

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCRAP2023/0021

BETWEEN:

RYAN STRACHAN

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Esco L. Henry
The Hon. Mde. P. Nicola Byer
The Hon. Mr. Gerard St. C. Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Jerry Edwin for the Appellant
Ms. Crisan Greenidge, Senior Crown Counsel, for the Respondent

2026: May 18;
September 25.

Criminal Appeal – Appeal against sentence – A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court, Sexual Offences (the “Sentencing Guidelines”) - Whether the judge erred in the mathematical calculation of the notional sentences of imprisonment having regard to the Sentencing Guidelines – Whether the judge took into account factors already considered to justify an upward increase in sentence – Credit for guilty plea at earliest opportunity - Section 80 (1) of the Criminal Code of Grenada – Whether offences can be classified as ‘one continuous transaction’ - The totality principle - Consecutive sentences – Whether the imposition of consecutive sentences violated section 80(1) of the Criminal Code

By indictment dated 14th September 2023, the appellant, Ryan Strachan, was charged with three counts of unlawful sexual intercourse, with a female person of the age of 13 years contrary to section 181(1) of the Criminal Code of Grenada as amended. The appellant pleaded guilty to the first and second counts. Upon receipt of the guilty plea on those counts, the prosecution offered no evidence on the third.

At the sentencing hearing, the judge imposed a sentence of 7 years and 9 months' imprisonment on each count to be served consecutively. The appellant's aggregate sentence was therefore 15 years and 6 months' imprisonment. On appeal against his sentence, the appellant argued that his sentence was manifestly excessive. In further submissions, the appellant elaborated upon the basis of his appeal and challenged the calculation of the notional sentence; that he had not been properly credited for his guilty plea and; the imposition of consecutive sentences having regard to section 80 of the Criminal Code and the totality principle. It was conceded by the respondent that the learned judge erred in selecting the starting point for the sentence and that the appellant was entitled to the full one-third reduction for his guilty plea. The principal issue which remained for determination was, having regard to the totality principle and section 80 of the Criminal Code which provides that with respect to cases where one act constitutes several crimes, or where several acts are done in execution of one criminal purpose, the following provisions shall have effect, that is to say where a person does several acts against or in respect of one person or thing, each of which acts is a crime, but the whole of which acts are done in execution of the same design, and, in the opinion of the Court before which the person is tried, form one continuous transaction, the person may be punished for the whole of such acts as one crime or for any one or several of such acts as one crime, and all the acts may be taken into consideration in awarding punishment, but he or she shall not be liable to separate punishments as for several crimes; whether consecutive sentences were warranted in the circumstances of this case.

Held: allowing the appeal against sentence, setting aside the sentences of 7 years 9 months to be served consecutively and substituting sentences of 9 years 10 months to be served concurrently, that:

1. The imposition of a sentence, unless fixed by law, involves an exercise of discretion by the sentencing judge. The judge must bear in mind the principal aims of sentencing which are retribution, deterrence, prevention and rehabilitation and assess each case in relation to the mitigating and aggravating factors, sentencing range, calculation of an applicable starting point, and whether credit should be given for time spent on remand or for a guilty plea, as well as the cumulative effect of those considerations on the sentence ultimately imposed. The implementation of the Sentencing Guidelines does not dispense with this discretion but rather collates the relevant factors to be taken into account, to ensure consistency in sentencing throughout the Eastern Caribbean. As such, the general principles relating to appellate interference remain applicable and the Court will not lightly interfere with a sentence by a trial judge even if it would have imposed a different sentence.

DPP v Shaunlee Fahie Territory of the Virgin Islands HCRAP 2008/003 (delivered 11th January 2010, unreported) followed; **Curt John v The King and Kendol Cato v The King** SVGHCRAP2020/0007 consolidated with SVGHCRAP2020/0008 (delivered 12th March 2025, unreported) followed; **Desmond Baptiste et al v The Queen** Saint Vincent and the Grenadines Criminal Appeal No 8 of 2003 (delivered 6th December 2004, unreported) followed.

2. The Sentencing Guidelines require that at the first and second stages of the sentencing exercise, the judge must assess the seriousness and consequence of the offence. In this appeal, the learned judge considered the consequence of the offence to be at Category 1-Exceptional and the seriousness to be Level A-High. These findings were not disputed by either party. The learned judge however erred in her mathematical calculation of the starting point by applying the starting point of 40% of the maximum sentence which is applicable to a Category 2 – Level A offence rather than Category 1- Level A. That misapprehension resulted in an incorrect mathematical calculation and warranted appellate intervention and review of all that followed from the incorrect application of the starting point. Making the requisite adjustment, the true mathematical calculation of the starting point would be 65% of 15 years which is 9 years 9 months and the range would therefore be 50% to 80%, that is, 7 years 6 months to 12 years.
3. An uplift or increase to the notional sentence will usually be made to account for aggravating features of the offence and the offender. A court must be cautious, however, not to engage in double counting by taking into consideration aggravating factors that were already considered at an earlier stage in the sentencing exercise. The grooming of the victim was a significant factor used by the judge to justify the substantial uplift of 8 years to the starting point. However, when the court was required to consider what factors existed to place the offence in 'Level A – High' of seriousness, the issues of the grooming and the recording of the victim and the disparity in the age were all necessary considerations at that stage. To take them into account again in relation to the aggravating features of the offence would result in double counting to the detriment of the appellant. The Court is however satisfied that even without recounting the clear factors that led to the classification under the first and second stages, there were aggravating factors of the offence in this instance to warrant an upward movement of the starting point. The Court therefore substitutes the 8 years uplift with an upward adjustment of 7 years on both the 1st and 2nd counts to indicate adequate aggravation as identified.
4. Similarly, where there are mitigating features of the offence and the offender, the court ought to accordingly adjust the notional sentence downwards to account for same. In the present case, there were no mitigating factors of the offence, however, there were mitigating factors of the offender which had to be taken into account. These were good character, genuine remorse, and his relative youth being of the age of 24. The 5-year downward adjustment ascribed to them by the trial judge cannot stand in the totality of the circumstances of this case. The Court is satisfied however that 2 years would adequately reflect the factors considered in the appellant's favour.
5. The general principle is that credit should be given for a guilty plea entered at the earliest practicable opportunity in the form of a reduction or discount of one-third of the sentence. Although a sentencing judge may, in his or her discretion, choose to depart from this principle, such departure must be supported by clear and cogent reasons. The learned judge in the present appeal chose not to credit the one third discount to the appellant's sentence since, in her view, the appellant's guilty plea

did not come at the first opportunity, “keeping in mind the various options he [was] given to indicate his willingness to plea”. The learned judge erred in that she failed to identify firstly, what those options were and secondly, whether the appellant had failed to avail himself of any of those mechanisms or establish that, having regard to the manner in which the appellant’s case proceeded through the Magistrate’s Court, they had in fact been available to him. The appellant is therefore entitled to the full one-third discount to his sentence.

Garfield Clement v The King GDAHCRAP2019/0017 (delivered 9th July 2025, unreported) followed.

6. Generally, where more than one offence is committed in the course of the same transaction or arises out of the same incident or facts or where the offences are of a similar nature and were committed over a short period of time against the same victim, the sentences should normally be made to run concurrently. A consecutive sentence may however be more appropriate in instances such as where the offences were committed on separate occasions or were committed when the offender was on bail for other offences for which he was eventually convicted or in cases involving a firearm. Ultimately, whether a concurrent or a consecutive sentence is imposed is in the discretion of the sentencing judge as they take into consideration the totality principle of what sentence adequately reflects the total criminality of the offence but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behaviour.

Paragraphs 3 and 5 of the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, Practice Direction 8A No 1 of 2019 – General Sentencing Principles** applied.

7. Section 80(1) of the Criminal Code prohibits separate punishments as for several crimes, for what, in the opinion of the Court, can be considered as one continuous transaction. It is clear that the sentencing judge did not address her mind to the application of section 80(1) of the Criminal Code to the case before her. This amounts to a fundamental flaw in her sentencing exercise which invites appellate review. Having regard to the facts, it is undeniable that the offences are in fact captured by section 80 (1) as “one continuous transaction”. Further in considering the seriousness and consequences of the offence, the correct applicable starting point, the aggravating and mitigating features and bearing in mind the totality principle, the Court is satisfied that a sentence of 9 years and 10 months for each offence to be served concurrently is just and proportionate in the circumstances.

Section 80(1) of the **Criminal Code**, Cap 72A of the Revised Laws of Grenada applied; **Garfield Clement v The King** GDAHCRAP2019/0017 (delivered 9th July 2025, unreported) distinguished; **Linton Pompey v The Director of Public Prosecutions** [2020] CCJ 7 (AJ) GY considered.

JUDGMENT

- [1] **BYER JA:** This is an appeal against the appellant's sentence following the submission of a guilty plea on an indictment dated 14th September 2023 on which he was charged with three counts of sexual intercourse with a female person of the age of 13 years contrary to section 181(1) of the **Criminal Code**¹ of Grenada as amended by section 19 of the **Criminal Code (Amendment) Act**.² The appellant pleaded guilty to the offence taking place on a date between the 1st and 30th day of June 2022 (the 1st count) and to the offence taking place on a date between the 1st and 31st July 2022 (the 2nd count). The prosecution, upon the entering of the guilty plea to the 1st count and the 2nd count, offered no evidence on the 3rd count which concerned a date of offence in August 2022.

Background to the Charges (as set out in the Sentencing Judgment)

- [2] The victim had lived with her paternal grandmother, father, aunts and uncle from approximately four years of age, as her mother worked on a cruise ship. The victim's mother maintained a home in the same area as the paternal grandmother, to which the victim would return whenever her mother was home on holiday.
- [3] The victim was attending primary school when she met the appellant through Instagram. During their initial communications, the appellant introduced himself as "Keston" and told the victim that he was approximately 17 or 18 years of age. The victim later discovered his true identity. The appellant also represented that his father owned an iPhone store and showed the victim photographs of mobile phones in different colours, asking her which one she preferred.
- [4] During their communications, the appellant asked the victim to send him a video of herself. The victim sent a video in which she was wearing a bra and underwear and in which her face was visible. The appellant subsequently asked her to send another

¹ Cap 72A of the Revised Laws of Grenada.

² Act No. 29 of 2012.

video without her bra. When the victim refused, he threatened to post the first video on social media. The victim, being afraid that he would carry out the threat, complied and sent him a video in which she was braless and her face was visible.

- [5] The appellant thereafter asked the victim to be his girlfriend and told her that he wished to have sexual intercourse with her. When the victim refused, he threatened to post the semi-nude video on social media. The victim blocked the appellant and deleted her Instagram account. However, after she created another account, the appellant found her and resumed communicating with her. He continued to demand sexual intercourse and repeated his threat to post the video if she did not comply. At that time, the victim was still attending primary school.
- [6] In June 2022, the appellant told the victim that she was required to find a place where they could have sexual intercourse, failing which he would post the semi-nude video on social media. The victim, acting out of fear, told him that they could go to her mother's house. Having taken her mother's house key without permission, the victim met the appellant and accompanied him to the house. Once there, the appellant demanded that the victim remove her clothing. When she refused, he again threatened to post the video, whereupon she complied.
- [7] The appellant removed his clothing and instructed the victim to lie on the bed. He kissed her and inserted his penis into her vagina notwithstanding that she was uncomfortable and told him to stop. The appellant responded that, if he stopped, he would post the video. He also sucked the victim's breast. When the victim indicated that she had to leave, the appellant compelled her to remain by repeating his threat. They eventually left the house at approximately 4:00 p.m.
- [8] In July 2022, the appellant again demanded sexual intercourse from the victim and threatened to post the semi-nude video if she refused. Being afraid that he would carry out the threat, the victim again took him to her mother's house. The appellant removed their clothing, caused the victim to lie on the bed, digitally penetrated her

and then inserted his penis into her vagina. He also demanded that the victim encourage one of her friends to come to the house. When she refused, he again threatened to post the video.

[9] The appellant recorded himself and the victim having sexual intercourse after again threatening to post the semi-nude video. He subsequently posted on Instagram: "Message if you want to see a video with a high school girl".

[10] The actions of the appellant were eventually discovered and the appellant was arrested and charged with the offences.

[11] In his record of interview, the appellant suggested that it was the victim who had recorded him while she was naked and engaging in a sexual act. He stated that the victim had told him that she was "feeling for sex". The appellant admitted that the victim appeared to be approximately 10 or 11 years of age when they first met, although he referred to her as his girlfriend. He also revealed that he had known the victim from before August 2021 and had communicated with her through WhatsApp.

[12] The appellant admitted to having sexual intercourse with the victim in June and July 2022. He stated that the victim had told him to stop on one or two occasions and that he had done so. Although he initially maintained that the victim had sent him nude videos of her own volition and denied threatening to post them, he later admitted that he had threatened her on approximately six or seven occasions. He also admitted to recording approximately three or four videos of himself and the victim having sexual intercourse and to posting on Instagram: "Who want to see a video with a high school girl?"

[13] The appellant further admitted that he knew it was unlawful to compel a female person to engage in sexual intercourse. He stated that he had believed that sexual activity with a person was lawful from the age of 17 years but subsequently learned that the age of consent was 16 years.

Judgment in Court Below

- [14] In sentencing the appellant, the learned judge identified retribution, deterrence, rehabilitation and prevention as the applicable sentencing principles. The learned judge considered that deterrence was the primary sentencing objective in cases of this nature and applied **A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court: Sexual Offences** (the “Sentencing Guidelines”)³ and in particular the provisions of the Guidelines which deal with unlawful sexual intercourse.⁴
- [15] In assessing the category of harm, the learned judge considered the psychological and emotional effects of the offending on the victim. The victim had begun to harm herself and had numerous scars extending from her wrists to her elbows. Her paternal grandmother had also observed changes in the victim’s behaviour, including rapid changes in mood, withdrawal and sadness. The victim’s academic performance had declined to the extent that she was required to repeat Form 1 and transfer to another school. She had received counselling from the Child Protection Authority and had been referred to a group psychotherapy programme. The learned judge found that the cumulative effect of the offences had caused the victim significant psychological harm and classified the consequences as Category 1 – Exceptional.
- [16] In relation to culpability, the learned judge noted that the victim was 13 years old, whereas the appellant was 24 years old, there being an age difference of 11 years between them. The learned judge accordingly assessed the appellant’s culpability as Level A – High. As the maximum sentence for each offence was 15 years’ imprisonment, the learned judge selected a starting point of 40 per cent of the maximum sentence, namely, 6 years’ imprisonment, within a sentencing range of 3

³ Re-Issue 8th November 2021.

⁴ Section 2 of the Sentencing Guidelines.

years and 9 months to 8 years and 3 months. The same starting point was applied to each offence.

- [17] The learned judge identified several aggravating features of the offences. These included the appellant's misrepresentation of his identity and age; his grooming of the victim while she was attending primary school; his inducement of the victim to send him partially nude recordings; and his use of those recordings to coerce her into having sexual intercourse with him. The learned judge regarded the appellant's repeated threats to publish the recordings as a form of blackmail or "sextortion" which considerably increased the seriousness of the offending.
- [18] The learned judge also considered that the offences were premeditated; that the appellant had recorded the sexual activity and retained approximately three or four recordings; that he had sought to involve one of the victim's friends in sexual activity; and that he had ejaculated and had not used a condom. The effect of the offending on the victim's family and on the relationship between the victim and her paternal grandmother was also treated as aggravating. In relation to the first count, the learned judge considered the appellant's continued contact with the victim, despite her efforts to end their communications, and the fact that the victim was a virgin. In relation to the second count, the learned judge treated the repetition of the offence as a further aggravating feature.
- [19] The learned judge found that there were no mitigating features of either offence. She rejected the submission that the absence of physical violence was mitigating, finding that the appellant had deprived the victim of any real choice through coercion, intimidation and the repeated threat of public humiliation. Having regard to the gravity of the offending, the learned judge increased the starting point for each offence by 8 years, producing a sentence of 14 years' imprisonment on each count. She considered that it was appropriate to exceed the prescribed sentencing range because of the extensive use of social media and sextortion to procure the victim's compliance and the need to deter similar offending.

- [20] Turning to the appellant's personal circumstances, the learned judge noted that he had received a good upbringing, had no previous convictions and had no history of mental or emotional difficulties or substance misuse. His family and members of his community described him as quiet, respectful, courteous and well-behaved. The learned judge found no aggravating factors personal to the appellant. She identified his previous good character, genuine remorse and relative youth as mitigating factors and reduced each sentence by 5 years. The notional sentence on each count was therefore 9 years' imprisonment.
- [21] The learned judge next considered the appellant's guilty pleas. Although he had pleaded guilty at his first appearance before the High Court, the learned judge found that this did not represent the first available opportunity for him to indicate his willingness to plead guilty. She therefore allowed a reduction of one quarter rather than one third. The learned judge calculated the reduction as 2 years and 3 months and concluded that the resulting sentence on each count was 7 years and 9 months' imprisonment.
- [22] Finally, the learned judge considered the principle of totality. She concluded that consecutive sentences were required to reflect the overall criminality of the appellant's conduct, notwithstanding that both offences had been committed against the same victim. The learned judge accordingly sentenced the appellant to 7 years and 9 months' imprisonment on each count, with the sentences to run consecutively. The appellant had spent no time on remand. His aggregate sentence was therefore 15 years and 6 months' imprisonment.

The Appeal

- [23] Being dissatisfied with the sentence of the learned judge, the appellant filed his notice of appeal on 11th December 2023, relying on the sole ground that the sentence was manifestly excessive. He also indicated that further grounds would be added upon receipt of the transcript. By affidavit filed on 22nd April 2024, the

appellant clarified that his appeal was against sentence only. Thereafter, by supplemental affidavit filed on 21st May 2024, he elaborated upon the basis of his appeal, contending that the sentence was excessive; that the learned judge had imposed consecutive sentences upon him notwithstanding that he was a first-time offender; and that he had not been properly credited for entering his guilty plea at the earliest opportunity. In his skeleton arguments filed on 21st November 2024, the appellant developed these complaints by challenging the calculation of the notional sentence, the reduction allowed for his guilty plea and the imposition of consecutive sentences, having regard to section 80 of the **Criminal Code** and the totality principle. Although the transcript was subsequently filed on 19th January 2026, no additional grounds of appeal were formally filed.

- [24] Before I proceed to consider the submissions of the parties on this appeal, it is necessary to identify the matters which are now common ground. In its written submissions, the respondent conceded that the learned judge erred in selecting the starting point for the sentence and that the appellant was entitled to the full one-third reduction for his guilty plea. In reply, the appellant accepted the respondent's position that the correct starting point was 9 years and 9 months' imprisonment. It is therefore common ground that the sentencing exercise was affected by errors which warrant appellate intervention. Those concessions do not, however, determine the sentence which should ultimately be imposed. The appellant maintains that retaining the eight-year upward adjustment would involve double counting, while the respondent contends that an upward adjustment remains warranted. More significantly, the parties remain divided as to whether the sentences should run concurrently or consecutively. The principal issue which remains for determination is therefore whether, having regard to section 80 of the **Criminal Code** and the totality principle, consecutive sentences were warranted in the circumstances of this case. That issue requires consideration not merely of the mathematical calculation of the sentences, but of whether consecutive sentences were necessary to reflect the overall criminality of the appellant's conduct.

Appellant's Submissions

- [25] Turning, then, to the matters which remain in dispute, counsel for the appellant submitted that the 8-year upward adjustment, described by the learned judge as a “considerable upward adjustment”, could not stand. In his submissions, given that the aggravating feature of sextortion had already been utilised in classifying the offences as Category 1 and Level A, its reuse to justify a further substantial uplift therefore amounted to impermissible double counting. Counsel submitted that any recalibration of the sentence must correct this error and avoid a mechanical reconstruction of the sentencing exercise.
- [26] Counsel contended that the principal issue of divergence between the parties was whether the sentences should run consecutively or concurrently. The appellant submitted that the learned judge failed properly to apply the governing principles in respect of multiple offences. In particular, counsel relied upon section 80(1) of the **Criminal Code**, which provides that where several criminal acts are committed against one person, in execution of the same design, and form one continuous transaction, the offender shall not be liable to separate punishments for the several crimes.
- [27] The appellant submitted that the present case fell within the scope of section 80(1) and that, on a proper construction, the provision favoured the imposition of concurrent sentences. Counsel pointed out that there was no indication on the record that the learned judge had directed her mind to the requirements or effect of section 80(1). That omission was said to constitute a material error of law which vitiated the exercise of her sentencing discretion.
- [28] In his initial submissions, the appellant contended that the appropriate sentence was 5 years and 8 months’ imprisonment on each count, with the sentences to run concurrently. In reply, counsel however fundamentally re-worked his submissions and instead invited this Court to set aside the sentences and re-sentence the appellant afresh by applying the correct principles or, alternatively, to remit the

matter to the High Court for re-sentencing in accordance with the law and the applicable guidelines.

Respondent's Submissions

- [29] Counsel for the respondent in her submissions directed this Court's attention to two issues that had not been initially challenged by the appellant and in relation to which the appellant had in fact made no complaint. These were firstly the 8-year upward adjustment made by the learned judge and secondly the 5-year deduction allowed for his personal mitigation. The respondent also noted that the appellant had also submitted that, having regard to the aggravating factors, the Court could have arrived at the maximum sentence at the conclusion of the first step of the fourth stage. This was a position with which the respondent also concurred.
- [30] The respondent therefore went on to submit that, if the same adjustments were applied to the corrected starting point, the 8-year upward adjustment would produce a sentence of 17 years and 9 months, which exceeded the statutory maximum. The deduction of 5 years for the appellant's personal mitigation would result in a notional sentence of 12 years and 9 months. After applying the full one-third discount for the guilty plea, the sentence would be 8 years and 6 months' imprisonment on each count.
- [31] Alternatively, the respondent submitted that the corrected starting point could be adjusted upwards by 5 years and 3 months to account for the aggravation of the offences and reduced by 2 years to account for the mitigation of the appellant. This would result in a notional sentence of 13 years' imprisonment. Following the one-third discount for the guilty pleas, the sentence would be 8 years and 8 months' imprisonment on each count.
- [32] In relation to section 80(1) of the **Criminal Code**, the respondent submitted that the provision was not applicable. Counsel pointed out that the appellant had sexual intercourse with the victim on two occasions, one in June 2022 and the other in July

2022. These offences did not fall within the category of several acts done in execution of one criminal purpose. Counsel submitted that the learned judge also did not form the opinion, correctly so, that the two sexual acts formed one continuous transaction. Rather, the appellant committed multiple offences of sexual intercourse with a minor.

[33] The respondent further submitted that the learned judge adequately considered whether the sentences should run concurrently or consecutively and properly applied the totality principle. In deciding to impose consecutive sentences, the learned judge considered the nature and circumstances of the offences, the use of the internet in their commission, the dominant role played by blackmail and the threat of sextortion, and the need for the sentences to reflect all the appellant's offending behaviour and to deter both the appellant and potential offenders.

[34] Counsel argued that in determining whether to impose concurrent or consecutive sentences, the Court was required to have regard to the overall criminality of the case and to determine what was just in the circumstances. The sentences imposed were required to reflect the overall culpability of the offending. Sextortion was a key element in the commission of the offences and had to be taken into account in that assessment. The respondent maintained that this did not amount to double counting.

[35] The respondent disagreed with the appellant's submission that the appropriate sentence was 5 years and 8 months on each count, to run concurrently. Counsel submitted that the sentences ought to have been higher, having regard to the learned judge's error in consulting the grid and adopting a lower starting point. The sentences proposed by the respondent were therefore within the applicable range and were not disproportionate.

[36] The respondent maintained that the imposition of consecutive sentences was fair, just, proportionate and appropriate to the extensive aggravating circumstances of

the case. Counsel therefore invited the Court to make the necessary adjustments to the starting point and the other relevant figures to reflect the seriousness of the offences. The appeal against sentence should accordingly be allowed and the sentences varied only to that limited extent.

Discussion

[37] As noted above, I am of the opinion that this appeal, while considering the sentence imposed in terms of its mathematical correctness, additionally and more fundamentally focuses on the imposition of consecutive sentences in the context of this case.

[38] In that regard it is essential to be reminded as to the role of the appellate court in reviewing the sentence of a lower court. In the case of **DPP v Shaunlee Fahie**⁵ Creque-George JA (as she then was) stated it thusly:

“The imposition of a sentence unless specifically fixed by legislation involves the exercise of discretion by the sentencer. Accordingly, it is well settled that an appellate court will only interfere with a sentence passed by the sentencing court if:

- (1) it is not justified in law;
- (2) it is passed on the wrong factual basis;
- (3) some matter has been improperly taken into account; and
- (4) where the sentence was wrong in principle or manifestly excessive.

In essence these are the same principles which govern the court in the review of the exercise of any discretion by any trial court or tribunal.”

[39] Indeed, although it must be accepted that the foregoing proposition of law was stated before the Sentencing Guidelines now utilised by all sentencing judges came into force, the advent of those Guidelines has not altered the principles governing the approach of an appellate court. In fact, in 2025 this Court made it clear in the consolidated appeal of **Curt John v The King and Kendol Cato v The King**⁶ where my sister Henry JA noted at paragraph [23] thereof that:

⁵ Territory of the Virgin Islands HCRAP 2008/003 (delivered 11th January 2010, unreported) at paragraph 2.

⁶ SVGHCRAP2020/0007 consolidated with SVGHCRAP2020/0008 (delivered 12th March 2025, unreported).

“It is a well-established principle of law that an appellate court will not lightly interfere with a sentence by a trial judge even if it would have imposed a different sentence – **R v Ball**.⁷ It would do so seldomly and only if satisfied that the sentencing judge committed an error of law or principle or misapplied a principle of law and thereby arrived at an erroneous decision.”

Then at paragraph [24]:

“As stated by this court in a number of cases including **Gurrie v The Queen**,⁸ in approaching this revision exercise the Court remains mindful that an appeal against a sentence is not a re-hearing but merely an evaluation of the sentence passed and the steps taken to craft it, to inquire whether the sentencing judge failed to consider or apply any settled principles of law. This Court is cognizant that a range of appropriate sentences is always available to a sentencing judge in coming up with an appropriate and just sentence and there is no magic, mathematical or other scientific formula which can be applied.”

[40] With those principles firmly in mind as I approach this review, I must also bear in mind the seminal case of **Desmond Baptiste et al v The Queen**,⁹ in which the Court noted that the principal aims of sentencing should be retribution, deterrence, prevention and rehabilitation. Each case being assessed in relation to the mitigating and aggravating factors, sentencing range, calculation of an applicable starting point, and whether credit should be given for time spent on remand or for a guilty plea, as well as the cumulative effect of those considerations on the sentence ultimately imposed.

[41] By and large, save for the general aims of sentencing, the factors to be taken into account are contained in the published Sentencing Guidelines. Those guidelines were introduced to ensure that there was consistency in sentencing, but not to dispense with the sentencing judge’s discretion in determining each case on its particular facts.

⁷ (1951) 35 Cr App R 164.

⁸ GDAHCRAP2013/0004 (delivered 5th April 2022, unreported).

⁹ Saint Vincent and the Grenadines Criminal Appeal No 8 of 2003 (delivered 6th December 2004, unreported).

- [42] Thus, in the case at bar, it was the learned judge's duty as the sentencing judge to bear in mind all the circumstances that were at play in crafting the sentence that she sought to impose on the appellant and, in doing so, to ensure that the process was transparent and decipherable and in keeping with the published guidelines on the same.
- [43] This was clearly not the case in this appeal as noted by both the appellant and the respondent. The sentencing judge failed in her application of the relevant guidelines and in so doing, commenced the entire exercise on a misconceived premise on two fronts.
- [44] Firstly, the learned judge at paragraphs [20] and continuing, purported to consider the applicability of the guidelines as set out in the Sentencing Guidelines.
- [45] In considering the first stage under the guidelines that applies to unlawful sexual intercourse offences the learned judge took into account the following: a) the self-harming inflicted by the victim; b) mood changes within the family context; and c) poor performance at school, which she considered all met the consequence of the offence at Category 1 – Exceptional. Neither the appellant nor the respondent dispute that this was in fact a Category 1 offence.
- [46] The learned judge then considered the second stage at which she placed the seriousness of the offence at Level A - High. Again, neither the appellant nor the respondent have disputed this and I accept that several of the factors which make the culpability of the offender in Level A are apparent.
- [47] From the undisputed factual matrix, it was clear that the appellant had pursued the victim with a significant degree of planning and grooming as he befriended her on social media and established his relationship with her there. There was a significant disparity in age with the victim being 13 at the time and the appellant being 24, and during the occurrence of the 1st offence he recorded the sexual act and threatened

the victim to post it on social media and in fact made comments on social media to the effect that he would have available for viewing the recorded footage. It could not be clearer to me that the seriousness was warranted at Level A.

[48] The third stage is where the starting point is calculated. It is at this point that the learned judge made the error as to her mathematical calculation. At paragraph [28] of the sentencing judgment the learned judge applied the starting point of 40% of the maximum sentence being at Category 2 of the consequence of the offence rather than Category 1 as found earlier in her judgment. That misapprehension resulted in the incorrect mathematical calculation found at paragraph [28] wherein she stated “the starting point is 40% of 15 years within a sentencing range of 25% to 55% of 15 years. 40% of 15 years is 6 years. 25% of 15 years is 3 years and 9 months. 55% of 15 years is 8 years and 3 months.” It was therefore pellucid that the learned judge, although having determined the correct consequence and seriousness, then failed to apply the correct starting point.

[49] In making the requisite adjustment, the true mathematical calculation of the starting point would be 65% of 15 years which is 9 years 9 months. The range would therefore be 50% to 80%, that is 7 years 6 months to 12 years. It is therefore obvious that if the correct starting point had been identified that the learned judge would not have been constrained to think that the starting point would be as low as 6 years or that the range was from 3 years to 8 years.

[50] All that therefore flowed from that incorrect application is subject to review.

[51] At stage four, the aggravating and mitigating factors of the offence itself had to be considered. Neither the appellant nor the respondent disputes the findings of the learned judge as to the aggravating factors she determined were in existence in the perpetration of the offence. However, when I look closely at the factors considered by the learned judge, the grooming of the victim was by and large a significant factor that impacted her determination of an increase of 8 years to the starting point.

However, it must be noted that when the court was required to consider what factors existed to place the offence in 'Level A – High' of seriousness, the issues of the grooming and the recording of the victim and the disparity in the age were all necessary considerations at that stage. In my mind to take them into account again in relation to the aggravating features of the offence would result in double counting to the detriment of the appellant. In fact, in the rubric to the fourth stage the guidelines make this clear:

“Having determined the starting point consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards if required **taking care not to double-count factors considered in stages 1 and 2.**” (emphasis added).

[52] Thus, I will not do so at this stage. In my mind the victim being 13 years old, still in primary school at the time of the approach by the appellant, was particularly vulnerable being mentally young, a child who was preyed upon by a man who totally misrepresented who he was to her both by name and age. There was no evidence that the offence took place in the presence of others, but the appellant did have the victim lie to her family and surreptitiously meet him for the purpose of having sexual intercourse. There is no evidence that the appellant used a condom in his act of sexual intercourse. Suffice it to say, I am satisfied that even without recounting the clear factors that led to the classification under the first and second stages, there were aggravating factors of the offence in this instance to warrant an upward movement of the starting point. However, I am not of the view that on a considered approach that they can amount to as much as an 8-year increase as indicated by the learned judge. I would therefore substitute the 8 years with an upward movement of 7 years to indicate adequate aggravation as identified, to 16 years 9 months on the 1st count.

[53] In relation to the 2nd count, acknowledging that the same starting point applies and considering that the appellant continued to pursue the victim and repeated the offence in all material ways, I would also ascribe a 7-year uplift to the starting point.

[54] There are no mitigating factors of the offence.

[55] At step two of the fourth stage, the court needs to consider the circumstances of the offender himself. In this regard the learned judge ascribed 5 years for the personal mitigation of the appellant. The appellant took no issue with this attributed figure however the respondent suggested that such mitigation, while accepting that there were no aggravating features of the appellant, should, at most, amount to a 2-year deduction which was sufficient to reflect the personal circumstances of the appellant.

[56] When I consider the mitigating factors suggested in the guidelines and accepting that there are no aggravating factors, I find that three of the five identified factors of mitigation apply to the appellant on the facts of this case. These are good character, genuine remorse, and his relative youth being of the age of 24. In those circumstances even though I accept that the personal mitigation is particularly evident I do not believe that the 5 years ascribed to them by the trial judge can stand in the totality of the circumstances of this case and I agree that the suggested 2 years by the respondent herein would adequately reflect the factors considered in his favour. In those circumstances the 2-year deduction for mitigation should stand and the sentence reverts to the notional sentence of 14 years 9 months.

[57] The second misconceived application of the learned judge as complained of by the appellant, is her apparent failure to attribute the entire one third discount for his guilty plea. The judge indicated at paragraph [57] that:

“The convict pleaded guilty on his first appearance before this Court. He will not reap the benefit of a full one-third reduction on the notional sentence since pleading before this Court is not the first opportunity, keeping in mind the various options he is given to indicate his willingness to plea.”

[58] In the case of **Garfield Clement v The King**¹⁰ this Court considered the impact of a guilty plea on the sentencing exercise of a trial judge. At paragraph [30] Taylor-

¹⁰ GDAHCRA2019/0017 (delivered 9th July 2025, unreported).

Alexander JA [Ag.] relying on the seminal case of **Desmond Baptiste et al v The Queen**, Byron CJ (as he then was) observed:

“In England a plea of guilty normally attracts a significant, approximately a one-third reduction of the sentence. There are sound policy reasons for this. The criminal justice system benefits from genuine guilty pleas. Such pleas spare the judge, the jury, and witnesses the stress and rigours of a full trial. ... Clearly, the earlier the defendant pleads guilty the greater the likelihood that he will receive the full discount permissible... The discount should be applied not to the maximum sentence possible under the statute but rather to the notional sentence the sentencer might have given save for the guilty plea.”

[59] Thus, the Court in **Garfield Clement**, although recognising that there can be some departure from this principle of the one third discount, said that such departure must be supported by clear and cogent reasons.¹¹ At paragraph [57] of the learned judge’s sentencing judgment her only reason for not applying the full one third reduction was that the appellant had had other options to indicate his guilty plea. The learned judge failed to identify firstly what those options were and secondly how if at all, they impacted the fact that on an indictable offence, even if it commenced in the Magistrate’s Court, there was no indication as to how the matter had proceeded to the High Court and whether in fact any such opportunity had been given to the appellant. In this regard, section 27(1) of the **Magistrates Act**¹² confers jurisdiction on a magistrate to receive and inquire into all charges of indictable offences, while sections 101 to 106 of the **Criminal Procedure Code**,¹³ govern the preliminary inquiry and committal of an accused for trial. Section 115 of the **Criminal Procedure Code** further provides that, except where the charge is one of high treason, murder or manslaughter, an accused who admits his guilt during the preliminary inquiry and indicates that he does not wish the witnesses to appear again at trial may be committed by the magistrate for sentence rather than for trial. This does not, however, amount to the formal entry of a guilty plea before the magistrate, since section 119 requires an indictment to be preferred and the accused to be called upon to plead to it in the Supreme Court. Section 125 also

¹¹ GDAHCRA2019/0017 (delivered 9th July 2025, unreported) at paragraph 32.

¹² Cap. 177 of the Revised Laws of Grenada.

¹³ Cap. 72B of the Revised Laws of Grenada.

permits an accused who has already been committed for trial to file written notice with the Registrar of his intention to plead guilty and to be sentenced before the next regular session of the court. Therefore, although the legislation provided mechanisms by which the appellant could have indicated his guilt before his arraignment in the High Court, the learned judge did not identify whether the appellant had failed to avail himself of any of those mechanisms or establish that, having regard to the manner in which the appellant's case proceeded through the Magistrate's Court, they had in fact been available to him.

[60] I therefore find that there was no good or sufficient reason provided by the learned judge why the appellant should not have been given the full discount applicable and as I am satisfied that the one third discount should have been applied to the notional sentence of 14 years 9 months.

[61] I therefore set aside the entire sentence of the learned judge and in this re-sentencing exercise, find that the appellant should be sentenced to 9 years 10 months on both the 1st and 2nd counts.

[62] In coming to this determination, the next consideration must be the principle of totality and the imposition of concurrent or consecutive sentences where there has been more than one occurrence of the complained offence. In this appeal, apart from the mathematical calculations that were undertaken by the learned trial judge, this is the major complaint of the appellant.

Totality of Sentence

[63] The starting point for any court when considering whether there should be the imposition of a consecutive or concurrent sentence are the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, Practice Direction 8A No 1 of 2019 – General Sentencing Principles** ("Practice Direction 8A").

[64] Under paragraph 3 of Practice Direction 8A, it is stated at 3.1 that:

“The principle of totality requires a court, when sentencing for more than one offence to pass a sentence that reflects the total criminality but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behaviour. This principle applies regardless of whether the offences form a single episode of criminality or two or more acts of criminality.”

Therefore, as stated at 3.3:

“The court’s first task is to consider the appropriate sentence for each individual offence applying the relevant guideline. Secondly it must decide whether the sentences should be made to run concurrently or consecutively. Finally, the court will then assess the overall sentence for justness and proportionality adjusting the sentence accordingly.”

[65] In determining whether the sentence given to an offender should run consecutively or concurrently to reflect the totality principle, paragraph 5 of Practice Direction 8A gives further guidance. By paragraph 5.1, the court considers that where more than one offence is committed in the course of the same transaction or arises out of the same incident or facts, the general rule is that the sentences are to run concurrently with each other¹⁴ and where the offences are of a similar nature and were committed over a short period of time against the same victim sentences should normally be made to run concurrently.¹⁵ In relation to whether consecutive sentences are more appropriate Practice Direction 8A at paragraph 5.3 notes that consecutive sentences may be appropriate in principle where the offences were committed on separate occasions or were committed when the offender was on bail for other offences for which he was eventually convicted or in cases involving a firearm. However, in any event whether a concurrent or a consecutive sentence is imposed is in the discretion of the sentencing judge as they take into consideration the totality principle of what sentence adequately reflects the offence of which the offender was convicted.

[66] In the case under appeal, the sentencing judge at paragraph [62] of her decision asked herself the important question of whether the sentence for one of the offences

¹⁴ Paragraph 5.1(i).

¹⁵ Paragraph 5.1(ii).

of which the appellant was convicted could “comprehend and reflect the criminality of the other offences”. In answering this question, she had this to say at paragraph [63]:

“Given the nature and circumstances of the of the convict’s crime being of such a sordid sexual nature, the use of the internet to commit these crimes and the dominant role that blackmail/ the threat of sextortion played in their commission, the Court will impose a consecutive sentence even though the incident was committed against the same individual. The Court believes that such a sentence is just and proportionate, reflects all the offending behaviour of the convict and speaks to the need for deterrence to the convict and potential offenders.”

[67] The main complaint of the appellant as to the imposition of the consecutive sentence is that the learned judge failed to consider section 80(1) of the **Criminal Code**. Section 80(1) provides the following:

“...where a person does several acts against or in respect of one person or thing, each of which acts is a crime but the whole of which acts are done in execution of the same design **and in the opinion of the Court** before which the person is tried, form one continuous transaction the person may be punished for the whole of such acts as one crime or for any one or several of such acts as one crime and all the acts may be taken into consideration in awarding punishment but he or she shall not be liable to separate punishments as for several crimes...” (**emphasis added**)

[68] The appellant’s contention is that while section 80(1) contains the totality principle it prohibits separate punishments for what can be considered one continuous transaction. In his submission, he maintains that since the feature of the offences which supported the imposition of consecutive sentence was what the learned judge termed ‘sextortion’, this had already been considered and adopted earlier in the sentencing exercise which had taken the offence into the Consequence -Category 1. In the appellant’s view, taking it into consideration again to impact the totality principle amounted to double counting. The respondent’s counter to this argument was that while the offences involved the same offender and victim, the offences which the appellant was convicted of occurred on two separate occasions, in two different months nor did the two sexual acts form one continuous transaction. Rather the appellant had committed multiple offences of sexual intercourse with a minor and thus the provisions of section 80 were inapplicable. The court in considering the

overall criminality of the case had to take into account that sextortion was a key element in the commission of the offences and did not amount to double counting as alleged by the appellant. The imposition of the consecutive sentences by the learned judge, in the submission of the respondent, was therefore just proportionate and appropriate to the circumstances of the case.

[69] In considering the submissions of both the appellant and the respondent, I need to remind myself that:

“The sentence imposed upon a convicted person should ultimately be neither too harsh nor too lenient. It must be proportionate. The totality principle requires that when a judge sentences an offender for more than a single offence the judge must give a sentence that reflects all the offending behaviour that is before the court. But this is subject to the notion that ultimately the total or overall sentence must be just and proportionate. This remains the case whether the individual sentences are structured to be served concurrently or consecutively.”¹⁶

[70] Thus, if a sentencing judge is minded to impose a consecutive sentence, then it must be that there was more than simply undertaking an arithmetic exercise. There must be due consideration of what they are trying to achieve in relation to the punishment and the offences for which that convicted person stands to be sentenced.¹⁷

[71] In addition to this general principle, this case also raises the specific application of section 80(1) of the **Criminal Code**. It is clear from the sentencing judgment of the learned trial judge that there is no indication that she considered the applicability or non-applicability of section 80(1) to the appellant in her sentencing exercise. There having been no mention, it is a reasonable inference that she had not considered its implication for the circumstances of this case. In that regard, I consider that this failure on the part of the learned judge to address her mind to section 80(1) amounts to a fundamental flaw in her sentencing exercise which invites appellate review.

¹⁶ Linton Pompey v The Director of Public Prosecutions [2020] CCJ 7 (AJ) GY at paragraph 16.

¹⁷ Mill v The Queen [1988] 166 CLR 59 at 63.

[72] Like the case before me, this Court in **Garfield Clement** had to consider the interpretation of section 80 and how the same should be applied in circumstances where there had also been multiple counts of sexual impropriety by the same offender against the same victim.

[73] At paragraph [41] thereof, the Court after considering the interpretation of similar words as contained in section 80(1) from two other jurisdictions stated this:

“The expression ‘one continuous transaction’ is not to be approached with undue rigidity. It calls for a **practical, fact- sensitive assessment, guided by common sense and directed to the justice of the case.** The authorities indicate that proximity of time, place, conduct and purpose are important considerations. They are not, however, conclusive or exhaustive. It requires a court to determine whether, **taken together and in their proper context, the acts complained of form a single, continuous course of criminal conduct.** The mere presence of a common complainant or even a common general criminal intent is not without more, sufficient to conclude that offences form part of a continuous transaction. **A court must be satisfied that the offences are linked in time, place, purpose and execution that they properly form part of a single, uninterrupted course of conduct.**” (emphasis added)

[74] In **Garfield Clement**, this Court found that the offences were committed against the same complainant but over a period of 4 years. This Court therefore considered that in that instance the determination of the learned trial judge that the sentences should run consecutively was not plainly wrong and did not interfere with the sentence that had been imposed.

[75] In the case of **Linton Pompey v The Director of Public Prosecutions**¹⁸ the Caribbean Court of Justice offered some guidance for trial judges when considering the totality of sentencing and although it is acknowledged that in the context of Grenada such advice is only persuasive, it is in my mind something that can be well considered. In that particular case, the apex court was considering an appeal from the Court of Appeal of Guyana where the appellant had been sentenced to 37 years for the rape and sexual activity with a minor, the niece of his common law wife. In

¹⁸ [2020] CCJ 7 (AJ) GY.

considering the 37 years that was imposed to be excessive (the trial judge having not, in their opinion adequately considered the principle of totality), the court set aside the consecutive nature of the sentences and ordered that the same were to be served concurrently.

[76] In doing so at paragraph [33] the court offered this guidance:

“So far as totality principle is concerned, in cases where it is necessary to sentence someone for multiple serious offences, before pronouncing sentence the judge should:

- (a) Consider what is an appropriate sentence for each individual offence;
- (b) Ask oneself whether if such sentences are served concurrently, the total length of time the prisoner will serve appropriately reflects the full seriousness of his overall criminality;
- (c) If the answer to (b) above is Yes then the sentences should be made to run concurrently. If the answer is No and it is felt that justice requires a longer period of incarceration so that the sentences should run consecutively, test the overall sentence against the requirement that it be just and proportionate;
- (d) If upon having the sentences run consecutively, the total prison time to be served is not just and proportionate (as in Pompey’s case where it yielded an excessive 37 years sentence) go back to the drawing board and consider structuring the sentence in a different fashion bearing uppermost in mind the totality principle. This re-structuring exercise might be achieved by lowering the individual sentences and retaining their consecutive character or by altering the individual sentences (in particular the most serious one) and having the sentences run concurrently;
- (e) Finally, carefully explain the rationale for the sentence and its structure in a way that will be best understood by the parties and the public.”

[77] Even though that guidance was given in the context of an absence of structured guidelines in Guyana while this Court has had these in place for many years, I do not think that the importance of those words in that guidance can at all be minimized.

[78] Thus, in considering the present case, each offence by recalculation would have garnered a tariff of 9 years 10 months. Unlike the **Garfield Clement** case the time between the offences was a matter of weeks not years. It was clear that the offender engaged in a campaign against this complainant to continue to have inappropriate sexual contact with her until it came to a stop. Further, both offences occurred at the same premises- the residence of the complainant's mother and the assignments were all conducted via social media. In the round, as egregious as these offences were, it cannot be denied that the offences are in fact captured by section 80(1) as "one continuous transaction". In my mind the appellant being incarcerated for a period of 9 years and 10 months taking him to the age in the region of 34/35 when he is released and re-enters society would have had the result of depriving him of his youth and be just and proportionate in the circumstances.

[79] I am satisfied that not only was the notional sentence incorrectly calculated by the learned judge but that the direction that the sentences (even wrongly calculated) should run consecutively was also vitiated by an error of principle and there is a proper basis for this Court to interfere in the sentence.

Disposition

[80] For the reasons set out above, I would make the following orders:

- (1) The appeal is allowed.
- (2) The appellant's sentences of 7 years 9 months to be served consecutively is set aside.
- (3) On the 1st count, the sentence is substituted to a sentence of 9 years 10 months imprisonment.
- (4) On the 2nd count, the sentence is substituted to a sentence of 9 years 10 months imprisonment.
- (5) The sentences shall run concurrently.

I concur.

Esco L. Henry
Justice of Appeal

I concur.

Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar