

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 75/2007

BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MRS JUSTICE HARRIS JA
THE HON. MRS JUSTICE McINTOSH JA

MARK CAMPBELL v R

Patrick Thompson for the applicant

Miss Meridian Kohler and Leighton Morris for the Crown

25 & 26 October 2010

ORAL JUDGMENT

PANTON P

[1] This applicant for leave to appeal was convicted on his plea of guilty on 8 May 2007, in the Circuit Court for the parish of Kingston. His sentence was postponed to 25 May 2007, after character evidence had been adduced and a social enquiry report produced and considered. The learned trial judge, Mr Justice Pusey, sentenced the applicant to 15 years imprisonment at hard labour.

[2] The circumstances that gave rise to this charge are that the applicant on 28 March 2006 in the parish of Kingston unlawfully knew and

carnally abused a girl who was aged 11 at the time. He offered this girl a ride on his bicycle while she was on her way to school. Instead of taking her to the school, he took her to a house occupied by a friend of his and there he proceeded to have sexual intercourse with this young girl. The police received information from a male citizen in the area and proceeded to the house. When confronted, he told the police that the girl was his cousin. He was arrested and charged.

[3] At the sentencing hearing, evidence was given by a Mr Bill Stephens who is the director of a marching band. He gave evidence as to the applicant's active participation in that band and his exemplary behavior. He also gave evidence that the applicant had received awards for being the most disciplined, the most punctual and the most dedicated person at various stages in his involvement with this band. There was evidence also from a Miss Rosemarie Rosewell who operates a restaurant and bakery. She said she had employed the applicant as a chef in that restaurant. As in the case of Mr Stephens, Miss Rosewell was deeply shocked by the behavior of the applicant in respect of this young girl.

[4] After the evidence had been given as to character, there followed quite an extensive exchange between Bench and Bar in relation to the contents of the social enquiry report and also in relation to the principles

of sentencing. There was great emphasis placed on the character of the applicant, naturally, by Mr Thompson who appeared then as he does now before us. The exchange also revealed that the applicant had, within the past year, become familiar with the use of marijuana. There was discussion between the Bench and Bar as to the virtues or otherwise of this substance and as to whether it had anything to do with the commission of the offence. Indeed, the learned trial judge remarked that there had been a proposal by learned persons at the University that this substance should be legalized. As said earlier, at the end of that exchange, the judge proceeded to impose the sentence of 15 years imprisonment. In his comments, the learned trial judge indicated that he had taken into consideration his good character, the fact that the applicant had no previous convictions and also the fact that he had pleaded guilty.

[5] Before us, Mr Thompson has quite rightly pointed out that the offence is an abhorrent one and that a strong sentence ought to be imposed for such unsatisfactory behavior. But, he submitted, there must also be an appreciation for those persons who have erred in this way and who have sought to make amends; persons who have sought to take responsibility for their actions, persons who have pleaded guilty. He stressed that there are several persons in the society who are not taking responsibility for their actions and when they come before the court they

seldom do so. This, he pointed out, was not the position of this applicant. He submitted that the applicant does not need a long period of incarceration and he thought that the learned trial judge ought to have given more consideration to the offender, given the work that he had previously done in his community and the fact that he was an example to young men of his age and social orientation.

[6] We have thoroughly reviewed the transcript as also the social enquiry report and we note that family considerations were advanced before the learned trial judge with a view to having an impact on the sentence. We wish to remind sentencers that the law does not permit in a matter of this nature, for family considerations to be taken into account when sentencing is being done. Having considered the matter, we are of the view that a long term of imprisonment was properly imposed by the judge. Offences of this nature are too prevalent in our society and it appears that our young men particularly, are not taking this situation seriously. Our young men continue to impose themselves on the female of the species particularly, underaged children.

[7] In this case the applicant is reported as having expressed the view that he thought that the complainant was 14 years old. Given the fact that he himself is 27 years old, the question of the child being 14 years old

ought not to have led him to think that that would have been an excuse for having sexual intercourse with her.

[8] Having said that, we are of the view that although a long term of imprisonment ought to be imposed in a matter of this nature, we do not think that sufficient credit had been given to the applicant for his plea of guilty. It is true that the learned trial judge did, at page 31 of the transcript, say that he had considered the fact that the applicant had pleaded guilty. That plea in our view has not been reflected in the sentence.

[9] In the circumstances, we are granting the application for leave to appeal against sentence. The hearing of the application has been treated as the hearing of the appeal. The appeal is allowed and the sentence of 15 years imprisonment is set aside and substituted by one of 12 years imprisonment. The sentence is to run from 29 June 2007.