

In the Supreme Court of St. Helena (in the jurisdiction of Ascension Island)

Citation: SHSC 34/2021

Criminal

Sentence

Attorney General

-v-

Robert Ellick

Sentence dated 18th February 2023

Duncan Cooke, sitting as an Acting Judge of the Supreme Court

Section 93 of the Welfare of Children Ordinance 2008 & Section 1 Sexual Offences (Amendment) Act 1992 apply to this ruling. Nothing may be published if it is likely or calculated to lead members of the public to identify any complainant or person under 18 involved in these proceedings

1. Mr Ellick you were found guilty of an offence of indecent assault against your niece who I will refer to as AB. When you were a teenager, and certainly before you were 18, you assaulted a girl who was 10 years your junior. Of course the younger you were then the younger she was.
2. As the directions to the jury required there to have been penetration of the vagina for them to convict the factual basis for sentence is that, when in this girl's bedroom, you penetrated her vagina with either your fingers or penis. When you did so you caused her pain so that she cried out alerting her mother. The penetration caused her to bleed from her vagina for the first time in her life as she did not start her periods until she was 11. When her mother came upon you her reaction was one which covered up your offending in that she told her daughter to pull up her knickers and get out.
3. Mr Ellick I cannot see this in terms of adolescent experimentation for two reasons, firstly the girl was too young for that and secondly you are currently serving a 12 year sentence for like offences committed later on in life. By virtue of the jury's verdict it is clear that you have a sexual interest in children that you acted upon.
4. The maximum penalty for this offence is one of 5 years custody. The verdict was given as an alternate one to an offence of sexual intercourse with a girl under 13 where the age of the victim was stated on the indictment and there can be no room for doubt that AB was

under 13. If I am wrong as to whether the age was stated on the indictment it is a moot point as the sentence will not exceed 2 years.

5. The equivalent offence from 2004 is assault of a child under 13 by penetration which carries a penalty of up to life imprisonment. The guidelines for the later offence are of assistance but they are predicated on a much higher maximum penalty. I do not consider that the appropriate approach is to treat this as a familial sex offence given that the victim was so young and the offence involved an assault
6. Had you been sentenced on the current guidelines this would be either a 2B or a 3B offence with a starting point of 4 years custody for a 3B offence and a range of 2 to 6 years. The victim was very young, aged 5, 6 or 7 but whether that is extreme youth in the context of this offence is arguable. She was certainly at the lower end of victims for this type of offending and I will take that into account
7. I am required to have regard to the guidance issued by the sentencing council regarding sentencing historical sexual offences and paragraphs 6.1 to 6.3 of the guidance on sentencing children and young people, especially paragraph 6.2 regarding assessing what sentence you would likely to have received had you been sentenced at the time of the offence itself, this guidance is also referred to in paragraph 9 of the guidance on sentencing historical sexual offences. Such an approach is of course problematic and it is impossible to say how you would have been sentenced in 1970 before the St Helena Supreme Court. Attitudes have changed and such an approach is contrary to that for adult offenders, the rationale for that is that it is impossible for a court to put itself in the shoes of a court from many years previously and apply sentencing practice from that time.
8. Further the guidance applies where a defendant has crossed a threshold between available sentences, that is not the case here. In your case imprisonment was always available whether you were 15, 16 or 17
9. I will therefore apply a measured approach to the current sentencing guidelines. The passage of time does not assist you as you continued to offend in a like manner, it is not the case that you have led a blameless life since this offence, quite the contrary.
10. The first criminal procedure ordinance for St Helena came into force in 1976 and as such prior to that the English Law would have applied. In your case that would be section 17 of the Criminal Justice Act 1948, whether by virtue of s.2 of the English Law (Application) Ordinance 1968 or s.25 of the Interpretation and General Law Ordinance 1895. As this is the St Helena Supreme Court sitting in St Helena I do not have to go further and consider if this further applies to Ascension. The parties are agreed on this approach.
11. In applying s.17(2) of the 1948 Act I could only have imposed a custodial sentence when you were under 21 if there was no other method of dealing with you. There are certain matters I have to take into account which I am fully aware of, I do not need a pre-sentence report for example.
12. I am of the view that as you are currently serving a prison sentence of 12 years for a number of like offences and as this case clearly passes the custody threshold, there is no other method of dealing with you that is appropriate to the seriousness of this offence.

13. Applying a measured approach to the sentencing guidelines and paying particular regard to your youth at the time I consider that the correct sentence in your case is one of 12 months custody. You inflicted pain on a little girl in her own room when she was very young, when inflicting that pain you were sexually molesting her and that has stayed with her for many years. Whatever your age this was a gross act inflicted upon a little girl who should have felt safe in her own home and who you were related to.
14. The issue is whether that sentence should be run concurrently or consecutively to your current sentence. If you were sentenced for this offence at the time of the others it would have run consecutively on application of the totality guidelines. But here you are being sentenced at a different time to the other offences so I have to have regard as to what the correct sentence would have been for all your offending. In my view a just and proportionate sentence would not have been 13 years but would have been 12 and a half years.
15. I will therefore impose for this offence a sentence of 6 months imprisonment to run consecutively to the current sentence.

Duncan Cooke, Acting Judge of the Supreme Court
18th February 2023