IN THE COURT OF APPEAL OF BELIZE AD 2015

CRIMINAL APPEAL NO 1 OF 2013

WINSTON DENNISON Appellant

v

THE QUEEN Respondent

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Samuel Awich	Justice of Appeal
The Hon Mr Justice Christopher Blackman	Justice of Appeal

Appellant in person.
C Ramirez, Senior Crown Counsel, for the respondent.

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22 October 2014, 10 March and 14 October 2015.

AWICH JA

[1] The appellant, Winston Dennison, was indicted in the Supreme Court for the offence of carnal knowledge of a girl over the age of 14 and under the age of 16, an offence under s.47 (2) (a) of the Criminal Code, Cap. 101 of Laws of Belize. The indictment was comprised of 3 counts.

[2] The first count stated that: "Winston Dennison on a precise date unknown between the 8th and 30th days of April 2010, in Belize City in the Belize District, Central District of the Supreme Court, carnally knew [MC], a girl above the age of fourteen years, but under the age of sixteen years." The second count stated that: "Winston

Dennison on the 22nd day of August 2010, in Belize City, in the Belize District in the Central District of the Supreme Court, carnally knew [MC], a girl above the age of fourteen years, but under the age of sixteen years, to wit, fourteen years and nine months of age." The third count stated that: "Winston Dennison on 24th day of August 2010, in Belize City in the Belize District, in the Central District of the Supreme Court, carnally knew [MC], a girl above the age of 14 years, but under the age of sixteen years, to wit, fourteen years and nine months of age." The appellant was 53 years old when the incidents were said to have occurred. He pleaded not guilty to each count.

[3] In the trial before the learned judge, Gonzalez J, and a jury from 6 to 17 December, 2012 the appellant did not have an attorney to represent him. The jury returned a verdict of guilty on each count. Gonzalez J entered the verdicts, and on 21 December, 2013 passed the following sentences: 5 years imprisonment on the first count; 6 years imprisonment on the second count; and 7 years imprisonment on the third count. The sentences were to run consecutively, and to commence on 17 December 2012, the date of conviction. That meant that the sentence of 5 years imprisonment on the first count would commence on 17 December 2012, the second sentence of 6 years imprisonment would commence on the day following the expiration of the first, and the third sentence of 7 years imprisonment would commence on the day following the expiration of the second.

[4] We noticed that the committal warrant states erroneously that, the sentence on the second count is 5 years imprisonment. It is advisable that judges sign or check committal warrants, and prosecuting counsel obtain a copy.

[5] The learned judge did not say anything about how the three sentences of imprisonment would relate to a prior prison sentence of 25 years imprisonment for manslaughter that the appellant was serving at the time of the conviction on the three counts of carnal knowledge. The appellant had been released from prison on parole when the incidents, the subjects of the indictment for carnal knowledge, were said to have occurred.

The facts

[6] The evidence adduced by the prosecution, and accepted by the jury as sufficient proof beyond reasonable doubt, was the following. MC, the complainant, and her brother M were born in Cayo, Belize, to RDC (the mother) and MC (the father). MC was born on 2 November, 1995 at La Loma Luz Hospital. Her grandmother, a prosecution witness, attended in the hospital ward during the birth. MC's father died in 1999, the mother in 2007. AD, the second prosecution witness, became the guardian of MC and her brother M. AD became the guardian after the guardians appointed by will, and who lived in the USA were unable to take the children to live in the USA. AD is the daughter of the appellant and a cousin of MC and M. AD's mother was the sister of the father of MC and M. The two children were brought to live in Belize City where AD lived with her sisters and mother. AD was then 23 years old, she was 28 years old when she testified in December 2012.

[7] When the children came to live with AD the appellant was in prison for a different matter. He was subsequently released on parole and went to live at the same address. The information about the prior imprisonment of the appellant was unguardedly given during the proceedings. But the judge properly directed the jury to exclude it from their consideration about whether the prosecution did prove beyond reasonable doubt that the appellant was guilty of the charges.

[8] At the address where AD and the children "lived" there were two houses; one was a "bungalow", the other was a double storeyed house. MC and M went to live with AD and her sisters A and K in the bungalow. The Parents of AD lived on the ground floor of the storeyed house. The upper floor was rented out. In April, 2010 when the incidents, the subjects of the indictment, were said to have occurred, AD had gone to live with her boyfriend in Orange Walk. AD's mother was left in charge of MC and M. She moved to the bungalow. In December, 2012 when she testified AD lived in San Pedro where she was employed.

[9] From this point on the evidence (which was believed by the jury) was an account of sordid events of manipulation and sex. In April, 2010 MC, M, A, K and the appellant's

wife, D (aunt D), lived in the bungalow; the appellant continued to lived on the ground floor of the storeyed house. The upper floor was still rented out.

[10] One Sunday morning the appellant requested aunt D to allow MC to go to the ground floor of the storeyed house so that he would “talk” to her. Aunt D permitted MC to go. While there with the appellant alone, the appellant asked MC whether she would like him to be her secret lover, or a father figure. MC replied that she would like him to be a father figure. She returned to the bungalow. From that time the appellant used to come to MC’s room. One night the appellant got on her bed. Nothing more was said about that.

[11] Then one Saturday night in April 2010, after the 8th, when MC, K, A and aunt D returned from church the appellant brought some food and drink to the bungalow for them, and asked whether K would still want to go and sleep in the ground floor house, where he slept. K is appellant’s daughter. K said yes, but the mother (aunt D) did not want K to go alone to sleep there together with the appellant, so she asked MC to go with K to sleep there. MC then went together with K.

[12] In the house (the ground floor of the storeyed house) the three, MC, K, and the appellant ate chips and dip and watched television. When K fell asleep the appellant switched off the lights and tv. He then talked to MC begging her to have sexual intercourse with him, and was rubbing her legs. After long begging by the appellant, MC said, “I got vexed and I just told him yes”. The appellant removed MC’s pants and sucked her vagina, and then he inserted his penis into her vagina and then ejaculated on her belly. He wiped off her belly. MC, K and the appellant slept on his mattress until morning when MC and K went back to the bungalow.

[13] On the morning of 22 August, 2010 the appellant went to the bungalow and requested aunt D to permit MC to go to the ground floor of the storeyed house so that he would talk to MC. Aunt D permitted, and MC went with the appellant. In the house the appellant took off his clothes and MC’s clothes. He then sucked her vagina, inserted his penis in, and ejaculated on her belly and cleaned it. He wore his clothes back and put MC’s back on her. She returned to the bungalow.

[14] On 24 August, 2010 about 7.00 p.m. the appellant again requested aunt D to permit MC to go to the storeyed house so that he would talk to her. Aunt D permitted, and MC went with the appellant to the ground floor of the storeyed house. First he talked to MC, then he removed his clothes and MC's clothes. He sucked her vagina and then inserted his penis into her vagina and ejaculated on her belly and cleaned it. He wore back his clothes and put back MC's clothes on her. MC then returned to the bungalow.

[15] MC said that she allowed the appellant to have sex with her because she felt pity for him, he had been away from his children for a long time. The appellant also told MC that he would leave home if MC did not agree to have sexual intercourse with him.

[16] All this came to light from one incident. On 28 August, 2010 AD was at the address in Belize City where MC and the rest of the family lived. A text message to MC came on MC's telephone supposedly from the appellant. AD regarded the content as a serious matter. She took MC to another aunt, RBC, in Belize City and discussed the matter. AD then reported the matter to Ms. Lennan, a social worker, on 17 September, 2010. On the same date the social worker, and AD took MC to Belize Health Care Partners where Dr. Mauricio Navarette examined MC and concluded that, the hymen in MC had "complete tear", which meant that she had already experienced sexual intercourse. On 18 February, 2011 AD and MC went to the police station and made a report complaining against the appellant. On 11 March, 2011 a police officer, WPC Tamara Humes unsuccessfully searched for the appellant. On 17 March, 2011 the appellant went to the Police Station. WPC Humes informed the appellant of the report of carnal knowledge made against him, cautioned and arrested him. On 18 March, 2011 WPC Humes charged the appellant with 3 counts of having carnal knowledge of a girl over 14 years old but under 16 years old. The appellant was subsequently indicted and tried in the Supreme Court.

[17] The defences which emerged from the testimonies of the witnesses, or were intimated were that: (1) MC and A were permitted by aunt D two times to go to the house where the appellant slept because they wanted to watch a certain tv programme; (2) on the occasions that the appellant requested aunt D to permit MC to go to talk to the appellant, he merely counselled MC about her studies and sexual diseases, it was

all about the well-being of MC and her brother M; and (3) undue influence and pressure were exerted on MC by AD to fabricate the complaint against the appellant, AD wanted the appellant to leave the home. The jury rejected the defences, accepted the prosecution evidence, and returned the verdicts of guilty.

The grounds of appeal.

[18] The appellant filed notice of appeal on 2 January, 2013 and grounds of appeal on 2 February, 2015. Although the grounds were numbered 1 and 2, there were four items of complaint in them. They were set out as: "Notice of grounds of appeal against conviction or sentence," and stated as follows:

> "TO THE REGISTRAR OF THE COURT OF APPEAL
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> I, **WINSTON DENNISON** HAVING BEEN CONVICTED OF THE OFFENCE OF CARNAL **KNOWLEDGE** AND SENTENCED TO **5 YEARS X2 AND 7 YEARS** BEING A PRISONER AT THE BELIZE CENTRAL PRISON, DO HEREBY GIVE YOU NOTICE OF THE GROUND OF APPEAL AGAINST MY **CONVICTION** AND **SENTENCE** RELIED ON, THAT IS TO SAY
>
> **GROUNDS OF APPEAL**
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> 1. Prejudicial trial in that the trail judge failed to grant the appellant time to seek legal representation considering the sensitivity of the allegations. The matter was also prejudicial because the appellant was not offered an adjournment to locate his second named witness. Prejudicial evidence was admitted when the judge allowed WPC Humes to mention the appellant's previous manslaughter conviction; it is evident that the conviction sheds negative light on the allegations in question.
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> 2. The weight of evidence given by the accuser was not sufficient for a guilty verdict in that there were inconsistencies in the dates she gave; she is not a credible witness as she refused to cooperate with the police to take the medical examination."

[19] At the hearing of the appeal the appellant presented to the Court a further document headed, “Grounds”. The contents, some 24 paragraphs, were merely repetition and explanation of the grounds of appeal already filed, and supporting arguments. He told the Court that, someone wrote the document for him, and that his ability to read was limited. The President assured the appellant that this Court would read the document and fully consider the contents. We have done so.

Determination:

[20] We would like to make an observation here that, on an appeal to the Court of Appeal in a criminal case, it is the responsibility of the appellant to demonstrate that, the verdict of the jury should be set aside on the ground that, (1) it is unreasonable, or (2) cannot be supported having regard to the evidence, or (3) there was a miscarriage of justice on any ground, or (4) the judgement of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law. There is of course, the proviso that, the Court of Appeal may dismiss an appeal if it considers that, ***no substantial miscarriage of justice has actually occurred***, notwithstanding that a point raised in the appeal might be decided in favour of the appellant. The above observation comes from ***s. 30 (1) of the Court of Appeal Act Cap. 90, Laws of Belize***. The section states:

> **30.-(1) The Court on any such appeal against conviction shall allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgement of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:**
>
> **Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.**

[21] The first ground of appeal that, “the trial judge failed to grant to the appellant time to seek legal representation”, raises the question of denial of a constitutional right. In our view, it must fail. There is no factual basis for it. The Constitution declares that, an accused has a right to be represented by an attorney of his choice; but it is at his own expense. Sections ***5 (2) (b) and 6 (3) (d) of the Constitution*** declare the right as follows:

> **5 …**
>
> **(2) Any person who is arrested or detained shall be entitled –**
>
> **…**
>
> **(b) to communicate without delay and in private with a legal practitioner of his choice, and in the case of a minor, with his parents or guardian, and to have adequate opportunity to give instructions to a legal practitioner of his choice.**
>
> **…**
>
> **6 …**
>
> **(3) Every person who is charged with a criminal offence -**
>
> **…**
>
> **(d) shall be permitted to defend himself before the court in person, or at his own expense, by a legal practitioner of his own choice.**

[22] The responsibility of the court in ensuring the above constitutional right is simply to afford the accused adequate time, that is, reasonable time, to obtain an attorney of his choice. Reasonable time may include a realistic time to obtain attorney’s fees.

[23] In the trial the appellant had more than adequate time to obtain an attorney. He was arrested on 17 March, 2011 and was informed that, his arrest was made pursuant to the complaint made against him of carnal knowledge of MC, a girl under the age of 16. On 18 March, 2011 he was formally charged in three counts, with the offence. Then

the appellant would have been committed by a magistrate for trial in the Supreme Court. He was indicted. Trial in the Supreme Court commenced on 6 December, 2012. It was 1 year and over 8 months from the time the appellant was arrested. On that date (6 December, 2012) after a plea of not guilty was taken on each count, and the jury empanelled, the trial was adjourned to 10 December, 2012. The appellant did not, on 6 or 10 December, request the judge to adjourn the trial so that the appellant would obtain an attorney. On these facts the judge was entitled to conclude that the appellant was unable to obtain an attorney to represent him and was resigned to having the trial proceed without an attorney.

[24] We shall mention *en passant* here that, the law ***in s. 194 of the Indictable Procedure Act, Cap. 96,*** provides for courts to assign an attorney (*pro bono publica)* only to an impecunious accused person charged with an offence that is punishable with capital punishment. This Court has on many occasions urged that, *pro bono publica* assignment of attorneys be extended to impecunious accused persons charged with serious offences such as, sexual offences, aggravated robbery, kidnapping, attempt to commit them and attempted murder. It is all too frequent that impecunious appellants apply for long adjournment in order to enable a relative, usually a mother, to raise money for attorney's fees. When this appeal was called up for hearing in the October, 2014 session, the appellant requested adjournment so that he would obtain an attorney. The Court traversed the hearing to the March 2015 session. The appellant was still unable to instruct an attorney in March, 2015. He presented his appeal without assistance by counsel.

[25] The record of proceedings does not indicate that the trial judge inquired of the appellant whether he wished to have an attorney, and the reason for not having one in court. It is always a good practice to do so whenever an accused person appears without an attorney. The circumstances in this case show, however, that the appellant was not denied an opportunity to obtain an attorney.

[26] To satisfy ourselves that, the fact that the appellant was not represented by counsel did not occasion prejudice to the appellant at the trial, we considered whether as a matter of fact and law, the trial proceeded in an unfair way, and whether any miscarriage of justice was otherwise occasioned, and the conviction was unreasonable

or cannot be supported having regard to the evidence. We concluded that, there was no instance on which unfair trial was occasioned, or a miscarriage of justice was occasioned, because the appellant did not have an attorney representing him. The judge was alert to those possibilities. He stated many times during the proceedings that, because the appellant was not represented by counsel, the judge had a duty to explain the law and rules of practice to the appellant. We agree that the judge had a duty to explain the law and rules of practice to an accused person not represented by counsel, provided that the judge did not stray beyond remaining neutral. He had a duty to ensure a balanced trial.

[27] Some of the examples of explanations and even cautions rendered by the judge are outlined below. At empanelling the jury, the judge asked the appellant whether he would object to any of the persons called upon to serve as a member of the jury, and indeed asked the appellant to confirm whether he was “comfortable” with the persons called upon. The appellant answered that, he did not object to any, and that he was comfortable with them.

[28] At the commencement of the trial the judge inquired if the appellant would call witnesses, and the judge directed that subpoenas be issued for attendance of the witnesses. He inquired again at the close of the prosecution’s case as required by a rule of practice.

[29] At the end of examination in chief of MC, the first prosecution witness, the judge, at page 45 of the record, explained to the appellant that, it was his time to ask questions to the witness, that might “clear up things”, and that would “show that the witness was not a truthful witness.” When the appellant was taking too much time on whether MC had sexual intercourse with other people, the judge explained to him at pages 75 and 76 that, he should not spend too much time on that, and that, he should also put it to MC that, the appellant never had sexual intercourse with her in April, 2010, on 22 and 24 August 2010, for which he had been charged.

[30] When the appellant in cross-examination introduced a letter written by MC to him, which he said would explain the trusting relationship between MC and him, the judge, at pages 88 to 98, explained to him that, the contents of the letter might be

damaging to his defence. The judge advised several times. Despite that, the appellant insisted on disclosing the contents of the letter. In the end the judge directed the jury to disregard the prejudicial parts of the letter. At page 129 the judge stopped the prosecution from re-examining MC about other letters referred to by the appellant in cross-examination but the contents of which had not been revealed by the appellant.

[31] At pages 157 to 168 the judge explained to the appellant when he cross-examined AD his daughter, that the appellant should not introduce questions about accusation of his misconduct against AD made by AD, when the prosecution had omitted the matter from the evidence, and explained that it was irrelevant to the three charges against him. At page 208 the judge explained the relevance of the date of birth of MC, and told the appellant that he could ask questions to the grandmother witness, that would challenge the age of MC, because the age of MC was important in the offence charged.

[32] Further, when we examined the summing-up by the judge for any mistake of law, or in the direction regarding the facts, we also looked for any direction regarding matters that had been mentioned during the trial and that could be prejudicial to the appellant. Some of them were the following. At page 287 the judge directed the jury that, they should not look at the appellant as, “a predator”, they should disregard any prejudice. At page 308 the judge explained that, because the appellant was not represented by counsel the judge had to, “explain things”, to the appellant and “advise” him, although sometimes the appellant, “did his own thing.” At page 313 the judge gave what he described as, “a strong direction,” that the jury should exclude the prejudicial part of the evidence given by AD of misconduct by the appellant towards her. The evidence had been given in an answer to a careless question in cross-examination by the appellant.

[33] Regarding the ground that, prejudice was caused to the appellant because, “evidence was admitted when the judge allowed WPC Humes to mention the appellant’s previous manslaughter conviction”, we concluded that no prejudice was occasioned, despite the improper revelation of the previous conviction of the appellant for manslaughter, during the trial. That is because the judge gave proper direction to the jury to exclude it from their consideration of the evidence and verdict. Factually the ground of appeal was erroneous. WPC Humes never mentioned the previous conviction

of the appellant for manslaughter or any at all. The relevant part of the record is of the cross-examination of WPC Humes at page 194 as follows:

> "Q. My question to her is when Ms, Bevan had taken me to the station what did you tell her?
>
> A. I informed her as well of the report made against you just as I did to you.
>
> Q: You had told my parol officer that you had enough evidence to arrest me because you had a cell phone…?
>
> A: No, Mr. Dennison, I do not recall any of that."

[34] The prejudicial information was, in fact, first stated by the first prosecution witness when the judge unguardedly asked the witness, at what place her aunt used to take the witness to visit the appellant. The prosecutor had carefully warned the witness not to name the place. The witness answered to the judge that, it was at prison. Unfortunately the appellant, despite explanation by the judge, subsequently spoke about his imprisonment for manslaughter freely when he cross-examined witnesses, and in his unsworn statement. The judge properly directed the jury as follows: "You also heard members of the jury that the accused said a number of times that when he came out of prison…Members of the jury I don't want you to be prejudiced by what he said. The fact that he was in prison for whatever offence is neither here or there. Forget about that because that is not for your consideration."

[35] The ground that, "the appellant was not offered adjournment to locate his second witness," also fails. Adjournment of trial must be applied for based on good reason. We noted that the appellant was unrepresented. But we also noted that, the discussion between the judge and the appellant invited the conclusion that the appellant decided that he would let the case proceed without the witness. At page 258 the judge asked the appellant: "do you have any other witness?" The appellant answered: "no sir." Then he proceeded with an unrelated matter, he requested whether he would be allowed to hand in certain medical reports which would show that he cared for MC very much, he used to take her to the hospital for medical attention. The judge rejected the reports and gave the reasons. Then the judge asked: "now, that is your case?" The appellant answered,

"your honour, I don't have another witness because the other witness came this morning, but she had to go back because she had to go to the hospital to deal with her appointment. So, she will not be able to come." The judge then asked again "Okay, so this is your case?" The appellant answered: "Yes sir." The appellant did not ask for or intimate that he wished to have adjournment so that he would call the witness.

[36] Regarding the ground that, "the weight of the evidence…was not sufficient for a guilty verdict…," that is, "*the verdict of the jury should be set aside on the ground that it cannot be supported, having regard to the evidence*," we concluded that it could not succeed. The evidence adduced for the prosecution could, if the jury accepted, prove all the elements of the offence of carnal knowledge on each count. The evidence was that: MC was born on 2 November, 1995, the acts of sexual intercourse took place between 8 to 30 April 2010, on 22 and 24 August 2010; MC was over 14 years old but under 16 years old. The appellant was the one who had the sexual intercourse with MC on those dates. It was open to the jury to accept or reject the evidence. They accepted it. This Court, an appellate court, cannot substitute its own view of the facts. The verdict of guilty on each count, returned by the jury, can be supported, having regard to the evidence. None of the three verdicts can be described as unreasonable.

Conclusion: appeal against conviction is dismissed.

[37] We have considered all the complaints in the grounds of appeal. We have not been persuaded that, the verdict of guilty on each count was unreasonable, or cannot be supported, having regard to the evidence, or that there was a miscarriage of justice on any ground in the trial of the appellant. Further, we have not identified any error of law in the direction given by the judge to the jury on points of law. We dismiss the appeal against conviction on all three counts.

Sentences.

[38] At the hearing of the appeal the appellant withdrew his appeal against the sentences. The respondent did not appeal at all. Therefore this Court affirms the sentences of 5 years imprisonment, 6 years imprisonment and 7 years imprisonment for the three counts, and the order that the sentences, " are consecutive". We add, however, that all three sentences shall be consecutive to the sentence of imprisonment

for the conviction for manslaughter that the appellant is currently serving. We have made the additional order because the trial judge erred by omitting it. ***Section 161 of the Indictable Procedure Act Cap. 96*** required the judge to make an order about how the three sentences he passed would run in relation to any sentence of imprisonment that the appellant was already serving. The section states:

> **161. Where the court sentences any person to undergo a term of imprisonment for a crime, and the person is already undergoing, or has been at the same sitting of the court sentenced to undergo imprisonment for another crime, the court may direct that the imprisonment shall commence at the expiration of the imprisonment which the person is then undergoing, or has been so previously sentences to undergo, as aforesaid.**

[39] The fact that an accused was on parol when he committed the offence for which he is to be punished usually requires that, the sentence of imprisonment for the subsequent offence be made consecutive to the existing sentence. The practice is appropriate for the circumstances in this appeal case.

[40] The prison record shows that the schedule date of release of the appellant from prison on the imprisonment for the manslaughter conviction is 18 December, 2015. It follows that, the sentence of imprisonment on the first count in this appeal case shall commence on the day following, that is, 19 December, 2015, and the second and third sentences shall follow accordingly. In the event that because of remission according to law, the date of expiration of any of the prison term imposed on a count will occur earlier than the scheduled date, the commencement date of the next consecutive imprisonment term shall commence immediately after that earlier date.

The Order.

[41] The appeal, which in the end is against convictions only, is dismissed. The three sentences of imprisonment on each count for carnal knowledge is affirmed. The three sentences are consecutive, and are consecutive to the sentence of 25 years imprisonment for the previous conviction for manslaughter which the appellant is now serving.

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SIR MANUEL SOSA P

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AWICH JA

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BLACKMAN JA