

**In the Supreme Court of St. Helena**

**Citation: SHSC 14/2022**

**Criminal**

**Sentence**

**Attorney General**

**-v-**

**Mike Caswell  
Julian Thomas  
Sanjay Williams  
GP  
ZP**

**Sentence dated 24<sup>th</sup> March 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. Before I start the sentencing there are a few comments that apply to all defendants. I don't want any of you who sexually abused this girl to think that she consented and that what happened was in some way as much her doing as yours. She has nightmares, flashbacks and panic attacks because of what you did to her. She has been put in a children's home as a consequence of a number of factors, one of which was your actions. She is having to leave not just her home but also the island where she is from because you decided to use her for your own sexual gratification and her mother failed to protect her. You have caused her to feel ashamed and what has happened to her is not a secret on the island. She, as a child, has to face people every day who know what you did to her.
2. What has made matters worse is that her own mother, the one person who should have protected her, wilfully chose not to do so. That rejection of a child by a parent at a time when she was in crisis and in need of help is something that is difficult for anyone to comprehend.
3. I will not rehearse the facts in detail, they are amply set out in the prosecution opening note and the bases of plea. I will refer to your victim as AB

4. For those defendants currently serving terms of imprisonment the sentences I impose will commence today. For those that have been on remand, that time will count towards the final sentence
5. In relation to the length of the sentences that will be imposed the following matter is relevant. The prison cell certification of the prison was amended by the Governor on 6<sup>th</sup> October 2022. The capacity for male prisoners has been increased from 18 to 24 as a short term measure. The building of a new prison is a project that has been mooted for many years which has yet to come to fruition. There is funding available through the Economic Development Investment Programme and the tender process for design and build is due to start soon. The earliest date for completion is 2026, but given the past history of the prison project I cannot be satisfied that this is a timescale that will be achieved. Three of the defendants are facing very lengthy jail sentences and may well spend many years in the prison in the conditions which are currently in place. The male prison population is at present 20 and expected to be 21. Any figure above 18 is considered overcrowded. This means that there will in some circumstances be 4 men to a cell with no natural light and poor ventilation.
6. Applying the principles in R v Manning and R v Fairclough I will of course have regard to the likely effect of the sentence upon all the defendants. However in relation to those who will receive very long sentences the impact of the conditions becomes more pertinent as they are unlikely to change in the near future and will have to be endured for quite some time.

Mike Caswell

7. Mr Caswell you are 28 years old and you were found guilty after trial of rape of a child under 13 and sexual activity with a child under 13. You were this girl's step-father and when she was 11 or 12 you went into her bedroom and raped her, you started when she was asleep and when she woke up you carried on until you ejaculated. Prior to this event you had entered her room and penetrated her vagina with your fingers. On both occasions AB struggled to try and stop you but you carried on regardless. These events occurred in her bedroom in her own home where she should feel safe, but what is quite clear is that the environment you lived in was one that showed indifference to the welfare of the children living there
8. This meant that she was particularly vulnerable due to her personal circumstances, circumstances that were of your and ZP's making and existed before you started abusing AB. You knew that you could act with impunity before you committed these offences. You were this girl's step-father and lived with her. The relationship between you was one which gave rise to a significant level of responsibility towards AB upon which she was entitled to rely. You breached that trust placing culpability in A
9. For the rape matter it is a 2A offence, this provides a starting point of 13 years custody with a range of 11 to 17 years. I will start the sentence at 11 years before taking into account the aggravating and mitigating factors in this case. You ejaculated. You attacked her in her own bedroom. She has been compelled to leave not just her home but the island, and you were clearly under the influence of alcohol for both offences. To mitigate the offence is your lack of relevant convictions. The sentence for the rape offence on count 2 of the indictment will be 13 years.
10. For the assault of a child under 13 by penetration the guidelines for a 2A offence mirrors those of the rape so the starting point is the same but there must be some differentiation between the two offences given that the penetration was with your fingers. The same aggravating and mitigating factors apply save for the ejaculation.

The sentence for count 1 will be 12 years. Both sentences will run concurrently and so the total sentence is 13 years

Julian Thomas

11. Mr Thomas counts 3 and 4 will lie on file on the usual terms. You are 29 years old and pleaded guilty to counts 5 and 6 which are both rapes of AB when she was under 13. Your plea came after you had entered not guilty pleas on the 28<sup>th</sup> November 2022. You indicated your guilty pleas on the 18<sup>th</sup> January 2023. I will allow 20% credit for plea
12. You were an almost daily visitor to AB's home and so should have been fully aware of the circumstances in which she lived. She was particularly vulnerable by virtue at that stage of already having been sexually abused by Mr Caswell and her mother not protecting her from this abuse. I accept the point made by Miss Lindop that you were not responsible for her being particularly vulnerable before you abused her but whether you were aware of it or not does not impact upon the harm that you caused. AB says that at the time you were abusing her she liked the attention because she was not getting any from her mother. It was in this vacuum of lack of affection that your abuse took place. That your basis of plea asserts that AB was a willing participant reflects a significant deficit in your thinking, as does you saying that you misinterpreted her friendliness towards you. That a 12 year old girl could in any circumstances be someone who might be a sexual partner because she was friendly is not a position that is tenable. This was a child who wanted treating with care and compassion and you abused her desire to be so treated.
13. In terms of grooming many offences of this nature involve a degree of manipulation but that does not necessarily amount to grooming. What occurred in your case does not allow me to safely find that what happened falls within the meaning of grooming
14. Count 5 is a vaginal penetration and count 6 is an oral one. As AB was vulnerable by virtue of her personal circumstances the offences fall within category 2B with a starting point of 10 years with a range of 8 years to 13 years. I will start at 9 years for each offence.
15. Aggravating factors include the location of the offence as being in AB's own home, that she was compelled to leave that home and the island. For the vaginal rape there was ejaculation. To mitigate the offence is the lack of relevant convictions. For the vaginal rape the sentence before credit for plea will be 10 years and for the oral rape it will be 9 and a half years. Applying the credit for plea the sentences are 8 years and 7 months and 7 months respectively to run concurrently making a total of 8 years

Sanjay Williams

16. Mr Williams you are 27 years old and you pleaded guilty to counts 7 and 8 which are offences of rape of a child under 13, counts 9 and 10 which are sexual activity with a child and count 14 which is child abduction of a different girl
17. What stands out most in your case is that on the 24<sup>th</sup> December 2021 you were aware that AB had been raped by Mr Caswell. By the 31<sup>st</sup> December 2021 you yourself were raping her. You told her that you loved her and began a relationship which you saw as akin to a boyfriend/girlfriend one. You knew that AB's mother was indifferent to her wellbeing in that she was doing nothing about her daughter being sexually abused by Mr Caswell. You filled a gap in this child's life by making her feel

wanted, however you were sexually abusing her at the same time. You made her think that she loved you but as she says in her impact statement she now realises that you can't love someone you barely know. I am quite satisfied that your conduct falls squarely within that described as grooming. In addition to this you conflicted her loyalties as she had a close relationship with your partner

18. For the rapes this is a 2A offence due to AB being particularly vulnerable because of her personal circumstances and your grooming of her. Before taking into account aggravating and mitigating factors I will start the sentence at 11 years for each offence.
19. The offences occurred in AB's own home where she should be safe and you also ejaculated. She had to leave her home and will now leave the island. In your case it can clearly be said that you specifically targeted this girl because she was particularly vulnerable. To mitigate the offences is the lack of relevant convictions. Given the significant aggravating factors the sentences on the rapes will be 13 years before credit for plea
20. For counts 9 and 10 this is penile penetration with grooming and therefore a 1A offence with a starting point of 5 years on each with a range of 4 to 10 years. I start the sentence at 4 years
21. The same aggravating and mitigating factors that apply to the rapes also apply to these offences except in this case there is a significant disparity in age to take into account. The sentences will be 5 years on each before credit for plea
22. For the child abduction the girl was 15 and you had been warned not to be with her but you spent time with her. There is no evidence of any other activity taking place. I do not believe that this passes the custody threshold and this is one of those cases where it is appropriate to impose no separate penalty.
23. You initially pleaded not guilty but indicated a guilty plea on the 4<sup>th</sup> January 2023. Your credit for plea will be 20%
24. For the rapes the sentences are 10 years and 4 months and for the sexual activity with the child the sentences are 4 years. These will run concurrently with one another and the total sentence is 10 years and 4 months.

#### GP

25. GP you are 56 years old and you were found guilty of two offences of sexual activity with a child who was then aged 13, these are counts 11 and 12 on the indictment. You are AB's uncle and when visiting her mother at her home you sexually assaulted AB by grabbing her vagina over clothing. This happened when you attended her house with your daughter and grandchild.
26. This is a 3A offence on the guidelines as it falls within other sexual activity and there is a significant disparity of age. I take a starting point of 9 months for each offence
27. The offence occurred in AB's home which aggravates matters as does the fact that she has been forced to leave that home. As her uncle you would have been fully aware of her vulnerabilities and home circumstances and I am satisfied that you targeted her because of this. However you have no similar previous convictions and have never been to prison before so I see no need to deviate from the 9 months.
28. The issue in your case is if there is a meaningful non-custodial option and if there is not if the sentence can be suspended.
29. Your pre-sentence report does not make happy reading. Your attitudes to victims of sexual offending are particularly worrying. Any alternative non-custodial option would have to be one that offers a chance of rehabilitation, and in your case there is

none. You deny the offence and show antipathy towards the probation services and those who are there to protect children.

30. I also cannot suspend the sentence. The risk of harm that you pose is just too high.
31. The sentences on both offences will be 9 months imprisonment to run concurrently with one another.

### ZP

32. ZP you are 40 years of age and you pleaded guilty at the first opportunity to count 13 which is an offence of neglect of AB. You knew that your daughter was being, or had been, abused by a number of men. Your response was to dismiss her concerns and seek to place the responsibility upon her to avoid the circumstances where she might be abused. Instead of taking action by protecting her you left her to fend for herself when she was particularly vulnerable and ill equipped to do so. You even allowed Mr Caswell to remain in the family home after AB told you that he had raped her.
33. When the police and social workers expressed their concerns to you about AB and you lied to them saying nothing had happened, claiming that their concerns amounted to a witch hunt. This offence was an ongoing one and the dates on the indictment are from 20<sup>th</sup> January 2020 to the 31<sup>st</sup> May 2022. In January 2022 you received a suspended prison sentence. That sentence was suspended on the basis that your imprisonment would have had a significant impact upon your children. You used your children then as a reason to avoid custody when in fact you knew that the eldest was being, or had been, abused. As the indictment period ends after the suspended sentence was imposed, and in February and April of 2022 you were spoken to by the police and did not disclose what AB had told you about the abuse, it is clear that you are in breach of that suspended sentence.
34. The maximum penalty in St Helena for this offence is 2 years. What many may not comprehend is that you will receive a lesser sentence for your abuse of your daughter than you will for handling stolen goods from a burglary. Applying the English guidelines which are currently in force, and not those due to come into effect on the 1<sup>st</sup> April 2023, your offending falls within the 1A category as there was a deliberate disregard for the welfare of the victim and there was serious psychological harm caused by you. If you were subject to the sentencing regime that these guidelines relate to your sentence would start at 6 years, with a range of 4 to 8 years.
35. However the maximum I can impose is 2 years custody. By a measured reference to the English guidelines I find that this is an offence right at the top end of seriousness.
36. There has been significant social services intervention in your family in Milton Keynes and on St Helena and you have failed to learn anything from that. You put your desire to remain in a relationship with Mr Caswell above that of your daughter. Your pre-sentence report demonstrates that you are having trouble accepting what you did to your daughter. This lack of insight into the impact of your offending is concerning but I accept that for any parent it must be very hard to come to terms with what you did.
37. Given that this offending is at the higher end of seriousness I start the sentence at 21 months and reduce it to 14 months to reflect your guilty plea. The suspended sentence will be activated and will run consecutively to the 14 months. That makes a total of 3 years and 2 months. That sentence is too long to suspend and a non-custodial option is out of the question given the seriousness of the offence, your breach of the suspended sentence and denials of your offending.

### Sexual Offences Prevention Orders

38. Each of the male defendants will have a sexual offences prevention order in the following terms -

*The defendant is prohibited from:*

- i. Having any contact or communication with any female who is under the age of 16, other than that which is not reasonably avoidable in the course of lawful daily life, unless that contact or communication is with the consent of that child's parent or guardian who has knowledge of the convictions giving rise to the making of this order*
- ii. Remaining in any private place (such as, but not limited to, any house, flat, private garden, toilets, changing room, vehicle or vessel) where there is a female under 16 unless there is also a person over 18 present who is responsible for the welfare of the child and who is in sight of you at all times*
- iii. Residing or staying overnight in any place where a female under 16 is present unless you have the permission of your police service offender manager and abide by any conditions set by that offender manager*
- iv. Undertaking any employment or activity (paid or otherwise) where you might reasonably be expected to come into regular contact with females under 16 without the consent of your police service offender manager*
- v. Undertaking any employment unless within 48 hours of commencing that employment you inform your police service offender manager*
- vi. Contacting directly or indirectly AB*

*Until further order*

Duncan Cooke, Acting Judge of the Supreme Court  
24<sup>th</sup> of March 2023

[NB – appeal against sentence for ZP successful in that 12 months, and not two years, of the suspended sentence activated - see SHCA 2/2023]