

IN THE CAYMAN ISLANDS COURT OF APPEAL

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

INDICTMENT # 33 OF 1955

C.I.C.A. # 32/95

BEFORE THE RT. HON. MR. JUSTICE ZACCA P.C., O.J., PRESIDENT
THE RT. HON. MR. JUSTICE TELFORD GEORGES P.C., J.A.
THE HON. MR. JUSTICE GERALD COLLETT J.A.

BETWEEN ALLAN GEE APPELLANT
AND REGINA RESPONDENT

Mr. Hampson for the Appellant
Mr. Bulgin for the Crown

2nd and 15th April 1996

JUDGMENT

The appellant was convicted on his own plea of guilty before the Grand Court on 24th November, 1995 of two counts of defilement of a girl under sixteen years of age contrary to section 132 (3) of the Penal Code (Revised). He now appeals against the sentences of three years immediate imprisonment on each count, to run concurrently, which were passed upon him for those offences.

The offences relate to two High School pupils and they were committed

at the Appellant's residence when the complainants were respectively aged 15 and 14 years. The appellant had sexual intercourse with each of them on a number of occasions and the facts presented by Crown Counsel indicate that neither of the girls was at all averse to his doing so. On each occasion the Appellant, who is 54 years of age, gave the girls substantial presents of money. He also on some of these occasions recorded by video camera what took place between them; although we are satisfied that the video tapes were made for his own subsequent gratification and not for dissemination to others, let alone for commercial profit.

During the course of Mr. Hampson's plea in mitigation and subsequently when passing sentence, the learned Grand Court Judge made it clear that he took a most serious view of these offences. He was of course entitled to do so and more particularly because the Legislature in recent times has increased the maximum penalty from two to seven years imprisonment.

There are, however, apparent from the transcript some observations of the learned Judge which have lead us to the conclusion that he took an excessively rigid approach to the exercise of his judicial sentencing discretion in this case.

On page 61 it was indicated that if the case had been fought out, the maximum sentence could very well have been a possibility "because there would have been no mitigating factors". At page 71 it is stated , "the Court has taken a deterrent approach: there is no other

course open in these cases". It is clear from a reading of the judgment of Lord Taylor C.J. in Attorney General's Reference (R. v. McLennan) (1994) 16 Cr. App. R (S) 578 that deterrence is an important factor to be borne in mind when sentencing in such cases but also that it is by no means the only one. And the maximum sentence permitted by law for any offence is one which judges traditionally reserve for the worst conceivable instances of its perpetration: it is rarely considered even as a starting point in the mental processes involved in sentencing.

We have, therefore, taken the view that the sentences passed upon the Appellant may have been wrong in principle, not because these are not most serious offences meriting a substantial term of imprisonment but that the learned Judge may have been misled into a disregard of the powerful mitigating factors which are present in the case and which needed to be balanced carefully against the obligation to protect precocious adolescents even against their own instincts. Our approach has accordingly been one of seeking to strike a proper balance in arriving at a proper but not an overly severe deterrent sentence.

The appellant is a man of hitherto blameless character, a successful chartered accountant and a former special constable who has rendered considerable services to the administration of justice. He is also a family man. His conviction by itself will inevitably lead to the loss of his professional qualification and, at his age, this will also mean the end of his professional career. It may also lead to the breakup of his family life, his wife having already petitioned for

divorce although she has not yet pursued this to a final decree. There is, in addition, the disgrace which he has brought upon himself in this community where he has lived and been known for 22 years as well as the financial ruin referred to in the evidence. In view of all these factors it seems most unlikely that he will ever be tempted to offend again. Observations of Lord Lane C.J. in R v Richards (1980) 2 Cr. App. R (S) 119 show that these are proper factors for consideration.

On the other side of the balance, however, there are certain features which Crown Counsel has pointed out and which can be regarded as aggravating; in particular the video taping of the events and the giving of substantial money presents, which may have the effect of further cheapening the act of sex in the eyes of these young complainants. Those factors must, to some extent, offset the weight of the mitigating ones already mentioned.

There is no doubt that the Appellant has frankly admitted his guilt and co-operated with the Police and his pleas of guilty have protected the complainants from the ordeal of giving evidence at a public trial in the Grand Court. For this, as the learned Judge found, he deserves a substantial discount of time off.

Giving the matter the best consideration which we can, we believe that a sentence of two years imprisonment on each count to run concurrently would meet the justice of this case. The appeal against sentence is therefore allowed to the extent that the sentences of three years

passed by the Grand Court are set aside and sentences of two years imprisonment on each count are substituted to run concurrently, any time spent in custody prior to arraignment to be taken into account.