

ROYAL COURT  
(Samedi Division)

1st March, 1995

42.

Before: The Bailiff and Jurats  
Coutanche, Blampied, Bonn, Orchard, Gruchy,  
Le Ruez, Vibert, Herbert and Rumfitt

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The Attorney General

- v -

Desmond Herlihy

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Sentencing by the Superior Number, to which the accused was remanded by the Inferior Number, on 24th February, 1995, following guilty pleas to:

1 count of attempted rape (count 1); and  
1 count of indecent assault (count 2).

AGE: 23

PLEA: Guilty.

**DETAILS OF OFFENCE:**

In small hours of morning accosted victim and dragged her down onto beach. Attempted rape but could not get an erection. Attempted anal penetration but could not get erection. Threats to kill victim repeated four times. Threat to drown victim accompanied by dragging victim down towards sea. Victim in genuine and justified fear for her life. Indecent assault ran full gamut of indecency and humiliation: digital penetration, sucking nipples, licking bottom, manual masturbation, penis in mouth. Victim escaped by biting penis and squeezing testicles. Victim distraught, changed, less outgoing, now fearful. No present indication of lasting psychological damage. Though defendant affected by childhood accident, drank against medical advice.

**DETAILS OF MITIGATION:**

(1) guilty plea - greater merit in cases of this nature because spares victim trauma. (2) surrendered to police - could have left island. (3) remorse - racked by guilt. (4) childhood accident caused damage to brain: increased impulsivity, low intellect, susceptibility to disinhibiting effect of alcohol. Present offences committed after drinking and taking tablets for headache.

**PREVIOUS CONVICTIONS:** None of relevance.

**CONCLUSIONS** Count 1: 4½ years' imprisonment.  
Count 2: 4½ years' imprisonment, concurrent.

**SENTENCE AND OBSERVATIONS**

**OF THE COURT:**

7 year starting point. 2 yrs. mitigation for guilty plea, 6 months for youth, remorse, good character.

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The Solicitor General  
Advocate S.E. Fitz for the accused

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JUDGMENT

5 THE BAILIFF: This was an appalling catalogue of violence and sexual indignity perpetrated against a woman who was a total stranger to the defendant. The victim was accosted and forced to go onto the beach where the defendant attempted to have intercourse with her and perpetrated these sexual indignities. During the course of the attack he threatened to kill her on several occasions engendering considerable fear in her.

10 We agree with the Solicitor General that Billam, (1986) 8 Cr. App. R. (S) 48, is the authority which we should follow as indeed the Court decided in the recent case of Héuzé. Part of the head note of Billam reads as follows:

15 *"For rape committed by an adult without any aggravating or mitigating features a figure of five years should be taken as a starting point in a contested case. Where rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to the place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds them captive, the starting point should be 8 years."*

20 In the course of his judgment in that case the Lord Chief Justice stated in relation to offences of attempted rape:

25 *"The starting point for attempted rape should normally be less than for the completed offence especially if it desisted at a comparatively early stage. But, as is illustrated by one of the cases now before the Court attempted rape may be made by aggravating features into an offence even more serious than some examples of the full offence."*

30 We approach the matter in this way: although this was a case of attempted rape rather than the full offence there were a number of sexual indignities which were suffered by the victim which in the judgment of the Court aggravate the offence. There was also an element of abduction in that the victim was pulled onto a dark beach out of sight of anyone on the public road.

35 We take the starting point in this case to be a figure of 7 years' imprisonment.

40 In mitigation we agree that the defendant is entitled to a discount to the full extent for his guilty plea, in that he

readily admitted the offence and as a result the victim was not required to give evidence either in this Court or in the Police Court. We allow 2 years in that respect. We also propose to make an allowance of six months for the other mitigating factors of his previous good character, his relative youth and his remorse. We therefore arrive at the figure moved for by the Crown.

Herlihy, we accept that your behaviour on that night was out of character. You have brought distress upon your family and you have also disgraced yourself. We have no doubt that alcohol was the precipitating factor and that you now feel remorse. We hope that during the time which you will spend in prison you will take advantage of the medical advice which is available to you. Nevertheless, at the end of the day you have committed offences against an innocent young woman which will probably remain with her for a very long time and you must be punished for those offences.

The conclusions are granted and we sentence you on count 1 to imprisonment for 4½ years' and on count 2 to imprisonment for 4½ years' to run concurrently, making a total of 4½ years' imprisonment.

Authorities

Billam (1986) 8 Cr. App. R. (S) 48.

Sheen (1987) 9 Cr. App. R. (S) 164.