

In the Supreme Court of St. Helena

Citation: SHSC 15/2023

Criminal

Sentence

Attorney General

-v-

Brooklyn Fowler

Sentence dated 1st December 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. Mr Fowler you pleaded guilty at the earliest opportunity to an allegation of sexual activity with a child.
2. Your victim was 13 years old and you were 22 years old at the time. You were a daily visitor to your victim's house, you being friends with her father and in a sexual relationship with her mother. Every day you would go there and have your evening meal. After that you would leave at about 9pm on work nights and later on the weekends. Occasionally you stayed over and when you did this would be in the front room or on your victim's bed.
3. You would regularly be in your victim's room and would lie on her bed where you and her would watch videos on a telephone or do other activities that a 13 year old might engage in. You were seen as a brother figure to your victim and indeed you were saved as a contact in her phone under 'brother.'
4. This girl trusted you and you were a source of emotional support to her. Her parents trusted you to be around her and you spent time together in her bedroom with the door shut
5. You will be sentenced on the basis of your police interview and evidence at trial which is that this was a short lived penetration of the vagina with your penis, that you withdrew when you realised what you were doing was wrong and did not ejaculate. You also knew that the girl was 13. You said in your evidence that this girl came onto you, I do not have to decide whether this is true or not. You were the adult in the room, the older brother figure and the one best placed at that moment in time to protect her from herself. She is a child and, whichever way you look at it, you took advantage of that for your own sexual gratification.

6. After you abused her you told her not to tell anyone and she agreed with this. You knew only too well what you did was wrong and you wanted to pretend it never happened. You continued to go round to her house and spend time with her alone in her bedroom. When it did come out what you had done the impact upon her was only too evident from hearing from her mother about how she responded to events being discovered.
7. There is an impact statement which of course is predicated upon more extensive offending which you were found not guilty of. However your victim does talk of the type of impact that is a common feature of this type of offending. She feels conflicted in that she loved you and still cares about you which causes confusion about why you abused her. She says that she should feel safe in her own bedroom. She talks about the loneliness of not having anyone to talk to and feelings that she herself had done something wrong. She talks about rumours and being bullied and that school is not a happy place. She also talks about a loss of trust with her parents and self-harming. Mr Fowler these are common features of this type of offending whether it be from one incident or multiple ones. The sentencing guidelines take these into account and this impact upon your victim does not aggravate the offending as it reflects how those abused commonly react. I mention them so that you can reflect upon what you did
8. I have regard to everything that has been so ably said on your behalf and your pre-sentence report. I do not have regard to the further medical information on your victim that was served this morning.
9. Your pre-sentence report does not make for happy reading. You have no sympathy for your victim, blaming her for what happened and describing her as a willing partner having instigated sexual intercourse. You go further by impugning her character by saying that she was not a virgin having been sexually active with 2 other males, which in some way you think further justifies your actions. You clearly have no empathy for the trauma suffered by this child
10. I will apply the sentencing guidelines. For harm this falls within category 1 due the penetration. Culpability is assessed as between categories A and B. There was a significant disparity in age but not to my mind such that would justify moving this fully into category A. That is especially the case as none of the other category A factors apply here.
11. I start the sentence at 3 years before having regard to the following aggravating and mitigating factors. You abused this girl in her own bedroom where she should feel safe and she was fearful that she had become pregnant by you. You are however of previous good character.
12. In light of the aggravating and mitigating factors identified I will not deviate from the three years before applying the relevant discounts. As the English guidelines have been used I will apply a 25% reduction to have regard to the differing release provisions between England and St Helena and also for the prison conditions that prevail. This provides a sentence of 27 months. This is further reduced by one third to reflect your guilty plea to a sentence of 18 months.
13. I now have to consider if there is a meaningful non-custodial sentence or, failing that, if the sentence can be suspended. The offence is too serious to be marked by a community sentence and it must be a custodial one.
14. Having heard you give evidence and seen your pre-sentence report there is a significant defect in your thinking where it comes to your attitudes to women. That you relied upon the girl coming on to you to try and excuse your conduct is very concerning and that you regularly got onto the same bed as an adolescent girl you were not related to, and on occasion spent the night on it, shows that you exposed this girl to

this type of offending. You are assessed as posing a high risk of serious harm to others. In those circumstances the risk is too great to suspend the sentence.

15. The sentence is one of 18 months imprisonment. There will be a sexual offences prevention order until further order of this court in the following terms:

You are prohibited from:

- i. Contacting directly or indirectly any female child under the age of 16 other than that which is:
 - a. inadvertent in the course of everyday life; or
 - b. with the consent of the child's parent or guardian who is aware of this conviction and is also with the written consent of Children's Social Care.
- ii. Contacting directly or indirectly your victim.

Duncan Cooke, Acting Judge of the Supreme Court
1st December 2023

**NB Appeal Attorney General's appeal allowed 3rd June 2024 SHCA 1, 2 & 3 2024
and sentence increased to 22 months**