

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

3  
4 INDICTMENT NO: 0087/11-B

5  
6  
7 THE QUEEN

8  
9 v.

10  
11 JEFFREY ALEXANDER BARNES



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14 **Appearances:**

DPP, Cheryl Richards, Q.C., and Snr.  
Crown Elisabeth Lees for the Crown

17 Mr. Nicholas Dixey of Nelson & Co for  
18 Defendant  
19

20 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

21 **Heard:**

21<sup>st</sup> December 2017

22  
23 **HEADNOTE**

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25 *Criminal Law – Conditional Release Law – Conditional Release Law*  
26 *Regulations – Rape – Tariff for Life Sentence – Aggravating and Mitigating*  
27 *factors.*

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31 **JUDGMENT**

32 **PURSUANT TO THE CONDITIONAL RELEASE LAW**  
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1 B. **Count 2: Rape**, contrary to s.127(1) of the Penal Code (2010  
2 Revision). The particulars of the offence are that Jeffrey Alexander  
3 Barnes, on the 20<sup>th</sup> day of October, 2011, at [an address on Grand  
4 Cayman, Cayman Islands], Cayman Islands, had unlawful sexual  
5 intercourse per vagina with [a female], who, at the time of the  
6 intercourse, did not consent to it and, at the time, he knew that the said  
7 [female] did not consent to the intercourse.

8 C. **Count 3: Rape**, contrary to s.127(1) of the Penal Code (2010  
9 Revision). The particulars of the offence are that Jeffrey Alexander  
10 Barnes, on the 20<sup>th</sup> day of October, 2011, at [an address on Grand  
11 Cayman, Cayman Islands], had unlawful sexual intercourse per anus  
12 with [a female], who, at the time of the intercourse did not consent to it  
13 and at the time he knew that the said [female] did not consent to the  
14 intercourse.



- 15 4. The prisoner pleaded Not Guilty to these three counts.
- 16 5. The trial by Jury took place from the 25<sup>th</sup> March 2013 to the 8<sup>th</sup> April 2013. The  
17 prisoner was found guilty on each of the three counts and sentenced, on 23<sup>rd</sup>  
18 September 2013 to Life Imprisonment on each count.
- 19 6. The prisoner appealed his Conviction to the Cayman Islands Court of Appeal  
20 (CICA). This Appeal was dismissed on the 24<sup>th</sup> July 2015 and the Appellate Court's  
21 written reasons were released on the 20<sup>th</sup> November 2015.
- 22 7. The prisoner appealed his Sentence to the CICA. This Appeal was dismissed on the  
23 21<sup>st</sup> April 2016.



1 **CONDITIONAL RELEASE LAW**

2 10. Section 14 of the **CRL** deals with “Release of Life Prisoners” and reads as follows:

3 “14. (1) *Notwithstanding any other Law to the contrary, when*  
4 *sentencing a prisoner to a term of imprisonment for life, the*  
5 *court shall specify the period of incarceration the prisoner*  
6 *shall serve before the prisoner is eligible to be considered for*  
7 *conditional release on licence, the period being such as the*  
8 *court considers appropriate to satisfy requirements of*  
9 *retribution, deterrence and rehabilitation, ....”*  
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11 11. Section 23(1) of the CRL reads:

12 “23. (1) *...Within twenty-four months after the entry into force of this*  
13 *Law, the Director of Public Prosecutions shall send to the*  
14 *Grand Court the case records of all prisoners serving life*  
15 *sentences, excluding those whose applications for release on*  
16 *licence are pending under section 31A of the Prison Law,*  
17 *1975, and the Grand Court shall, in exercise of the powers*  
18 *contained in section 14, pronounce in open court a period of*  
19 *incarceration for each prisoner, and in so doing shall exercise*  
20 *the powers specified in section 14 as if it were sentencing an*  
21 *accused who has been convicted.”*



22 12. Schedule 12 of the **Conditional Release of Prisoners Regulations (CRoPR) 2016**,  
23 which is read with s.14 of the **CRL** sets out the Sentencing Guidelines. Schedule 12  
24 para 1(1) and para1(3) deal with Life Sentences for murder, whereas, Schedule 12  
25 para 1(2) deals with offences other than murder (such as this case) and reads:

26 “1. (1) ....  
27 (2) *For offences other than murder, for the purposes of section 14*  
28 *of the Law, the aggravating and extenuating circumstances*  
29 *may include all the relevant circumstances of the offence and*  
30 *or the offender.*  
31 (3) ...”

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33 13. Schedule 12(3) deals with previous convictions and reads:



1                   “3. (1) *In considering the seriousness of an offence committed by an offender*  
2                   *who has one or more previous convictions, the court must treat each*  
3                   *previous conviction as an aggravating circumstance if (in the case of*  
4                   *that conviction) the court considers that it can reasonably be so treated*  
5                   *having regard, in particular, to -*

- 6                   (a)       *the nature of the offence to which the conviction relates*  
7                             *and its relevance to the current offence; and*  
8                   (b)       *the time that has elapsed since the conviction.”*  
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11           14.       Schedule 12(5) reads:

12                   “5. (1) *Any court making an order pursuant to section 14 must state in open*  
13                   *court, in ordinary language, its reasons for deciding on the order*  
14                   *made.”*

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16           15.       The maximum sentence for Rape pursuant to s.128 *Penal Code*, is life  
17                   imprisonment. The maximum sentence for Aggravated Burglary, pursuant to s.244  
18                   of the *Penal Code* is also life imprisonment.

19           16.       Furthermore, s.23(2) of the Penal Code, reads:

20                   “(2)   *Where a person is found guilty by a court of committing a Category ‘A’*  
21                   *offence for the second time, (as is the case with this prisoner) the court*  
22                   *may in its discretion sentence that person to imprisonment for life for*  
23                   *that second offence”*

24           17.       In addition, s.23(3) of the Penal Code, reads:

25                   “(3)   *When determining whether it would be appropriate not to impose a life*  
26                   *sentence, the court shall have regard to the circumstances relating to*  
27                   *either of the offences or to the offender.”*

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29           18.       The jury, by a unanimous verdict, found the prisoner guilty of all three counts on  
30                   the 8<sup>th</sup> April 2013.

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1        19.    On the 23<sup>rd</sup> September 2013 the Grand Court imposed a life sentence on each of the  
2                    three counts on the Indictment. The Court noted that it was the prisoner's second  
3                    conviction for the offence of Rape. He had been sentenced in 2001 to 10 years'  
4                    imprisonment for Rape and, therefore, pursuant to s.23(2) of Penal Code, upon a  
5                    second conviction for a Category 'A' offence the Court may sentence the convicted  
6                    person to life imprisonment for this offence.

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*SUMMARY OF FACTS*

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20. The prisoner was charged with three offences which occurred on the 20<sup>th</sup> October 2011 – namely Aggravated Burglary with intent to Rape, Rape per vagina and Rape per anus. The offences all relate to the same female at her home. The prisoner had an offensive weapon with him – namely a knife when he entered the victim’s home as a trespasser.

21. Just prior to this attack, the victim had returned to her address sometime after 11 p.m. on the 19<sup>th</sup> October 2011. She locked the door behind her. She left the window at the front of the apartment open – that is, with the glass window portion up, but the screen in place. When she lay on her bed she was wearing her panties, a white T-shirt, an undershirt and her bra. The last thing she recalled before falling asleep was sending a text message at 11:18 p.m.

22. At about 3 a.m. in the early hours of Thursday the 20<sup>th</sup> October 2011, whilst sleeping on her back the victim felt as if she could not breathe properly and awoke to find the prisoner on top of her. The prisoner had one hand on her throat and a knife against her windpipe. The light was off. The victim began to fight. The prisoner squeezed her throat tighter and told her to stop fighting. She knew it was a man because she heard his voice. She told him she could not breathe. She begged him not to rape her as she was having her period. The prisoner said he did not care. The prisoner used the knife to cut off the victim’s clothes. The victim was crying and begged him not to rape her. The prisoner told her it could have been six men so she should stop crying as it could be worse.



- 1       23.     The prisoner took off his clothes and put on a condom. He lay on top of the victim  
2             and began kissing her. The victim closed her mouth and the prisoner told her to act  
3             like she was enjoying it.
- 4       24.     The prisoner had the knife at her neck and the prisoner proceeded to have sexual  
5             intercourse with the victim in her vagina.
- 6       25.     After the prisoner had raped the victim he lay down on the bed and took one of the  
7             pillows which were on the bed and placed it under his head. The prisoner told her to  
8             lie down on his arm and he proceeded to ask her, her name, where she was from  
9             and where she worked.
- 10      26.     The victim said she told him that the thing you fear most always happens to you.  
11             The prisoner asked what was that and the victim told him her biggest fear was being  
12             raped.
- 13      27.     The prisoner began touching the victim again. He placed his penis in her vagina. He  
14             then told her to turn over on her hands and knees. The victim said she told him she  
15             could not do as he asked because her stomach was hurting her. The prisoner said he  
16             did not care.
- 17      28.     The victim then turned over and she noted that she had been lying on her phone.  
18             She tried to hide the phone but the light came on and he saw it.
- 19      29.     The prisoner then placed the knife between the victim's vagina and anus and told  
20             her that if she tried anything stupid he would cut it out.



1 30. The prisoner then placed his penis into the victim's anus and had anal sex with her.  
2 The prisoner then next placed his penis back into the victim's vagina and eventually  
3 ejaculated.

4 31. The prisoner then said he wanted water and went to the refrigerator to get water.

5 32. The prisoner came back to the bed and fell asleep for about 15 minutes.

6 33. The victim tried to get up as it was almost time to go to work but the prisoner woke  
7 up. The victim estimated that it was some minutes to six o' clock (on the morning  
8 of the 20<sup>th</sup> October 2011). When the victim explained that she needed to leave for  
9 work the prisoner told her to go and act normal and not tell anyone. The prisoner  
10 said that when she returned he would be waiting for her.

11 34. In the course of preparing for work the light was on in the apartment and the victim  
12 was able to see the prisoner and to note that he had a tattoo marked "Gangsta" on  
13 his chest, a black spot on his left leg and she noted his general description.

14 35. The victim said she had seen the prisoner on occasions outside her apartment  
15 complex.

16 36. The victim also saw the knife which she described as a red Swiss army knife.

17 37. The victim said that whilst she was ironing her shirt on the bed the prisoner asked  
18 her if she was thinking of burning him with the iron and she replied "No" and asked  
19 "Why would she." The prisoner said that she had every right to do so as he had  
20 broken into her place and raped her. However, he said that if she did burn him he  
21 would "out the iron on her."

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- 1       38.     The victim left the apartment at about 6:48 a.m.
- 2       39.     The prisoner had asked her if she would be coming back and she said yes. The  
3       victim agreed to return to the apartment because she was still afraid that he would  
4       kill her as he had told her that he had a gun. He also told her that it made no sense  
5       to report this to the police because “*Cayman police don’t solve crimes.*”
- 6       40.     On her way to work the victim telephoned her friend in Jamaica and told him what  
7       had happened. On arrival at work she telephoned her boss’ husband and asked him  
8       to meet her at the store where she told him what happened. The victim’s boss’  
9       husband noticed a cut on her neck with blood just drying. He telephoned the police  
10      and reported the matter.
- 11      41.     The victim was in fear and did not wish to go to the police to make the report. She  
12      stayed overnight at her boss’ house and left the next morning for Jamaica. She told  
13      her boss that she did not wish to return to the apartment.
- 14      42.     When she arrived in Jamaica the victim’s fiancé noticed scrapes to her neck like  
15      knife marks and he went with her to the doctor.
- 16      43.     Two days after the incident her boss and her husband checked the victim’s  
17      apartment. They noticed the screen on the window had been pulled back and the  
18      place in disarray. There were red stains on the sheet and there was a torn empty  
19      condom wrapper next to the bin by the door.

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1 44. The matter was reported on the 1<sup>st</sup> November 2011 and on the 2<sup>nd</sup> November 2011  
2 the police contacted the victim and attended the victim's apartment with the Scenes  
3 of Crime Officer (SOCO). Items were recovered and forensically examined. There  
4 was a DNA match with the DNA of the Prisoner from the semen on the pillow and  
5 from the condom wrapper and on the exterior of the bra of the victim.

6 45. The Prisoner was arrested. He was interviewed on the 11<sup>th</sup> November 2011 when he  
7 presented a prepared statement. On being asked questions the prisoner exercised he  
8 legal right to remain silent.

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*CROWN'S SUBMISSIONS*

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46. In this case the Crown submitted that the victim had been subjected to a serious and sustained sexual assault, which she described as “terrifying”.

47. The prisoner appealed his sentence before the Cayman Islands Court of Appeal (CICA). In the CICA Judgment dated the 31<sup>st</sup> April 2016, in dismissing the prisoner’s appeal, the Appellate Court reviewed the Cayman and UK authorities and held that the Judge’s imposition of a life sentence was justified. The CICA stated that these were undoubtedly very serious offences, with many aggravating features and the Judge was plainly entitled to take the view that the Appellant would remain a serious danger to the public for an indefinite period. That conclusion was warranted by the prisoner’s attitude, recorded in the psychological evaluation, that when refused sex by females he had met socially he became frustrated and takes it, and, feels a sense of pleasure from taking it by force.

48. The CICA also said the Sentence was justified also by the fact that this was the Appellant’s third conviction for rape - in addition to his conviction for indecent assault.

49. The Crown submitted at the Prisoner’s trial that given the antecedent history of the Defendant, the nature of the offence and the totality of the circumstances of the case, a sentence was required which, if not the maximum, of life imprisonment should be at the highest end of the scale.



1 50. The Crown rely upon s.14(2) of the *CRL* which states that the aggravating and  
2 extenuating factors may include all the relevant circumstances of the offence and or  
3 the offender. The Crown submit that all the very serious aggravating circumstances  
4 at paragraph 89 of the Grand Court's Judgment dated the 23<sup>rd</sup> September 2013  
5 apply again for the purpose of this hearing. Furthermore, the Crown could find no  
6 extenuating factors in relation to the offence or on behalf of the Prisoner.

7 51. The Crown submitted that the Prisoner's previous convictions for violence,  
8 abduction and rape are all to be treated as aggravating/extenuating factors. It is  
9 therefore submitted by the Crown that the approach to be taken in this case is to  
10 identify a Notional Determinate Sentence (NDS), taking into account the principles  
11 of punishment, retribution and deterrence, the aggravating features of the offending  
12 behavior and the previous convictions of the defendant.

13 52. The NDS should exclude considerations of risk. The question of risk should be left  
14 for the consideration of The Board as it is already reflected in the imposition of a  
15 life sentence. The Court may consider whether the NDS should then be reduced by  
16 forty percent (40%)<sup>1</sup> in order to calculate the appropriate minimum term to be  
17 imposed on this offender before he is eligible for the consideration of The Board.

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<sup>1</sup> (in accordance with UK practice)

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3 **DEFENCE SUBMISSIONS**

4 53. Mr. Dixey notes that in England the maximum sentence for Rape is also life  
5 imprisonment and that in England the appropriate starting point would be 15 years'  
6 imprisonment – with a sentencing range of 13 to 19 years for this offence.

7 54. Mr. Dixey submits that the Cayman Islands Court of Appeal (CICA) provides the  
8 guideline authority of *Dilbert and Samuels v R*<sup>2</sup>. In that case, the Court referenced  
9 the Cayman Islands *Statement on Tariff and Guidelines for Sentencing for*  
10 *Certain Offences 2002* issued by the learned Chief Justice in order to confirm that  
11 the starting point in the Cayman Islands for a rape with no aggravating  
12 circumstances was 10 to 12 years' imprisonment – deliberately higher than in  
13 England and Wales because of the prevalence of the offence in the Cayman Islands.  
14 However, the principles as set out by the Court of Appeal of England and Wales in  
15 *R v Millberry*<sup>3</sup> as to how to approach the sentencing exercise were considered of  
16 assistance at paragraph 22 of the CICA decision in *Dilbert and Samuels*.

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19 55. Mr. Dixey points out that at the sentencing hearing of this matter, the sentencing  
20 judge's attention was drawn by the prosecution to the Cayman Islands case of *Dave*  
21 *Kennedy Whittaker v R*<sup>4</sup>, in which the judge observed at paragraph 75 of his  
22 Ruling:

23  
24 *“...it bears some resemblance to the present circumstances. The Court of*  
25 *Appeal considered the UK cases and took note of the antecedent history of the*  
26 *Defendant. The Court imposed a sentence of imprisonment of 20 years”*  
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<sup>2</sup> [2010] 1 CILR 10

<sup>3</sup> [2002] EWCA Crim 2891

<sup>4</sup> [2010] 1 CILR 29



1 56. Mr. Dixey submits that the Court was correct in identifying the similarities between  
2 this case and the case of *Whittaker*. Mr. Dixey submits that the forced oral sex in  
3 *Whittaker* which constitutes Rape in England and Wales, and that the  
4 circumstances in *Whittaker* would fall into the very worse category of offending.  
5 Accordingly, Mr. Dixey submits that as a starting point the NDS of 20 years'  
6 imprisonment is fully supported by *Whittaker*.

7 57. Mr. Dixey highlights the fact that the English case of *James Michael Donoghue*<sup>5</sup>  
8 was referred to at paragraph 87 of the judgment in this case and the factual  
9 similarities were also noted. A life sentence was imposed by the trial judge in  
10 *James Michael Donoghue* where the offender had pleaded guilty. The sentencing  
11 judge in that case applied a minimum Tariff of 10 years' imprisonment before  
12 eligibility to be considered for release, which would have equated to a 20-year  
13 NDS.

14 58. Accordingly, based on the Cayman and English authorities of *Whittaker* and  
15 *Donoghue* respectively, Mr. Dixey urges the Court to impose a NDS of 20 years'  
16 imprisonment, thereby ordering a Tariff (before the prisoner can be considered for  
17 release by The Board), of 12 years.

18 59. Despite Mr. Dixey's admirable research and well-reasoned submissions, for the  
19 reasons set out below, I do not consider that a NDS of 20 years satisfies the  
20 requirements of retribution and deterrence, which are necessary when one takes into  
21 account the very serious nature of these three offences and the Prisoner's significant  
22 and relevant previous convictions.

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<sup>5</sup> [2011] 1 Crim App. R. (S) 46 (*supra*)



1       60.    Mr. Dixey submits that for the reasons of totality, it should be made clear that the  
2            Tariff is to run from the date of sentence, concurrent to the date of the sentences  
3            imposed by Henderson J on Indictment 87/11A. Accordingly, Mr. Dixey submits  
4            that using a NDS of 20 years' imprisonment, and reducing that by 40 percent by  
5            virtue of/pursuant to s.7(1)(b) of the *CLR*, it is submitted that the appropriate Tariff  
6            before the prisoner is eligible for release should be 12 years from the date of his  
7            sentence on Indictment 87B/11 and that such sentence should run concurrent to  
8            such Tariff should be served concurrently to the sentence imposed on 87/11A.

9       61.    Before I turn to my final analysis and conclusion I would like to address two  
10            separate headings, namely:

- 11            a.    The guidance from England and Wales *Criminal Justice Act 2003* and the  
12                English case law on Whole Life Sentencing Orders; and
- 13            b.    The approach to be adopted under the new *CRL* for offences other than murder.

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1 *GUIDANCE FROM ENGLAND AND WALES ON WHOLE LIFE ORDERS*

2  
3 62. Looking at the guidance from England and Wales on Whole Life Orders, it is  
4 noteworthy that the English authorities support the view that whole life sentences  
5 are not appropriate in rape cases except where they are of the most exceptional  
6 nature.

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8 63. In *Oakes*<sup>6</sup> the English Court of Appeal said that a whole life order, without any  
9 minimum term<sup>7</sup> is reserved for the most exceptional discretionary life sentence  
10 cases. While stopping just short of saying that a whole life order was limited to  
11 cases of murder, the Court said that whole life orders outside the context of murder  
12 would be ‘*very rare indeed*’.

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15 64. In the case of *Wheaton*<sup>8</sup> the English Court of Appeal found that the imposition of a  
16 life sentence is designed to protect the public from the offender, whereas the  
17 specified period is meant to reflect the degree of punishment, retribution and  
18 deterrence appropriate for the offence, aside from the question of public protection.

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20 65. In *Adams*<sup>9</sup> the English Court of Appeal stated that the specified period in cases of  
21 this nature should not be lengthened with a view to protecting the public. These  
22 principles were re-stated and confirmed by the English Court of Appeal in  
23 *Andrews*<sup>10</sup>.

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<sup>6</sup> [2013] 2 All ER 30

<sup>7</sup> (referred to in the judgment as a ‘whole life order’)

<sup>8</sup> [2005] 1 Cr App R (S) 425

<sup>9</sup> [2000] 2 Cr App R (S) 274

<sup>10</sup> [2015] 2 Cr App R (S) 317 (40)



1 66. The Court of Appeal in *Bell*<sup>11</sup> noted that, unlike calculations of the minimum term  
2 for mandatory life sentences for murder, (which, although an exercise in judicial  
3 discretion, was subject to the statutory regime) calculation of the minimum term in  
4 a discretionary life sentence was solely an exercise in judicial discretion.

5  
6 67. In *Andrews* it was noted by the Court that a whole life sentence would be rare and  
7 the general framework was outlined. It was emphasized that the determinate portion  
8 of the sentence was separate from the risk posed by the offender<sup>12</sup>.

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10 68. The actual sentence of life imprisonment is governed by consideration of risks to  
11 the public. The question of the appropriate tariff is to be judged not by risk but  
12 solely by considerations of punishment and deterrence, taking into account the  
13 seriousness of the offences.

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15 69. In England, there is now the *Criminal Practice Direction VII Sentencing L:  
16 Imposition of Life Sentences*<sup>13</sup> which reads:

17  
18 “L.1 Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000  
19 empowers a Judge when passing a sentence of life imprisonment,  
20 where such sentence is not fixed by law, to specify the part of the  
21 sentence (‘the relevant part’) as shall be served before the prisoner  
22 may require [referral of his case] to the Parole Board. This is  
23 applicable to defendants under the age of 18 years as well as to adult  
24 defendants.

25 L-2 Thus the life sentence falls into two parts:

- 26 (a) the relevant part, which consists of the period of detention  
27 imposed for punishment and deterrence, taking into account  
28 the seriousness of the offence, and  
29 (b) the remaining part of the sentence, during which the  
30 prisoner’s detention will be governed by consideration of risk  
31 to the public.  
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<sup>11</sup> [2016] 1 WLR 1

<sup>12</sup> (see para 32)

<sup>13</sup> (Archbold 2017, paragraph 5-515)

1                   L-3     *The Judge is not obliged by statute to make use of these provisions [...] when passing a life sentence. However, the Judge should do so, save in the very exceptional case where the judge considers that the offence is so serious that detention for life is justified by the seriousness of the offence alone, irrespective of the risk to the public. In such a case, the judge should state this in open court when passing sentence.*"

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9       70.     The DPP and Mr. Dixey both contend that whilst this is a very serious offence it  
10           does not come into the category of *Oakes*<sup>14</sup> (and *Michael John Roberts*) where the  
11           Court of Appeal stated at paragraph 102 :

12                   *"Like the Crown which accepted that notwithstanding the seriousness of the offences, a whole life order was inappropriate we agree that there is force in the submission. It is regrettably possible to envisage, and there have been cases, where dreadful sexual assaults have been followed by murderous violence. The whole life order is reserved for the most exceptional cases. Without suggesting that the Court is prohibited from making a whole life order unless the defendant is convicted of at least one murder, such an order will inevitably be a very rare event indeed."*

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22       71.     I agree with Mme. DPP and Defence counsel and find that this is not a case for a  
23           Whole Life Order.



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<sup>14</sup> [2013] 2 All E R, [2012] EWCA Crim 2435; [2013 Q.B. 979



1 77. The DPP and the Defence agree that the Court should consider arriving at a NDS  
2 which should be based on the seriousness of the offence, the authorities, the  
3 Sentencing Guidelines and the previous convictions.

4  
5 78. Having arrived at this NDS it is further submitted that there should be a deduction  
6 for the time served – which is not applicable in this case.

7  
8 79. Further, both counsel submit that in deciding on the NDS, the principles in *R v. M*<sup>15</sup>  
9 and *R v Wheaton (David George)*<sup>16</sup> are of assistance. In *R v. Wheaton*, Mr. Justice  
10 Treacy (as he then was) stated:

11  
12 *“... in fixing a notional determinate sentence term the element of sentence*  
13 *reflecting the need to protect the public from the danger posed by the*  
14 *Defendant should not be taken into account when a discretionary life sentence*  
15 *was being passed. However judges should not overlook the need to reflect an*  
16 *element of deterrence which might properly feature in fixing Notional*  
17 *Determinate term.”*  
18

19 Tracey J went on to state:

20 *“... Even ignoring the element of danger or risk posed to society, these were*  
21 *grave offences and the second offence represented an escalation of gravity and*  
22 *exacerbation of the first offence.”*  
23  
24

25 80. Observing these principles ensures that the Court is mindful of the relevant parole  
26 provisions – (in the United Kingdom, two-thirds to a half) – which would not be  
27 applicable to the determinate term, which is a minimum term. The rationale is that  
28 an indeterminate sentence prisoner should be in no worse a position on an  
29 application for early release than a determinate sentence prisoner<sup>17</sup>.

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<sup>15</sup> [1999] 1 WLR 485; [1999] 1 Cr. App. R. (S.) 6

<sup>16</sup> [2005] 1 Cr App R (S) 425

<sup>17</sup> *Marklew* [1999] 2 All ER 939



1 81. Under s.7(1)(b) of the *CRL* the prisoner serving a determinate sentence over a year  
2 would be eligible to be considered for release after serving sixty percent (60%) of  
3 that sentence. Accordingly, the NDS identified by the Court should be reduced by  
4 forty percent (40%) in order to arrive at the appropriate specified period – otherwise  
5 known as the Tariff.

6  
7 *ANALYSIS*

8 82. The only issue between the DPP and Defence counsel is the length of time for the  
9 NDS.

10 83. Mr. Dixey urges the Court to impose an NDS of 20 years, whereas the DPP urges  
11 that, in light of the circumstances of both the offence and the offender, the Court  
12 should consider an NDS at the highest end of the scale and, certainly, higher than in  
13 the case of *Whittaker*.

14 84. In coming to my decision on the NDS and, thereby, the minimum Tariff to be  
15 served by the prisoner before he can be considered for release, it is my view that I  
16 should review the following subjects:

- 17 a. Aggravating and Mitigating Factors;
- 18 b. Victim Impact Report (VIR), Social Inquiry Report (SIR) and related material;
- 19 c. UK Guidelines and Authorities;
- 20 d. Cayman Islands Authorities;
- 21 e. Previous convictions of the prisoner.
- 22

1        85.    *Aggravating and Mitigating Factors:*

2            a. Having considered the evidence in this case, the submissions of the DPP and  
3            Defence counsel, I can find no mitigating factors to assist the prisoner.

4            b. The aggravating factors are set out at paragraph 89 of the Court's Sentence  
5            Ruling dated the 23<sup>rd</sup> September 2013 and are equally applicable to this  
6            hearing. They are:

7                    A. The prisoner broke into the victim's dwelling place at approximately 3  
8                    a.m. on the 20<sup>th</sup> October 2011;

9                    B. The victim awoke to find the prisoner on top of her, with one hand on  
10                   her throat and a knife against her windpipe;

11                   C. The apartment was dark and the victim began to fight and the prisoner  
12                   squeezed her throat a little tighter and told her stop fighting. The victim  
13                   begged the Defendant to stop and said she was having her period and  
14                   the prisoner responded that he did not care.

15                   D. The prisoner used his knife to cut off the victim's clothes;

16                   E. The victim was crying and begged the Defendant not to rape her. The  
17                   prisoner's response was that it could have been "six men" and she  
18                   should stop crying because it could be worse.

19                   F. The prisoner continued and told the victim to act like she was enjoying  
20                   it, whilst keeping the knife to her neck.

21                   G. The prisoner raped her per vagina.





- 1 H. The victim told the prisoner that this was the worst fear she ever had.
- 2 I. The prisoner placed the knife between the victim's vagina and anus and  
3 told her that if she tried anything stupid he would cut it out.
- 4 J. The Prisoner placed his penis into the victim's anus and had anal sex  
5 with her.
- 6 K. The Prisoner then placed his penis in the victim's vagina and eventually  
7 ejaculated.
- 8 L. Before she left her apartment the prisoner told the victim to act normal  
9 and not tell anyone

10 c. These are aggravating factors of the most serious nature and it is impossible to  
11 imagine the mental anguish the victim endured when the prisoner ordered the  
12 victim to act like she was enjoying it while he raped her whilst keeping a knife  
13 to her neck. The knife actually cut the victim's neck and caused a little  
14 bleeding.

15 86. **The VIR and SIR**

- 16 a. On the 9<sup>th</sup> April 2013 the victim gave a statement to the police in which she  
17 stated:

18 *“Additional to my previous statements I wish to state that I have been*  
19 *seriously impacted by the incident. Since the incident happened to me I*  
20 *am afraid to be alone. I cannot sleep at night alone and I am still*  
21 *having nightmares about the incident. I wake up during the night*  
22 *checking the windows and the doors because I am afraid. I am very*

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*cautious and overly sensitive of where I go now since the incident. I am not able to fully speak about the incident to anyone because I am embarrassed. I was not able to work for a year because I could not focus or was [in]capable of dealing with others around me. I feel that my personal space was totally violated and I have trouble trusting people. Each time I think about the incident I break down and cry. It was very difficult to do the trial because I was ashamed to say out loud to anyone what he actually did to me. I came to the Cayman Islands to make my life better and in coming here my life was ruined. I am forever changed since the incident and I will not ever be the same."*

- b. I have considered the SIR dated the 17<sup>th</sup> May 2013.
- c. Furthermore, as noted by the Cayman Islands Court of Appeal at para. 14 of their judgment dated the 21<sup>st</sup> of April, the Prisoner feels a sense of pleasure from taking sex by force.
- d. There was also a psychological evaluation report prepared by Dr. Elma Whittaker dated the 27<sup>th</sup> August 2013, however, I consider that this psychological evaluation is best used by The Board when this case comes before that Board.
- e. It is noteworthy that in the SIR the Defendant still claims he is not guilty of all three charges and he continues to blame the RCIPS for planting incriminating evidence against him at the scene of the crime.

1        87.    *The UK Guidelines and Cases*

2            a. The particular offending behaviour would fall into Category 1 and would be  
3            classed as Category 1 Harm, due to:

4                    A. The severe psychological or physical harm;

5                    B. The prolonged period for which the assault lasted whilst the offender  
6                    remained in the victim's home;

7                    C. The forced entry into the victim's home;

8                    D. The threat of violence by the use of the knife.

9            b. The offending behaviour would also fall into Category A Culpability, due to the  
10            facts that:

11                    A. The offence was committed in the course of a burglary; and

12                    B. Required a significant degree of planning.

13            c. The starting point in the United Kingdom would therefore be 15 years with a  
14            range of 13 to 19 years.

15        88.    *The Cayman Islands Cases*

16            a. In *The Statement on Tariff and Guidelines for Sentencing for Certain*  
17            *Offences 2002* the learned Chief Justice stated that for Rape, which has become  
18            alarmingly prevalent, the Tariff is 10 to 12 years' imprisonment.





1 e. In *Whittaker*, the Defendant was convicted of Burglary for which the maximum  
2 sentence was 14 years' imprisonment, Indecent Assault, for which the  
3 maximum sentence was 10 years, and, Abduction, for which the maximum  
4 sentence was life imprisonment. In this case, the Grand Court's sentence of 25  
5 years was reduced by the CICA to 20 years. Mr. Dixey urges this Court to  
6 impose the same penalty in this case.

7 f. In *Whittaker*, the CICA noted in its judgment at paragraph 49 that there was no  
8 evidence that the Appellant had a knife at the time he entered the victim's  
9 premises and, therefore, the charge of Aggravated Burglary was reduced to  
10 Burglary. Furthermore, the CICA stated at paragraph 59 that they were  
11 reminded by the defendant's attorney that he had only one previous conviction  
12 and therefore his record does not support the inference that he should be viewed  
13 as a serial rapist or serious sexual offender.

14 g. It must be noted that there are material distinctions between this case and the  
15 case of *Whittaker*.

16 A. First there was no charge of Rape against *Whittaker*, whereas in this  
17 case of Jeffrey Barnes there are two separate charges of rape and one  
18 for aggravated burglary.

19 B. Secondly, the evidence in this case is that the prisoner entered the  
20 victim's apartment with the knife in his possession.

21 C. Thirdly, the prisoner in this case has convictions for more serious  
22 sexual offences than *Whittaker* which I shall address below.

23



1        89.     *Previous Convictions of the Prisoner*

2            a. The *CRL* dictates that the Court must treat each previous conviction as an  
3            Aggravating Factor having regard to:

4                    A. The nature of the offence to which the conviction relates and its  
5                    relevance to the current offence; and

6                    B. The time which has elapsed since the conviction.

7            b. In this case the prisoner has 29 previous convictions. Thirteen of these are for  
8            violence and offensive weapon offences.

9            c. On the 26<sup>th</sup> February 2001 the prisoner was sentenced to 10 years for rape.

10           d. On 14<sup>th</sup> December 2010 the Defendant was sentenced to 18 months  
11           imprisonment for indecent assault. He was released from prison on 31<sup>st</sup> March  
12           2011.

13           e. On the 31<sup>st</sup> May 2013 for the offences of Abduction, Attempted Rape and Rape,  
14           he was sentenced to 15 years' imprisonment, 5 years' and 15 years'  
15           imprisonment – all to run concurrently.

16           f. The time periods between these offences demonstrate that the prisoner was not  
17           at liberty for a very long period before committing the further sexual offences  
18           against females. And, as the DPP points out, the last two rape offences were  
19           committed within 7 months of the defendant's release from prison.



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*CONCLUSION*

90. There is evidence before the Court that the victim saw the prisoner outside her apartment and the prisoner knew where the victim lived. In my view this shows pre-planning and premeditation for the offences the prisoner committed.

91. The victim endured intense fear together with extreme physical and mental suffering. As the victim stated in her VIR: *"I came to the Cayman Islands to make my life better and in coming here my life was ruined. I am forever changed since the incident and I will never be the same."*

92. The aggravating factors in the two rapes of the victim are of the most extreme and grave nature.

93. The prisoner has 29 previous convictions with 13 convictions for violence. Within approximately 15 years, the prisoner has two convictions for rape, one conviction for attempted rape, one conviction for abduction and one conviction for indecent assault.

94. All these convictions and consequential sentences show that the prisoner is not deterred by these prison sentences. I must treat each conviction as an aggravating factor.

95. When I take the very serious aggravating factors of the three offences in this matter and the prisoner's previous convictions – which are all relevant to this case – I consider that the proper and appropriate NDS is 35 years' imprisonment. In my view, and leaving aside any question of public protection, 35 years' imprisonment reflects the degree of punishment, retribution and deterrence appropriate for these offences and for this prisoner.

1 **CONDITIONAL RELEASE BOARD**

2  
3 96. It is important to note, and for the victim and the public to understand, that the  
4 question of whether the prisoner presents a risk to women and to the general public  
5 safety are not matters for me or this court under the *CLR*. They are matters for the  
6 Conditional Release Board.

7 97. However, in saying that, I wish to make some observations about the life sentences  
8 imposed and the role of the Conditional Release Board. I should state that I have  
9 received helpful assistance from the English Court of Appeal decision in the case of  
10 *R v. James Michael Donoghue*<sup>23</sup> where Openshaw J, giving the Judgment of the  
11 court, stated at paragraph 13:

12  
13 *“We would not wish this (the NDS) to be misunderstood or misreported. The*  
14 *sentence of the Court is and remains a sentence of imprisonment for life. The*  
15 *Appellant may not even be considered for release until he has served seven*  
16 *years (in the Cayman Islands 60 percent of his sentence). He will only be*  
17 *released if the Parole Board then considers that he presents no continuing risk*  
18 *to the public. Very many offenders, and surely the Appellant will be one, who*  
19 *continue to present the danger long after their Tariff sentences have expired*  
20 *and consequently serve much longer. Some indeed are never released. The*  
21 *Appellant would be deluding himself if he thought that he would be released in*  
22 *seven years. He has received a life sentence and he should brace himself, for he*  
23 *may have to serve very many years beyond his tariff. We hope C and her family*  
24 *will also understand that this is the position in fact.”*  
25

26 98. Furthermore, in the more recent English Court of Appeal decision of *R v.*  
27 *Andrews*<sup>24</sup>, the President Lord Justice Treacy stated at paragraph 49 – making it  
28 clear that an order of life imprisonment was maintained, but instead of a Whole Life  
29 Order a minimum term of 12 years, less 237 days, was imposed. Lord Justice  
30 Treacy said:

31  

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<sup>23</sup> [2011] 1 Crim. App R (S) 36

<sup>24</sup> [2015] 2 Crim. App R (S) 317 (40)



1                    *“We emphasise that this new sentence in no way diminishes the gravity of these*  
2                    *offences or in any way reflects upon the extreme danger that this offender poses*  
3                    *to the public. Nor does the new sentence reflect that there is any real prospect*  
4                    *of that position being changed by any further treatment.”*  
5  
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7           99.       The President went on to state at paragraph 50:

8                    *“In the circumstances we see little or no prospect with this offender’s release.*  
9                    *The order now being made merely provides the earliest date at which this*  
10                   *offender could be considered for release. However, he cannot and will not be*  
11                   *released until the relevant authorities are satisfied that it would be safe to do*  
12                   *so. On the evidence before us, it is extremely unlikely that he will be safe for*  
13                   *release then, or at any later time, to the extent this appeal is allowed.”*  
14  
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16       100.       In my view, these words of Openshaw J in *Donoghue* and of Lord Justice Treacy in  
17                    *Andrews* could have been written for this case of Jeffrey Barnes and I adopt them in  
18                    my concluding remarks.

19  
20       101.       I have imposed and NDS of 35 years’ imprisonment. The sentence of this Court is  
21                    and remains imprisonment for life. The prisoner may not be considered for release  
22                    until he has served a minimum of 21 years<sup>25</sup>. The sentence is to run from the 23<sup>rd</sup>  
23                    September 2013, which is the date the defendant was sentenced in the Grand Court.  
24                    He will only be released if the Conditional Release Board considers that he presents  
25                    no continuing risk to the public. And this is important for the victim and her family:  
26                    If the Prisoner still presents a danger he may well serve a sentence long after the  
27                    Tariff expires.



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<sup>25</sup> 60 percent of 35 years.

1        102.    The prisoner has received a life sentence and he should be prepared to serve prison  
2                    time beyond the Tariff. The prisoner cannot and will not be released until the  
3                    Conditional Release Board is satisfied that it will be safe to do so. I hope that the  
4                    victim and her family will understand that this is the position in fact.  
5

6    **Dated this the 2<sup>nd</sup> day of February 2018**

7    

8    **Honourable Mr. Justice Charles Quin Q.C.**  
9    **Judge of the Grand Court**

