

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**CRIMINAL JURISDICTION**

**Central District**

**Indictment No C79/2020**

**THE QUEEN**

**v.**

**B. M. G.**

**BEFORE:** **The Honourable Justice Susan Lamb**

**APPEARANCES:** **Ms. Romey Wade for the Crown**  
**Mr. Leeroy Banner for B.M.G.**

**DATES:** **28 February 2022, 11 April 2022, 25 April 2022, 16 May 2022, 23 May 2022, 29 June 2022, 11 July 2022 and 09 August 2022.**

**SENTENCING**

i. Introduction

1. On 29 June 2022, B.M.G. entered a plea of guilty to the offence of rape of a child contrary to Section 47(A) of the Belize Criminal Code.<sup>1</sup>
2. The complainant was five years of age at the time of the offence. All proceedings in this case were held in closed session and comprehensive reporting restrictions were, and remain,

---

<sup>1</sup> Section 47(A), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

in place that prohibit publication of any information that may lead to her identification. Throughout this judgment, she is referred to by the pseudonym VC. Other information that may lead to her identification has also been anonymized.

3. The agreed facts are that on 15 October 2018, VC was at her home and asleep, when she was awoken by B.M.G. He proceeded to kiss VC on her mouth and took off her pajama pants. The child told him ‘no’ and asked him to leave her alone. Despite this, B.M.G. removed his clothing and raped the child vaginally. B.M.G. stopped when the child’s mother returned home and began knocking on the door and shouting. He slapped the child and sought unsuccessfully to efface evidence of her vaginal bleeding. Upon medical examination, the child was found to be suffering significant genital trauma and active vaginal bleeding. From this, the examining physician concluded that she had experienced a recent sexual assault. Bruising was also seen to the right side of her face.

ii. Procedural history

4. On 1 June 2020, B.M.G. was indicted on a single count of rape of a child and thereafter arraigned before the Supreme Court.
5. This matter first came before me on 28 February 2022. Case Management occurred on 11 April 2022 and the case listed for trial on 29 June 2022, following a brief adjournment to enable B.M.G. to obtain legal representation.
6. Immediately before the commencement of trial, B.M.G. requested an indication of the maximum sentence that would be imposed should he plead guilty to this offence. B.M.G. was informed that in the event of a guilty plea, he would receive a custodial sentence of not more than 20 years of imprisonment. Rape of a child pursuant to Section 47 (A) of the Criminal Code attracts a maximum penalty of life imprisonment and a 15-year mandatory minimum sentence of imprisonment.
7. On 29 June 2022, B.M.G. entered a plea of guilty to this offence, on the basis of the above agreed facts, which was accepted by both the Crown and the court.
8. At a sentencing hearing on 11 July 2022, VC testified as to the impact of this offence. Both VC and her mother also provided written Victim Impact Statements. B.M.G.’s counsel, and B.M.G. personally, made submissions in mitigation on 12 July 2022.
9. On 28 July 2022, the court received a Social Inquiry Report from the Community Rehabilitation Department of the Belize Ministry of Human Development, Families and Indigenous Peoples’ Affairs (“Social Inquiry Report”), which provided useful information concerning B.M.G.’s family and professional background, in addition to victim impact.

### iii. Legal Framework

10. Section 47(A) of the Criminal Code provides that “[e]very person who rapes [a] person ... under the age of sixteen years commits an offence and is liable on conviction on indictment to ... imprisonment for not less than fifteen years, but [which] may extend to life, where that ... person was under the age of fourteen years at the time [of] the offence.”
11. Section 160(1) of the Indictable Procedure Act provides that where any person is convicted of a crime punishable by a mandatory minimum term of imprisonment, the court may, if it considers that the justice of the case so requires, exercise its discretion to sentence the person to a time of imprisonment less than the prescribed mandatory minimum term. However, Section 160(2)(b) of the same Act contains a proviso which states that the court may not sentence an adult offender to less than the prescribed mandatory minimum term in relation to certain offences. This list includes the crime of rape a child under Section 47(A).<sup>2</sup>
12. The Supreme Court draft Sentencing Guidelines indicate that a Category 1 offence under Section 47(A) attracts a term of imprisonment of between 15 and 20 years. Category 2 and Category 3 offences are punishable by 20-25 years of imprisonment and 25 years to life imprisonment respectively.<sup>3</sup>
13. At the Sentencing Indication Hearing on 29 June 2022, B.M.G. was informed that the impact of a plea of guilty would be to commute the maximum sentence that would be imposed on him to the Category 1 range for this offence.
14. A previously-decided case under this provision, with similar facts to the present, resulted in the imposition of a 15 year term of imprisonment, following a guilty plea.<sup>4</sup>
15. Finally, the Criminal Code contains special provisions for the treatment and reporting of sex offenders. Section 65(1) provides that where a person is convicted of certain sexual offences, including the rape of a child, the court shall order that he be subject to any counselling, medical or psychiatric treatment that the court may consider appropriate having regard to the facts of the case. This provision also contains mandatory reporting regarding the offender’s place of residence to the Commissioner of Police and to the Ministry for Human Development, Women and Youth upon an offender’s release from prison. Section 65(A)(2) further requires the Superintendent of Prisons to notify the Commissioner of Police and Director of Human Development as soon as a sex offender is released, and provides for the collation and recording of the offender’s conviction and personal information on the National Sex Offender Database for a period of at least ten years.

---

<sup>2</sup> Sections 160(1)-(2)(b), Indictable Procedure Act, Chapter 96, Substantive Laws of Belize, Revised Edition 2020.

<sup>3</sup> Sentencing Guidelines of the Supreme Court (2015) (indicating that offences fall into 3 categories: Category 1 (the least serious, in which there is limited culpability and harm); Category 2 (where there is either serious culpability and limited/moderate harm or serious harm and limited/moderate culpability, or moderate culpability and harm) and Category 3 (the most serious, where there is both serious culpability and serious harm)). The Guidelines also contain other relevant sentencing criteria, including aggravating and mitigating factors, reductions for guilty pleas and credit for remand time.

<sup>4</sup> *R. v. I.P.*, N38/2017 (2017) (rape of a six year old). *See also FW v. The Queen*, Criminal Appeal No. 18 of 2011, Court of Appeal, 17 December 2020 (by a majority, sentence of 80 years of imprisonment for multiple acts of incestuous rape of an adult complainant substituted for a consolidated sentence of 15 years).

iv. Sentencing considerations

16. Having regard to this sentencing framework and my duty to arrive at an individualized sentence which is tailored to the offender and the offence, I have considered a number of aggravating and mitigating circumstances in this case. Aggravating circumstances are the extremely young age and vulnerability of VC, the serious harm that has resulted from the offence, as well as the significant violation of trust entailed. I have also weighed mitigating factors, principally B.M.G.'s remorse, as well as his guilty plea and acceptance of responsibility.

*a. Aggravating factors*

17. Principal among these are the extremely young age and vulnerability of VC, and the extent of the harm this offence has caused to both VC and her mother. It represents a significant dereliction of B.M.G.'s responsibility toward the child. The crime occurred in VC's home, where she should have had every expectation of protection and safety. The offence was also accompanied by violence over and above that innate to the crime itself.

18. At the time of the incident, VC was five years of age. She is currently eight. She testified *via* video-link, accompanied by her puppy for emotional support. She was tearful during her evidence, but resolute and able to clearly describe the trauma she has experienced. In her testimony and Victim Impact Statement, she spoke of the love she had previously had toward B.M.G, which meant that the incident caused her significant confusion and distress. This has not abated over time, as her ability to comprehend what has occurred increases as she grows older. She considered that B.M.G. gave no thought to all she would have to go through in her life; instead, he has caused VC and her mother to experience many bad days. She struggles to forgive B.M.G. and stated that she no longer feels any affection toward him.

19. In the aftermath of the offence, VC and her mother relocated to a third country. In view of her young age, VC required significant counselling, both in Belize and abroad, to assist her in coming to terms with what had occurred.

20. VC also suffered significant genital trauma as a result of the offence, the physical effects of which still linger. Following the incident, VC displayed significant trauma around efforts to put on and remove her pajamas, as this triggered memories of the incident. VC's mother was advised by the therapist to desist from having the child wear pajamas to sleep, because of these traumatic associations. It is only recently that VC has overcome her fears sufficiently to allow her mother to remove her pajamas, and to tend to her physical injuries.

21. The Social Inquiry Report and the Victim Impact Statement of VC's mother indicate that while VC is now doing well, she still frequently suffers from nightmares and bed-wetting. The child experiences fear every time she sees a man that resembles B.M.G., which causes her to become upset and to start crying.

22. In her Victim Impact Statement, VC's mother indicated that she too was psychologically harmed as a result of the incident, but that she felt compelled to remain strong for the sake

of her daughter. The incident has significantly impacted her, as she no longer trusts any male to be near her child. She does not permit her daughter to be around any man, even momentarily, and nor does she permit any male person to live with her. She experiences extreme distress and anxiety about leaving her daughter alone, and spoke of her need to compulsively monitor the child, and to seek continual reassurance that she is safe. She is traumatized by the anxiety as to whether VC, when she is older and seeks to find a partner, will have a normal life. She had no forewarning that B.M.G. would harm her daughter in this manner, but also reproaches herself for failing to anticipate and prevent the offence.

23. B.M.G. was 41 years of age at the time of the offence and in a position of responsibility toward VC. The offence entailed a profound violation of trust and exploitation of the vulnerability of a very young child. In addition to the above-mentioned injuries, the child was also hit during the course of the assault and suffered bruising to her face.

*b. Mitigating factors*

24. In determining sentence, I have also weighed mitigating factors, principally B.M.G.'s plea of guilty, acceptance of responsibility, and expression of remorse. I have also considered B.M.G.'s comportment in prison, Defendant History, and family and personal circumstances.
25. At the mitigation hearing on 12 July 2022, Mr. Banner submitted on B.M.G.'s behalf that he is extremely remorseful. He greatly regrets what took place. Mr. Banner noted that a plea of guilty is rare in relation to such crimes, and is indicative of B.M.G.'s character and genuine desire to take full responsibility for his actions. He also submitted that it was only the impact of COVID-19 and challenges in finding earlier legal representation which impeded B.M.G. from entering an earlier guilty plea.
26. B.M.G. also personally expressed contrition for this offence. He stated that he wished to take full responsibility for his actions and to apologize. He admits that he has made many mistakes, and acknowledges the pain he has caused to VC and her mother. He stated that he is disappointed in himself and that this incident does not reflect the type of person he is. The Social Inquiry Report also indicates that B.M.G. is "sorry from the bottom of his heart for what he has done. He lost his family, which mean[t] the world to him, [and which was] the reason he [worked] so hard so that he can sustain [them] to the fullest."
27. B.M.G.'s guilty plea avoids the need for a trial, thus saving the court time and resources. It also spares a young child the ordeal of having to give evidence and describe the offence in detail, and of being cross-examined. By pleading guilty to this offence, B.M.G. has also acknowledged his wrongdoing and taken responsibility for his conduct, and has apologized both to VC and her mother and also to the court.
28. Finally, it was submitted on B.M.G.'s behalf that this was an isolated incident. Whilst not seeking to deny the seriousness and wrongfulness of the offence, B.M.G.'s counsel emphasizes that B.M.G. has done the next best thing – namely, to take full responsibility and to apologize for his actions. On this basis, he seeks the leniency of the court.

*c. Defendant history, comportment in prison and personal circumstances*

29. B.M.G. has been incarcerated at the Belize Central Prison since 18 October 2018, or a total of three (3) years, nine (9) months and twenty-two (22) days. A report from the Kolbe Foundation at Belize Central Prison, dated 29 June 2022, indicates that during his time on remand, B.M.G. had three recorded breaches of prison rules (two for possession of unauthorized articles, and one an offence against good order and discipline). None of these breaches entailed violence. The same report indicates that B.M.G. completed two rehabilitative programs while in prison.
30. B.M.G.'s Defendant History indicates that he has not previously offended in Belize or in the country of his birth. Prior to his offending, B.M.G. had lived in Belize and the country of his birth for relatively short periods. No information was provided to the court regarding his antecedent history in the country where he has resided for most of his child- and adulthood.
31. The Social Inquiry Report provides useful background information concerning the offender's family and personal circumstances. B.M.G. is in his mid-40s and has worked as a skilled tradesperson since graduating from high school. He remains in contact with his former employer, who views him as hard-working, reliable, well-mannered and respectful employee. He was surprised to learn of his offending. At the time of the incident, B.M.G. had been in a stable domestic partnership for approximately two years. He also has two teenage children from a previous relationship. B.M.G. was raised in a caring home, although his parents separated when he was 10 years of age. B.M.G.'s mother and sibling describe him as well-behaved and hard-working in his youth, who achieved well at school. B.M.G.'s mother has struggled to come to terms with his offending but both his mother and sibling have remained in contact with B.M.G. and continue to offer support.
32. The Social Inquiry Report sheds little light on B.M.G.'s offending. It states that B.M.G. was experiencing difficulties in his relationship with his common law spouse at the time of the offence, and that he was struggling to cope with his emotions at this time. Failed past relationships and divorce of his parents while a child are also identified as possible stressors.
33. The Social Inquiry Report recommends that B.M.G. undergo counselling to enable him to process his inner emotions, since he was unable to explain why he had intercourse with a five-year-old child.

v. Determination of sentence

34. In light of the above, I have determined a term of fifteen (15) years of imprisonment to be appropriate in all the circumstances.
35. As of the date of this judgment, B.M.G. has been incarcerated at the Belize Central Prison since 18 October 2018, or a total of three (3) years, nine (9) months and twenty-two (22) days. He is entitled to credit for time already spent on remand when calculating the term of imprisonment which remains to be served.

36. While serving his sentence, B.M.G. shall undertake any counselling and psychiatric treatment available at Belize Central Prison and considered by the court-appointed psychiatric experts, Dr. Alejandro Matus and Dr. Seena Fazel, as likely to assist in B.M.G.'s rehabilitation or to be otherwise recommended in the circumstances. Drs. Matus and Fazel shall convey their recommendations to the Director of the Kolbe Foundation at the Belize Central Prison as soon as practicable, or, if required, following the next possible date upon which B.M.G. can be assessed.
37. At the conclusion of B.M.G.'s sentence, the Superintendent of Prisons shall notify the Commissioner of Police and Director of Human Development of his impending release, who shall ensure that the offender's conviction and personal information is recorded on the National Sex Offender Database for a period of at least ten years.
38. Should he remain in Belize upon his release, B.M.G. shall further inform the Commissioner of Police and the Director of Human Development of his address and any change of residence thereafter, and otherwise comply with the reporting requirements contained in Section 65(1) of the Criminal Code.

Dated this 09<sup>th</sup> day of August 2022

---

Susan Lamb  
Justice of the Supreme Court