

ROYAL COURT
(Samedi Division) 182.

9th September, 1994

Before: The Bailiff, and Jurats
Orchard and Gruchy

The Attorney General

- v -

Roger Edward Clark

1 count of having unlawful sexual intercourse with a girl under the age of 16, contrary to Article 4 (1) of the Loi (1895) modifiant le droit criminel.

AGE: 28

PLEA: Guilty

DETAILS OF OFFENCE:

Defendant then aged 27½ invited girl of 13½ into his house when his wife was out. He stripped off and had intercourse with her in the lounge. He instigated the offence and there was evidence from a Child Protection Report that the offence had had a serious effect upon the victim and her family. She had lost her friends and had been the subject of adverse comment and had been having nightmares, stomach pains and cried frequently at night.

DETAILS OF MITIGATION:

Defendant immediately admitted the offence and had pleaded guilty. There was an issue between the victim and the defendant as to whether she had consented. It was put to the Court on the basis that, as she did not resist, the accused may have persuaded himself that she consented. The defendant's plea had avoided the need for the victim to give evidence. It was not a case where there was any breach of trust accordingly and individual sentence such as Probation (recommended by the background report) was appropriate.

PREVIOUS CONVICTIONS:

1 for refusing to quit licensed premises and assaulting police officers (bound over).

CONCLUSIONS:

15 months' imprisonment.

SENTENCE AND OBSERVATIONS OF THE COURT:

Conclusions granted. In cases of this nature a prison sentence will normally be imposed unless there are exceptional circumstances. The main factors were the considerable disparity in age and the effect upon the victim. It was important that older men should be aware of their responsibilities and the deterrent element referred to in R. v. Forsyth (1987) 9 Cr.App.R.(S) 126 was appropriate even if the breach of trust, which was present in that case, was not present in this case. The Court did not find that there were exceptional circumstances to enable it to impose a non-custodial sentence.

The Attorney General
Advocate A.R. Binnington for the accused

JUDGMENT

THE BAILIFF: It is clear from the authorities to which our attention has been directed that a prison sentence is normally imposed in cases of this nature, unless there are exceptional circumstances entitling the Court not to do so.

The first question we have to ask ourselves is whether there were, in this case, those exceptional circumstances which would have entitled the Court not to impose a prison sentence. We have been unable to find those circumstances.

The accused knew perfectly well that this was a young school girl, having seen her in school uniform. He lived on the same estate, and it was quite clear that there was a great disparity of age between them: she was only 13 $\frac{1}{2}$ years old at the time, and he was 27 $\frac{1}{2}$. We cannot think that a man of that age, with that age disparity between him and the child, should not go to prison.

It is perfectly true, as the Attorney General has said and as Counsel has very carefully argued before us, that in R -v- Forsyth (1987) 9 Cr.App.R.(S) 126, there was a greater element of trust, inasmuch as the child in that case was a baby sitter. Clearly, however, that case is also an authority for suggesting that deterrence has to be taken into account.

The main matter to which we have had regard has been the effect on the child. It is quite clear from the reports that there has been a great effect; indeed, the action of the accused has almost ruined family life in both families. The fact that it has affected the accused's family is really attributable only to his own actions. There is, of course, mitigation in the fact that he pleaded guilty immediately and has thereby saved the child a certain amount of trauma; also his agreeing certain of the facts - notably in relation to the question of consent - has obviated the need for a 'Newton' hearing which would, again, have been a trauma for the child.

Having said all that, the Court is nevertheless aware that, in cases of this nature, the legislature has provided for a sentence of imprisonment of up to two years; and one of the principles the Court feels bound to take into account and to express this morning is that, as the Attorney General has said, it is important that older men should be aware of their

responsibilities in this respect, when living next door to and associating with children much younger than themselves.

Accordingly, we cannot accept your suggestion, Mr. Binnington - although we did give it serious consideration - that this is a case which merits other than a prison sentence; that is to say community service as an alternative to a prison sentence. We feel that a prison sentence should be imposed and we cannot say that the conclusions of the Attorney General are wrong. Accordingly you are sentenced to 15 months imprisonment.

AUTHORITIES

Thomas: Principles of Sentencing (2nd Ed'n): pp.121-122.

"Sentencing News" (27th July, 1993) Issue 3: pp.6-8.

R.-v-Forsyth (1987) 9 Cr.App.R(S) 126.