

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
CRIMINAL DIVISION

CASE NO.: ANUHCR2023/0078

BETWEEN:

THE KING

-and-

LIVINGSTON PURCELL

Appearances:

Mr. Daniel Lattery for the Crown

Mr. Wendal Alexander for the Defendant

2025: MAY 7TH
JULY 15TH

SENTENCING FOR UNLAWFUL WOUNDING

- [1] **BAKRE, J.:** The fact of this case is as related in the judgment above. The defendant having been convicted for the offence of unlawful wounding is now set for sentencing.
- [2] The Crown's case was that on March 19, 2019, in Swetes Village, the Virtual Complainant, Mr. Quaniel Joseph, was at his friend's house (Mr. Chester Joseph) when the convict appeared at the rear of the house and had a discussion with Chester surrounding missing marijuana plants. The convict left shortly after. Both Mr. Quaniel Joseph and Mr. Chester Joseph then went into the house.

- [3] While they were in the house, the convict came into the house and began beating the Virtual Complainant about his head and body. He accused the Virtual Complaint of stealing his marijuana plants, despite the VC saying he did not.
- [4] The accused then began to drag the VC out of the house and began to punch the VC in his face with his ring on his fist. He also kicked the VC all about his body. As a result of the beating by the accused, the VC suffered various injuries.
- [5] In the trial, the defendant alleged that he did that in the defence of his property and in the cause of citizen's arrest. The court however did not agree with this and he was convicted of unlawful wounding.
- [6] The convict is now here for sentencing.
- [7] The court is in receipt of the prosecution sentencing brief with respect to this case. The court is also in receipt of the probation report made by one Desiree Weston Williams, a Probation officer and signed by the Director of family and social services, Mrs Feona Charles Richards.
- [8] The probation officer had an interview with the convict and members of his family. It was reported that the convict is an extremely quiet young man who keeps and tries to support his family.
- [9] His father and mother spoke glowingly well about him and his very well behaved manner. It was stated that the matter at hand is out of character with him and was an act of indiscretion.
- [10] On the other hand, even though the officer was unable to trace or speak with the virtual complainant, the community report about him was not good.

- [11] In the consideration of this sentencing Ruling, this court shall take into consideration the favourable probation report and the plea in mitigation.

THE LAW

- [12] The offence of unlawful wounding is provided for at section 22 of the Offences Against the Persons Act Cap 300 Laws of Antigua and Barbuda. It is punishable with an imprisonment of five year with or without hard labor.

SENTENCING GUIDELINES

- [13] In this exercise, the court is guided by the Sentencing Guidelines of The Eastern Caribbean Supreme Court Republished on 6th January 2025.

First Stage

- [14] The first stage is to consider the consequence by assessing the harm caused by the offence and placing it in a specific category.
- [15] Based on the Guidelines, this will fall into Category 2 – High. There was serious physical harm based on the injuries.

Second Stage

- [16] The second stage is to consider the seriousness by assessing the culpability of the offender. Consequently, this would be placed into Seriousness Level B- Lesser.

Third Stage

- [17] Having determined the consequence and the level of seriousness, the starting point is 35% of the maximum sentence (5 years) or One year and Nine months with range between 20% - 50% of the maximum sentence. This translates to a range between 12 months and 30 months.

Fourth Stage

[18] Consideration must now be had to the various aggravating and mitigating factors.

AGGRAVATING FACTORS

- a. Offender motivated by revenge in relation to his missing marijuana plants.

MITIGATING FACTORS

- a. Significant provocation.

The two factors will thus cancel each other out and the sentence shall remain at One year and nine months.

AGGRAVATING AND MITIGATING FACTORS FOR THE OFFENDER

[19] There is no aggravating factor for this offender but it was stated that he is a first offender and has never had an issue with the law. I consider this a mitigating factor and reduce the sentence to One year and three months.

[20] The convict here did not take advantage of an early plea. The matter went to full trial and thus not entitled to any rebate in that regard.

[21] The convict was also not in custody in respect of this case.

DEPARTURE FROM THE GUIDELINES

[22] The question at this stage is whether the ECSC Sentencing Guidelines can be dispensed with within the circumstances of this case? What does the justice of this case require? Are there compelling reasons for not following the Sentencing Guidelines?

[23] Among the questions which must be asked are: Is a term of imprisonment the appropriate sentence in this case? Would a non-custodial sentence with an order for compensation to the Virtual Complainant be sufficient to do justice in this?

- [24] Practice Direction 8A, No: 1 of 2019 of the ECSC addresses General Sentencing Principles and states that:

“Any departure from the guidelines must be explained as part of the reasoning”

- [25] Having carefully considered the various issues in this case, in particular the statement of the defendant’s counsel in the course of this case to the effect that up till today, the defendant is still deprived of the marijuana plant which was allegedly stolen from his yard and which itself was the cause of this whole issue. it is apparent that court ought to depart from the Sentencing Guidelines in order not to visit the convict with a situation of double jeopardy.
- [26] I observed that the father of the convict was present at every stage of this ordeal with his son. He attended every day of the main trial and every day of the sentencing trial. This speaks volume about his love for his son.
- [27] In considering the probation report, I observed that there are favorable reports from everyone that commented about this convict. I also observed that he strives to take of himself and his family.
- [28] I am convinced that a custodial sentence in this instance would not be an appropriate sentence in this situation rather I will make a sentence for fine and compensation.
- [29] I consider that the convict has unfortunately suffered some loss as a result of this incidence but I consider that this should be a lesson for him to be more careful in life.

[30] In view of the above, I order that the convict pay a fine of (\$1000) One thousand Dollars within the next 30 days or in the alternative, he shall serve a term of one year and three months imprisonment. He shall also pay compensation of \$1,000 one thousand Dollars in compensation to the Virtual complainant within the next 30 days failing which he shall serve 6 months imprisonment.

SENTENCE

[31] Livingston Purcell, having been convicted for the offence of unlawful wounding, you are hereby fined the sum of \$1000 One Thousand Dollars to be paid within the next 30days failing which you shall serve a term of One years and three months in prison. You shall also pay compensation of \$1,000 one thousand Dollars to the Virtual complainant within the next 30 days failing which he shall serve 6 months imprisonment.

Tunde A. Bakre
High Court Judge

By The Court



Registrar