



THE SUPREME COURT OF THE
FALKLAND ISLANDS

R. v Jason Hopkins
Falkland Islands Supreme Court SC/CRIM/01/16

SENTENCE

1. Jason Hopkins, you have been found guilty of one count of sexual assault by the jury after a contested trial.
2. The circumstances of your offending are as follows. On the weekend of 24 and 25 October 2015 the company Sodexo held its annual awards ceremony at Mount Pleasant. You attended that event as did your victim and her partner. There was dinner, and then dancing and a bar afterwards. The victim's boyfriend became very drunk and was incapable of walking without assistance. Both you and your victim had been drinking that evening, but neither of you were described as drunk. A time came when you, the victim, her boyfriend, and others were given a lift back to the JE accommodation block where you, the victim and her boyfriend live.
 - 2.1 During the journey you were a back seat passenger with the victim and others. When the vehicle reached the accommodation block you helped carry the victim's boyfriend to his bedroom in the accommodation where the victim was also staying for the night. Events in the car journey when your left arm on any view came into contact with the victim's right leg, caused the victim to feel uneasy. In her evidence your victim explained that she did not want you to get too close for comfort and did not want you to come into the bedroom. When she reached the bedroom door she told you in no uncertain terms that she required no further assistance stating "I'll be OK with him now, I'll be alright it's good." You were clearly not invited into the bedroom which was effectively her home, yet you went in regardless. Her boyfriend was then repeatedly sick in the washbasin and he was drifting into unconsciousness.
 - 2.2 You took advantage of this situation. The victim's evidence was that you mouthed the words, "I'm gonna fuck you", and you then proceeded to sexually assault her. Whilst you were found not guilty by the jury of a count of attempted rape, on any view what followed was a frightening sexual assault upon your victim in her home, which involved violence on your part as you grabbed at her hands and legs, and you were trying to lift up her dress, causing her scratch injuries to her hands and, she believed, resulting in her dress being ripped. She described being scared and frightened as to what you were going

to do to her. She was telling you, “go away, don’t do that, stop it now” but you ignored her pleas and carried on regardless. She tried to push you away about ten times using the same force as you would to move furniture – but you were strong and carried on despite her pleas for you to stop. She told the jury that she felt you had bigger intentions that night, and had she been any smaller you would probably have done a lot worse. You only stopped when her boyfriend stirred and started to mutter words, you then backed out of her room, and she slammed the door shut behind you.

- 2.3 You took advantage of the fact that your victim was effectively alone with her boyfriend being incapacitated, in what was effectively her bedroom where she was entitled to feel safe, and you subjected her to a sustained sexual assault involving violence that left her traumatised. She was described as normally being a chatty and confident person, but the following morning she was described by her boyfriend as being upset, sad and tearful.
- 2.4 Whilst you have no previous convictions for sexual offences you have a previous conviction for assault occasioning actual bodily harm in March 2013 arising out of a bar brawl. You had taken drink on that occasion as well and it appears you are someone who may resort to violence when under the influence of alcohol although you denied having a drink problem to the probation officer who prepared the pre-sentence report.
- 2.5 The Sentencing Council’s Sexual Offences Definitive Guidelines are regarded as of persuasive authority in the Falkland Islands but are not binding. I have had regard to them. I have also taken into account that in England and Wales release is after having served one half of the sentence, whereas here release is after serving two thirds, although here on release prisoners are not subject to the same supervision on licence.
- 2.6 In terms of the Sexual Offences Guidelines, there was some debate before me as to the categorisation of the harm in relation to the sexual assault, with it being recognised that “uninvited entry into the victim’s home” (here the bedroom in which she was staying) and “violence” (in that you grabbed your victim causing scratches to her body) are both factors which place the harm within category 1. Against that it is said that other category 1 factors such as “severe psychological or physical harm” or “abduction” were not present, and it was submitted that such other factors suggest that category 1 is aimed at a very serious level of harm. That said the Sentencing Council clearly regard the uninvited entry of a person into another’s home and the use of violence without imposing a qualitative description of the extent of such violence as each giving rise to a serious level of harm.
- 2.7 Ultimately it was submitted before me that this was a category 3 case. I consider that the present case is one of those cases that does not fit particularly well within the Guidelines. There are factors that exist which means that it cannot be said that “factors in categories 1 and 2 [are] not present”. In my view there are two factors from category 1 that are present namely uninvited entry into the victim’s home and the use of violence which means that the present case is not to be characterised as a category 3 case. In relation to category 2, the sexual assault was persisted in for some time with the victim

trying to push you away 10 times with you continuing in your assault despite her repeatedly telling you to stop, so although it was not a particularly sustained incident, it did carry on for some time despite the victim's pleas for you to stop. It was far removed from a brief sexual assault involving one non-consensual sexual touching.

- 2.8 It is important to bear in mind that the categories are designed to identify the extent of the harm, they are not straight-jackets to be applied rigidly and without regard to the precise factual circumstances, still less in the Falkland Islands where they are of only persuasive reach. Their purpose is to identify the nature of the harm. The harm in the present case was greater than is contemplated by category 3, and in my view was of a level that would be reflected in the mid-range of category 2. It is common ground that this is a category B case in terms of culpability. A category 2B case would have a starting point of 1 year's custody with a range of high level community order to two years custody. A category 3B case would have a starting point of a high level community order with a range of a medium level community order to 26 weeks custody.
- 2.9 Aside from the Sentencing Council Guidelines, which apply in England and Wales, an important factor in my view in sentencing for sexual offences in the Falkland Islands is that sexual assaults upon adults in the Falkland Islands are thankfully rare, and there is an important deterrent element in sentencing for sexual offences on the Falkland Islands. Sexual offences are not as prevalent here as in some other jurisdictions. Those who commit sexual assaults in the Falkland Islands should appreciate that in most cases the custody threshold will have been passed, and the likelihood is that they will face an immediate custodial sentence in the event of conviction at trial for sexual assault, absent particularly compelling mitigation.
- 2.10 There are also aggravating factors in this case. You are not of previous good character. You have a previous conviction for assault occasioning actual bodily harm. Whilst this is not a sexual offence it is an offence of violence committed by you when alcoholic drink had been consumed, and the present sexual offence also involves the use of violence and was perpetrated when you had once again consumed alcohol – I regard that previous conviction as an aggravating factor on the facts. Other aggravating factors exist, namely the location of the offence, effectively the victim's home (albeit I have already had regard to that in the context of harm which I bear well in mind), and the timing of the offence which was late at night when the victim was in a particularly vulnerable situation.
- 2.11 I have had regard to the mitigation that has been given on your behalf, that you have a good work ethic, you provide support for your daughter, and you have been saving towards building a house in St. Helena. You remain in denial, however about your offending, and lacked in empathy, as your defence counsel recognise, in putting the victim through the ordeal of giving evidence. However I recognise that you have stated that you “accept the Court's decision and your conviction”. You have cooperated fully in the preparation of the pre-sentence report and you have indicated that you would be willing to

take part in, and engage in, an appropriate sex offender treatment package in the event that a custodial sentence is imposed.

- 2.12 I recognise that a consequence of your conviction is that your employment has been terminated and it is likely that you will not be able to obtain a work permit due to the nature of your conviction. In view of your immigration and employment status as a result of which you will no longer have a right to live and work in the Falkland Islands, a community based disposal such as community service would not have been available, had that been appropriate on the facts, which it is not. Nor would a suspended custodial sentence have been appropriate on the facts, and would, in any event have been no more than nominal in actual effect and would have had no standing in St.Helena.
- 2.13 I have had full regard to the comprehensive and insightful pre-sentence report that has been prepared for which I thank the probation officer. The officer is unable to recommend a period of community supervision and recommends that the Court give consideration to the imposing of a custodial sentence of a length which would enable you to engage in completing a relevant sex offender treatment package to address your sexual offending, namely a sentence of 9 months or more. You have agreed to engage with the probation officer in that regard.
- 2.14 In my opinion, your offence is so serious that neither a fine alone nor a community sentence can be justified for it.
- 2.15 I am therefore going to pass a sentence of imprisonment. This will be shortest which in my opinion matches the seriousness of your offence, and takes into account the mitigating factors in your case.
- 2.16 The sentence I pass is one of 9 months imprisonment.
- 2.17 Such a period of imprisonment will also have the beneficial consequence that you will be able to complete a relevant sex offender treatment package which will benefit your future rehabilitation, and reduce your risk of re-offending. This is an incidental, but beneficial, consequence of the sentence I pass, and provides a real benefit that is so often lacking in other jurisdictions where a short custodial sentence of the period I have imposed is passed for a sexual offence. I trust you will make the most of this opportunity.
- 2.18 You will also be subject to a notification requirement for 10 years.



4 May 2016

Simon Bryan QC

Chief Justice of the Falkland Islands