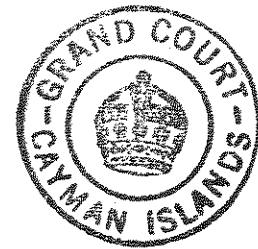
² [1977] 1 W.L.R. 612 at letter C on page 615



1 39. From my review of the English case law and the UK Sentencing Council Sexual
2 Offences Definitive Guideline dated the 1st April 2014 this offence is a Category 1
3 offence. In England, the new Sentencing Guideline recommends a starting point for
4 a person with no convictions after a trial of 5 years' imprisonment.

5 40. The difference between the maximum of 14 years' imprisonment for the UK
6 offence of sexual activity with a child, and the maximum of 12 years' imprisonment
7 for the offence of Defilement of a girl under 16 years – pursuant to s.134 of our
8 Penal Code – is only 2 years' imprisonment, and, consequently, *de minimis*.

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



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1 **AGGRAVATING AND MITIGATING FACTORS**

2 42. Aggravating Factors: The SIR refers to the Defendant’s “predatory behaviour”
3 with respect to this victim and I note:

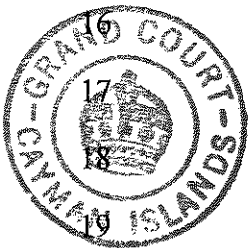
4 i. The Defendant, in 2010 was formally warned by the police for inappropriate
5 text messages with a juvenile female athlete on the team he was coaching.

6 ii. The dates of birth of the Defendant and victim are 8th March 1983 and the 8th
7 March 1999, respectively and, accordingly, the Defendant is exactly 16 years
8 older than the victim. Therefore, at the time of the incident (on the 3rd March
9 2013) the victim was 13 years of age (only five days shy of her 14th birthday)
10 and the Defendant was 29 years of age (only five days shy of his 30th birthday).

11 iii. The Court notes that the Defendant has two sons – with the older being the
12 same age as the victim and, even with having a child who is of the same age as
13 the victim, the Defendant continues to maintain that he was “in a relationship”
14 with this victim.

15 iv. In the same vein, the Defendant continues to maintain that he was in a
relationship with a child of 13 years – even though he was 16 years older than
her – without any clear appreciation, according to the SIR, of “*the impact that
his actions and people’s reactions towards (the victim) in the community have
had on [the victim]*”.

20 v. The Defendant continues to justify filming the victim during sexual intercourse
21 without her knowledge by re-stating that he was in a “*mutually respectful (sic)
22 and caring relationship*” with the 13 year old victim.



1 vi. The Defendant's breach of the trust of the adult-child/coach-student/Advisor-
2 troubled child relationships that were supposed to have existed with this
3 juvenile is an overriding concern for this Court and, as the SIR states, the
4 Defendant "*used his position as her coach to groom her, gain her trust and take*
5 *advantage of her. It would appear that he has used her vulnerability to connect*
6 *with her, as he admitted that he would talk to her about her problems and they*
7 *understood each other.*"

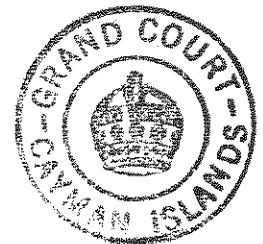
8 43. Mitigating Factors:

9 i. The Defendant has no previous convictions.

10 ii. I note that, upon learning of the complaint to the police, the Defendant
11 voluntarily surrendered himself to the police.

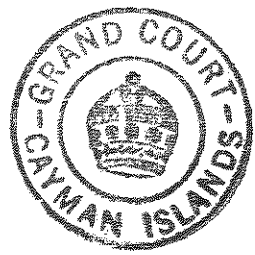
12 iii. Additionally, it was during the Defendant's second interview with the police
13 that he admitted taking the photographs and he admitted sexual activity with the
14 victim.

15 iv. It is clear from the facts of the case that the relationship between the Defendant
16 and the victim was, at that time, based on genuine affection on the part of the
17 victim as there is no evidence that the Defendant used any threat, force or any
18 intoxicants on the victim and, it has been accepted that the act, whilst unlawful,
19 was with the consent of the victim.



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v. The Defendant himself had been the victim of sexual abuse and it is extremely regrettable that the Cayman Islands does not have an intervention programme for sexual offenders and the victims of such offences – which would significantly assist in the work that must be done with offenders to deter them from re-committing these offences. It is a matter of some urgency that such programmes are introduced in the Cayman Islands and available for the inmates of Northward Prison.



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CONCLUSION

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44. I have considered the submissions of both counsel and the UK Guideline, and, as I have stated above, it is my view that the starting point for the offence of Count 1 is 5 years.

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45. Counsel on behalf of the Defendant submits that the relationship between the Defendant and the victim was based on genuine affection and the sexual activity was with the full consent of the victim.

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However, as Mr. Justice Henderson stated on the 24th April 2014 in *R v. Randy McLean* Indictment 48 of 2013,

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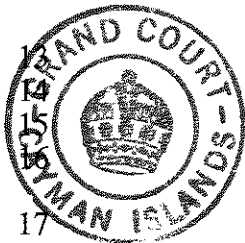
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“...defilement is carnal knowledge of a girl under 16 and it is no defence to show that she consented.”

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Justice Henderson pointed out,



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

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46. In *McLean*, as it was a second conviction for Defilement, the Judge found that the appropriate sentence was 8 years' imprisonment. However, as the Defendant McLean pleaded guilty, the Judge imposed a sentence of 5 years and 4 months. This Court notes that the *McLean* case was not a breach of trust case.

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47. However I consider that the aggravating factors in this case raise the sentence to be imposed above the starting point of 5 years for the following reasons:

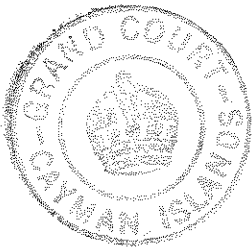
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- i. This is not a case in which the Defendant and the victim are similar in age. It is not a case where two young people are in a virtuous friendship which ends in sexual intercourse. The Defendant was a mature older man and what is important is that he was acting in a supervisory capacity.

- ii. The abuse of the privileged position of trust this Defendant held as a coach in this case is a very serious aggravating factor. The Defendant was a coach for a team of young girls. There should be no safer haven for children, especially young girls, to spend productive and recreational time, whilst learning a skill, than by joining and playing for a young girls' football club. This Defendant, by his actions, has transformed the environment of a young girls' football club into a place that parents now view with some apprehension and fear. The girl and her parents were entitled to consider that the young girls' football club was a safe environment for girls to play football and have fun. The sports coach is the very person to whom the children look for protection and guidance. The 31 year old Defendant has abused his position of trust for his own selfish sexual gratification.

- iii. In addition, there is the further aggravating factor that the Defendant filmed his sexual activity with the young girl without her knowledge or consent.

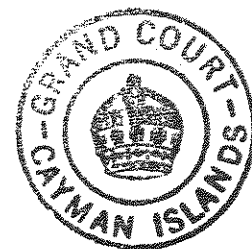


1 iv. The abuse of this young victim's innocence is serious. The victim may have
2 viewed the Defendant with some affection because of the companionship he
3 provided in their discussions. However, the Defendant was a father of children
4 himself, and a father of a child who is the same age as the victim. The
5 Defendant should have fully realised how impossible it would be that there
6 could be anything right, proper, normal or legal, about a sexual relationship
7 with this young girl. Defence counsel's description of the Defendant's
8 "*monumental error of judgment*" is an accurate description of the Defendant's
9 conduct.

10 48. For the aforesaid reasons I find that the appropriate sentence in the circumstances of
11 this case is 7 years' imprisonment.

12 49. However, in light of the fact that the Defendant pleaded guilty at the earliest
13 possible stage and avoided the necessity of a trial with the inevitable cross
14 examination of the victim, I will award the usual 33 1/3% reduction on a sentence of
15 7 years and impose a sentence of 4 years and 8 months' imprisonment.

16 50. I also order that, whilst in custody, the Defendant is to undergo regular psychiatric
17 and medical assessments to monitor his attitude and behaviour.



1 51. In relation to Count 4 the recommended starting point in the UK Guideline is 12
2 months' imprisonment. I note that there was no dissemination of the image. In light
3 of the fact that the Defendant has pleaded guilty, I award an appropriate reduction
4 and impose a sentence of 8 months' imprisonment. As the photograph of the
5 activity is an aggravating feature in relation to Count 1, which I have already taken
6 into account in arriving at an appropriate sentence of 7 years, I order that the 8
7 months is to run concurrent to the 4 years and 8 months on Count 1.

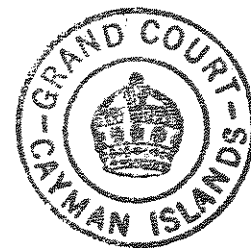
8 In addition I hereby order the destruction of all the photographic or video material
9 relating to this victim. Should there be any risk that the photographic or video
10 material can be recreated, I would order the destruction of the cell phone containing
11 the same.

12 52. The Defendant is sentenced to a total term of imprisonment of four (4) years and
13 eight (8) months, with time spent in custody to be deducted.

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17 **Dated this the 3rd June 2014**



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21 **Honourable Mr. Justice Charles Quin**
22 **Judge of the Grand Court**