

**In the Supreme Court of St. Helena**

**Citation: SHSC 2/2023**

**Criminal**

**Sentence**

**Attorney General**

**-v-**

**Rico Thomas**

**Sentence dated 10<sup>th</sup> August 2023**

**Duncan Cooke, 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. Rico Thomas you fall to be sentenced for one offence of rape of a child under 13 which occurred when you were 15 or 16, you are 26 now. Your victim, who I will refer to as AB, was your cousin and would have been 7 or 8 years old. There is a basis of plea which asserts that the activity that took place was part of your sexual experimentation as a youth. The prosecution do not accept this aspect of your basis but take the view it would make little difference to sentence, I agree with that position and will sentence you on your basis and accept this was sexual experimentation by a young man
2. The offence occurred in your bedroom in the house in which you also lived. As cousins you would play together as children. This play often took place in your bedroom as you had a games console but you would also ask AB to lie on the bed with you.
3. On one occasion you made AB suck your penis, you told him to go back and forth while your penis was in his mouth, this went on for some time. You then ejaculated in AB's mouth. After this you told him to drink some juice and AB describes you as panicky and you told him not to tell anybody.
4. The impact of this act has been devastating for AB and his immediate family. The victim personal statements from AB and his mother attest to very real significant mental health problems. AB became very withdrawn after this event. He had suicidal thoughts and other intrusive thoughts. He suffers with anxiety and flashbacks, he has difficulty getting close to friends and has trouble even leaving the house. Most days he remains in his bedroom and says that what you did to him continues to destroy him. He says his childhood and teen life have been taken away from him.

5. A psychiatrist diagnosed him with post-traumatic stress disorder which is most likely linked to this event as there are no other events in AB's life to account for it. AB certainly links his mental health problems to what you did to him.
6. The mother describes the impact upon the family with some not believing AB's accusations. She also confirms the impact upon AB saying that it has ruined his life.
7. The sentencing guidelines take into account a basic level of psychological harm which is inherent in this type of offence but I am fully satisfied that the level of harm described by AB, which is backed up by medical evidence and his mother, is severe.
8. I turn to how I approach sentencing in this matter. You would have been 15 or 16 at the time of the offence. Imprisonment is available for those aged 16. For those aged 15 they may be detained in safe custody or a prison for a period of time that is determined by the Governor. That period cannot exceed the maximum period of imprisonment to which the young offender could have been sentenced. The pre-requisite for such an order is that the offence must carry a term of imprisonment and that there would be no suitable alternative to sentencing the young offender to a term of imprisonment to be served in a prison.
9. In effect whether you were 15 or 16 you could have been sent to a prison for a period of time, the difference being the period at 16 is determined by the court and at 15 it is determined by the Governor who must periodically review the detention and that period of detention can be reduced. Any term of imprisonment for those aged 16 or over in excess of three years does allow for release on licence at the one third point. Anything less than three years a prisoner must serve two thirds. The Governor can also substitute a less severe form of punishment for any sentence imposed upon young people or adults in line with s.29(1)(c) of the Constitution. The reality is that in law, whether you were 15 or 16, you could have been sent to a prison for a period of time not exceeding the maximum sentence available to the court and you could be released from that custody at the discretion of the Governor whatever your age. That is the position now and that was the position at the time of these offences.
10. Sentencing guidelines direct that in sentencing you today I must take as a starting point the period of detention likely to be imposed, either by a court or the Governor, had you been 15 or 16. Unfortunately there is no guidance in the legislation or regulations to the Governor as to what criteria to apply when assessing length of detention for those aged 15, however the guidance within the Sentencing Council Guidelines for Sentencing Children and Young People, and for Sexual Offences – Sentencing Children and Young People and for Rape of a Child under 13 would no doubt be of as much relevance to the Governor as they would to a court. These guidelines recognise the differences between children and adults and have regard to the differing sentencing approaches between the two. Even though the guidelines in relation to sentencing children generally and for sexual offences came into force after your offending they broadly reflected what was sentencing practice at the time your offences occurred and are applicable from 1<sup>st</sup> June 2017 regardless of the date of offence. These are the guidelines I will apply in your case and I will follow the approach contained in *R v Ahmed and others [2023] EWCA Crim 281* at paragraphs 21 to 32
11. I accept fully that you were a young man at the time of the offence without the same experience and capacity as an adult to understand the effect of your actions on others and it cannot be said that you could have anticipated or intended the harm that you have caused. I also accept that what happened was unplanned.
12. Applying the guidelines for Sentencing Children and Young Persons for sexual offences this clearly falls into the bracket where a custodial sentence is warranted due

to the fact that this was penetrative activity involving pressure and severe psychological harm was caused. On the facts of this case custody is unavoidable due to the extremely serious nature of the offending and I will look towards the adult guideline, which came into force at about the time these offences occurred, to assist me in determining the length of the sentence that would have been imposed had you been sentenced shortly after your offending occurred.

13. I disagree with the prosecution assertion that the victim was particularly vulnerable due to extreme youth. 'Particularly' indicates a something that is to a higher degree than is usual or average. The prosecution position does not, to my mind, take into account that the guideline relates to rapes of those under 13 and those aged 7 or 8 do not have extreme youth by reference to those aged from babies to 12. AB was certainly very young and vulnerable by virtue of that age, but the guidelines take that youth into account. As I have already indicated the psychological harm is severe but I cannot, as suggested by the prosecution, place this within category 1 for harm. It falls squarely within category 2.
14. In the absence of any category A factors for culpability the offence for an adult is a 2B one on the guidelines. If you were an adult I would start this sentence at 10 years.
15. The ejaculation is not taken into account in stage 1 and is an aggravating factor. I do not accept that telling AB not to tell anyone else about what happened amounts to steps taken to prevent reporting, steps requires something more than one enjoiner to keep quiet. It does however indicate that you knew very well what you had done was wrong and you would have known that before the offending commenced.
16. The remorse and victim empathy referred to in the pre-sentence report is very much undermined by your earlier denials of the offending and your late guilty plea. I will however take into account that you have, albeit late in the day, faced up to what you have done and shown insight. Your previous convictions do not aggravate the offence but you cannot avail yourself of credit for being of hitherto good character. Having regard to the aggravating and mitigating factors in this case I consider that for an adult the appropriate sentence would be one of 10 years.
17. Given your age at the time and that your level of maturity was no less than others of the ages of 15 or 16 I find that a sentence of 5 years would have been the one that would have been imposed upon you shortly after the offence occurred. In coming to this decision I have had regard to the sentencing guidelines already referred to, the pre-sentence report, the impact statements, the basis of plea, the defence and prosecution notes on sentence, the reference from Darren Duncan and the very helpful submissions I have received in court today
18. I turn to credit for plea. In this case you delayed entering your plea and your case came into one Supreme Court session and was further adjourned until another. You then indicated a guilty plea before the next session. I will allow 15% credit for your plea coming as it did very late in the day. This reduces your sentence to one of 4 years and 3 months.
19. As this is a lengthy sentence I will consider whether to have regard to the conditions within the prison, especially relating to the significant overcrowding. The prison cell certification of the prison was amended by the Governor on 6<sup>th</sup> October 2022. The capacity for male prisoners was increased from 18 to 24 as a temporary measure and the prison is close to capacity. That will be mitigated shortly by the creation of 6 new beds on the conversion of the workshop which is due to be completed by mid to late October 2023. However the increase in capacity from 18 to 24 was a temporary measure and even with 6 new beds there will be an element of overcrowding in what is a small prison with limited recreational space. To reflect the

conditions in which you will be held for quite some time there will be a small allowance of 2 months, reducing your sentence to 4 years and 1 month.

20. I am satisfied that a sexual offences prevention order is necessary. It is not the case that you have not offended since this matter as you will shortly be sentenced in the Magistrates' Court for an offence of sexual activity with a child which occurred in 2015 when you were 18. You are also assessed as posing a medium risk of serious harm to children by the probation service.
21. The order prohibits you until further order of this court contacting directly or indirectly any child under the age of 16 other than that which:
  - i. is inadvertent in the course of everyday life; or
  - ii. is with the consent of the child's parent or guardian who is aware of this conviction and is with the written consent of Children's Social Care.
22. Counts 2 to 4 will lie on file on the usual terms

Duncan Cooke, Acting Judge of the Supreme Court  
10<sup>th</sup> August 2023