



CASE NO SC/CRIM/04/17

IN THE SUPREME COURT
OF THE FALKLAND ISLANDS

Courts and Tribunal Service
Stanley
Falkland Islands

Date: 20th April 2018

Before:

JAMES LEWIS QC
(CHIEF JUSTICE OF THE FALKLAND ISLANDS)

BETWEEN:

REGINA

-and-

GEORGE BUTLER

Joseph Hart and Stuart Walker for the Crown

Ciaran Rankin (instructed by Pinsent Masons LLP) for the Defendant

SENTENCING REMARKS

1. George Butler you have been convicted by a unanimous jury of one count of rape. You were acquitted by the jury of raping the complainant on more than one occasion. It now falls on the court to sentence you.
2. The facts of the offence are that on or about the 1st July 1979 the complainant, then a young girl of 13 years, stayed with her sister at your house. They were staying there as their mother had come in from camp and just given birth at the hospital in Stanley.
3. You were friends with the complainant's mother and she trusted you to look after her and her sister. Because of problems with their stepfather, the girls were staying with you for a couple of weeks. At the time you were a married man, 47 years old. While you wife and children stayed at your other house in Stanley you alone stayed with the complainant and her sister. The girls slept at the house each night as did you.
4. On one occasion you went into the girl's bedroom and raped the 13 year old complainant. She describes the rape as painful and frightening as you would expect. She has clearly suffered from this abuse and it has had long term effects on her. At the time you told her not to mention the rape to anyone. She did in fact mention it at the time to her mother but was not believed at the time.
5. You have denied the offence and as is your right, demanded a trial which required the complainant to give evidence on this distressing event which took place when she was a child. I do not increase in any way your sentence for exercising that right but it does mean you get no credit for a guilty plea or remorse.
6. You are now a man of 86 years and in good health. I have taken account of everything your counsel has said on your behalf and I have had the benefit of a pre-sentence report from the probation service for which I am grateful. The most important part of your mitigation is that you are a man of hitherto good character and your family, friends and community have held you in high regard.
7. The pre-sentence report indicates that you maintain your innocence and accordingly show no remorse for your offending.
8. Pursuant to section 482(4) of the Criminal Procedure and Evidence Ordinance 2014 I may have regard to sentencing guidelines published by the Sentencing Council (England and Wales) where no guidelines have been published by the Falkland Islands

Sentencing Council. No Falkland Islands guideline has been published for this type of offence and I do consider the English Guidelines. In determining your sentence I must consider the seriousness of your offence. I do that by considering first the harm which the offence caused and second your culpability for the offence.

9. Whilst this is a historic offence the penalty at the date of the offence was the same as it is now. I must also consider the passage of time. It is not, and cannot be, in dispute that this offence is so serious that only a custodial sentence can be passed.
10. Dealing first with the harm caused, the complainant was vulnerable due to her age and circumstances by which she was put into your care by her mother. In addition in light of the medical history and the presentation of the complainant it is clear she has suffered psychological harm. However, in her account she was consistently abused by her stepfather as well as by you, and given the jury have found your offence only occurred once I cannot fairly attribute all this harm to you alone. In my judgement this offence falls into category 2 of the relevant sentencing guidelines.
11. Next I must determine your culpability. The sentencing guidelines divide culpability into different bands. The prosecution urge that the offence was committed by you as an abuse of trust and therefore your culpability falls into Band A. While it is true that the guidelines indicate an offence committed in breach of trust may fall into Band A, in my judgment I have already taken into account such circumstance when determining the appropriate category of the relevant sentencing guidelines; namely the fact that she was put into your care by her mother. It would be wrong in principle to take the same circumstance into account when determining the category of harm and the level of culpability. They are separate components making up the seriousness of the offence and should not be 'double counted'. In any event the sentencing guidelines are just that, guidelines and not rigid boxes. It follows the correct starting point is 8 years custody within a range of 7 to 9 years.
12. The offence of course took place in your home at night in the presence of the complainant's sister. You did not ejaculate into her but into a towel. It occurred once. You have shown no remorse and it appears but for this one offence you have been of good character. People have spoken highly of you and but for this offence I accept you have led an honest hard working life. I ignore the previous conviction you have in 1966 for operating an unfit slaughterhouse. The passage of time is relevant and you have no

convictions since this offending. You are 86 years of age and any sentence will be onerous on you. In all the circumstances the very least sentence I can pass commensurate with the seriousness of the offence and all the circumstances is one of 7 years imprisonment.

13. In addition pursuant to section 296 and Schedule 13 of the Crimes Ordinance 2014 you will be subject to notification requirement for an indefinite period on your release.

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