

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR2022/0027

BETWEEN:

THE QUEEN

v

DANE SAMUEL

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Defendant in person

Before: The Honourable Mr Justice Colin Williams

2022: June 28th
July 1st, 6th

SENTENCING DECISION

- [1] **WILLIAMS J:** The defendant, Mr. Dane Samuel was indicted for wounding Mr. Joshua James. The date of the offence was the 4th June, 2020.
- [2] The indictment contained two counts. They were both grounded in the **Offences Against the Person Act**, Cap 380 of the Laws of Antigua and Barbuda Revised Edition 1992.
- [3] The First Count on the indictment charged Mr. Samuel with wounding with intent, contrary to section 20 of the **Offences Against the Person Act**. The particulars of the offence alleged that “Dane Samuel on the 4th day of June 2020, at Cashew Hill in the Parish of Saint John in the State of Antigua and Barbuda, unlawfully and maliciously wounded Joshua James with intent to do him [Mr. James] grievous bodily harm”.

- [4] The Second Count charged Mr. Samuel with unlawful wounding contrary to section 22 of the **Act**. The particulars of the offence are that “Dane Samuel on the 4th day of June 2020, at Cashew Hill in the Parish of Saint John in the State of Antigua and Barbuda, unlawfully and maliciously wounded Joshua James.”
- [5] The counts on the indictment are in the alternative.
- [6] Mr. Samuel at his arraignment on the 16th May, 2022 pleaded not guilty to both counts.
- [7] Shortly after the commencement of Mr. Samuel’s trial on the 28th June, 2022 and after the first witness (the virtual complainant, Mr. James) commenced his testimony, the Defendant indicated that he wished to change his plea. Mr. Samuel entered a plea of guilty to the second count of unlawful wounding.
- [8] The facts of the case were presented by the Prosecutor, Mr. Sean Nelson. He stated that on the 4th day of June 2020, around 9:00 am, the virtual complainant Joshua James went by his friend ‘Yard Man’ to collect a bed cot. After collecting the bed cot, Mr. James was walking through the yard belonging to Michael Bowen, also known as ‘Quarter’. Quarter asked Mr. James where he got the bed cot from. Mr. James told Quarter to “mind his business.” Quarter then took up two stones and threw them at Mr. James. The stones missed Mr. James. Mr. James then ran towards Quarter and held on to him. Mr. James had both of his hands around Quarter and told Quarter to calm down. Mr. James then felt a stab to the back of his left shoulder. He released Quarter. Mr. James turned around and he saw the defendant, Mr. Samuel with a pair of scissors in his hand. Quarter then kicked the virtual complainant. Mr. James fell to the ground. Quarter began kicking Mr. James and Mr. Samuel fired stabs at the virtual complainant. Mr. James received three stab wounds, two of them to the back and one to the right front chest area. Mr. James got away from the men and ran up the road. Mr. Samuel briefly chased after Mr. James. Mr. James met up with his cousins. He was taken to the hospital. The doctor found that Mr. James had: (1) Irregular 2 cm stab wound over the right nipple with active bleeding; decreased air entry to right base; (2) 2 cm stab wound to left mid-scapular region; (3) 2.5 cm wound to right para-spinal region. Mr. James suffered a collapsed lung and required a right thoracostomy tube placement to re-inflate his lung. Mr. James was released from the hospital on the 8th June, 2020.
- [9] Mr. Samuel agreed to those facts.
- [10] Mr. Samuel denied speaking with the police about the incident.
- [11] The parts of the Crown’s narrative of the facts that Mr. Samuel denies refer to the evidence of Corporal 598 Benjamin. The Crown did not elect a Newton Hearing and the references to the conversation are not considered in the sentencing process.
- [12] The statement in the deposition from Corporal Benjamin was not particularly crucial to the matter, given in any event the Defendant’s voluntary guilty plea. Corporal Benjamin in his statement said that on the 11th of June 2020, while investigating the wounding of Mr. Joshua James, he saw the Defendant at the Saint John’s Police Station at about 5:40 am. He (Corporal Benjamin) cautioned

Mr. Samuel in the presence of other police officers. He made an entry in his pocket diary of Mr. Samuel's response, but the Defendant declined to sign the entry made in the pocket diary. That entry records the Defendant as saying:

"The man is problem, he come in my yard and take up a bed cot, when me and my uncle ask him where he going with the bed cot he wah mek fighting with me uncle. Me go to him to try stop him and he grab on to my shirt collar and want mek fighting with me so me dig he with a little scissors me had...."

- [13] The contents on Corporal Benjamin's pocket book entry were expressly denied by Mr. Samuel.

Sentencing Hearing

- [14] At the sentencing hearing, Mr. James testified of the impact that the injuries have had on him. Mr. James said that he is still feeling the effect of the stab wounds. Mr. James testified that as a consequence of the injuries suffered, he can no longer participate in sports. He also lost his job and was unemployed for a while.
- [15] Mr. James said that the Defendant in the past did in fact teach him (Mr. James) a lot. The virtual complainant also expressed the view that he believed that the Defendant can do much better with his life.
- [16] The Defendant for his part apologized for what happened. He said that he was sorry. Mr. Samuel asked for leniency.
- [17] Mr. Samuel said he was now 38 years old. He worked with his father in construction. He lived by his grandmother. He had no children. He said he has never been convicted for any offence at the High Court before. Mr Samuel however accepted that he had thirteen previous convictions at the Magistrate's Court dating back to June 2008 when his antecedent record was read to him.
- [18] Mr. Samuel's antecedent record include convictions for obstruction, battery on police and disorderly conduct in 2008. Wounding, battery, disorderly conduct by fighting, armed with offensive weapon and assault in 2021.
- [19] The most severe penalty imposed to date on the Defendant at the Magistrate's Court was one year imprisonment for house breaking and larceny.

Sentence Considerations

- [20] Two sets of considerations ought to be applied in determining a just and proper sentence in this case. The first, has to do with an assessment regarding the applicability and weight of the four cardinal principles of sentencing: retribution, deterrence, prevention and rehabilitation. The second has to do with the application of the sentencing guidelines of the Eastern Caribbean Supreme Court.

- [21] Although in many cases, one or the other of the principles of sentencing may be especially relevant to the particular case, it is apparent that in Mr. Samuel's case, the four principles are all applicable.
- [22] What, however, is the appropriate starting point in the construction of the sentence?
- [23] Based on the victim impact testimony from Mr. James, it is apparent that there is some long term physical harm. Mr. James is unable to enjoy some of the activities he once did and experiences some discomfort. With respect to the consequences of the offence, when the full range of Mr James' incapacities are considered, could it be said that the harm is (1) severe, or (2) serious, or (3) lesser? The injuries were serious. They led to consequential physical trauma and impairment to Mr James' body functions and prolong limitations to his health. This is Consequence Category 2 – High.
- [24] With respect to the level of seriousness, the attack on the virtual complainant was carried out initially by Quarter and then the Defendant joined in and inflicted the stabs. This does not seem as rising to the level of being a group or gang attack in which the Defendant played a leading role. Although subsequent to the stabbing, the Defendant accepts that he did initially pursue the virtual complainant, it must be noted that no injury was inflicted during that pursuit, which was in any event abandoned. However there was the use of a bladed instrument which was used to inflict the wounds. This factor placed it in the Level A Seriousness.
- [25] In consulting the grid, the Consequence Category 2 and Seriousness Level A have a range of 45% to 75% of the maximum sentence with a starting point of 60%.
- [26] According to the section 22 of the **Offences Against the Person Act**, the maximum term of imprisonment for someone convicted of unlawful wounding is a term of imprisonment not exceeding five years.
- [27] The starting point of 60% of five years is three years.
- [28] With regard to the offence itself, the aggravating factors are that there were multiple stabs and it was a senseless and unnecessary attack. As far as mitigating factors are concerned, there was a lack of premeditation and it was an isolated incident carried out without any threats. The aggravating and mitigating factors with regard to the offence appear to balance out each other.
- [29] As far as the factors regarding the Defendant are concerned, he has been convicted on several occasions at the Magistrate's Court for relevant offences, the last occasion being the 30th June, 2021 when the Magistrate imposed a fine of \$500.00 to be paid in one month or two months imprisonment for assault and convicted, reprimanded and discharged Mr. Samuel for being armed with an offensive weapon. Mr Samuel was also convicted before a different Magistrate on the 3rd June, 2021 for wounding and was sentenced to 8-months imprisonment. On the mitigating side, Mr. Samuel has apologized and expressed remorse. However, the aggravating factors outweigh the mitigating factors. Accordingly, a further 4 months ought to be added to the three-years, carrying that figure to three years and 4 months.

- [30] Although the Defendant did not enter a guilty plea at the earliest opportunity, but rather did so soon after the commencement of the trial, he is still entitled to a reduction in his sentence. While Mr. Samuel cannot be given the full one-third discount for his early plea of guilty, a reduction of 25% or ten months is considered to be appropriate.
- [31] Mr. Dane Samuel, for the offence of unlawfully and maliciously wounding Joshua James on the 4th June, 2020 to which you pleaded guilty, you are sentenced to a term of thirty months, or two and a half years. The time spent in custody on remand by Mr. Samuel is to be taken into account in computing his sentence.

Colin Williams
High Court Judge

By the Court

Registrar