

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

GRENADA

CASE NO. GDAHCR2016/0066

BETWEEN:

THE KING

And

ALFRED LEWIS

Appearances:

Mr. Jordan Marshall, Crown Counsel for the Crown
Mr. Ruggles Fergusson KC of Counsel for the Defendant

2024: June 7; 17; 28
July 8.

JUDGMENT

[1] **INNOCENT, J.:** The defendant was indicted on 12th January 2017 on a charge of maim contrary to section 208 of the Criminal Code as amended by section 35 of the Criminal Code (Amendment) Act¹ relative to events that occurred on 23rd February 2016. The defendant was arraigned on the said indictment on 25th January 2017. The defendant entered a plea of guilty to the offence of maim on 1st March 2024. He is presently before the court for sentencing.

[2] The defendant and the virtual complainant are proprietors of adjoining land. They have known each other for a period of about ten to fifteen years. They both engage in farming on their respective properties. They each irrigate their farms from an

¹ Act No. 29 of 2012

adjoining river. The defendant's farm is located higher up the river. The defendant had installed a gravity flow system of irrigation to replace the pump system that he had previously utilised. The defendant and the virtual complainant each erected dams in the river to supply their respective irrigation systems.

[3] A disagreement arose between the defendant and the complainant about the operation of their respective irrigation systems. The virtual complainant's complaint was that when the defendant utilised his irrigation system his irrigation system was deprived of water flow from the river. The defendant did not agree with the virtual complainant's complaint.

[4] It appears that when the incident giving rise to the present proceedings occurred there was heightened tension between the defendant and the virtual complainant that seemed to have escalated over time. The incident which is the subject of the present proceedings was clearly precipitated by the impasse between the defendant and the virtual complainant.

[5] On the day of the incident the virtual complainant went on to the defendant's dam when he discovered that the water supply to his farm had been interrupted. The defendant was present some distance away from his dam. The virtual complainant accosted the defendant and an exchange of words ensued between them. The virtual complainant walked past the defendant and proceeded to unblock the dam by removing one of the stones located in the river.

[6] Based on the agreed statement of facts filed by the parties, it would appear that both the defendant and the virtual complainant had machetes in their possession. The defendant dealt a blow to the virtual complainant with his cutlass which did not appear to have inflicted any injury and which is affectionately called in Caribbean vernacular a "planass". In an attempt to shield himself, the virtual complainant raised his left hand. The defendant made another strike with the machete which struck the virtual complainant on his left hand resulting in the severing of his left hand. The virtual complainant picked up his machete presumably to shield himself and the defendant continued swinging his machete at the virtual complainant. As a result of

this altercation the virtual complainant suffered a laceration of one of his right fingers.

- [7] The virtual complainant's severed hand was hanging by a piece of skin tissue and bled heavily. He complained of feeling very weak. He was taken to a medical facility where he received medical and surgical intervention for his injuries and was hospitalised for a period of two weeks. It would appear that the injury inflicted by the defendant did not result in the complete amputation of the virtual complainant's hand. However, all bones, veins, arteries, tendons and nerves were severed. The hand was removed and the stump covered with skin.
- [8] The defendant had alleged in the course of the proceedings that the virtual complainant and his workmen were tampering with his water catchment area. The defendant claimed that while he was restoring his dam the virtual complainant and one of his workers arrived and prevented him from doing so. According to the defendant a scuffle ensued, and in the process the virtual complainant got cut on his hands.
- [9] In sentencing the defendant, the court has not applied the Compendium Sentencing Guideline for Violent Offences – Re-Issue 8th November 2021 (hereafter referred to as “the Guidelines”) as provided for by the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019. The reasons for the court's departure from the Guidelines will become more apparent in the course of the court's sentencing remarks.
- [10] The court, therefore, has not adopted a starting point sentence by reference to the grid contained in the Guidelines. Instead the court has determined the appropriate sentence to be imposed based on the established principles of sentencing. The court will instead determine whether a suspended sentence is appropriate in the circumstances of the present case based on the seriousness of the offence, including the defendant's culpability in the commission of the offence and the consequences of the offence as referenced by the harm caused in the commission

of the offence. The court will also give consideration to the aggravating and mitigating factors in the case relative to the offence and the offender.

- [11] In making this determination the court will consider whether such a sentence is commensurate with the seriousness of the offence and whether it is necessary to protect the public from serious harm from the defendant. The court will also consider whether there is and need for the rehabilitation of the defendant. In so doing the court will strive to achieve a sentence that is proportionate by ensuring that the sentence imposed is commensurate with the gravity of the offence.

Departure from the Guidelines

- [12] Mr. Fergusson KC has implored the court to depart from the Guidelines. Mr. Fergusson KC submitted that in the instant case departure from the Guidelines may be justified by exceptional circumstances which includes, a breach of the defendant's constitutional right to a fair hearing within a reasonable time; the devastating impact of a custodial sentence on his family; his overall positive contribution to the community; and the defendant's age.
- [13] According to Mr. Fergusson KC, the exceptional circumstances identified must be viewed within the context of the defendant's hitherto unblemished record; his status as an upstanding citizen; his productivity as a farmer he being engaged in providing yeomen service to a pivotal sector of the economy; the fact that the defendant does not pose a danger to the public and the unlikelihood of his reoffending and the importance of his continued contribution to society.
- [14] It appeared to the court that Mr. Fergusson's primary argument was premised on his perception that the imposition of an immediate term of imprisonment on the defendant would be grossly disproportionate whereas the imposition of an alternative form of sentencing would be proportionate when one considers that the imposition of an immediate custodial sentence would only serve a penological purpose where as in the present case the permissible aims of deterrence, rehabilitation and protection of the public were not applicable.

[15] The question of the sentencing court's departure from the Guidelines was discussed in the case of **Jonathan Edward v The King**² where the Court of Appeal held:

"The Eastern Caribbean Supreme Court has issued a Compendium Sentencing Guideline on Violence Offences. In speaking to the applicability of the guideline, the guideline states:

"In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence."

Ward JA in delivering the judgment of the Court of Appeal said:

"Thus, a judge is expected to adhere to the guidelines. He may only depart from the guidelines where exceptional circumstances exist that justify such departure, and he must clearly articulate his reasons for so doing."³

[16] The Court of Appeal did not attempt to lay down any definition of what constitutes "exceptional circumstances" in any given case; however, what can be gleaned from the judgment in **Edward v The King** is that the court must be placed in a position to identify any feature which makes a case exceptional, such that departure from the sentencing guidelines is justified. The factors identified and relied upon by the court must be seen cumulatively to yield exceptional circumstances.

[17] The question that arises in the present case is whether any of the circumstances identified by the Mr. Fergusson KC when viewed either alone or cumulatively amount to exceptional circumstances warranting a departure from the Guidelines.

[18] Mr. Fergusson's arguments in support of a departure from the Guidelines focused not only on the purpose of the punishment, but also on its effect on the individual offender and a remedy was available only where the punishment imposed was grossly disproportionate for the offender. An assessment as to whether a sentence was grossly disproportionate required consideration of the gravity of the offence, the

² SLUHCRA2022/0004 (12th May, 2023)

³ At para [87]

personal characteristics of the offender and the particular circumstances of the case.

- [19] For a full contextual understanding of the sentencing provisions to which Mr. Fergusson KC alluded, further factors had to be taken into account including: the actual effect of the punishment on the individual, the penological goals and sentencing principles upon which the sentence was fashioned, the existence of valid alternatives to the punishment imposed, and a comparison of punishments imposed for other crimes in the same jurisdiction.
- [20] If the sentence was not grossly disproportionate for the individual offender but would be grossly disproportionate in a reasonable hypothetical case, then the sentence required to be imposed by the Guidelines would be justified. In the instant case, although an intentional act committed in circumstances of extenuation usually constituted a far less grave offence than an intentional act, the Criminal Code has set a very high threshold to be met in order to attract criminal liability under section 208 of the Criminal Code.
- [21] Therefore, condemnation for wanton and reckless disregard for life and safety deserving of criminal liability had to be demonstrated. Moreover the mitigating factors in the offender's case must offset the aggravating ones, and should displace the gravity of the offence. Accordingly, where the offender's criminal conduct was particularly grave this would militate against a departure from the Guidelines.
- [22] Although it is appropriate for the legislation to discourage the careless and wanton use of violence, generally it could only do so in a manner consistent with existing sentencing principles. The fundamental principle of sentencing was proportionality. In the court's view, the Guidelines are consistent with the principles of proportionality and simultaneously pursue all of the traditional sentencing principles.
- [23] In addition, the punishment prescribed by section 208 of the Criminal Code is in keeping with the principles of sentencing even if it pursues sentencing principles of

general deterrence, denunciation, and retributive justice more than the principles of rehabilitation and specific deterrence.

- [24] In other words, the punishment prescribed by the statute was acceptable in having a strong and salutary effect of general deterrence. Ultimately, it is within the discretion of the sentencing court to determine in any given case which of the principles of sentencing should be given more priority than the others.
- [25] Therefore, it is not in every case that the court should depart from the Guidelines purely on the basis that the mitigating factors relative to an individual offender or his lesser degree of criminal responsibility grossly outweigh the aggravating factors. The punishment imposed on the offender should serve a legitimate penological purpose and must be founded on recognised sentencing principles. In addition, the effect of the punishment on the offender is mitigated by the availability of the deductibility of pre-trial custody and his guilty plea.
- [26] In the court's view, the real question appears to be whether the imposition of an alternative means of sentencing such as a conditional sentence, suspended sentence or parole would serve the penological purpose of the sentence and meet the requirements of the general principles of sentencing in the same way as a custodial sentence. The court thinks that perhaps that this is the relevant context within which the view any departure from the Guidelines.
- [27] The court believes that this provides a convenient segue into the discussion on restorative justice which seemed to have formed the basis of Mr. Fergusson's submissions although he did not express them explicitly in terms of the principles that underpin restorative justice.

Restorative Justice

- [28] Generally restorative justice brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. Restorative justice offers victims an opportunity to be heard and to have a say in the

resolution of offences, including agreeing rehabilitative or reparative activity for the offender.

- [29] Restorative justice is concerned with the restoration of the parties that are affected by the commission of an offence. Crime generally affects at least three parties: the victim, the community, and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in a manner that addresses the needs of all parties involved. This is accomplished, in part, through the rehabilitation of the offender, reparations to the victim and to the community, and the promotion of a sense of responsibility in the offender and acknowledgment of the harm done to victims and to the community.
- [30] The underlying policy behind the expanded use of restorative principles in sentencing emanates from the general failure of incarceration to rehabilitate offenders and reintegrate them into society. By placing a new emphasis on restorative principles, the law expects both to reduce the rate of incarceration and improve the effectiveness of sentencing.
- [31] One part of the jurisprudential policy underpinning restorative justice is that jails and prisons will be there for those who need them, for those who should be punished in that way or separated from society. The general concept is that restorative justice creates an environment which encourages community sanctions and the rehabilitation of offenders together with reparation to victims and promoting in criminals a sense of accountability for what they have done. It is not simply by being harsher that we will achieve more effective criminal justice. We must use our scarce resources wisely.
- [32] This innovative and flexible approach to justice has been advanced within criminal justice in recent years as an alternative way of responding to offending behaviour. There has been a proliferation of legal and extra-legal programs aiming to restore victims, encourage offenders to take responsibility for the harm caused, reintegrate offenders into the community, and involve victims, offenders and community representatives in collaborative decision-making processes.

- [33] It can provide a means of closure and enable the victim to move on. Alternative sentences also provide a way for offenders to face the consequences of their actions, recognise the impact that it has had upon others and where possible make amends. In this way, restorative justice has the potential to help rehabilitate offenders and enable them to stop offending. It has the potential to motivate them to change and become responsible, law-abiding and productive members of society.
- [34] A potentially suitable case where the court can give consideration to restorative justice is where the offender accepts responsibility and has made a guilty plea at any point in proceedings. The court retains a duty to ensure that the conditions are proportionate to the offending and meet the public interest requirements of the case.
- [35] The conditions of an alternative sentence must be clearly defined in terms of what must be done and within what period of time. Conditions must be realistic and should take account of the particular offender's physical and mental capacity, so that he could reasonably be expected to achieve them within the time set; otherwise the only result will be a delayed prosecution.
- [36] The dilemma that the court faces in the present case is whether restorative justice should be defined primarily in terms of the process to be used or the outcomes to be achieved. Should the process or the outcome be regarded as the dominant factor or are both to be given equal status?
- [37] In the court's view, any definition of restorative justice needs to go beyond defining it as a process by also giving importance to the aims and outcomes of that process. The process is not restorative if focused simply upon punishment or other disposal of the offender. A preferred definition of restorative justice is one that prioritises the outcomes to be achieved. Restorative justice should be considered with the context of every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime. This rightly characterises restorative justice by its aim of restoration and not only by the process.

- [38] An advantage of seeking a definition that emphasises outcomes is that it is then possible to have a variety of processes considered restorative, provided they are aiming for restoration. While the fullest degree of restoration is most likely achieved through informal voluntary processes, where this is not possible, some degree of restoration can still be achieved through coercive measures. Requiring the offender to take part in a restorative process may be an option as long as the use of coercion serves the primary aim of restoration.
- [39] The permissibility of coercion is at the heart of the restorative justice debate. It is disputed whether restorative justice should remain an informal, voluntary process or whether it should, at times, be structured and coercive. Some view 'voluntariness' as a key value of restorative justice because they fear coercion is equal to punishment, an approach which they believe should have no place in restorative justice. However, even given the absence of coercion, the notion of voluntariness is not that straightforward. Voluntariness, for example, may be constrained by an offender's desire to avoid prosecution or a less favourable sanction. 'Choice', then, must be understood as a qualified notion.
- [40] While restoring the victim should be prioritised, it is clear that attempts to repair the harm caused by crime should also be directed towards the offender and affected community. Restoration is not just an option; justice requires that efforts be made to achieve restoration of those directly affected by crime. To satisfy justice the notion of repairing the harm must go beyond physical and material losses to encompass emotional aspects, involving attempts to restore victims' self-respect, feeling of safety, and sense of empowerment, and offenders' sense of belonging and reintegration into the community.
- [41] Restorative justice is about restoring responsibility to offenders to take active steps to repair the harm caused, both materially and symbolically. Restorative justice is also about requiring offenders to participate in the process that decides how to deal with their offending behaviour. The aim should be to try and make offenders aware of the consequences of their actions and how the harm done affects others and

themselves. In restorative processes, offenders have to speak about their offending and listen to how victims have been affected.

- [42] Offenders should be encouraged to recognise their wrongdoing in order to take responsibility for the harm they have caused; victims need to be assured that the community has taken this harm seriously; and recognising the wrong done is important for the wider community in helping to restore public confidence in the criminal justice system. To that extent restoration can be said to encompass retribution.
- [43] While reparation of the harm done to the victim should be prioritised, it must be recognised in any response that a wrong has also been committed. Restorative justice is about encouraging offenders to accept responsibility and make reparation for their offending but efforts must also be made to restore offenders' sense of belonging and reintegration into the community. While restorative justice as an informal, voluntary and collaborative process is an ideal, to widen the applicability of restorative justice principles in the criminal justice process, coercion should be an option.

The court's approach to restoration and alternative sentencing

- [44] The 2012 amendment to the Criminal Code substantially reformed the provisions of section 78 of the Criminal Code, and introduced, inter alia, the concept of alternative sentencing by providing for alternative measures for adult offenders and a new type of sanction, the suspended sentence of imprisonment and probation. It appears that the new regime was enacted both to reduce reliance on incarceration as a sanction and to increase the use of principles of restorative justice in sentencing.
- [45] Before proceeding to discuss the approach that the court should take in determining the appropriateness of any of the alternative sentencing regimes contemplated by section 78 of the Criminal Code as amended it is necessary to return to the question of the departure from the Guidelines.

- [46] The court's jurisdiction to impose a suspended sentence or a sentence of probation is founded in statute and not in the Guidelines. Therefore, it appears that if the sentencing court makes the determination that a particular case is an appropriate one to impose a suspended sentence or probation this would warrant a departure from the Guidelines or alternatively would obviate the need for dependence on the Guidelines. This observation will be discussed later on in the court's sentencing remarks.
- [47] Mr. Fergusson KC, Counsel appearing for the defendant in presenting his submissions to the court advocated for a departure from the Guidelines and argued strenuously for the imposition of a non-custodial sentence or the imposition of a suspended sentence. Mr. Fergusson KC submitted that the court ought to give serious consideration to the dictates of restorative justice. According to Mr. Fergusson KC, the dictates of restorative justice would be met by the imposition of alternative sentencing regime or a suspended sentence.
- [48] The court has adverted its attention to the provisions of Practice Direction 8C No. 3 of 2019 (the 'Practice Direction') made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 which sets out guidance on when a suspended sentence should be imposed. The Practice Direction highlights the factors to which the court must have regard when imposing a suspended sentence. The Practice Direction provides crucial guidance to the court particularly since the statutory provisions dealing with suspended sentences in this jurisdiction does not provide any basis upon which the court should exercise its discretion to impose a suspended sentence.
- [49] In Mr. Fergusson view, the court is armed with an arsenal of alternative sentencing regimes which would serve the objectives of restorative justice; and in all the circumstances of the case, would obviate the need for a sentence based entirely on penology particularly as there is no requirement to meet the permissible aim of rehabilitation of the offender or the protection of the public from harm from him.

- [50] In furtherance to his submission on the point, Mr. Fergusson KC directed the court's attention to the provisions of section 5 of the Criminal Code (Amendment) Act⁴ which amended the Criminal Code⁵ section 78 by enacting and inserting section 78BA which grants the sentencing court the power to make Community Service Orders.
- [51] Section 78BA (1) provides that where a person is convicted of an offence punishable by imprisonment the Court by or before which he is convicted may, in addition to or instead of dealing with him in any other way make an order requiring him to perform community services. Section 78BA (3) defines "community service" as work for a community organization or other work of value to the community performed by a person without payment.
- [52] In considering Mr. Fergusson's submissions, the court remains focused on the principle that a community service order drafted in the abstract without knowledge of what actual supervision and institutions and programs are available and suitable for this offender is often worse than tokenism: it is a sham. Hence, the judge must know or be made aware of the supervision available in the community by the supervision officer or by counsel. If the level of supervision available in the community is not sufficient to ensure safety of the community, the judge should impose a sentence of incarceration.
- [53] Mr. Fergusson KC also referred the court to the provisions of section 3 of the Probation Act⁶ which provides that where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion that having regard to the circumstances, including the nature of the offence and the character of the offender, it is expedient to do so, the court may, instead of sentencing him or her, make a probation order.
- [54] The dictionary to the Probation Act defines "offence the sentence for which is fixed by law" as an offence for which the High Court is required to sentence the offender

⁴ Act No. 20 of 2012

⁵ Cap. 72A

⁶ Cap. 256

to death or imprisonment for life or to detention during Her Majesty's pleasure. This is not the case here. Therefore, the court is not proscribed from considering a probation order as an alternative sentence to immediate incarceration once the statutory requirements of the Code are capable of being fulfilled.

[55] Probation has traditionally been viewed as a rehabilitative sentencing tool. Therefore, in the court's view, if the court were to accept Mr. Fergusson's position regarding the absence of the need for rehabilitation in the case of the defendant, then clearly the making of a probation order would not be fulfilling any of the permissible aims of punishment.

[56] The court was also referred to the provisions of section 78(1) (c) of the Criminal Code which empowers the Court before which a person is convicted, according to the circumstances of the case, to substitute for a punishment assigned by the Code a different punishment, and the court before which a person is convicted of any offence may order that, in lieu of or in addition to any other punishment, he or she enter into his or her own recognisance, with or without sureties, for keeping the peace and being of good behaviour; and that, in default of such recognisance or sureties, he or she be imprisoned, in addition to the term, if any, of imprisonment to which he or she is sentenced, for any term not exceeding six months in the case of a conviction before the Supreme Court, or three months in the case of a conviction before a Magistrate's Court, not exceeding in either case the term for which he or she is liable to be imprisoned for the offence of which he or she is convicted.

[57] A similar provision to section 78(1) (c) is contained in the Probation Act. Section 6 of the Probation Act empowers the court to make an order that the defendant provide security for good behavior where the court makes a probation order. The section provides that a court may, on making a probation order, if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behaviour of the offender.

[58] Section 78 of the Criminal Code was amended by section 78BB of the Criminal Code (Amendment) Act by inserting the new section which provides that where a

court passes on any person a sentence of imprisonment for a term of not more than three years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than three years from the date of the order, such person commits in Grenada another offence punishable with imprisonment and thereafter a court having power to do so orders that the original sentence shall take effect with or without variations of its terms. The section also defines a suspended sentence thus: “suspended sentence” as respects any offender means a sentence which is ordered pursuant to this section not to take effect unless the offender commits another offence.” Therefore, a suspended sentence may properly be viewed as a sentence of imprisonment.

- [59] The difficulty with section 78BB is that it does not provide any guidance to the sentencing court as to when a suspended sentence is appropriate in any given set of circumstances. In the court’s view, the provisions of the Practice Direction supplements section 78BB of the Code.
- [60] A suspended sentence should be distinguished from probationary measures. Probation is primarily a rehabilitative sentencing tool. By contrast, a suspended sentence was intended to be punitive in nature. Therefore, suspended sentences should generally include punitive conditions that are restrictive of the offender’s liberty.
- [61] No offences are excluded from the suspended sentencing regime. There appear to be no presumptions in favour of or against a suspended sentence for specific offences. Section 78 of the Code lists only one criteria that a court must consider before deciding to impose a suspended sentence, that is, the court must impose a term of imprisonment of not less than one year and not more than three years’ imprisonment.
- [62] The Practice Direction provides that a suspended sentence remains a prison sentence and should not be passed unless a term of imprisonment is warranted. It should not be considered another form of non-custodial penalty like probation or community service. It appears that a literal interpretation of this provision in the

Practice Direction, presupposes that a sentencing judge must first fix a term of imprisonment that is warranted in the circumstances of the case.

- [63] The court has concluded that the requirement in section 78 that the judge impose a sentence of imprisonment of not less than one year and not more than three years does not require the judge to first impose a sentence of imprisonment of a fixed duration before considering whether to impose a suspended sentence. Such an approach in the court's view is unrealistic and could lead to unfit sentences in some cases. Instead, a purposive interpretation of section 78 should be adopted. The court is also of the view that the same purposive interpretation ought to be given to the above cited provision in the Practice Direction.
- [64] A literal reading of section 78BB suggests that the decision to impose a conditional sentence should be made in two distinct stages. In the first stage, the judge should decide the appropriate sentence according to the general purposes and principles of sentencing. Having found that a term of imprisonment of not less than one year and not more than three years is warranted, the judge would then, in a second stage, decide whether this same term should be served in the community according to section 78BB. At first sight, since section 78BB states that the court imposes a sentence of imprisonment of not less than one year and not more than three years' it seems that the sentencing judge must first impose a term of imprisonment of a fixed duration before contemplating the possibility that this term be served in the community.
- [65] In the court's view, this two-step process does not correspond to the reality of sentencing. In practice, the determination of a term of imprisonment is necessarily intertwined with the decision of where the offender will serve the sentence. A judge does not impose a fixed sentence of "x months" in the abstract, without having in mind where that sentence will be served. Furthermore, when a suspended sentence is chosen, its duration will depend on the type of conditions imposed. Therefore, the duration of the sentence should not be determined separately from the determination of its venue.

- [66] There is also a contradiction embedded in this rigid two-step process. After having applied 78BB in the first stage to conclude that the appropriate sentence is a term of imprisonment of a fixed duration (in all cases less than one year or not more than three years), the judge would then have to decide if serving the same sentence in the community is still consistent with the fundamental purpose and principles of sentencing. It is unrealistic to believe that a judge would consider the objectives and principles twice or make a clear distinction in his or her mind between the application of 78BB in the first stage and in the second stage. Even if this could be done, it could lead to what has been described as a “penalogical paradox”.
- [67] This second step of the analytical process would effectively compromise the principles of sentencing that led to the imposition of a sentence of imprisonment in the first place. For instance, the principle of proportionality, embedded in section 78BB as the fundamental principle of sentencing, directs that all sentences must be proportional to the gravity of the offence and the degree of responsibility of the offender.
- [68] Therefore, when a judge in the first stage decides that a term of imprisonment of “x months” is appropriate, it means that this sentence is proportional. If the sentencing judge decides in the second that the same term can be served in the community, it is possible that the sentence is no longer proportional to the gravity of the offence and the responsibility of the offender, since a suspended sentence will generally be more lenient than a jail term of equivalent duration. Thus, such a two-step approach introduces a rigidity in the sentencing process that could lead to an unfit sentence.
- [69] Hence, the paradox already identified can be addressed by a purposive interpretation of section 78BB. For the reasons already discussed above, the requirement that the court “imposes a sentence of imprisonment of not less than one year and not more than three years” could not have been intended to impose on judges a rigid two-step process. Rather, it was included to identify the type of offenders who could be entitled to a suspended sentence. At one end of the range, section 78BB denied the possibility of a suspended sentence for offenders who

should receive a penitentiary term. At the other end, the section was intended to ensure that offenders who were entitled to a more lenient community measure such as a suspended sentence with or without probation did not receive a sentence of imprisonment, a harsher sanction in the legislative scheme.

- [70] This principle was enunciated in **R v O'Keefe**⁷ where it was stated emphatically that suspended sentences should not be given when, but for the power to give a suspended sentence, a probation order was the proper order to make. After all, a suspended sentence is a sentence of imprisonment. The approach recommended in **R v O'Keefe** was that before one gets to a suspended sentence at all, a court must go through the process of eliminating other possible courses such as absolute discharge, conditional discharge, probation order, fine, and then say to itself: this is a case for imprisonment, and the final question, it being a case for imprisonment: is immediate imprisonment required, or can I give a suspended sentence?
- [71] Hence, a purposive interpretation of section 78BB does not dictate a rigid two-step approach in which the judge would first have to impose a term of imprisonment of a fixed duration and then decide if that fixed term of imprisonment can be served in the community. In other words, the requirement that the court must impose a sentence of imprisonment of not less than one year and not more than years can be fulfilled by a preliminary determination of the appropriate range of available sentences.
- [72] The above-mentioned, approach still requires the judge to proceed in two stages. However, the judge need not impose a term of imprisonment of a fixed duration at the first stage of the analysis. Rather, at this stage, the judge simply has to exclude two possibilities: (a) probationary measures; and (b) a penitentiary term. If either of these sentences is appropriate, then a suspended sentence should not be imposed.
- [73] In making this preliminary determination, the judge need only consider the fundamental purpose and principles of sentencing to the extent necessary to narrow

⁷ (1968), 53 Cr. App. R. 91, at pp. 94-95

the range of sentence for the offender. The submissions of the parties, although not binding, may prove helpful in this regard. For example, both parties may agree that the appropriate range of sentence is a term of imprisonment of not less than one year and not more than three years.

- [74] Once that preliminary determination is made, the judge should then proceed to the second stage of the analysis that is, determining whether a suspended sentence would be consistent with the fundamental purposes and principles of sentencing. Unlike the first stage, the principles of sentencing are now considered comprehensively. Further, it is at the second stage that the duration and venue of the sentence should be determined, and, if a suspended sentence, the conditions to be imposed.
- [75] In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a “just and appropriate” sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.
- [76] As a prerequisite to any suspended sentence, the sentencing judge must be satisfied that having the offender serve the sentence in the community would not endanger its safety. If the sentencing judge is not satisfied that the safety of the community can be preserved, a suspended sentence must never be imposed.
- [77] The issue here is whether “safety of the community” refers only to the threat posed by the specific offender or whether it also extends to the broader risk of undermining respect for the law. The proponents of the broader interpretation argue that, in certain cases where a conditional sentence could be imposed, it would be perceived that wrongdoers are receiving lenient sentences, thereby insufficiently deterring those who may be inclined to engage in similar acts of wrongdoing, and, in turn, endangering the safety of the community.
- [78] In the court’s opinion, to assess the danger to the community posed by the offender while serving his or her sentence in the community, two factors must be taken into

account, namely, the risk of the offender re-offending; and the gravity of the damage that could ensue in the event of re-offence. If the judge finds that there is a real risk of re-offence, incarceration should be imposed. Of course, there is always some risk that an offender may re-offend. If the judge thinks this risk is minimal, the gravity of the damage that could follow were the offender to re-offend should also be taken into consideration. In certain cases, the minimal risk of re-offending will be offset by the possibility of a great prejudice, thereby precluding a suspended sentence.

[79] It is suggested that consideration be given to whether the offender has previously complied with court orders and, more generally, to whether the offender has a criminal record that suggests that the offender will not abide by the suspended sentence.

[80] Additional factors that may be of relevance to the court may include the nature of the offence; the relevant circumstances of the offence, which can put in issue prior and subsequent incidents; the degree of participation of the accused; the relationship of the accused with the victim; the profile of the accused, that is, his [or her] occupation, lifestyle, criminal record, family situation, mental state; his [or her] conduct following the commission of the offence; and the danger which the interim release of the accused represents for the community, notably that part of the community affected by the matter. The risk that a particular offender poses to the community must be assessed in each case, on its own facts. Moreover, the factors outlined above should not be applied mechanically.

[81] The risk of re-offence should also be assessed in light of the conditions attached to the sentence. Where an offender might pose some risk of endangering the safety of the community, it is possible that this risk be reduced to a minimal one by the imposition of appropriate conditions to the sentence. Such other reasonable conditions as the court considers desirable for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences may be imposed.

- [82] In a preliminary determination, the sentencing judge should reject a penitentiary term and probationary measures as inappropriate. Having determined that the appropriate range of sentence is a term of imprisonment of not less than one year and not more than three years, the judge should then consider whether it is appropriate for the offender to serve his or her sentence in the community.
- [83] As a corollary of the purposive interpretation of section 78, a suspended sentence need not be of equivalent duration to the sentence of incarceration that would otherwise have been imposed. The sole requirement is that the duration and conditions of a suspended sentence make for a just and appropriate sentence.
- [84] The requirement in section 78BB is that the judge be satisfied that the safety of the community would not be endangered by the offender serving his or her sentence in the community is a condition precedent to the imposition of a suspended sentence, and not the primary consideration in determining whether a suspended sentence is appropriate.
- [85] In making this determination, the judge should consider the risk posed by the specific offender, not the broader risk of whether the imposition of a suspended sentence would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law. Two factors should be taken into account, namely the risk of the offender re-offending; and the gravity of the damage that could ensue in the event of re-offence. A consideration of the risk posed by the offender should include the risk of any criminal activity, and not be limited solely to the risk of physical or psychological harm to individuals.
- [86] Once the prerequisites of 78 are satisfied, the judge should give serious consideration to the possibility of a suspended sentence in all cases by examining whether a suspended sentence is consistent with the fundamental purpose and principles of sentencing.
- [87] In the court's opinion, the Practice Direction encapsulates all of the principles already discussed. In fact, the Practice Direction provides useful guidance to the

sentencing court relative to a non-exhaustive list of factors that the sentencing court should take into account when exercising its discretion whether or not to impose a suspended sentence.

[88] The Practice Direction provides that the court may consider the following non-exhaustive list of factors in exercising its discretion whether to impose a suspended sentence: (1) whether an appropriate punishment can only be achieved by an immediate custodial sentence; (2) whether the offender presents a risk or danger to the public or to the victim; (3) whether the offender has a history of poor compliance with court orders; (4) whether there is a realistic prospect of rehabilitation; (5) If sentencing a person under 21, whether there is a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation; (6) whether there is strong personal mitigation; and (7) What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?

[89] In the court's view, the factors highlighted by the Practice Direction are consistent with the permissible aims and principles of sentencing. Therefore, there appears to be no reason to depart from the Guidelines once the Practice Direction is applied correctly. In the premises, there is no need to depart from the Guidelines in the manner suggested by Mr. Fergusson KC. What is required, in the court's opinion, is whether the Guideline is applicable to the present case, and by extension the Practice Direction.

[90] A suspended sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the suspended sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

- [91] Generally, a suspended sentence will be better than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and the community, and promotion of a sense of responsibility in the offender and acknowledgment of the harm done to the victim and the community.
- [92] Where a combination of both punitive and restorative objectives may be achieved, a suspended sentence will likely be more appropriate than incarceration. Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved.
- [93] However, a suspended sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of lesser importance, depending on the nature of the conditions imposed, the duration of the sentence, and the circumstances of both the offender and the community in which the suspended sentence is to be served. A suspended sentence may be imposed even where there are aggravating circumstances, although the need for denunciation and deterrence will increase in these circumstances.
- [94] No party is under a burden of proof to establish that a suspended sentence is either appropriate or inappropriate in the circumstances. The judge should consider all relevant evidence, no matter by whom it is adduced. However, it would be in the offender's best interests to establish elements militating in favour of a suspended sentence. Sentencing judges have a wide discretion in the choice of the appropriate sentence. They are entitled to considerable deference from appellate courts. Absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit
- [95] The suspended sentence is therefore a meaningful alternative to incarceration for less serious and non-dangerous offenders. The offenders who meet the criteria of 78BB will serve a sentence under strict surveillance in the community instead of going to prison. These offenders' liberty could be constrained by conditions attached

to the sentence. In case of breach of conditions, the offender will be brought back before a judge. If an offender cannot provide a reasonable excuse for breaching the conditions of his or her sentence, the judge may order him or her to serve the remainder of the sentence in jail, hence there is a real threat of incarceration to increase compliance with the conditions of the sentence.

[96] Thus, a suspended sentence is available in principle for all offences in which the statutory prerequisites are satisfied. It is arguable that the fundamental purpose and principles of sentencing support a presumption against suspended sentences for certain offences. By the same token it is also arguable that a suspended sentence would rarely be appropriate for offences such as sexual offences against children; aggravated sexual assault; manslaughter; serious fraud or theft; serious morality offences; impaired or dangerous driving causing death or bodily harm; and trafficking or possession of certain narcotics. It has been argued that this followed from the principle of proportionality as well as from a consideration of the objectives of denunciation and deterrence.

[97] In the court's view, while the gravity of such offences is clearly relevant to determining whether a suspended sentence is appropriate in the circumstances, it would be both unwise and unnecessary to establish judicially created presumptions that suspended sentences are inappropriate for specific offences.

[98] Offence-specific presumptions introduce unwarranted rigidity in the determination of whether a suspended sentence is a just and appropriate sanction. Such presumptions do not accord with the principle of proportionality and the value of individualization in sentencing, nor are they necessary to achieve the important objectives of uniformity and consistency in the use of suspended sentences.

[99] Sentencing is an individualized process, in which the sentencing judge has considerable discretion in fashioning a fit sentence. The rationale behind this approach stems from the principle of proportionality, the fundamental principle of sentencing, which provides that a sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. Proportionality requires

an examination of the specific circumstances of both the offender and the offence so that the “punishment fits the crime”. As a by-product of such an individualised approach, there will be inevitable variation in sentences imposed for particular crimes.

[100] It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime. Sentencing is an inherently individualised process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this jurisdiction, as the “just and appropriate” mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred.

[101] Therefore, the suggestion that the proportionality principle presumptively excludes certain offences from the suspended sentencing regime espouses an approach that focuses inordinately on the gravity of the offence and insufficiently on the moral blameworthiness of the offender. This fundamentally misconstrues the nature of the principle. Proportionality requires that full consideration be given to both factors. The particular circumstances of the offender and the offence must be considered in each case.

[102] An individualised sentencing regime will of necessity entail a certain degree of disparity in sentence. Sentencing Guidelines which mandate the establishment of “starting point sentences” may be set out as guides to sentencing courts in order to achieve greater uniformity and consistency. However, the court is also acutely aware of the need to provide guidance to sentencing courts regarding the use of the suspended sentence, as it is a new sanction in some jurisdictions which has created a considerable amount of controversy and confusion in its short life.

[103] That said, the court does not think it necessary to resort to “starting points” in respect of specific offences to provide guidance as to the proper use of suspended sentences. In the court’s view, the risks posed by starting points, in the form of

offence-specific presumptions in favour of incarceration, outweigh their benefits. Starting points are most useful in circumstances where there is the potential for a large disparity between sentences imposed for a particular crime because the range of sentence set out in the Code is particularly broad.

[104] In the case of suspended sentences, however, the operation of section 78BB considerably narrows the range of cases in which a suspended sentence may be imposed. A suspended sentence may only be imposed on non-dangerous offenders who would otherwise have received a jail sentence of not less than one year and not more than three years. Accordingly, the potential disparity of sentence between those offenders who were candidates for a suspended sentence and received a jail term, and those who received a suspended sentence, is relatively small.

[105] Given the narrow range of application for suspended sentences, the court is of the opinion that a consideration of the principles of sentencing themselves, without offence-specific presumptions, can provide sufficient guidance as to whether a suspended sentence should be imposed. Some principles militate in favour of a suspended sentence, whereas others favour incarceration. It is the task of the sentencing court to articulate, in general terms, which principles favour each sanction. Although it cannot ensure uniformity of result, the articulation of these principles can at least ensure uniformity in approach to the imposition of suspended sentences.

Retribution

[106] The principle aim of retribution is to register society's denunciation for the criminal conduct engaged in by the offender. Denunciation is the communication of society's condemnation of the offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in **R.**

v. Sargeant⁸ “society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass”.

[107] Incarceration will usually provide more denunciation than a suspended sentence, as a suspended sentence is generally a more lenient sentence than a jail term of equivalent duration. However, as the court has already observed, a suspended sentence can still provide a significant amount of denunciation. This is particularly so when onerous conditions are imposed and the duration of the suspended sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances. First, the conditions should have a punitive aspect. Indeed, the need for punitive conditions is the reason why a probationary sentence was rejected and a sentence of imprisonment of not less than one year and not more than three years imposed.

[108] Second, although a literal reading of section 78BB suggests that a suspended sentence must be of equivalent duration to the jail term that would otherwise have been imposed, the court has already explained earlier why such a literal interpretation of section 78BB should be eschewed. Instead, the preferred approach is to have the judge reject a probationary sentence and a penitentiary term as inappropriate in the circumstances, and then consider whether a suspended sentence of not less than one year and not more than three years would be consistent with the fundamental purpose and principles of sentencing. This approach does not require that there be any equivalence between the duration of the suspended sentence and the jail term that would otherwise have been imposed. The sole requirement is that the duration and conditions of a suspended sentence make for a just and appropriate sentence.

[109] The stigma of a suspended sentence with attached conditions should not be underestimated. Living in the community under strict conditions where fellow residents are well aware of the offender’s criminal misconduct can provide ample

⁸ (1974) 60 Cr. App. R. 74, at p. 77

denunciation in many cases. In certain circumstances, the shame of encountering members of the community may make it even more difficult for the offender to serve his or her sentence in the community than in prison.

- [110] The amount of denunciation provided by a suspended sentence will be heavily dependent on the circumstances of the offender, the nature of the conditions imposed, and the community in which the sentence is to be served. As a general matter, the more serious the offence and the greater the need for denunciation, the longer and more onerous the conditional sentence should be. However, there may be certain circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct.

Deterrence

- [111] A suspended sentence can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences. There is also the possibility of deterrence through the use of community service orders, including those in which the offender may be obliged to speak to members of the community about the evils of the particular criminal conduct in which he or she engaged, assuming the offender were amenable to such a condition. Nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed.

Conclusions

- [112] In sum, in determining whether a suspended sentence would be consistent with the fundamental purposes and principles of sentencing, the sentencing court should consider which sentencing objectives figure most prominently in the factual circumstances of the particular case before it.

- [113] Where a combination of both punitive and restorative objectives may be achieved, a suspended sentence will likely be more appropriate than incarceration. In determining whether restorative objectives can be satisfied in a particular case, the judge should consider the offender's prospects of rehabilitation, including whether the offender has proposed a particular plan of rehabilitation; the availability of appropriate community service and treatment programs; whether the offender has acknowledged his or her wrongdoing and expresses remorse; as well as the victim's wishes as revealed by the victim impact statement. This list is not exhaustive.
- [114] Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a suspended sentence. Conversely, a suspended sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance, depending on the nature of the conditions imposed, the duration of the suspended sentence, and the circumstances of the offender and the community in which the conditional sentence is to be served.
- [115] Finally, it bears pointing out that a suspended sentence may be imposed even in circumstances where there are aggravating circumstances relating to the offence or the offender. Aggravating circumstances will obviously increase the need for denunciation and deterrence. However, it would be a mistake to rule out the possibility of a suspended sentence *ab initio* simply because aggravating factors are present. The court repeats that each case must be considered individually.
- [116] The suspended sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence. It is this punitive

aspect that distinguishes the conditional sentence from probation, and it is to this issue that the court will now turn.

Probation order inappropriate

- [117] There is a difference between a suspended sentence and a probationary sentence. While a suspended sentence with probation is primarily a rehabilitative sentencing tool a suspended sentence addresses both punitive and rehabilitative objectives. On their face, these differences do not suggest that a suspended sentence is more punitive than a probation order. Moreover, the penalty for breach of probation is potentially more severe than that for breach of a suspended sentence. Pursuant to the Probation Act, breach of probation constitutes a new offence, punishable by imprisonment, while a breach of a suspended does not constitute a new offence per se. The aforementioned observations are clearly disclosed by the provisions of sections 7 and 8 of the Probation Act. Section 7 of the Probation Act deals with the consequences of the Breach of a probation order. Section 8 of the Probation Act deals with a situation when an offender commits a further offence while a probation order is still operative.
- [118] Section 9 of the Probation Act deals with the effect of a probation order. Section 9(1) provides that subject as hereinafter provided, a conviction of an offence for which an order is made under this Part placing the offender on probation shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act: Provided that where an offender, being not less than seventeen years of age at the time of his or her conviction of an offence for which he or she is placed on probation, is subsequently sentenced under this Part for that offence, the provisions of this subsection shall cease to apply to the conviction.
- [119] In light of the foregoing, it is clear that Parliament intended a suspended sentence to be more punitive than a probationary sentence, notwithstanding the similarities between the two sanctions in respect of their rehabilitative purposes. Therefore,

suspended sentences were designed to “permit the accused to avoid imprisonment but not to avoid punishment”.

Disposition

- [120] In the premises, the court has given due consideration to the question of whether the imposition of an alternative sentence whether in the form of probation or a suspended sentence would serve the meaningful aims of punishment in the present case; and also the question of whether in this way the aims of restorative justice can be achieved.
- [121] The law does not appear to attribute to either party the onus of establishing that the offender should or should not receive a suspended sentence. To inform his or her decision about the appropriate sentence, the sentencing judge can take into consideration all the evidence, no matter who adduces it.
- [122] In matters of sentencing, while each party is expected to establish elements in support of its position as to the appropriate sentence that should be imposed, the ultimate decision as to what constitutes the best disposition is left to the discretion of the sentencing judge.
- [123] The court will now apply the principles discussed above to the present case.
- [124] In assessing seriousness by reference to the consequences and harm done the court took into account the physical harm done to the victim which can be evidenced by the resulting disability which the victim suffered. It appears that the victim now has a permanently deformed right hand which has obviously diminished his ability to utilise same in conducting the affairs of his daily life. It is fair to say that this disability must be a source of embarrassment to the victim. The court also took into account the pain and fear which the victim must have experienced having witnessed the partial amputation of his right hand unexpectedly and in the circumstances in which it was done. Additionally, recovery from such an injury must have involved the victim experiencing pain and disability after surgical intervention and during the period of recuperation.

- [125] The attack on the victim was to some extent provoked but seemed to have been based purely, if we accept the defendant's explanation, upon suspicion. There was however no degree of premeditation involved.
- [126] The court having determined the appropriate sentence considered the aggravating and mitigating factors present in the case. The court was able to discern the following aggravating factors in the present case. The defendant was clearly motivated by his suspicion that the victim had interfered with his irrigation system. The vicious and brazen attack upon the victim although perpetrated upon the defendant's land occurred in the presence of others. Additionally, the implement used was a machete. Our experience in this jurisdiction has taught us that a machete is a brutal and dangerous weapon when wielded in the wrong hands.
- [127] The court did not find the existence of any mitigating factors in the commission of the offence save and except that there appeared on the facts placed before the court that both the defendant and the virtual complainant were both armed with cutlasses at the material time. In addition, it appeared that this was a situation where at one point the defendant and the virtual complainant appeared to have been engaged in a physical altercation or scuffle. Mr. Fergusson KC in his submissions to the court suggested that this may very well have been a case of excessive self-defense.
- [128] In the circumstances, the court finds that in the present case the aggravating factors relative to the commission of the offence are far outweighed by the mitigating factors.
- [129] The court was unable to make a thorough assessment relative to matters of personal mitigation in the case of the defendant; save and except that the defendant in this case has no previous convictions for any offence and is generally a man of good character and good standing in the community. In the circumstances, there appears to be no need to consider the question of rehabilitation relative to this offender. There is no evidence that the defendant poses a real risk of offending or

re-offending or that he is a danger to the community or the victim. The court has also taken into account the defendant's age and his familial arrangements.

- [130] Given the discourse that the court has engaged relative to the question of restorative justice, the court has formed the view that a probation order would not serve the aims of punishment in the present case. The court is of the view that there is the need to register denunciation for the commission of the offence by ensuring that there is a punitive aspect to the sentence imposed by the court on the offender. The court is of the view that such an objective cannot be obtained by the imposition of a probation order. Therefore, the court is minded to impose a suspended sentence coupled with a community service order.

Sentence

- [131] Therefore, the court's sentence is as follows:

- (1) The defendant is sentenced to 3 years' imprisonment which shall be suspended for a period of 3 years. The sentence of 3 years' imprisonment herein shall not take effect unless, during the period of 3 years from the date sentence is pronounced, the defendant commits another offence punishable with imprisonment and thereafter a court having power to do so orders that the original sentence shall take effect with or without variation of its terms.
- (2) The defendant Mr. Alfred Lewis shall engage in community service by providing assistance to the Grand Bacolet Juvenile Rehabilitation and Treatment Centre for a period of 3 years commencing from 31st July 2024. Such community service as herein described shall be performed twice weekly and shall be for a duration of at least three (3) hours daily. The community service to be performed shall be under the supervision of the Head of Grand Bacolet Juvenile Rehabilitation and Treatment Centre.
- (3) The Head of the Bacolet Juvenile Rehabilitation and Treatment Centre shall submit a report to the Court every six (6) months relative to the defendant's performance.

- (4) Should the defendant fail to adhere to the terms of the community service order he shall be brought back to Court for the purpose of the Court determining whether and in what manner the defendant shall be dealt with in accordance with law and whether there ought to be any extension of the community service order.

Shawn Innocent
High Court Judge

By the Court

Registrar