

In the Supreme Court of St. Helena

Citation: SHSC 14/2023

Criminal

Sentence

Attorney General

-v-

Leslie Clingham

Sentence dated 15th December 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 Clingham you have been found guilty of two offences of rape and two of indecent assault against the same boy when he was 15 or 16. These offences occurred in either 2001 or 2002 when you were 43 or 44.
2. Your victim was your nephew. He was helping you renovate a building and you, on two occasions, asked him to stay overnight in the building on the pretext that you could then have an early start the next morning. I am satisfied having regard to the proximity of the building to where you and this young man lived that this was a device to have him alone with you. I am also satisfied that having regard to your victim's youth that he was in no position to refuse your request to stay over and that you took advantage of this.
3. On two occasions you performed oral sex on your victim so that he ejaculated and you then anally raped him. You did not use force but his character, the difference in age and you being his uncle meant that you did not have to.
4. Your victim did not report what had happened as he was embarrassed at what you had done to him. He left the island shortly afterwards to work on Ascension and the Falklands before relocating to the UK.
5. His impact statement outlines the consequences of your actions upon your victim. Mr Clingham what is described is unfortunately a common reaction to abuse and I hope you reflect on your part to play in the problems that your victim had later on in his life.
6. As with all offences of this kind the impact upon your victim was significant but it does not amount to being severe within the guidelines. This does not mean that the consequences were minor or trivial, they were only too clear from the evidence of your victim and they are still ongoing

7. I have regard to all matters before the court including the pre-sentence report prepared upon you, the impact statement, and all that has been so ably said on your behalf.
8. You are a 64 year old man who is not unknown to these courts. In 2014 you were convicted of indecent assault upon a male child aged 15. That offence occurred about the same time as those before this court today. The records from that time are not clear but it seems that you pleaded guilty on the basis that the boy was too young in law to consent. I have no regard to the other matters on your list of previous convictions.
9. The guidelines that I shall have regard to for the indecent assault matters are those for causing a person to engage in sexual activity without consent. I will take into account the differing maximum sentences for the two offences
10. The guidelines for rape and causing a person to engage in sexual activity without consent mirror each other in terms of matters to be had regard to so what I say applies equally to all offences before this court.
11. For harm I place these in category 3 having indicated the psychological harm does not fall within the severe bracket while recognising that it was significant. I do not accept the prosecution assertion that your victim was particularly vulnerable due to his personal circumstances. That he lived with his grandmother is not unusual in St Helena and it is not said that his grandmother's care was deficient. That he was a 'troubled kid' as described by you does not provide a sufficient basis for me to find that he was particularly vulnerable due to his personal circumstances. I will take the isolation of the victim at the time of the offences into account when I come to consider if there was an abuse of trust due to an ad hoc relationship giving rise to a duty of responsibility
12. I place culpability in A. There is an abuse of trust not because of your familial relationship but because at the time the offences occurred you were responsible for his welfare when he was sleeping away from home. Although there was planning it was not significant. For both rapes this provides a starting point of 7 years and for the indecent assaults, having regard to the maximum sentence, I will take a starting point of 3 years.
13. I move on to consider the aggravating and mitigating circumstances and I take into account your previous convictions. There was ejaculation for the indecent assaults but I cannot be satisfied that there was for the rapes. There has been a significant delay which I have regard to but I note that in 2007 you admitted other sexual offences that occurred in 2002 and you could have done the same for the matters I am sentencing today. I also take into account that there has been no sexual offending since 2002 and the three offences you have been convicted of since then resulted in financial penalties. I also have regard to your age and ill health as described in the pre-sentence report.
14. Given all these factors for the first rape there is a sentence of 6 years and for the second 6 and a half years. For the indecent assaults for the first one there is a sentence of 2 and a half years and for the second 3 years. These will all run concurrently
15. As I have applied the English guidelines I apply a 25% reduction to take into account the differing release provisions and also the prison conditions. The sentences are as follows: for the first rape 54 months and for the second 58 months. For the first indecent assault 22 months and for the second 27 months. As all sentences are to run concurrently to one another this provides a total term of imprisonment of 58 months, which is 4 years and 10 months.
16. I will not make a sexual offences prevention order at this stage given that a period of 21 years has passed with no sexual offending and on your release you will be subject to a licence. If before the end of your sentence the probation service, after having

worked with you, have concerns that they expect to last beyond the licence period then an application can be made at that point. On the information I have available to me I consider that the notification requirements provide sufficient protection to the public.

Duncan Cooke, Acting Judge of the Supreme Court
15th December 2023

**NB Appeal Attorney General's appeal allowed 3rd June 2024 SHCA 1, 2 & 3 2024
and sentence increased to 5 years and 4 months**