

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

**Criminal Appeal No. 28 of 2009
(Indictment No. 28/09)
C#03915/09**

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

FELIX WILLIAMS

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that FELIX WILLIAMS having sought leave to appeal against *his* CONVICTION & SENTENCE passed upon *him* by the Grand Court on the 17TH day of December, 2009 as set out below:

Indictment # 28/09

**Attempted Rape Count 1
9 years imprisonment.**

**Indecent Assault Count 2
5 years imprisonment.
Sentences to run concurrent.**

The Court of Appeal has this 30th day of November, 2010 given judgment therein to the effect following:

- 1. Appeal against conviction having been abandoned is therefore dismissed.**
- 2. Appeal against sentence allowed. Sentences set aside. Sentences of 8 years (count 1) and 5 years (count 2) imprisonment imposed. Sentences to run concurrently.**
- 3. Time spent in custody to be taken into account. ***

Dated this 11th day of January, 2011

* Transcript of ruling
released 28/1/11
RB


Registrar



IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 28/09

BETWEEN:

FELIX WILLIAMS

Appellant

and

THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, President
THE HON. JUSTICE I. FORTE J.A.
THE HON. JUSTICE E. MOTTLEY J.A.

Court Proceedings on 30 November 2010

APPEARANCES:

Mr. N. Dixey

for the Appellant

Mr. K. Ferguson

for the Respondent



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THEIR LORDSHIPS' RULING

CHADWICK, President:

Following a trial in December 2009, the appellant, Felix Williams, was convicted on two counts: the first of attempted rape and the second of indecent assault.

The offences had occurred at the same time, some eight months earlier, on the 16th of May 2009. The victim was the 12-year-old stepdaughter of the appellant, Felix Williams; and the incident had occurred in the home which they both shared with her mother. Put shortly, the victim had awoken to find her stepfather on top of her in her bed; her mother having by then left for work. In the course of the indecent assault, the appellant used his fingers to touch the victim's vagina; he licked the vagina; he attempted to put his penis into the vagina, and he made that attempt on two occasions. The victim struggled, pushed and kicked him; and he came off the bed. The victim called her mother by mobile phone, who returned to the house, confronted the appellant

1 who was arrested and taken into custody. The
2 incident, although traumatic, was of relatively
3 brief duration.

4 The appellant was charged with rape. He
5 elected to be tried by judge alone. The judge
6 was not satisfied that there had been
7 sufficient penetration to constitute the
8 offence of rape; and reached a conclusion that
9 the appropriate verdict was "guilty of
10 attempted rape and indecent assault". She
11 sentenced Mr. Williams on 17th December 2009
12 to nine years' imprisonment on the attempted
13 rape and five years' imprisonment on the
14 indecent assault, the sentences to run
15 concurrently, but she did so on the basis that
16 the period which he had already spent in
17 custody, some seven months, should not be taken
18 into account against the term of imprisonment
19 for which he was sentenced.

20 It has been pointed out, correctly -- the
21 basis, usual in this island, that time spent in
22 custody would count as time served -- that the
23 effect of that approach was that the sentences
24 were comparable to ten years' imprisonment for
25 the attempted rape and six years' imprisonment

1 for the indecent assault. We have been asked
2 to approach this appeal on the basis that these
3 should be viewed as sentences of ten years and
4 six years respectively; and we take account of
5 that.

6 The appellant, who had been represented at
7 trial but subsequently lost the services of
8 counsel, filed his own notice of appeal on the
9 22nd of December 2009. He sought to appeal
10 against both sentence and conviction on the
11 basis, as he said, that the conviction did not
12 reflect the evidence presented at his trial.
13 He asked for the Court of Appeal to assign
14 Legal Aid. This Court did so in the August
15 session 2010; and the appellant has had the
16 benefit of being represented by counsel, Mr.
17 Nicholas Dixey, on this hearing. We are
18 grateful for Mr. Dixey's assistance.

19 Mr. Dixey has told us this morning that he
20 has clear instructions that the appellant
21 wishes to withdraw his appeal against
22 conviction. The appellant is in court and he
23 clearly concurs with that position stated by
24 his counsel. Accordingly, we treat the appeal
25 against conviction as withdrawn; and we need

1 say no more about it. It is only the appeal
2 against sentence that is now before us.

3 The real point that is made on the appeal
4 against sentence is that the offence of
5 attempted rape in this jurisdiction carries a
6 maximum sentence of 14 years' imprisonment, and
7 that this offence, although serious, does not
8 come within the upper tertile of offences of
9 this kind so as to merit a term as high as ten
10 years.

11 That presents a difficult sentencing
12 problem, for this reason: there were, in this
13 case, a number of aggravating factors. The
14 judge listed them in the course of her
15 sentencing remarks. She identified five
16 aggravating features.

17 First, that the victim was aged 12 at the
18 time of the offence; second, that she was the
19 stepdaughter of the offender and could have
20 expected to be nurtured by him and to place her
21 trust in him; third, that she lived with him
22 and therefore would have expected him to
23 protect her from harm; fourth, the offences
24 occurred in the sanctity of the home; and,
25 fifth, that the attempted rape was accompanied

1 by other acts of indecency.

2 The point is properly made that, to some
3 extent, the second, third and fourth of those
4 features overlap, but together, of course, they
5 each reflect the fact that this was a case
6 where the offender was a person in a position
7 of trust and influence over the victim.

8 In those circumstances, had this been a
9 completed offence of rape, Mr. Williams could
10 have expected to receive a sentence of 15 years
11 or more. The reasons for that view appear in
12 the decision of this Court in the appeals of
13 Craig Dilbert and Christopher Omar Samuels,
14 Nos. 3/2008 and 17/2009. In the course of its
15 judgment on those appeals, the Court pointed
16 out that, given a tariff guideline of ten to 12
17 years for rape, an offender who committed rape
18 in circumstances where there were aggravating
19 features of the nature identified by the Court
20 of Appeal in England in *The Queen v. Milbury*
21 could expect to be sentenced for 15 years or
22 more. That would be the appropriate starting
23 point in a case with aggravating factors of the
24 nature that were here present.

25 Had there been no maximum period of

1 imprisonment imposed or prescribed for offences
2 of attempted rape -- or, perhaps more
3 accurately, had the position been the same as
4 it is in England where the prescribed maximum
5 for attempted rape is life imprisonment (as it
6 is for rape itself) -- ten years would have
7 been an appropriate sentence for this attempted
8 rape; given that the corresponding sentence for
9 the offence of rape would have been 15 years or
10 more.

11 But the existence of the prescribed
12 maximum for attempted rape introduces the
13 additional feature that the appropriate
14 sentence must be measured against the yardstick
15 that 14 years is the maximum sentence for the
16 most serious offences of attempted rape. This
17 was a case in which there were mitigating
18 factors; notwithstanding the existence, also,
19 of aggravating factors. The judge identified
20 the mitigating factors as these: that no weapon
21 was used; that the incident was of short
22 duration; that no obvious residual physical
23 injuries were caused or existing; and that the
24 offender, a man of 44 years of age, had an
25 unblemished record and was properly to be

1 treated as being of good character before this
2 offence.

3 In those circumstances, as it seems to us,
4 to pass an effective sentence of ten years
5 against a statutory maximum of 14 years is to
6 put this offence into a range which is unduly
7 high in the scale applicable to attempted rape.
8 We are satisfied that the appropriate sentence
9 for attempted rape in this case would have been
10 an effective sentence of eight years, and that
11 the corresponding sentence in relation to
12 indecent assault would have been some five
13 years.

14 We have to ask ourselves, therefore,
15 whether the sentence passed was manifestly
16 excessive. We would not take the view that a
17 sentence of nine years was manifestly excessive
18 in circumstances where the appropriate sentence
19 was eight years. But, as I say, nine years is
20 not the appropriate comparator in this case.
21 The appropriate comparator in this case is ten
22 years, and the difference between ten years and
23 eight years is, we think, sufficient to meet
24 the requirement of manifest excess.

25 For those reasons, we propose to allow the

1 appeal against sentence, giving leave to appeal
2 if necessary. We set aside the sentences that
3 were passed. In their place, we impose a
4 sentence of eight years in respect of the
5 attempted rape and five years in respect of the
6 indecent assault, and we direct that time spent
7 in prison shall be taken into account in
8 serving those sentences.

9 MR. DIXEY: My Lord, for the avoidance of
10 any doubt, of course, My Lord, time served in
11 prison, Your Lordship would include in that
12 time served in custody on remand. I know
13 that's what Your Lordship means, I'm sure.

14 THE COURT: Yes, certainly.

15 MR. DIXEY: If we could express it that
16 way.

17 THE COURT: Time in custody, yes.

18 MR. DIXEY: I'm grateful.

19 THE COURT: That's absolutely what we had
20 in mind.

21 MR. DIXEY: That was clear to me,
22 sometimes it's not clear to others.

23 THE COURT: Time spent in custody is to be
24 taken into account --

25 MR. DIXEY: Very grateful.

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THE COURT: -- against the sentence.

