JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 56/07

BEFORE: THE. HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (AG.)

R V RAYON MASON

Michael Lorne for the applicant

Ms. Kathy-Ann Pyke on Fiat & Nigel Parke for the Crown

10th June 2008

ORAL JUDGMENT

PANTON, P.

The applicant Mr. Rayon Mason, pleaded guilty before the Hon. Miss Justice Gloria Smith on the 16th March 2007 on three counts of carnal abuse. He was sentenced to four (4) years imprisonment on each count with an order that the sentences were to run concurrently. A single judge of this court on the 12th December 2007, said in ruling on this application for leave to appeal, "the sentence imposed cannot be said to be manifestly excessive" and thereby refused leave to appeal.

The applicant, as is his right, has repeated his application for leave to appeal before this panel and we have heard a most eloquent plea from Mr. Lorne, as is the norm.

The facts to which the applicant pleaded guilty are simply that in three consecutive months during 2006 he had sexual intercourse with the young "Miss" who was at the time of the hearing of this matter 14 years old, which suggests that she would have been near 13 years old at the time of the incident. It really does not matter whether she was 13 or 14, the fact of the matter is that she was under 16 years old and the law has from time immemorial in Jamaica, it may be said, forbidden sexual intercourse with girls under the age of 16 and it does not matter whether such girls are promiscuous as some community members expressed to the probation officer that this young "Miss" was.

The applicant was given a glowing report in the Probation Officer's Report in that he had good upbringing, he was even exposed, according to the report, to Christian principles.

The learned judge, before whom this matter was presented, having heard the eloquent plea from Mr. Lorne and prior to that having considered the probation report, addressed her mind to all the principles that could be addressed in such a situation. She paid attention to the fact that the applicant had pleaded guilty and to the fact that this offence is prevalent within the Courts

and her words were "I go from parish to parish to parish and in every single parish I go it is the same thing." She said:

> "Children need to have their childhood and they need to mature gradually and not be forced into these situations where they become parents before their time."

Indeed, she made that comment because the child became pregnant with child, and duly delivered that child. The child according to Mr. Lorne is now in the care of the applicant's mother. So, it is assumed, that no one needs to fear for the upbringing of that child while the applicant is incarcerated.

The judge went further. She said:

> "It is said that you are brought up in a family where Christian principles were taught to you, (referring to the applicant) so one would expect you to know better and to do better. And when I hear, you know, community members saying how promiscuous that young lady is, maybe if some of them, especially in light of her circumstances where there is an absentee mother, maybe they should sit her down and try to give her proper guidance rather than just dismissing it that she is promiscuous. You see, we have to look at both sides of the coin; and too often in this society we seek to put the blame on one side as opposed to the next."

We would add, "well said" by the learned judge. This, she said,

> "is a serious offence. Young girls must be given an opportunity to develop and mature into adults without being pushed into these situations."

She made reference to the fact that the sentence provided for by the law is a maximum of seven (7) years. She even referred to the fact that there is a lot of lobbying going on as some of these penalties are too lenient. We say again, "well said".

So, in dealing with this application we have absolutely no doubt that the learned judge was perfectly correct in firstly, imposing a sentence of imprisonment and secondly, imposing one of four (4) years imprisonment. We see nothing that may be described as manifestly excessive in that sentence.

We trust that the young men, and indeed the old men too, because the old men are doing it, will recognize that girls are to be left alone and those who interfere with them sexually can expect nothing but imprisonment. We urge the courts below not the fail to impose imprisonment in these situations. If men will not hear, then, they will feel.

The application is refused. The sentences are to run from July 3, 2007.