

**IN THE SUPREME COURT OF GRENADA
AND IN THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

GRENADA

CASE NO. GDAHCR2019/0004

BETWEEN:

THE KING

And

BRADLEY RICHARDS

Appearances:

Mr. Jordan Marshall, Crown Counsel for the Crown
Mr. Jerry Edwin of Counsel for the Defendant

2024: December 13; 18;
2025: January 15; 23.

SENTENCING JUDGMENT

- [1] **INNOCENT, J.:** The defendant, Mr. Bradley Richards ('Mr. Richards') was indicted on 10th January 2019 for the offence of maim contrary to section 208 of the Criminal Code as amended by section 35 of the Criminal Code (Amendment) Act relative to events that occurred on 17th June 2018.
- [2] Mr. Richards had initially entered a plea of not guilty to the single count in the indictment. However, on 24th June 2024, Mr. Richards was re-arraigned on the said indictment and changed his plea to guilty.
- [3] Sometime in the month of November 2017 there was an altercation between the victim, his siblings and Mr. Richards. Both parties made separate reports to the police. This previous altercation occurred some six (6) months prior to the events giving rise to the present proceedings.

- [4] On the afternoon of 17th June 2018, the victim and Mr. Richards were both present at a football match. The victim was involved in the match while Mr. Richards sat in the bleachers. At the conclusion of the match the victim went to the bleachers to change his clothing and to retrieve his belongings. At that time Mr. Richards was sitting near his clothing. When the victim went to pick up his clothing he noticed that Mr. Richards had moved closer to him. Mr. Richards said certain things to the victim. The victim turned around with his left hand raised in a defensive position. At that time Mr. Richards had a cutlass which was suspended in midair. Mr. Richards struck the victim on his left hand with the cutlass.
- [5] The victim who was now bleeding profusely fashioned a tourniquet and was driven to a medical facility by one of his friends. The victim was examined by a medical practitioner. The extent of the victim's injuries are chronicled in a medical report dated 9th September 2020. The medical report described the injuries suffered by the victim as a circumferential laceration to the right wrist, with the bones exposed, with blood pumping from the laceration. The victim was admitted to the operating theatre.
- [6] The victim's injury was located at the left upper limb at the distal left forearm in the 7 o'clock position. During the operation, it was discovered that the victim suffered a deep wound 8 cm proximal to the left wrist with a complete fracture of the left distal radius and ulna. The victim also presented with a fully divided ulnar artery, radial artery, anterior and posterior interosseous arteries, medial nerve, ulna nerve, flexor tendons and extensor tendons. The only attachment connecting the left distal and the left hand to the proximal left forearm was 3 cm of skin and subcutaneous fat. The left distal forearm and hand could not be salvaged. Therefore, the left distal forearm and hand had to be amputated with the left proximal forearm terminalised. Although the victim made a full recovery despite infection in the left forearm stump which eventually resolved. His resulting personal permanent disability was estimated to be about 70%.
- [7] Mr. Richards was subsequently arrested and charged for the subject offence on 20th June 2018. He was admitted to bail on 28th June 2018. He was committed to stand

trial by way of paper committal on 19th December 2018. He was admitted to bail throughout the entirety of the proceedings.

- [8] Section 208 of the Criminal Code as amended by section 35 of the Criminal Code (Amendment) Act provides:

“A person who intentionally and unlawfully causes maim or any dangerous harm to any other person commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding twenty years.”

- [9] In sentencing this offender, the court will apply the Compendium Sentencing Guideline for Violent Offences – Re-Issue 8th November 2021 (the ‘Guidelines’) as provided for by the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.

- [10] The sentencing court is required to arrive at a starting point sentence by having regard to the seriousness of the offence relative to the consequences of the offence as reflected in the degree of harm caused and the degree of culpability of the offender.

- [11] After establishing a starting point sentence, the court will adjust this starting point sentence upwards or downwards within the scale prescribed by the Guidelines to take account of the aggravating and mitigating factors inherent in the commission of the offence.

- [12] Thereafter, the court will make a further adjustment to the starting point sentence arrived at to take account of the aggravating and mitigating factors relevant to the offender. The court will then go on to consider what if any discount or credit the offender is entitled to on account of his guilty plea. The court will then deduct any time that the offender spent on remand from the nominal sentence. The court will then pass the sentence that is appropriate in light of all the circumstances of the case.

- [13] In sentencing this offender, the court will strive to arrive at a sentence which is proportionate having regard to the circumstances of the defendant’s offending and

the subjective factors that might have influenced him in the commission of the offence. In other words, not only will the court seek to arrive at a sentence that is commensurate with the seriousness of the offence, but will fashion a sentence that suits the offender and his individual or subjective circumstances. In so doing the court will consider whether there is any need to protect the public from harm from the offender, which will necessitate an assessment of dangerousness, specific deterrence and the need for rehabilitation. In other words, the court will assess the individualised needs of the offender when deciding the appropriate sentence to be imposed.

- [14] In considering the consequences of the offence by reference to the harm done, the court had before it, the victim's affidavit which stood as his victim impact statement. The victim in this case is now 32 years old. He was 26 years old at the time of the commission of the offence. He is a store manager and owns and operates a chicken farm.
- [15] Before his injury, the victim was employed with Republic Bank Limited for six (6) years as a teller. He was engaged in Treasury central processing unit. After approximately one (1) years' leave from this employment, he resigned.
- [16] It is beyond peradventure that the injuries suffered by the victim were indeed severe and life changing. The injury inflicted on the victim resulted in permanent disability. Therefore, there was severe physical harm caused to the victim.
- [17] In his victim impact statement which incidentally was unchallenged by the defendant, the victim stated that he spent two weeks at hospital where he developed an infection which required him to travel to the United States for medical treatment because of his fear of losing his arm. The victim also claimed that another reason for travelling to the United States was his fear of reprisal from the perpetrator. He also stated that he remained an outpatient of the medical facility that he attended in the United States. After the complications from the injury had resolved he attended physcial therapy sessions for one year and he continues to use resistance bands

for self-therapy on the weaker arm having lost the dominant hand. The victim has been unsuccessful in obtaining a prosthetic hand.

- [18] Apart from his physical disability, the victim has also been placed under severe financial pressure in seeking to resolve the said disability and the deformity associated therewith. In his victim impact statement he described the financial burden in this way:

“Due to the loss of my limb, I need EC\$300,000.00 the equivalent of US\$99,000.00 to purchase an electric (used) prosthesis. In addition, I have spent approximately \$30,000 US dollars to date and expect a similar cost of \$30,000 US dollars, for medical and other cost.”

- [19] The psychological impact of the injury sustained by the victim is exemplified by what is stated in his victim impact statement, where he said:

“This is very hard for me as I experience various effects such as “phantom hand” and continuous fear of losing my other hand. Additionally, during the Paralympics I experienced various other mental challenges such as the “power of the moment”, hence I quit the Paralympics initially after training, as I was struggling to stay focused as I was experiencing bouts of depression, and new found empathy with persons that experienced suicidal thoughts.

Although, I have never felt like taking my life, I lost my hand for nothing. Moreover, I have been embarked to participate in the next Paralympics in 2028. However, training is difficult for me but I am confident with the backing of my representatives, I will achieve the required mental health to succeed...

I am always in fear of losing my other hand. I am not going to lose my other hand. I am always on edge. I don't think they will have mercy on me. I usually stay out of the island as much as possible. I don't have anything else to give. I lost my hand, and I don't have anything to sacrifice anymore.”

- [20] The victim described the psychological impact of the attack on him in the following terms:

“It's not easy for me to sit or go to town or anywhere to have a good time. They make themselves present everywhere, including around Four Roads, Tanteen and even at spots that you would like to enjoy yourself, even Umbrellas Restaurant on the beach. The only place I didn't see them is Grenville.

- [21] The victim recounted that following this encounter, he was tremendously fearful, and was unable to visit Gouyave where his grandmother lived for fear of reprisal from the defendant.
- [22] The victim also recounted the psychological impact of the attack and consequent injury in his victim impact statement in the following words:
- “Furthermore, I am suffering psychologically which has hindered my relationship with my family, as my anger and impulse levels have increased, and if I am not angry I shut down and communicate little. My social life is impeded as I have stopped socializing and partaking in all other activities like football tournaments. Consequently, I am always aware of my surroundings, and always looking around but I am always accompanied by someone for my protection.”
- [23] Therefore, in all the circumstances of the case, it appears that the consequences of the defendant’s offending reflected in the harm caused falls at Category 1.
- [24] The defendant’s degree of culpability, in the court’s view, is high. There obviously was a large measure of premeditation and planning in the commission of the offence. In addition, from all indications it appears that the defendant’s unlawful act was fueled by the need for revenge or retaliation. The victim in this case was unarmed and there is no evidence of him presenting any threat to the defendant. Even more striking is the fact that the defendant chose to retaliate some six months after the fracas with the victim and his brother. Furthermore, the defendant chose to take a sharp bladed instrument to a football match and committed the unlawful and unprovoked criminal act in the presence of the public and in a public place.
- [25] Given the factual matrix of this case and what has been presented to the court by way of submissions, it does not appear that there is any need to consider the aggravating and mitigating factors relative to the offence as these matters have already been considered in the determination of the harm done and the defendant’s degree of culpability in the commission of the offence. To hold otherwise would inevitably, in the court’s view, lead to a level of double counting which the court should be anxious to avoid. However, the court can state quite comfortably that there are no mitigating factors inherent in the commission of the offence.

[26] In assessing the aggravating factors relative to the offender, the court took into consideration what was contained in the social inquiry report under the rubric “Attitude, Behaviour and Character” where it states:

“However, he became increasingly agitated and angry when he verbalized his attempts to approach the victim to convey his apparent remorse for this matter before the Court. He stated that after he made the report of the first altercation between himself, the victim and the victim’s brother, he chose not to attend the hospital with the medical form to assess his injuries as protocol dictates, as his reasoning at the time was, “guys fight and I did not hold it against them (victim and his brother). I said to myself, I lose. I couldn’t study them, as I had to go to work,” However, he continued to defend his actions towards the victim, in relation to this matter before the Court and remonstrated all reasoning to the contrary about his defensive actions.”

[27] It also appears from the social inquiry report that the defendant has acknowledged his need for anger management and counselling to curb his triggered behaviour and to assist him with acquiring coping skills in conflict resolution.

[28] The writer of the social inquiry report opined under the rubric “Assessment” that:

“The convicted man presents an image of an industrious individual, well presented, educationally sound, with all the attributes to succeed in his chosen field as an entrepreneur. However, due to his childhood experiences, he continues to harbour unresolved issues as he is unable to let go of anger and past trauma which have impacted his relationships by perceived threat to himself and cause and effect upon others. He expressed that he continues to display signs of unhealed childhood trauma which has caused triggers of anger, when he believes that he is vulnerable, or others have been taken advantage of.”

[29] In considering the subjective factors that might have influenced the defendant in the commission of the offence, the court has adverted its attention to the opinion expressed by the writer of the social inquiry report which is based on academic treatise. The writer states:

“...young men who have experienced adverse childhood experiences may develop maladaptive coping mechanisms to deal with trauma, including the use of aggression to express or manage unresolved emotions, such as anger, fear or frustration. Research indicates that ACEs increase the likelihood of impulsivity, hyper arousal and difficulty with emotional regulation, all of which are key predictors of violent behaviour.”

- [30] In the court's view, it does not appear that the defendant has shown any genuine remorse for his unlawful act. The defendant appears to place the blame for his actions squarely at the feet of the victim. In addition, he presents as a man who feels overwhelming justified in committing the unlawful act.
- [31] Mr. Richards is 26 years old at the time of sentencing. He was 20 years old at the time that he committed the subject offence. From all indications he has excelled academically. He attended the Presentation Boys' College from 2009 to 2014 where he attained 8 CXC passes at age 16. He later obtained an Associate's Degree in business management at the T. A. Marryshow Community College ('TAMCC') between the years 2014 to 2016. He obtained a fishing license in 2020. He is currently a self-employed fisherman and owns his own fishing vessel. He also engages in other forms of employment on an ad hoc basis to generate additional income. For all intents and purposes, Mr. Richards can be described as an enterprising young man.
- [32] The social inquiry report indicates that the defendant is a man of general good character in the community and is admired by many for his enterprising ways. For all intents and purposes it appears that his current offending was out of character. The defendant has no previous convictions for any offence.
- [33] The defendant is entitled to credit for his guilty plea. The amount of credit will be determined by the stage of the proceedings at which the defendant entered the plea. The defendant did not enter the guilty plea at the earliest available opportunity. Therefore, in the court's view, he is only entitled to a 25% discount from the notional sentence.
- [34] As a general principle, an offender who pleads guilty may expect some credit in the form of a reduction in the sentence which would have been imposed if he had been convicted by the jury on a plea of not guilty.

[35] In **R v. Buffrey**¹; Lord Taylor C.J. said that there was no absolute rule as to what the discount should be, but as general guidance, the court believed something of the order of one-third would be an appropriate discount from the sentence which would otherwise be imposed on a contested trial. In the instant case the defendant's late plea may have disentitled him from the entire one- third discount, however, some discount was still warranted. In **Buffrey** Lord Taylor C.J. stated thus:

“...But some reduction, clearly, must be made and because frauds of this kind are complex and do take a long time to unravel, it is well known that they have become a burden on the criminal justice system. They are very costly, both in time and in money. They cause stress to jurors who have to try them, to judges who have to try them, to those who have to conduct them and, not least of course, to the witnesses and to the defendants themselves who have to endure long periods of investigation in Court.

All those matters, in our judgment, justify the Court in applying a considerable discount where somebody does, albeit late in the day, face up to what he has done and plead guilty. It would be quite wrong for us to suggest that there was any absolute rule as to what the discount should be. Each case must be assessed by the trial judge on its own facts and there will be considerable variance as between one case and another.”

[36] Therefore, although the defendant's guilty plea came late in the day, it nonetheless saved the court considerable time, expense and the agony of witnesses testifying. On that basis therefore the defendant is entitled to some fraction of discount.

[37] Further guidance with respect to the quantum of discount that could be expected in the case of a delayed plea can be found in the English Court of Appeal case of **R. v Okee and West**². The appellants in that case pleaded guilty to robbery and were sentenced to four-and-a-half years' detention in a young offender institution and four-and-a-half years' imprisonment respectively. The sentencer indicated that he considered that five years would have been an appropriate sentence on a conviction, and had limited the discount to six months as the appellants had delayed their pleas until immediately before the trial was about to begin. In commenting on the reduction given Mellor LJ. stated:

¹ (1993) 14 Cr. App. R. (S.) 511, CA

² [1998] 2 Cr. App. R. (S.) 199

“It is vital that offenders should know that if they plead guilty their sentence will be discounted and they should see that discount. It is likewise right that those who choose to run their not guilty pleas up to the wire should know that that discount will be substantially and visibly reduced from that which they would otherwise have earned and therefore the 10 per cent given by the learned judge in these circumstances seems to this Court to have been ample.”

- [38] The court has given consideration as to whether any additional period of incarceration more than what is commensurate with the seriousness of the offence is required to take into account dangerousness and the need to protect the public from serious harm from this offender. It does not appear that there is such a need. This was an isolated incident and there is no evidence that this defendant presents the likelihood of harm to the public. The court has also given consideration to issues related to specific deterrence, general deterrence and the need for the rehabilitation of this offender.
- [39] Before deciding the issue of whether and to what extent the permissible aim of rehabilitation applies to this offender, the court will treat with the pressing issue raised by counsel for the defendant relative to whether the imposition of an immediate custodial sentence is proportionate to the offender and his offending.
- [40] Mr. Jerry Edwin, counsel for the defendant urged the court to refrain from imposing an immediate custodial sentence on the defendant. He submitted that the court should consider the imposition of a noncustodial sentence with an order for compensation to the victim. Mr. Edwin prayed in aid the defendant's youth, relative good character and the fact that he had no previous convictions for any or any offence involving violence. According to Mr. Edwin, no other permissible aim of punishment separate and apart from retribution would be served in sentencing the defendant who is a first time offender to a term of immediate imprisonment.
- [41] It is beyond peradventure that offences of this nature would inevitably attract a custodial sentence. The question that arises is whether the offender ought to serve out his custodial sentence in prison or in public. In resolving this issue there are several factors which the sentencing court must take into account.

- [42] The court understood Mr. Edwin's submission to be that since there was no urgent need for the rehabilitation of this offender, or the need to protect society from harm from him absent the element of dangerousness and this being his first offence, the imposition of an immediate custodial sentence would be excessive in the circumstances.
- [43] The approach which a sentencing court should adopt in such circumstances is that the principal objects as comprising the aims of punishment should be kept in mind. In some cases one object will be more predominant whereas in others regard must be had more particularly to two or more of them.
- [44] In this case, for instance, the conduct of which the defendant has pleaded guilty should, not only be held by ordinary men and women in utter abhorrence but also should receive when brought to justice the punishment commensurate with the seriousness of the offending. This is necessary because the punishment should at all times fit the crime. Therefore, although all five objects of sentencing policy should, if possible, be kept in view, they will not all be necessarily applied. Each case must depend upon its own facts.
- [45] In the present case, what features predominantly is the seriousness of the offence in light of the defendant's degree of criminal culpability and the harm caused to the victim. Another principal aim of sentencing which the court has given critical consideration to is that of general deterrence. Although there does not appear to be any urgent need for the rehabilitation of this offender, the court is mindful of the fact that in its experience in this jurisdiction offences of maim seem overwhelmingly prevalent.
- [46] Therefore, it is necessary that the courts reflect society's condemnation and abhorrence for such offences by the sentences which they pass. In this way the permissible aim of general deterrence can hopefully be met. It is important that would be offenders would recognise the seriousness of this kind of offending conduct and that engaging in same would likely be met with the most condign

consequences. In the court's view, the defendant's present offending necessitates the imposition of an immediate custodial sentence.

[47] Mr. Edwin had also raised the defendant's age or youthfulness as a matter of personal mitigation which the court ought to consider in determining the appropriate sentence.

[48] The court can do no more than reemphasise the approach which a sentencing court must adopt when dealing with the question of youthfulness as part of the sentencing exercise. The general principle is that where the offender is a young person who is in all relevant respects a first offender and appears generally motivated towards reform, there may be a benefit both to the offender and society of a significantly reduced sentence.

[49] Therefore, youth, the level of maturity and the prospect of rehabilitation of an offender, may be considered as factors militating against the imposition of a custodial sentence or the length of the sentence which the court may be minded to impose. However, it is important to recognise that what is appropriate in any given case depends substantially on the circumstances of the case.

[50] In order to determine whether this is so in a particular case, requires the sentencing court to make a realistic assessment which gives proper and adequate weight to the fact that the commission of an offence involving the infliction of serious physical and psychological harm on a victim resulting in a permanent disability, even when committed by an immature offender, remains serious and egregious offending especially when it is motivated by the need for revenge or retaliation.

[51] Once the age of majority has been attained, that is eighteen years, with the attendant conferral of important adult rights and privileges, youth by itself cannot lead inevitably to a reduction in sentence. Adult offenders must be taken, when deliberate action is engaged in, to have courted the consequences of their behaviour choices. By doing so, adult offenders cannot seek to be partially immunised in the sentencing process, by praying in aid "young adulthood" as a

mitigating factor. If the age of majority is to be considered as meaningful, representing as it does both notionally and practically the portal into the world of adult decision-making and overall responsibility, then any offender of and above that age will have a severely steep uphill climb in persuading a sentencing court, that without more, comparative youth is a mitigating factor that should steer the court away from a custodial sentence or a significantly reduced sentence.

- [52] No evidence has been presented to the court to suggest that the defendant's youth played any role or contributed to influencing his behaviour in any respect. On the contrary, the defendant appeared to have made a very deliberate decision in carrying out the offence. Although there is no evidence of the defendant having any prior criminal behaviour or record, the court has before it on the one hand, the defendant's good character, and on the other, the aggravating factors relative to the seriousness of the offence.
- [53] In the court's view, the combination of the defendant's culpability and the degree of harm caused to the victim make the offence so abhorrent that the defendant's good character young adulthood pales almost into insignificance, so that it fails to hold sufficient merit to justify a noncustodial sentence.
- [54] Mr. Edwin has asked the court to find that the defendant may have been acting impulsively and that his unlawful act was a wanton and unpremeditated act which was influenced by the opportunity which presented itself with some element of the defendant being influenced by the effects of the prior conduct attributed to the victim.
- [55] There appeared to be another limb to Mr. Edwin's argument. Mr. Edwin suggested to the court that the defendant's offending ought to be mitigated by the fact that he was labouring under the mistaken belief that he was going to be attacked by the victim having regard to what had transpired on a previous occasion; and in the circumstances, made a preemptive strike. This argument seemed to go against the grain of the plea entered into by the defendant.

- [56] In instances such as this the court is reminded of the well-known case of **Newton**³, in which three possibilities were suggested as being open to a court if there was a real conflict in evidence upon a plea of guilty between the prosecution and the defence. The first is to arrange matters so that a jury may determine the issue. The second is for the trial judge himself to hear evidence and determine the issue. The third is for the judge to hear no evidence but come to a conclusion on the basis of the submissions of counsel, but if he does that, “where there is a substantial conflict between the two sides, he must come down on the side of the defendant.”⁴
- [57] Therefore, if there is a substantial difference between the account put forward, on a plea, by the prosecution and that put forward by the defence, there should either be a trial of the issue so that the matter can be determined or the defendant should be sentenced on the basis most favourable to him.⁵ However, the conflict of evidence to be resolved must necessarily be material and or substantial. In **Williams v. R**⁶, Goff L.J. referred to this conflict as “a sharp divergence on a question of fact following an admission of an offence, the question of fact being one which was material to the sentence imposed.”
- [58] The common thread that runs through all of the cases cited is the substantial nature of the conflict to be resolved. In the court’s view, the divergence in evidence to which Mr. Edwin seems to have alluded to tangentially can hardly be regarded as substantial. In fact, the court is unable to find any conflict in the evidence at all. The inculpatory written statement of the defendant contained an admission that he had struck the victim with the bladed instrument. This evidence was not contradicted by the defendant, so that what remained at the end of the day was the unopposed evidence of the victim that he struck by the defendant in what was an unprovoked attack.

³ (1982) 4 Cr. App. R. (S.) 388

⁴ per Lord Lane C.J. at p 391

⁵ Phillip Andrew Smith (1986) 8 Cr. App. R. (S.) 169 at 172

⁶ (1983) 77 Cr. App. R. 329 at 332, Goff L.J.

- [59] A **Newton** hearing is conducted with respect to substantial conflicts between prosecution and defence evidence that are unresolved on a guilty plea. These conflicts must relate to the facts already existing on the evidence. In the instant case, all that was available on the plea was the unopposed evidence that the defendant struck the victim with a bladed weapon. A **Newton** hearing may have been warranted if it were the defendant's case that he never struck the victim at all. Such a substantial clash in evidence, pivotal to sentencing the defendant would have begged a **Newton** hearing. That was not the case here. The defendant's position in this case relative to his mistaken belief that he was going to be attacked seemed to have arisen ex improviso.
- [60] There remains only one issue which is whether the court in this instance should have proceeded to conduct the **Newton** hearing notwithstanding defence counsel's failure to inform the court that it was desirous of have such a hearing. This issue is moot, since has already determined that a **Newton** hearing was not necessary in the instant case. However, the court endeavour to briefly highlight a principle of general importance in this regard, as it requires some clarification.
- [61] The basic principle of a **Newton** hearing is that where there is a substantial conflict in the versions of the facts of the offence, and the court is not willing to sentence on the basis of the defendant's version, the court must proceed to hear evidence on the question, whether or not counsel for the defence wishes such a hearing to take place.⁷ In **R v J.W.** the judge did not give any intimation to counsel that he was rejecting the basis of plea that appeared in the pre-sentence report and arrived at his own conclusion as to the facts without any inquiry or hearing evidence. It was held that in those circumstances a **Newton** hearing should have been conducted.
- [62] In **R v. Paul Alan Gardener**⁸, where the appellant pleaded guilty to robbery, but denied the prosecution's case that a knife was involved in the offence, the Court of

⁷ **R v. J.W.** [2000] 1 Cr. App. R. (S.) 488 CA.

⁸[1994] 15 Cr. App. R. (S.) 667 CA

Appeal succinctly summed up the role of counsel and judge in initiating a **Newton** hearing thus:

“Neither counsel, and in particular counsel for the appellant, suggested at any stage during the course of this hearing that the Newton procedure should be adopted, nor did counsel for the appellant resile in terms from, or take issue with the expression of the judge's preliminary conclusion. Counsel at that stage was plainly influenced by the authorities which indicate that in the end it is for the judge himself to decide whether there should be a Newton hearing.

In our judgment, where there is a dispute about relevant facts which may affect the sentencing decision, counsel for the defence should make that fact clear to the prosecution and the court should then be informed at the outset of the hearing, if not by counsel for the prosecution then by counsel for the defence. The judge can then consider whether it is appropriate or necessary to order such a hearing. That did not happen in this case. If for some reason the procedure is overlooked at the very outset of the case, then counsel for the defence should ensure that during the course of the mitigation the judge is made aware not merely that there is a dispute, but that there is an issue of fact which counsel for the defence wishes the judge to resolve in the form of a Newton hearing. The judge can then decide the appropriate procedure.”

[63] The court, in delivering the judgment in **Gardener** then went on to explain the practical difficulties that a Court of Appeal faces when a ground of appeal alleges that a **Newton** hearing should have been held in the Court below:

“In the present case, neither counsel touched on the potential issue of a **Newton** hearing until the mitigation and the judge having expressed his preliminary view, counsel did not pursue the matter further. The first reference to a **Newton** hearing appeared in the advice on appeal. This is far too late. This Court will not normally consider an argument that the judge failed to order a hearing into disputed facts unless the possibility of such a hearing is raised expressly and unequivocally at the Crown Court for the judge to consider. There are huge disadvantages if that procedure is not followed. To take a very simple example: this Court is likely to be put into an impossible position, as in the present case, where we are invited to accept the appellant's version of events and, therefore, to reject the victim's account of what happened to him without the victim having had any opportunity to be heard, and when the Crown's case throughout is that the victim's version of this incident is correct.”

[64] In the instant case, neither defence nor prosecution counsel requested a **Newton** hearing, nor did the court see it fit to hold one. This seems to be attributable to the

fact that there was nothing in the evidence that warranted it. Accordingly, the court endorses the following the following passage from **Bent**⁹ (1986) 8 Cr. App. R. (S.) 19 at pages 22-23, which aptly summarises the court's view on the subject:

"We wish to say, whilst acknowledging and repeating our acknowledgment of the need in the appropriate case for the guidelines in Newton to be followed, that in cases where there is...only a divergence of degree of a minor character between the prosecution and defence it is not necessarily appropriate for any trial of an issue to take place, certainly where it is not requested by the defendant."

- [65] In any event, on the question of youthfulness being a mitigating factor, nothing conclusive or objective has been presented to the court to explain the defendant's impulsive behaviour and whether his conduct had been affected by inexperience, emotional volatility, or negative influences. In any event, what has been canvassed before the court in the social inquiry report, although it may explain the reasons for the defendant's impulsivity and volatility, does not serve to palliate his wrong doing. Indeed, he had adequate time for reflection; and in any event, the court has treated with these matters in assessing aggravating factors relative to the defendant.
- [66] In addition, nothing has been presented to the court to show why the defendant may not have fully appreciated the effect his actions would have had on the victim. It has not been shown demonstrably that the defendant was susceptible to peer pressure and other external influences, generally or due to some other idiosyncrasy. Also, it has not been shown that the defendant's emotional and developmental age was not commensurate with his chronological age so that he may be partially absolved from all blameworthiness in the commission of the offence.
- [67] In the premises, the court is incapable of making any rational assessment of how the defendant's age affected his culpability to the extent that it would otherwise serve as a mitigating factor in this case or militate against the imposition of a custodial sentence.

⁹ (1986) 8 Cr. App. R. (S.) 19 at pp 22-23

- [68] Counsel on both sides had invited the court to make an order for compensation as part of its sentence to be imposed on this offender. The court declines this invitation.
- [69] It came to the attention of the sentencing court through counsel that the victim had filed a claim in the civil court seeking to recover the sum of \$263,199.06 as special damages and \$38,750.00 as loss of earnings together with general damages, interest and costs. Counsel on both sides indicated that the victim has obtained judgment in his favour but that no sums have been paid by the defendant towards the judgment debt.
- [70] The court made inquiries of counsel for the defendant concerning the defendant's financial means. It became apparent that the defendant does not possess the requisite financial means to discharge the debt in the civil claim far less to comply with any order that the court may make relative to compensation.
- [71] Mr. Edwin gave an indication to the court that one of the defendant's relatives has offered to assist with the payment of the judgment debt or any order of compensation which the court was likely to make. It is clear that it would be contrary to principle for the court to contemplate making a compensation order for the reasons that the court has highlighted above. More importantly, the court is of the view, that it would be unwise and contrary to sound principle and good sentencing practice to permit a third party to pay compensation to the victim. To hold otherwise would mean that such an order for compensation would not register as punishment for the defendant's offending. The money would not come from him.

The sentence

- [72] The court having determined that the consequences of the offence by reference to the harm done is at Category 1 and the defendant's culpability as High, the court has arrived at a starting point sentence of 75% of the statutory prescribed sentence of 20 years' imprisonment adjusted within the range of 60% to 90% in making the necessary adjustments for the aggravating and mitigating factors relative to the

offence and the offender. Therefore, the starting point sentence before any adjustment is made is 15 years' imprisonment.

[73] The court having found that there were no mitigating factors inherent in the commission offence makes no adjustment to the starting point sentence by way of discount. Additionally, the court having strived to avoid double counting as hereinbefore described makes no adjustment to the starting point sentence on account of the aggravating factors inherent in the commission of the offence.

[74] The court did not find that there were any aggravating factors relative to the defendant. Accordingly, there will be no upward adjustment made to the starting point sentence. However, the court having considered the mitigating factors relative to the defendant finds it appropriate to credit the defendant with a discount from the starting point sentence. The court found that there was strong personal mitigation in the case of this defendant. In the premises, the court will discount a period of 3 years' imprisonment from the starting point sentence.

[75] The defendant shall be credit with a 25% discount from the term of 12 years' imprisonment on account of his guilty plea which equates 3 years' imprisonment. Accordingly, the remaining period of incarceration would be 9 years' imprisonment.

[76] The court has given considerable thought to whether any additional discount ought to be credited to the defendant to take account of the delay in the disposition of this case. The court is in no position to discern what caused the delay in this case. It was not readily apparent whether this delay was attributable to the prosecution or to the defendant. Therefore, it was initially unclear how and on what basis the court could exercise its discretion in granting any discount from the notional term to factor in the inexplicable delay.

[77] Initially, the court declined to make any further discount from the notional term to take account of the delay. However, the court heard further argument from Counsel on both sides relative to this issue. It appeared that the prosecution and the defence were both agreed that the delay in the matter was entirely systemic and not due to

any fault on the part of the parties. In the premises, the court is minded to make a further discount from the notional sentence equivalent to 2 years' imprisonment.

[78] The defendant initially spent 8 days on remand prior to being admitted to bail. On 11th December 2024, at the conclusion of the sentencing hearing the defendant was remanded to custody where he remained until the time the court delivered its sentencing remarks. Accordingly, the defendant has spent a period of 51 days on remand. The period of 51 days on remand will be deducted from the sentence of 7 years' imprisonment.

[79] The court appreciates the general proscription against sentencing young first time offenders to terms of incarceration. However, in the present case, the seriousness of the offence overshadows the defendant's relative good character and youthfulness. In the court's view, the justice of the case and the principle of proportionality dictates that a term of immediate incarceration be imposed.

[80] Accordingly, the sentence of the court is as follows:

1. The defendant is sentenced to 7 years' imprisonment. The period of 51 days spent on remand shall be deducted from the sentence of 7 years' imprisonment.
2. The defendant while incarcerated shall be enrolled and engaged in counselling to address his anger management issues.

Shawn Innocent
High Court Judge

By the Court

Registrar

