

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No. 11 of 2009

(Indictment No.17/08)

C#00073/08

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

DALTON BENJAMIN ROBINSON

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

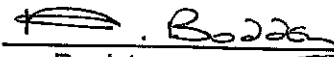
This is to give you notice that DALTON BENJAMIN ROBINSON having sought leave to appeal against *his* **CONVICTION & SENTENCE** passed upon *him* by the Grand Court on the 14th day of April, 2009 as set out below:

Ind 17/08 **Indecent Assault on a Female**
3 years imprisonment to run consecutively to present term of imprisonment.
Time spent in custody on this matter from 3rd January, 2008 to 24th November, 2008 to be taken into consideration.

The Court of Appeal has finally determined the said appeals, and has this 3rd day of **March, 2010** given judgment therein to the effect following:

- 1. Legal aid for this application granted to John Furniss.**
- 2. Appeal against conviction being withdrawn by appellant is hereby dismissed. Conviction affirmed.**
- 3. Appeal against sentence dismissed.**
- 4. Sentence affirmed**
- 5. Oral transcript of reasons to be released.**

Dated this 29th day of March, 2010


Registrar



CICA 17-09 Dalton Robinson transcript of oral judgment 29th March 2010

IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT

CAUSE No. 0073 of 2008
IND No. 17 of 2008
CRIMINAL APPEAL No. 11 of 2009

BETWEEN:

DALTON BENJAMIN ROBINSON

Appellant

- AND -

HER MAJESTY THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, P.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE CONTEH, J.A.

Reasons for Judgment delivered orally on 3rd March 2010

JUDGMENT

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Chadwick, President (Orally):

The appellant was convicted on the 5th of December 2008, after trial before judge alone, of the offence of indecent assault on a female. The offence was committed on the 12th of November 2007. On the 14th of April 2009, the appellant was sentenced to three years' imprisonment for the offence for which he had been convicted: that term of imprisonment to run consecutively to a term which the appellant was then serving for another and unconnected offence.

The appellant gave notice of his wish to appeal against both conviction and sentence. The grounds as they then were, in the notice of appeal which he signed on the 27th of April 2009, were these:

"I am appealing against the sentence and conviction which the magistrate impose on me. I think it is to [sic] harsh and

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1 excessive, so I am asking the
2 judge to be more lenient with
3 me."

4 Although there is reference there to a
5 magistrate, the sentence was in fact imposed by
6 a judge of the Grand Court.

7 When the matter came before this court the
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8 appellant was represented by Mr. Furniss. He
9 indicated that his client wished to withdraw
10 the appeal against conviction. The appellant
11 confirmed that to the court. Accordingly, it
12 was directed that on withdrawal of the appeal
13 the conviction should stand. We have been
14 concerned, therefore, only with an appeal
15 against sentence.

16 The judge found the facts on the basis
17 that he accepted the evidence of the virtual
18 complainant, a girl then aged 13 years or
19 thereabouts. The girl was visiting her
20 grandmother on the day in question. Living
21 with the grandmother was, among others, the
22 appellant, Dalton Robinson, who (it seems) was
23 the grandmother's adopted son. The
24 relationship, therefore, between the appellant
25 and the girl was that of uncle and niece.

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1 The offence took place in the back room at
2 the grandmother's house. The facts, for the
3 purpose of sentence, can be taken to be these:
4 At about 6:00 p.m. in the evening the appellant
5 called the complainant into the back room,
6 saying that he wanted to see her "thing". The
7 girl understood by that that he wanted to see
8 what she described as her "pussy" or, on being
9 asked for clarification, her vagina. She said

10 that the appellant told her not to be afraid
11 because her elder sister, Wimpy, had already
12 "done it". Her evidence was that she sat on
13 the bed in the back room, the appellant took
14 off her pants and had oral sex with her: that
15 is to say, he applied his mouth to her vagina.
16 He then said that he was going to get a condom
17 and left the room. She attempted to leave the
18 room after he had gone out, but he returned,
19 pulled her back and asked her where she was
20 going. She pulled away from him and went
21 outside.

22 Those were the bare facts of the incident.
23 The judge, as I said, believed the girl and
24 convicted the appellant of indecent assault.
25 There is now no appeal against that conviction.

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1 The judge went on to sentence the
2 appellant to a term of three years. In giving
3 his reasons for sentence he explained that he
4 had seen a victim impact statement; from which
5 it was plain that the girl had been affected by
6 this behaviour. He went on:

7 "... even at this point ... she is
8 complaining of the fact that she
9 is uncomfortable in the presence
10 of older men. How long she will
11 be saddled with that, we don't
12 know, but that flows directly ...

13 as a consequence of what you did
14 to her."

15 The appellant has a long record of
16 offending - amounting to some 45 previous
17 offences - but none of those offences were of a
18 sexual nature. It is clear that the judge
19 sentenced on the basis that this appellant,
20 although not able to rely on good character,
21 could not be regarded as a persistent sexual
22 offender. But he took account first of the
23 fact that the girl was the appellant's niece -
24 so he was, as it were, in a position of trust
25 in respect to her - and that, on her evidence,

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1 she had been "groomed" or "prepared" for a
2 sexual encounter by the appellant; in that he
3 had required her to watch him having sex with
4 other women on earlier occasions. Those other
5 women did not give evidence of that: but the
6 girl did, and it is plain that the judge
7 accepted her evidence on that point.

8 In those circumstances, as the judge said:
9 "Having looked at your
10 antecedents, having heard your
11 attorney and looked at the
12 precedents from this
13 jurisdiction and from England,
14 the court sentences you to a

16 imprisonment."

17 The principal English authority to which the
18 judge was there referring was the case of
19 wellman [1999] 2 Cr.App.R.(S.). The
20 circumstances in that case were not dissimilar
21 from the present. The appellant, in wellman,
22 was a man of 58. He was convicted of indecent
23 assault on a girl, aged 13, who was a friend of
24 his 14-year-old daughter and had come to stay
25 the night. In that case, the appellant

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1 supplied both girls with alcoholic drinks: to
2 the extent that eventually the friend, that is
3 the victim, was sick. They all went to bed.
4 The appellant had slept on a sofa. The friend
5 slept in another room. She woke up three times
6 in the night, and on each occasion found the
7 appellant in her room. On two occasions the
8 appellant put his hand inside her pyjama
9 trousers, and on one occasion inserted his
10 fingers into her vagina. She then immediately
11 left, climbing through the window. The trial
12 judge sentenced the appellant to two years
13 imprisonment. That sentence was upheld in the
14 Court of Appeal, who observed that it could not
15 be regarded as excessive: "it was entirely
16 appropriate".

17 wellman is of importance because it marks
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18 a departure from an earlier line of English
19 authorities which had relied on the decision in
20 Demel [1997] 2 Cr.App.R.(S.)5. Their decision
21 had indicated rather lesser sentences for
22 offences of this kind. But, as the Court of
23 Appeal pointed out in Wellman, those
24 authorities could no longer be relied upon
25 because the maximum sentence for indecent

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1 assault had been increased to ten years since
2 they were decided: so two years could not be
3 regarded as excessive.

4 Mr. Furniss relies on Wellman, of course,
5 for the observation that a two-year sentence in
6 that case seemed entirely appropriate. But
7 that case was an English case in 1999: the
8 present is a Cayman Islands case some ten years
9 later.

10 We must begin by looking at the Statement
11 on Tariffs and Guidelines for Sentencing for
12 Certain Offences handed down on the 16th of
13 January 2002 by the Chief Justice. Under the
14 heading "Sexual Offences" the Guidelines
15 indicate that for defilement of a girl over 12
16 but under 16 years of age, the law prescribed a
17 maximum penalty of seven years. They go on to
18 say this:

19 "The Courts regard all sexual

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20 offences as very serious and all
21 too prevalent. While the actual
22 age of the girl within each
23 category and the circumstances
24 of the offence will always be
25 important considerations, the

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1 basic tariff here will be 5
2 years where the offender had no
3 reasonable cause to believe or
4 did not ... believe that the girl
5 was above the age of 16 years."
6 That is the tariff for the offence of
7 defilement.
8 There are in the Penal Code (2007
9 Revision) two distinct offences: the offence of
10 defilement under section 134(1), which provides
11 that: "whoever unlawfully and carnally knows
12 any girl between the ages of twelve and sixteen
13 years is to be guilty of an offence and liable
14 to imprisonment for 12 years"; and the offence
15 of indecent assault under section 132(1). It
16 is an offence for a person to make an indecent
17 assault on a woman: the offence carries on
18 conviction a liability to imprisonment for ten
19 years (section 132(5)).
20 It seems clear that the maximum of seven
21 years for defilement - to which reference is
22 made in the Guidelines - has since been

23 increased to twelve years. It can be seen that
24 in a case of indecent assault, where the
25 maximum is a little less than the maximum now

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1 for defilement, a sentence of five years would
2 be well within the Guidelines. But, of course,
3 in cases of indecent assault the circumstances
4 vary widely and tariffs can be no more than a
5 guidance. The appropriate sentence must be
6 tailored to the facts of the particular case.

7 In the present case, there were
8 aggravating circumstances: first, the
9 preparation for grooming, which I have
10 described - that is, exposing the girl to the
11 experience of watching the appellant perform
12 sexual acts on other women; second, the
13 position of trust within which both that
14 grooming and the offence took place - in that
15 the appellant was her uncle and she was
16 visiting her grandmother's house in which he
17 resided; and, third, the nature of the indecent
18 assault itself - that is to say, his applying
19 his mouth to her vagina.

20 Mr. Furniss sought to argue that there
21 were degrees of indecent assault; and that
22 digital penetration came higher on the scale
23 than what occurred in this case. For our part,
24 we think that one must be cautious in making

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1 where, as here, the indecent assault involved
2 an act which must be regarded as disgusting and
3 must have been highly offensive to the victim.
4 It said that the appellant did not, in fact,
5 restrain the girl from leaving: but that
6 submission sits ill with the judge's findings
7 of fact which indicate that the appellant
8 attempted to do so but that the girl pushed
9 past him and got out. Further, there is the
10 feature that this act has affected her attitude
11 towards older men, in that she still feels
12 uncomfortable in their presence. Fortunately
13 it seems that she is reconciled to her uncle
14 and does not have a personal fear of him.

15 In all those circumstances, it seems to us
16 that the judge was fully entitled to reach the
17 conclusion that a three-year sentence was
18 appropriate in this case. That term cannot be
19 regarded as excessive, let alone manifestly
20 excessive.

21 For those reasons, we dismiss this appeal.
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REPORTER'S CERTIFICATE

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4 Certified correct to the best of my skill and ability, dated

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the 3rd day of March 2010.

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8 _____
CAROL ROUSE

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