

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

(CRIMINAL DIVISION)

Information No.240/7/2023

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

V

JASON FERGUSON

Before: The Honourable Mr. Justice Franklyn K M Williams OB KC

Appearances: Mrs. Cephia Pinder-Moss with her Mr.Calnan Kelly for the
Director of Public Prosecutions

Mrs. Wendawn Miller-Frazier for the convict

Hearing Date: 25 June 2025

JUDGEMENT ON SENTENCING

**[Criminal Law – Evidence – Rape – Aggravating factors outweighing
mitigating factors – Principles in sentencing – Appropriate sentence]**

Williams J

[1.] On 18 February, 2025, the accused (hereinafter referred to as “the convict”) was found guilty by unanimous jury of the rape of the complainant (“name withheld”).

The Facts

[2.] On the evening of 2nd January 2023, the complainant attended the birthday celebration of her friend Kyeshon Bain at the Envy Sporting Lounge. Jason Ferguson attended that event along with his friend Patrero Sherman, the paramour of Kyeshon Bain. Kyeshon Bain became intoxicated. Patrero Sherman and the convict took Kyeshon Bain to her residence.

[3.] While at Kyeshon Bain's residence an altercation occurred, as a result of which all left, the complainant into her vehicle along with Kyeshon Bain, Patrero Sherman and the convict. She had given Patrero Sherman the car keys, which he in turn gave to the convict.

[4.] At some point while on Independence Drive, the vehicle came to a stop, Kyeshon Bain and Patrero Sherman exited and engaged in an argument. The convict threatened the complainant. He told her to be quiet, that he had a firearm. He locked the doors of the vehicle and drove off with her. He took her to the South Beach Canal, where he had oral, vaginal, and anal intercourse with the complainant without her consent.

[5.] The convict threatened to kill the complainant, who begged him to let her go and promised not to report the matter to the police. The convict instructed the complainant to drive, and she drove to Patrero Sherman's house. Upon arrival, the complainant left the vehicle, fled to Patrero Sherman, who stood at outside of the premises along with his wife. The complainant informed both Shermans that the convict had raped her. Patrero Sherman's wife took the complainant to the Grove Police Station.

[6.] On Tuesday 3rd January 2023, the complainant reported (Criminal Investigation Department) that she had been raped by a male known to her as Jason Ferguson ("the convict").

The trial

[7.] The complainant testified that she met or seen the convict on two prior occasions, both and only in the company of Kyeshon Bain and Bain's paramour Patrero Sherman, the best friend of the convict.

[8.] The convict testified that he and the complainant were, at the time of the incident, in a relationship, had been intimate at their first meeting, and continued to be so frequently. This "tale" of relationship was contradicted by Patrero

Sherman, his acknowledged best friend, who also gave evidence. The convict's indications to Tabitha Hanna, Probation officer are at variance with his tale of "sex at first sight" told to the jury:

"He ("the convict") claimed that Ms. Scott was experiencing relationship problems with her boyfriend and often confided in him. Hence, *they became closer, which led to them to them becoming intimate.*" (emphasis added)

The jury rightly rejected the convict's defence.

[9.] Per the evidence, in particular that of the convict, the portrait emerges of a vile deluded fantasist, who projected his vile sexual fantasies upon the complainant.

Probation report and plea in mitigation

[10.] Mrs. Miller Frazier, on behalf of the convict makes a plea in mitigation. Remorse, if there could be said to be any expressed by the convict, is so faint, as to be unnoticed. The convict maintains his innocence:

"Mr. Ferguson expressed surprise that he was charged and convicted of the present offence, and claimed that he and (complainant) have been intimate several times prior to that night. ...Mr. Ferguson *maintains his innocence, stating that the act was consensual.*" (emphasis added) **Probation report** 14th May 2025

[11.] The convict is not of good character:

"Although, his criminal past does not indicate his guilt or innocence in the present offence, *none of the resource persons were able to speak on his character in this matter.*" (emphasis added) **Probation report** 14th May 2025

Submissions of the convict

[12.] Learned Counsel Mrs. Miller Frazier provided a number of authorities. These included **R v Coakley (James)** (1990) 54 WIR 32 and **Oliver v R** [2007] All ER (D) 327, the former references rape, the latter attempted rape, both of which suggest a term of imprisonment of seven years.

Submissions of the Director of Public Prosecutions

[13.] Learned Counsel Mrs. Pinder Moss provided a number of authorities, all from this jurisdiction, including **Regina v Oscar Ingraham** No. 54/2/2013, **Frederick Green v Regina** SCCrApp No. 83 of 2014, and **Franky Eugene v The Attorney General** SCCrApp. No. 221 of 2015 which all suggest a term of imprisonment of between fifteen to twenty years.

The law

[14.] Section 6(a) of the Sexual Offences Act, Chapter 99 provides that whoever commits rape is liable to life imprisonment

[15.] Rape is the gravest of offences against the person. In **Franklyn Huggins v The Queen** BVIHCR 2009/001, Charles J found:

“Short of homicide, rape is the ‘ultimate violation of self’. It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity.”

[16.] In **Billam**, the English Court of Appeal, in laying down sentencing guidelines for rape, cited a passage from the Criminal Law Revision Committee 15th Report on Sexual Offences, Command Paper 9213 of 1984, which it said accurately reflected the views of the Court:

“Rape is generally regarded as the most grave of all the sexual offences...[It] involves a severe degree of emotional and psychological trauma; it may be described as a violation which in effect obliterates the personality of the victim. Its physical consequences equally are severe: the actual physical harm occasioned by the act of intercourse; associated violence or force and in some cases degradation; after the event, quite apart from the woman’s continuing insecurity, the fear of venereal disease or pregnancy. We do not believe this latter fear should be underestimated because abortion would usually be available. This is not a choice open to all women and it is not a welcome consequence for any. Rape is also particularly unpleasant because it involves such intimate proximity between the offender and the victim. We also attach importance to the point that the

crime of rape involves abuse of an act which can be a fundamental means of expressing love for another; and to which as a society we attach considerable value.”

[17.] In **Millberry** [2003] 1 WLR 546, Lord Lane had this to say:

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence... . A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case.”

[18.] The maximum penalty for rape is life imprisonment. In **R v Puru**, the court underlined the wide discretion of court when sentencing for rape, viz, to ensure that punishment imposed reflects the justice of the case, having regard to the particular facts of each case:

“In exercising their sentencing responsibilities, judges must balance various critical considerations. While society’s condemnation of rape is a paramount consideration, sentences should seek to protect women, to deter future offences and to punish the offender justly with regard to his case and by reference to other cases.

[19.] Here, I adopt the dicta of Charles J in **Regina v Oscar Ingraham** Info. No.54/2/2013:

“Broadly speaking, there are three dimensions which a judge is obligated to consider in assessing the gravity of an individual offence of rape. The first is the degree of harm to the victim; the second is the level of culpability of the offender; the third is the level of risk proposed by the offender to society.”

[20’] Here, also, I remind myself of the four classical principles of sentencing:

- (i) Retribution – punishment is intended to reflect society’s and the legislature’s abhorrence of the offence and the offender;
- (ii) Deterrence – to deter potential offenders and the offender himself from recidivism;
- (iii) Prevention – preventing the offender through imprisonment from offending against the law;

- (iv) Rehabilitation – assisting the offender to reform in order to re enter society as a contributing member.

[21.] Which of these factors predominate depends on the particular circumstances of the case.

[22.] The complainant suffered a particularly brutal assault. She was threatened with death; at the scene, she was dragged out of the vehicle, beaten, dragged across the ground, assaulted orally, vaginally, anally. The notes of the emergency attending physician bear testimony to that brutality:

“Abrasions were noted to the back. A laceration was noted to the anus. ... There was bruising to the left cheek and tenderness to the left cheek and tenderness to the left flank. There was also tenderness noted to the anus. Bleeding was noted in the vagina... .”

and:

“Emotional state for the patient: She was depressed and crying. And her appearance at the time: She was disheveled as well as dirty.”

[23.] To add insult to injury, the convict claimed, untruthfully and fantastically, not only a relationship with the complainant, but consensual sexual intercourse upon first meeting.

[24.] Here, I have not the slightest hesitation in the application of the principles of retribution, deterrence and prevention in determining the appropriate sentence.

[25.] In considering mitigation, I apprehend none. The applicant is not a young person, and is not, as per the law, a person of good character.

Aggravating factors outweigh mitigating factors

[26.] I consider to be aggravating:

*The age of the convict at the time of the offence

*The age of the complainant – 23 years at the time of the offence

- *The premeditation of the offence
- *The brutality of the assault
- *The trauma of the complainant heightened by having to testify
- *The convict has shown no remorse
- *The convict claimed to have had a consensual sexual relationship up to and including the evening of the offence, and maintains this

Appropriate sentence and disposition

[27.] Having heard the submissions of the applicant Director of Public Prosecutions and of the respondent convict, and considering the particular circumstances of this case, and considering the principles of sentencing and guidelines from English and Bahamian authorities, a term of imprisonment of twenty years is appropriate. The convict is so sentenced.


Williams J.

1 July 2025