

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

MONTSERRAT

CLAIM NO. MNIHCR 2023/0019

BETWEEN:

[1] The Crown

Claimant

and

[1] Nyoka Stewart

Defendant

Appearances:

Mrs. Kristen Taylor-Hilton for the Crown

Mr. George Kirmon for the Defendant

2024: OCTOBER 28

SENTENCING

COTTLE [AG.]:

[1] The prisoner at bar was scheduled for trial on 23rd October 2024. She was indicted for inflicting grievous bodily harm and assault occasioning actual bodily harm. Before a jury could be empanelled, counsel who represented her asked that the indictment be put to her once more. This was done and she pleaded guilty to the two counts on the indictment. She is now before the court for sentencing.

The facts

- [2] The prisoner is now 24 years old. The virtual complainant (VC) is a 10-year-old boy. At the time of the offences the prisoner lived in the home of the VC and his mother. She shared a romantic relationship with the mother of the VC. On the morning of 30th May 2023, the VC was at school when the principal of the primary school he attended noticed an injury to his left eye. There was periorbital bruising although there was no associated swelling. The principal enquired of the VC and was told that he had been struck by the prisoner. The police were notified and investigated. The VC was taken for medical attention. Dr. Paz who examined him noted the bruising in the area of his left eye involving the lower eyelid. She also found there was muscle tenderness to both legs. They were painful to touch but exhibited no visible injuries. She thought this was consistent with excessive physical exercise such as squatting. The police audio and video recorded a statement from the VC. The VC told the police that the prisoner accused him of handling her toothbrush and punched him to the leg stomach and eye when he denied touching her toothbrush. He went on to say that on two previous occasions she had broken his arm. She had taken him to hospital for treatment of the injured arm. She told him to say to the doctor that he had fallen from a cupboard. The investigating officer obtained the medical record of the VC and it revealed that on 30th June 2020 the VC was brought to the Glendon Hospital. An Xray revealed a displaced fracture of the humerus. The arm was put in a cast and the VC eventually recovered without further surgical intervention. The police interviewed the prisoner. She admitted hitting the VC and causing the injury to his eye but denied having broken his arm. She said he had fallen and injured himself.
- [3] When the matter initially came up for trial the prisoner pleaded guilty. She was then represented by legal counsel. She was remanded into custody pending sentencing. At the sentencing hearing she was unrepresented and changed her plea to not guilty. She spent 159 days in custody before she was released on bail.

The offences

- [4] The offence for which the prisoner has pleaded guilty on count one carries a maximum penalty of imprisonment for 5 years. The maximum penalty for the offence charged on the second count is a term of imprisonment for 5 years with a possible fine of up to \$3000.00.

The Prisoner

- [5] The prisoner immigrated to Montserrat from her native country, Jamaica at the tender age of 7. She completed her primary school education at the Lookout Primary School before attending the Montserrat Secondary School from which she graduated with CXC passes. After school she secured short term employment, but this ceased when she came to live with the mother of the VC. She then became the primary caregiver of the VC as her full-time occupation. The prisoner was given the responsibility of helping to look after the VC though she had no training or experience in the care of young children.
- [6] She has a medical history of having had mental health care. She was diagnosed by the psychiatrist, Dr. Halliday, as suffering from bipolar disorder with severe major depression and anxiety. Her upbringing was chaotic. She was subjected to abuse as a child. The abuse was verbal, physical and sexual. Her immediate family was not accepting of her sexual orientation. She was removed into foster care from her mother's custody at the age of 13. She remained in foster care until she was 16. It was then that she began a relationship with the mother of the VC and subsequently moved into the home where the VC resided with his mother and a sibling. The prisoner was a victim of statutory rape from age 12 to 14. The matter was reported to the police but was never resolved as the alleged perpetrator left the island before he could be arrested. Confronted with all this childhood trauma the prisoner has in the past attempted suicide.
- [7] The comprehensive pre-sentence report that was provided to assist the court at sentencing revealed that the prisoner has no previous convictions. Interviews with the mother and grandmother of the VC elicited a response that neither wished for a custodial sentence to be imposed on the prisoner. Community members and other family members were unanimously of the opinion that prison would not be a good place for this offender. The professional who prepared the pre-sentence report, assessed that the prisoner offers low risk of reoffending and medium risk of harm to herself and others. Remedial counselling was offered as an apt alternative in all the circumstances of this case to assist the prisoner to develop adequate coping skills and behavioural change.

Aims of criminal sentencing

- [8] These are well known. I keep them firmly in mind as I proceed with this sentencing exercise. I repeat them for the benefit of the prisoner so she understands what the court is trying to achieve when imposing a sentence.

- a. Retribution is the first aim. This shows the view of society about the behaviour of the prisoner has exhibited.
- b. Deterrence is the second objective both general and specific. The court intends to deter others who may be minded to act as this prisoner has done and to deter her from repeating her conduct.
- c. The sentencing court is concerned with prevention, that is the need protect the public from some offenders by removing them from society.
- d. Rehabilitation is another objective, recognizing the importance of preparing offenders for re integration into society at the end of any period of incarceration.

[9] Our courts have a set of sentencing guidelines provided for the assistance of sentencing judges. These guidelines are to be followed unless doing so would not be in the interest of justice in any particular case.

Starting point

[10] For the offences of inflicting grievous bodily harm and assault occasioning actual bodily harm the court must first establish a starting point. This requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In considering seriousness the court is called upon to assess the culpability of the offender.

[11] The sentencing guidelines offer different levels of consequence. To my mind this case falls within category 3, meaning lesser harm with no long-term impact. Here the VC has fully recovered without any adverse sequelae.

[12] I turn to the seriousness of these offences. The guidelines offer 2 levels. I place this case in level 2 or lesser. None of the listed factors as set out in the guidelines seem to apply to this case. Here there was no violence or threat of violence apart from that which is inherent in the offences.

[13] When I consult the grid provided in the sentencing guidelines I find that the suggested starting point is a sentence of 20% of the maximum sentence within a range of 5% to 35 %. 20% of the maximum sentence works out to be a starting sentence of 1 year imprisonment on each count.

[14] With the starting sentence now chosen, I must adjust it after taking into account the aggravating and mitigating features of the offence and the offender.

Aggravating factors of the offence

- [15] The VC was a young child aged 9 at the time of the second offence. The Prisoner held a position of trust as caregiver for the VC. The offence occurred in a domestic setting.

Mitigating factors of the offence

- [16] The prisoner promptly sought and obtained medical assistance for the VC when this was needed.

Aggravating factors of the offender

- [17] There are no aggravating factors concerning the prisoner.

Mitigating factors of the prisoner

- [18] She is still very young. She is of good character. She too has been the victim of significant childhood abuse which may have contributed to her mental health challenges.
- [19] To my mind the aggravating factors are outweighed by the mitigating ones, and I will move the starting point downwards by 3 months to reflect this.

Credit for early guilty plea

- [20] The prisoner pleaded guilty. Offenders who plead guilty at the earliest opportunity usually benefit from a reduction of up to one third of what the sentence would otherwise be. In this case the prisoner pleaded guilty on the morning the trial was set to commence. Such a late plea would normally be attended by a significant reduction in the discount for an early guilty plea. However, in the peculiar circumstances of this case I will award the prisoner the full discount. This is because she admitted the offences to the police during the investigation. She also pleaded guilty when she was first arraigned and had the benefit of counsel. When she changed her plea she was unrepresented and I take into account the evidence provided of her mental health challenges. I note that when she again had the benefit of legal advice she once more pleaded guilty. The one third discount operates to reduce her sentence to a notional sentence of six months imprisonment on each count.

Consecutive or concurrent sentences?

- [21] The Chief Justice has issued a practice direction which accompanies the sentencing guidelines. It provides that in cases where an offender is convicted for more than one offence tried at the same time, where more than one offence is committed in the course of the same transaction or arises out of the same incident or facts, the general rule is that the sentences are to run

concurrently with each other. In the present case the offences were not committed at the same date. Where the offences were committed on separate occasions, consecutive sentences are in principle appropriate. The present case would require the imposition of consecutive sentences.

Totality Principle

- [22] The principle of totality requires a court, when sentencing for more than one offence, to pass a sentence that reflects the total criminality of the offender, but which is just and proportionate so that the sentence does not exceed what is necessary to reflect the overall offending behaviour. I have considered the principle and I conclude that the sentence I propose to pass does not offend the principle.

Time spent on remand

- [23] The prisoner has spent 159 days on remand. This must be deducted from any sentence.

Custodial or non-custodial sentence

- [24] In the sentencing guidelines the court is required to consider the following matters when deciding on whether to impose a suspended sentence.
- a. Can appropriate punishment only be achieved by immediate custody?
 - b. Does the offender present a risk or danger to the public or to the victim?
 - c. Has there been a history of poor compliance with court orders?
 - d. Is there a realistic prospect of rehabilitation?
 - e. If sentencing a person under 21, is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation?
 - f. Is there strong personal mitigation?
 - g. What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?
- [25] I have considered these matters. I have also considered section 2 (2) of the Probation of Offenders Act. That subsection permits this court where it is of the opinion that having regard to the character, antecedents, age health or mental condition of the offender it is expedient to release the offender on probation on condition that she enters into a recognizance to be of good behavior and to appear for sentence when called upon at any time up to 3 years later. I have concluded that it is expedient to release the prisoner on probation.

Sentence

- [26] On count 1 the prisoner is sentenced to a term of probation of three years from today.
- [27] On count 2 the prisoner is sentenced to a term of probation for three years from today.
- [28] The sentences on both counts are conditional on the prisoner being of good behaviour during this period and she will appear for sentence at any time within the next three years if the court should call on her to appear.
- [29] Additionally, as a further condition, the prisoner is ordered to participate in the Target for Effective Change programme. She must also attend the clinical psychologist to help her deal with the lingering effects of the trauma she has endured.
- [30] On these conditions the prisoner is ordered to be discharged.
- [31] I thank all counsel for the careful and helpful submissions on sentence.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR