

**IN THE SUPREME COURT OF BELIZE, A.D. 2020  
CRIMINAL JURISDICTION**

**CENTRAL DISTRICT**

**Indictment No. C45/2019**

**THE QUEEN**

**V**

**ROBERT LISBEY**

**BEFORE:** Honourable Justice Mr. Francis M. Cumberbatch

**APPEARANCES:** Ms. Janelle Tillett – Counsel for the Crown  
Mr. Oliver Twist – Counsel for the Accused

**TRIAL DATES:** 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, and 31<sup>st</sup> May, 2020.  
8<sup>th</sup> June, 2018.

**JUDGMENT ON SENTENCING**

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of attempted rape for that he on the 21<sup>st</sup> day of September, 2010, attempted to commit rape on Raquel Requeña (“the Victim”). After a fully contested trial the Accused was convicted of the said offence.

**The facts**

[2] The victim, who was 16 years old at the time, was employed by the Accused and his common-law wife to be the babysitter to their two minor children. On the night of September 20<sup>th</sup>, the Accused and his wife requested her to

overnight at their residence in her role as babysitter. That night, the Accused and his family together with the victim went to view a fireworks display in honour of this country's Independence anniversary. Whilst there, the Accused scolded the victim for speaking with a young boy who was her neighbour.

[3] After they returned to the Accused's home sometime after midnight the victim lay on a mattress with the two children; whilst, the Accused and his wife slept on a bed nearby. The house was a single room building with no separations.

[4] Whilst sleeping the victim was awoken by the Accused who placed a knife to her throat and threatened to kill her if she made any noise. He thereafter proceeded to pull down her skirt and underwear, lift up her blouse and brassiere, and remove his short pants and underwear and climb on top of her. As he was about to place his penis in the victim's vagina she kicked him off her and he fell on some coke bottles nearby. He got up and returned to his bed.

[5] On the 22<sup>nd</sup> day of September, 2010, after the victim took the children to school she was sitting at a cafeteria in the school compound and she received a telephone call from the Accused who wanted to know why she was not at work and if she was with a man. Shortly afterwards the Accused arrived

outside of the school on a cycle and called out to the victim. She complained of being molested by the man she worked for to the managers of the cafeteria who sent her to make a report to the San Ignacio Police Station.

[6] I find the following to be the aggravating and mitigating factors herein.

[7] **Aggravating Factors**

1. This offence was planned and premeditated;
2. A weapon was used in the commission of this offence;
3. The abuse of the trust placed in the Accused by the victim and her parents;
4. The wide disparity in the ages of the Accused and the victim. The Accused was more than twice the age of the victim;
5. The traumatic and psychological effect of this incident on the victim as is evidenced in the victim impact statement;
6. The prevalence of this offence within the jurisdiction.

[8] **Mitigating Factors**

1. The remorse expressed by the Accused to the victim and her family;
2. The Accused has taken full responsibility for his actions.

**Sentence**

[9] I have balanced the aggravating and mitigating factors herein and have very little difficulty in finding that the aggravating factors outweigh the

mitigating ones. This is a most heinous offence which was obviously planned and premeditated by the Accused. From all appearances, the Accused was attracted to the victim and intended to have his way with her. This view was further confirmed by his displeasure at seeing her speaking with a male person at the fireworks display. What however, is more egregious, is his pursuit of the victim on the following day and his utterances to her.

[10] The Accused in scolding the victim on the night of the 20<sup>th</sup> day of September made it clear that she was under his care. It is against this background that the breach of trust riposted in him by the victim and her parents becomes of greater significance. Save for homicide the act of rape is the most heinous offence committed against a female.

[11] The prevalence of sexual offences in this jurisdiction has reached endemic proportions. The Court must show its abhorrence for this type of offence by the sentence it imposes.

[12] The Court must also of necessity seek to deter this Accused from reoffending in like manner and those of the wider society who have contemplated committing a sexual offence from doing so. The Court must also consider the Defendant's rehabilitation to ensure his reintegration to the society as a changed person.

[13] Parliament has enacted the following provision for the sentencing of anyone convicted of the offence herein to wit:

*“every person who commits rape .... shall on conviction on indictment be imprisoned for a term which shall not be less than eight years but which may extend to imprisonment for life”*

[14] In *Winston Joseph v Regina*, Sir Dennis Byron CJ opined thus on the question of sentencing:

*“The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors... .. It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.”*

[15] In *R v Loff James*, Lennon Henry L.J. opined thus;

*“It is not the purpose of the judgment to seek to lay down guidelines for sentencing in cases of indecent assault. It is never easy to sentence in such cases. The circumstances of each case will vary*

*greatly....What the judge must do, as I see it, is to tailor the sentence to the particular facts of the case before the court. In most cases, the personal circumstances of the offender would normally take second place behind the plain duty of the court to protect the victims of sexual attacks and to reflect the clear intention of Parliament that offences of this kind should be met with greater severity than may have been the case in former years when the position of the victim may not have been so clearly focused in the public eye. (Underscoring mine).”*

[16] I have already conducted a balancing exercise on the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones. However, before I proceed to apply the guidelines and authorities aforesaid to this matter I must consider the discrete point of delay raised by Mr. Twist.

### **Delay**

[17] Defence Counsel submits that the delay of seven years and seven months ought to be taken into consideration notwithstanding the fact that the Criminal Code prescribes a mandatory minimum sentence of eight years imprisonment aforesaid. He contends that the sentence imposed should be

less than the statutory minimum as a remedy for the breach of the Accused's constitutional rights to a fair hearing within a reasonable time.

[18] This offence was committed in September 2010. It is common ground that the Accused was tried on a previous occasion and that trial was aborted through no fault of his own in or around the year 2014. His retrial commenced in May of 2018. The Court accepts that though the Defendant was on bail he has had the spectre of this case hanging over his head like the proverbial sword of Damocles for over seven years. The Court accepts that there are no complex issues of law or evidence to justify the delay herein.

[19] There has not been any or any sufficient reason advanced by the Crown to explain this inordinate delay, nor has the Court perceived from the record any deliberate attempts by the Defendant to delay the progress of his trial.

[20] Mr. Twist has further contended that the mandatory minimum provision in section 46 of the Criminal Code aforesaid is unconstitutional. I will not seek to pronounce on the constitutionality of that provision having not had the benefit of full arguments from Counsel on both sides on this important issue.

[21] The question to be determined is whether the Court is empowered to impose a penalty below the mandatory minimum herein. Mr. Twist contends that the remedy for the breach of the "reasonable time" guarantee provision in section 6(2) of the Constitution is a reduction of sentence. I find that is so in

the usual course of events where the Court is unfettered by a mandatory minimum sentence. From all appearances Parliament has sought to curb the steep rise of cases of rape and similar sexual offences by imposing draconian penalties for what is undoubtedly a most heinous offence. The sentencing court is left with a discretionary band of between eight years to life imprisonment. This has been clarified by the provisions of the *Indictable Procedure (Amendment) Act, 2017* which provides thus;

*‘notwithstanding the provisions of this section, the court may not sentence an offender who is 18 years of age or over, to less than the prescribed mandatory minimum term where the crime he has been convicted of is....an offence under section 46(rape)...’*

[22] The Court cannot escape the fact that the Accused committed an extremely serious offence which he carefully planned and premeditated. The fact that his wife and children were present did not cause him to exercise restraint or cease and desist from committing this offence.

[23] I would further adopt and apply the *dictum* of Henry LJ in *R v Loff James Lennon* aforesaid, to wit:

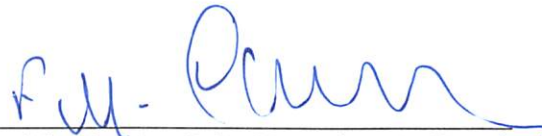
*“..... In most cases, the personal circumstances of the offender would normally take second place behind the plain duty of the court to protect the victims of sexual attacks and to reflect the clear*



*intention of Parliament that offences of this kind should be met with greater severity than may have been the case in former years when the position of the victim may not have been so clearly focused in the public eye.”*

[24] There can be no doubt that a custodial sentence must be imposed herein. That sentence must be commensurate with the gravity of the offence. I consider in the circumstances a starting point of 12 years imprisonment to be appropriate from which I shall deduct four years for the delay. Accordingly, the Accused is sentenced to eight years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial.

Dated this **8<sup>th</sup> day of June, 2018.** .



Honourable Justice Mr. Francis M. Cumberbatch  
Justice of the Supreme Court