

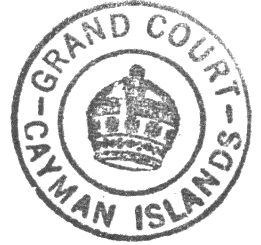
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3  
4  
5 **INDICTMENT NO: 109/2012**

6  
7  
8 **THE QUEEN**

9  
10 **V**

11  
12 **MARK CHARLES BODDEN**



13  
14  
15  
16 **Appearances:**

**Mr. Greg Walcolm for the Crown**

17  
18 **Mr. John Furniss for the Defendant**

19  
20 **Before:**

**Mr. Justice Alastair Malcolm (Actg.)**

21 **Submissions heard:**

**4<sup>th</sup> March 2016**

22  
23 **SENTENCE RULING**  
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1 **PREAMBLE**

- 2 1. Section 31 of the Criminal Procedure Code (2013 Revision) deals with the “Anonymity  
3 of complainants in rape etc. cases and states:

4 “31. (1) After a person is accused of a rape [etc.] offence, no matter likely to lead  
5 members of the public to identify a woman as the woman against whom the offence  
6 is alleged to have been committed shall be published in a written publication  
7 available to the public or be broadcast, except as authorised by a direction of the  
8 court.”

- 9  
10 2. Section 12 of the Youth Justice Law (2005 Revision) states:

11 “12. (1) In relation to any proceedings in any court, such court may direct [and  
12 this court so directs] that-

13 (a) no published report of or comment on the proceedings  
14 shall reveal the name, address or school, or include any  
15 particulars calculated to lead to the identification, of any  
16 young person concerned in the proceedings, either as  
17 being the person by, against or in respect of whom the  
18 proceedings are taken, or as being a witness in the  
19 proceedings; and

20 (b) no picture shall be published as being or including a  
21 picture of any young person so concerned in the  
22 proceedings.

23 (2) Whoever publishes any matter in contravention of subsection (1) is  
24 guilty of an offence and liable on summary conviction, in respect  
25 of each such offence, to a fine of five thousand dollars or to  
26 imprisonment for six months.

- 27  
28 3. Therefore, for the avoidance of any doubt, in any report of this matter, no words or  
29 descriptions shall be used which could identify the alleged victim by name, age,  
30 address, educational institution(s) or otherwise. This also means that none of the  
31 civilian witnesses shall be identified by name, age, address, institution(s), or otherwise.

1 4. On the 1<sup>st</sup> February 2013 the defendant, Mark Charles Bodden, pleaded guilty  
2 to two counts of Defilement contrary to s.134(1)(b) of the Penal Code (2010  
3 Revision). Sentence was adjourned for a Social Inquiry Report (SIR), a Victim  
4 Impact Report (VIR), and a psychiatric report. The psychiatric report was only  
5 delivered on the 6<sup>th</sup> January 2016, hence the case came before me on the 4<sup>th</sup>  
6 March 2016.

7 5. The Indictment alleges that the offence in Count 1 took place on the 8<sup>th</sup> October  
8 2011 and that Count 2 took place on a day unknown in October 2011, other  
9 than the date referred to in Count 1. The Defendant's date of birth is the 15-08-  
10 1988 and therefore he was 23 at the time of the Count 1 offence. The  
11 Complainant's date of birth is 13-10-1997 and therefore she was still 13 at the  
12 time of the Count 1 offence. It is common ground that Count 1 in the  
13 indictment was the second of the two occasions when sexual intercourse had  
14 taken place, so it follows that the Complainant was 13 at the time the offence in  
15 count 2 took place as well.

16 6. The facts can be put fairly shortly. The Complainant and the Defendant had  
17 known each other for some two years. The Complainant lived with her mother,  
18 step-father and four siblings aged between 5 and 9. The two offences occurred  
19 at the Complainant's home at times when her mother and stepfather were out  
20 fishing at night.



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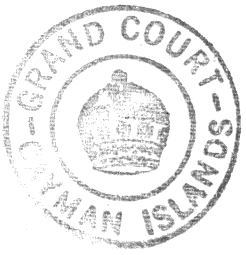
1       7.     On the 8<sup>th</sup> October 2011 the Complainant sent a text message to the Defendant  
2           indicating that her mother was out fishing and that she was bored. The  
3           Defendant suggested he would come round to her house and she agreed. After  
4           the Defendant had arrived he suggested sexual intercourse. Initially, the  
5           Complainant told the Defendant that he should go and find his girlfriend but,  
6           after he said he was single, she acquiesced.

7       8.     When the Complainant's mother returned from fishing her youngest daughter  
8           told her that a man had been in the house. The Complainant initially denied that  
9           a man had been there. The Complainant's mother then saw a text message from  
10          the Defendant on the Complainant's phone and, by impersonating her daughter,  
11          discovered the Defendant had been to the house.

12      9.     The matter was then reported to the police on the 10<sup>th</sup> October 2011 and the  
13          Defendant was arrested and interviewed. He admitted the 8<sup>th</sup> October offence  
14          and said that he had had sexual intercourse with the Complainant on an earlier  
15          occasion in similar circumstances.

16      10.    Having admitted the offence to the police without prevarication the Defendant  
17          pleaded guilty at the first available opportunity.

18      11.    At the time of these offences the Defendant had no previous convictions  
19          although in 2012 he was made subject to a two-year Probation Order for  
20          offences of an entirely different nature.



1 12. The SIR indicates that the Defendant was married in or about 2009 although by  
2 the time of the SIR in April 2013 he had been separated from his wife for some  
3 time. Further the report discloses that in 2010 he had a son from a relationship  
4 with someone older than himself.

5 *SENTENCING GUIDELINES AND AUTHORITIES*

6 13. I have been provided with the Chief Justice's Statement on Tariffs and  
7 Guidelines for Sentencing for Certain Offences dated 16<sup>th</sup> January 2002<sup>1</sup>, the  
8 UK Sentencing Council's Sexual Offences Definitive Guideline appropriate for  
9 sentences passed on or after 1<sup>st</sup> April 2014 in England and Wales and various  
10 decisions of the Grand Court and the Cayman Islands Court of Appeal (CICA).  
11 In considering the guidelines contained in the Sentencing Council's Guideline I  
12 remind myself that they are not binding in this jurisdiction, merely persuasive,  
13 and that the maximum sentence in England and Wales for s.9 of the Sexual  
14 Offences Act 2003 of Sexual Activity with a child is 14 years, whereas under  
15 s.134(1)(b) of the Penal Code (2010 Revision), Defilement carries a maximum  
16 of 12 years.



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<sup>1</sup> Although it is intended that there should be guidelines for sexual offences included in the 2015 Cayman Islands Sentencing Guidelines they have yet to be produced.

1 14. I take notice of the Chief Justice’s Statement on Tariffs of 2002 at page 4 where  
2 offences of Defilement of girls between the age of 12 and 16 are addressed and  
3 the learned Chief Justice says “*The Courts regard all sexual offences as very*  
4 *serious and all too prevalent*”. Similarly in his sentence ruling in ***R v Ron***  
5 ***Christopher Douglas***<sup>2</sup> Quin J said at paragraph 41:

6 “*It is my view that the Grand Court should take judicial notice of the deeply*  
7 *disturbing fact that the Offence of Defilement of a girl under 16 is becoming*  
8 *increasingly prevalent*”.

9  
10 15. The Chief Justice’s Statement on Tariffs sets the basic tariff of 5 years at a time  
11 when the maximum sentence was 7 years and as I have already noted the  
12 maximum for the offence now is 12 years.

13 16. I turn to the England and Wales guidelines. In passing I note that the 2007  
14 Sentencing Guidelines Council set a starting point of 4 years with a range of 3  
15 to 7 years. Concerns were expressed by the judiciary that this was too inflexible  
16 given the great variety of activities and, more importantly, ages of defendants  
17 covered by s.9 of the Sexual Offences Act 2003. This concern resulted in the  
18 more flexible guideline produced by the Sentencing Council in 2014.

19 17. At page 46 of the Sentencing Council’s Sexual offences Guideline the offence  
20 category is determined. There is no dispute that this is a Category 1 offence; the  
21 only question is whether under culpability this is an A or B offence.

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<sup>2</sup> Ind No 71/13 Ruling date 03.06.14



1 18. If this is a Category 1A offence the starting point is 5 years custody with a  
2 range of 4 to 10 years custody. If it is a category 1B offence the starting point is  
3 1 year custody with a range of High Level Community Order to 2 years'  
4 custody. Mr. Walcolm on behalf of the Crown submits that the only feature that  
5 could make this a Category 1A offence is if I find there was a "Significant  
6 degree of planning"; otherwise it is a 1B offence. Although there is some  
7 disparity in age between the Complainant and the Defendant in my judgment, in  
8 the circumstances of this case the degree of planning does not amount to  
9 "significant". Therefore, I agree with Mr. Walcolm's analysis. Mr. Furniss for  
10 the defence does not dispute Mr. Walcolm's proposition but asserts there is no  
11 evidence of "significant degree of planning".

12 19. Of the authorities supplied to me I do not find the cases of *R v Randy McLean*  
13 or *R v Ron Christopher Douglas* which were jointly considered by the Court of  
14 Appeal<sup>3</sup> assist as far as length of sentence is concerned as in both cases there  
15 were significant aggravating circumstances which are absent in this case.

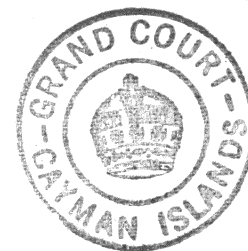
16 20. In *R v Woods*<sup>4</sup> the Complainant was 13 and the Defendant 19. They had been  
17 romantically involved for several months. A non-punitive sentence was  
18 appropriate and a probation order was made. In *R v Bryan Powell*<sup>5</sup> the  
19 Complainant was 14 and the Defendant was 19 and the court took the view that  
20 it was a case of two young people of similar age and that a probation order for 2  
21 years was appropriate.

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<sup>3</sup> CICA (Crim.) No 10/2014 & No 19/2014

<sup>4</sup> [2008 CILR Note 13]

<sup>5</sup> Ind No 29/2012 Ruling date 4.9.2012





1 Dr. McGill's conclusion was that the Defendant "*is a young man with no major*  
2 *psychiatric disorder and no tendency to bizarre behaviour*" and that "*this young*  
3 *man's low self-esteem increases his vulnerability to any female who expresses*  
4 *interest in him or admiration for him or attraction to him. His concrete thought*  
5 *processes and problem-solving technique may predispose to impaired decision*  
6 *making*".

7 ***DELAY***

8 24. It is now 3 years since the Defendant pleaded guilty. At least some of that delay  
9 was caused by the defendant missing appointments with the doctor who was  
10 preparing the report. In addition, on two occasions he failed to appear and had  
11 to be arrested.



1 *SENTENCE*

2 25. At the time of these offences the Defendant was a married man and the father of  
3 a child. He was not a teenager emotionally involved in a relationship with a girl  
4 only a few years younger than himself as the defendants were in the cases of *R*  
5 *v Wood*<sup>8</sup> and *R v Bryan Powell*<sup>9</sup>. In my judgment a Probation Order would be  
6 quite inappropriate in this case.

7 26. If I were only to have regard to the Sentencing Council's guidelines I would  
8 find there was no evidence of a significant degree of planning and deal with this  
9 as a Category 1B case. The starting point would be 1 year custody but that  
10 would be aggravated by the following circumstances - the disparity of ages,  
11 which is not sufficient to elevate this case to category 1A but it is a factor, and  
12 also his experience as a married man and father. The mitigating factors would  
13 be no relevant convictions and, to a very limited extent, the evidence of the  
14 psychiatrist that his ability to exercise self-control might be lessened.

15 27. Following the Sentencing Council's guidelines only, I would reach a sentence  
16 of 18 months' imprisonment before considering any reduction for the plea of  
17 guilty. However I must have regard to the primary guideline in this jurisdiction  
18 and that is the Chief Justice's Statement on Tariffs and also take judicial notice  
19 of the prevalence of this type of offending.

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<sup>8</sup> supra  
<sup>9</sup> supra



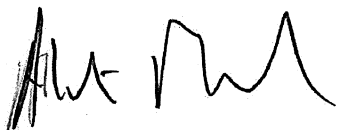
1 28. In my judgment the correct sentence is one of 2 years' imprisonment. As I have  
2 already indicated, the Defendant pleaded guilty at the earliest opportunity and is  
3 entitled to a full one third reduction. That produces a sentence of 16 months.

4 29. Mr. Furniss has urged me to suspend any prison sentence I might think  
5 appropriate – coupling it with a supervision order under the provisions of the  
6 Alternative Sentencing Law 2006. Mr. Furniss submits that I should suspend  
7 the sentence because of the age of the offence and the delay. Whereas delay  
8 may in certain circumstances justify a reduction or suspension of a sentence,  
9 those circumstances do not exist in this case – particularly as a substantial  
10 amount of the delay was caused by the defendant himself.

11 30. I can find no valid reason to justify the suspension of the sentence therefore it  
12 must be served.

13 31. The sentence is 16 months' imprisonment on each count, concurrent, making a  
14 total of 16 months' imprisonment. If there has been any time served it will  
15 count towards the sentence.

16 **Dated this the 15<sup>th</sup> day of March 2016**

17 



18 **Mr. Justice Alastair Malcolm Q.C.**  
19 **Acting Judge of the Grand Court**