

A11-43

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 52/93

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

REGINA vs. ALFRED MITCHELL

Arthur Kitchen for the appellant

Dr. Diana Harrison for the Crown

January 30 and February 13, 1995

WOLFE, J.A.:

The appellant was indicted for the offences of carnal abuse, buggery and inflicting grievous bodily harm in the Home Circuit Court. On May 10, 1993, before Chester Orr, J., he pleaded guilty to the offence of carnal abuse and not guilty to the other two counts of the indictment. The court having accepted the plea of guilty to the count charging carnal abuse, the Crown offered no evidence in respect of counts 2 and 3 of the indictment.

The circumstances giving rise to the offence can best be described as outrageous. The appellant, a carrier of the AIDS virus, commonly referred to as HIV, in May 1991 sexually assaulted J.R., a girl ten years of age, resulting in her contracting HIV. The appellant at the time of the incident knew that he was a carrier of this deadly virus as he was being treated at the Comprehensive Health Clinic in Kingston.

In passing sentence Orr, J. said:

"I don't know what could have got in your mind to have intercourse with a little girl, and on top of that you have given her an incurable disease. What you have given her is a death sentence. I am quite sure that there is no known cure

"for AIDS, and that persons who show HIV positive usually develop AIDS. There is nothing I nor you can do to help this poor girl.

I take into account the fact that you have pleaded guilty, but there is only one sentence I can pass on you, Imprisonment for life at Hard Labour. That is the sentence of the court, Imprisonment for Life at Hard Labour."

The complaint in this appeal is that the sentence was manifestly excessive.

The legislature in its wisdom has decreed that any man who is found guilty of carnal abuse of a girl under the age of twelve years is liable to be imprisoned for life. This indicates clearly the society's abhorrence of such a despicable act. That abhorrence is multiplied a thousand fold where a man who knows he is suffering from the deadly AIDS virus preys upon an innocent virgin and contaminates her with the virus or to put it as Orr, J. did, "sentence her to death." In circumstances such as this, the court has a duty to impose a sentence of retribution and deterrence. In R. v. Sergeant (1975) 60 Cr. App. R. 74 at page 77, Lawton, L.J. said:

"The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crimes, and the only way in which the courts can show this is by the sentence they pass. The courts do not have to reflect public opinion. On the other hand, the courts must not disregard it."

The sentence imposed by Orr, J. was most appropriate. This man is undoubtedly a threat to the health of the nation. To suggest that it is manifestly excessive is wholly misconceived.

For these reasons, we dismissed the appeal and affirmed the sentence imposed by the court below.