

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

COMMONWEALTH OF DOMINICA
CASE NO: DOMHCR: 2024/0004

BETWEEN:

THE STATE
V
ETINOFFE THOMAS

APPEARANCES:

Ms Sherma Dalrymple, DPP, Ms Daina Matthew, and Ms Marie Louise Pierre-Louis State Counsel,
for the State

Mr Peter Alleyne of Legal Aid Chambers and Mr Bernard Pacquette of Sage Chambers for the
Defendant

2024: May 10th, 22nd, 24th

SENTENCING

1. **COLIN WILLIAMS J:** When the defendant, Mr Etinoffe Thomas was arraigned on the 15th of April 2024, he entered a plea of not guilty. On Friday the 10th of May 2024, prior to impaneling of a jury for his trial, Mr Thomas, through his counsel, Mr Peter Alleyne, requested that the indictment be read to the defendant once again. Mr Thomas then pleaded guilty to “unlawfully and maliciously wound[ing] Frantz Desiree with intent to do the said Franz Desiree grievous bodily harm” contrary to the provisions of section 20 of the **Offences Against the Person Act, Chapter 10:31** of the Revised Laws of Dominica 1990.

2. The incident giving rise to Mr Thomas's indictment occurred on the 11th of December 2016, at 12 Princess Lane, Goodwill, in the Parish of Saint George in the Commonwealth of Dominica. Mr Desiree resided at those premises.
3. Following the incident in December 2016, Mr Thomas was charged with this offence on the 23rd of March 2017. The Preliminary Inquiry, PI, in this matter commenced more than three years and four months later, on the 13th of August 2020; the PI continued on diverse days until the 26th of February 2024 when the matter was committed to the High Court. Then, on the 10th of April 2024, the Learned Director of Public Prosecutions filed an indictment against Mr Thomas.
4. This matter, with five witnesses – three of whom were formal witnesses – took nearly seven and a half years to get to this stage.

The Facts

5. On Sunday the 11th of December 2016, the virtual complainant, Mr Frantz Desiree, was washing dishes in the kitchen at his mother's residence in Goodwill where he lived. Mr Desiree heard mumbling coming from the yard of the house in an area where an individual was washing Mr Desiree's vehicle. The virtual complainant went outside and spoke with the individual who was washing the vehicle; Mr Desiree then turned to go back into the house. Mr Desiree saw the Defendant, Mr Thomas, entering the yard.
6. (Mr Thomas had an intimate relationship with Mr Desiree's sister).
7. The virtual complainant then questioned Mr Thomas as to whether he had a problem with the individual who was washing the vehicle. Mr Thomas indicated that the individual was going around referring to him, Mr Thomas, as 'Paro.'
8. The virtual complainant told Mr Thomas that was not the way to get on for such a little thing. Mr Desiree and Mr Thomas then got into an argument. Mr Desiree's mother spoke to him (Mr Desiree), telling him to stop the argument.
9. Mr Desiree told Mr Thomas to leave the compound, but Mr Thomas remained there. The virtual complainant returned to the kitchen to continue washing up the dishes.
10. Mr Thomas entered the kitchen area where Mr Desiree was. Mr Thomas had a cutlass and he swung it at Mr Desiree's neck.
11. Mr Desiree put up his left hand defensively and he sustained a chop wound to the left wrist.
12. Mr Desiree received some assistance and he was taken to the then Princess Margaret Hospital. At the hospital, Mr Desiree underwent a surgical procedure.

The injury

13. Dr Curlson George, the Orthopedic Surgeon who attended to the virtual complainant, noted that Mr Desiree had:

“Injury to [the] left hand with dramatic partial amputation [of the] 4th and 5th digits with laceration to [the] ulna aspect.”

14. The doctor noted that the laceration had “nerve, artery and tendon involvement.”
15. The orthopedic surgeon noted that on the 11th of December 2016, Mr Desiree was taken to the Operating Theatre at the hospital for “repair to the ulnar nerve, artery, and flexion tendons of the 4th and 5th digits.”
16. Mr Desiree was hospitalised for four days.
17. Upon Mr Desiree’s discharge from the hospital, he had to undergo physical therapy.
18. Mr Desiree suffered permanent injury to his left hand. Employment wise, Mr Desiree’s activities in agriculture and upholstery has been impacted. He was unable to return to his livelihood for almost three years. His savings were depleted as he sought to meet his expenses without a corresponding source of income, as the injury affected his income earning capacity.
19. Probation Officer, Ms Anestin Baron, who spoke with Mr Desiree, noted that: “the annular finger (ring finger) on his left hand experienced nerve damage and he is now unable to fully bend that finger and also experiences severe cramping... the digitus manus (pinkie finger) on the same hand also suffered damage... due to nerve damage, he often experiences cramping in his left hand.” He has “been unable to apply too much pressure to his hand and, as such, he has to reduce his involvement in both agriculture and upholstery. As a result he has to employ someone to assist with the more laborious tasks.”

Social Inquiry Report

20. Following Mr Thomas’s guilty plea, Counsel, Mr Bernard Pacquette, requested that an Order be made for a Social Inquiry Report prior to sentencing. The Principal Probation Officer, Ms Anestin Baron produced a Social Inquiry Report. The Report included a victim impact statement. Ms Baron’s report was based on interviews that she conducted with: Mr Thomas; his sister, Ms Joannie Joseph; his ex-partner, Ms Sheila Desiree (who is the virtual complainant’s sister); his friend, Mr Roy Fontaine; and members of the community in Bagatelle.
21. Ms Baron also interviewed the virtual complainant.
22. Ms Baron noted that Mr Thomas was now 53 years old. His first name as it appears on his birth certificate is actually ‘Ubaldo.’ He is the sole child of his father and the third of his

mother's five children. His maternal siblings are all females. He was cared for by his mother for the first five years of his life, then he lived with his paternal grandfather in Bagatelle. He was not subject to any form of abuse while growing up. He told the Probation Officer that although his family experienced financial hardship and described their status as poor, his grandfather's home always had a supply of food.

23. Mr Thomas did not complete primary school. He commenced farming from a very young age. He earned \$300.00 to \$400.00, selling coconut water on Sundays and \$300.00 additionally when he sold farm produce on Thursday's and Friday's. He described himself to the Probation Officer as "a hardworking, helpful and decent individual... not a troublemaker."
24. Mr Thomas is unmarried. He has one minor child, a female, who lives with her mother.
25. Mr Thomas denied having any anger management issues. He said he spent most of his time by himself or in his garden. He grew up having few people in his home circle and he continues to have few people in his personal space as an adult. He started smoking marijuana from a young age and also smoked tobacco cigarettes; he does not consume alcohol.
26. Ms Baron reports that Mr Thomas "spoke positively about Mr Desiree and claimed that before the incident they had no problems." He said that he regarded and loved Mr Desiree as the biological brother that he never had. Ms Baron said that Mr Thomas accepted responsibility for his actions and said of the incident: "Honestly, when I do that, I cry because that was not my intention. He and I don't have beef. He is my only brother, I love him like my brother, not just my brother-in-law. Why would I just chop him just so, na?"

Custodial versus non-custodial sentence

27. An ever-present issue in the Social Inquiry Report is whether an Order for compensation ought to be imposed on Mr Thomas as opposed to a custodial sentence.
28. At sentencing, a judicial officer has to address several inter-related factors in arriving at a just and reasonable sentence:
 - 1) Determine whether or not a custodial sentence is the appropriate sentence in the particular case.
 - 2) Decide whether the decision to impose a custodial sentence ought to be subordinated to other factors, for example the interests of justice, the wishes of the parties, the circumstances of the defendant, or any other factor the judicial officer considers relevant.
 - 3) If there are substantial factors pointing to a departure from the sentencing guidelines, then the reasons for any departure must be fully documented.

- 4) If the decision is to impose a fine and/or a compensation order instead of a custodial penalty, that fine and/or order of compensation must not have the effect of immediately imprisoning the defendant for noncompliance or inability to meet the terms of the order.
- 5) A judicial officer imposing a fine or order of compensation on a defendant must conduct a “means test” to ascertain the defendant’s ability to pay. The judicial officer must be satisfied as to how and when the defendant would be able to make payment.
- 6) The default provisions of any fine or order for compensation, that is, the term to be served in prison if there is any breach or non-compliance with the fine or compensation order, must not have the effect of subjecting the defendant to a greater penalty than the custodial sentence which may have been considered to be appropriate in the case.

29. Ms Baron in her report noted that:

“Mr Thomas stated his desire to be spared a custodial sentence and rather, to be ordered to pay compensation to the victim. Mr Thomas expressed that he is a self-employed farmer but believes he will be able to meet the cost of compensation through monthly instalments.”

30. Ms Joannie Joseph, who is Mr Thomas’ sister, in speaking with the Probation Officer, “expressed her wish for a compensation order to be made... she will commit to assisting her brother in making the payments.”
31. Individuals in the Bagatelle community told the Probation Officer that: “Mr Thomas is a productive individual and should be spared a custodial sentence, but ordered to pay compensation to the victim.”
32. The virtual complainant also expressed a desire to receive compensation. The Probation Officer in reporting Mr Desiree’s preference, reported:

“[A]ccording to him the injury has significantly affected his ability to effectively partake in his daily undertakings in his agriculture and upholstery endeavours... [he] reiterated that his depleted savings account is a direct result of being unable to work for about three years after the injury and having to pay individuals to perform laundry and cooking tasks, assist with his garden, and maintaining his commitment toward his household expenses.”

33. An injured party will receive less in criminal court as compensation, as compared to any award that would be made in the civil jurisdiction. Nevertheless, a just compensation order would amount to tens of thousands of dollars.

34. Mr Desiree indicated that he considered a payment of \$30,000.00 to be fair and just.
35. State Counsel, Ms Marie Louise Pierre-Louis, pointed to the **Criminal Law and Procedure Act, Chapter 12.01** of the Laws of the Commonwealth of Dominica. It provides at section 73:

“(1) Any person who is convicted of an indictable offence may be adjudged by the court to make compensation to any person injured by his offence, and any sum adjudged may be recovered by such process, including imprisonment in default of payment, for twelve months as the court may direct;

“(2) The payment of such compensation shall be a bar to any further action for the same injury.”

36. It was apparent that Mr Thomas does not have any savings to make a lump sum payment to the virtual complainant. Mr Thomas in the Social Inquiry Report placed his earnings at \$700.00 a week. If he was to commit about 30% of his income towards meeting a compensation order, that would amount to roughly \$200.00 a week. At that rate, it would take several years for Mr Thomas to meet any compensation award. Also, what must be done if Mr Thomas defaults? And if he fails to comply and is imprisoned, should Mr Desiree then have to be burdened with ‘fighting up’ to enforce the compensation order?

Mitigation

37. Counsel, Mr Bernard Pacquette, at the Sentencing Hearing on Wednesday the 22nd of May 2024, highlighted that Mr Thomas was of previous good character; he had no convictions. Counsel noted that according to the Probation Officer’s report, the community of Bagatelle spoke favourably of Mr Thomas.
38. Mr Thomas also spoke from the dock on his own behalf. He said:

“My honour, I ask you to pardon me for what I did. He was my brother. I had no intention to do him anything.”

39. Mr Thomas also referred to his 11-year-old daughter who is in the Common Entrance Class and looking forward to attending Secondary School. Mr Thomas said that he wanted to “be there for her.”
40. Mr Thomas also used the opportunity to apologise directly to Mr Desiree who was in court.
41. Mr Thomas then indicated that he had “wet money” to be able to meet the compensation order. Mr Thomas said that he had a property that was passed on to him by his late grandfather with instructions to keep it. However, he was willing to sell it to an interested buyer and use the proceeds to compensate Mr Desiree.

Sentencing Guidelines

42. The maximum penalty for this offence is 10 years imprisonment. The **Sentencing Guidelines** do not contemplate a non-custodial sentence for this offence. It does make provision for compensation and other orders to be treated as an ancillary proceeding.
43. The Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court for violence offences was reissued on the 8th of November 2021.
44. In calculating the penalty for the offence, the first stage is to establish the starting point for the sentence. A determination has to be made as to -

(a) what is the consequences level; and

(b) the seriousness level,

then see where they intersect on the sentencing grid.

45. This matter falls into consequences Category 2 – High. This is because there is permanent disability suffered by the virtual complainant. Ms Pierre-Louis on behalf of the State submitted that the consequence was Category 1 – Highest. The difference between the two, is that to be in Category 1 the physical harm has to be ‘severe’ but for Category 2, the harm is classified as ‘serious’. There was some disability resulting from the injury, but it does not reach the threshold of ‘severe.’
46. The seriousness is Level A – High. This is because there was the use of a weapon, (a cutlass), in the commission of the offence.
47. The intersection of High [Category 2] consequence and High [Level A] seriousness has a recommended starting point of 60% of the maximum, or 6 years, and a starting range of 45% to 75% , or a range of four and a half years to seven and a half years.
48. A starting point of five years is used in this case. While the attack was on the lower end of the scale, but it was not at the lowest point. Indeed, the consequences for Mr Thomas could have been far worse had Mr Desiree not raised his hand to protect himself.

Adjustment for aggravating and mitigating factors

49. The starting figure has to be adjusted for aggravating and mitigating factors in relation to (i) the offence and (ii) the offender.

50. Regarding the offence, an aggravating feature is that the attack took place at the victim's residence. It was an unprovoked attack. Mr Thomas acknowledged during the sentencing hearing that he took the weapon he used from his ex-girlfriend's room.
51. A mitigating feature in relation to the offence is that it was an isolated event; only a single blow was struck.
52. In relation to the offender, there were no aggravating features.
53. A mitigating feature is that Mr Thomas is a first time offender. He had lived his life before this incident for more than four decades without infringing the law. To his credit as well, there is no indication that since this incident nearly eight years ago, that he has run afoul of the law. The view of the community is that generally, he is hard-working and productive. The Probation Officer noted that Mr Thomas is remorseful. He did apologise in court to Mr Desiree.
54. Overall, the aggravating and mitigating factors are even.

Early Guilty Plea

55. Mr Thomas is entitled to a significant discount for his early guilty plea. While Mr Thomas did not plead guilty at the first opportunity, he nevertheless saved judicial resources by entering a guilty plea prior to the commencement of the case and he spared the witnesses the agony and inconvenience of testifying.
56. A one-third discount would reduce the five years to three years and six months.

Remand time?

57. Mr Thomas did not spend any time on remand prior to conviction. State Counsel indicated that when Mr Thomas first appeared at the Magistrate's Court charged for this offence, that he obtained bail on the same day.

Delay

58. Both the defendant and the virtual complainant have at different times commented at court on the length of time that this matter is taking.
59. There is no indication that the delay in this matter can be attributed to Mr Thomas in any way. However, the lag has caused anxiety to the virtual complainant and the defendant and tarnishes the administration of justice and the rule of law.
60. As a consequence of the slow pace of getting this matter from December 2016 to the High Court, six months is credited to Mr Thomas. A similar approach to the issue of delay was

adopted in **The State v Prisma Joseph DOMHCR: 2023/0015**, delivered on the 23rd of February 2024.

Stare decisis

61. Ms Pierre-Louis submitted that consideration be given to applying the **Criminal Justice (Reform) Act, Chapter 12.35** of the Laws of Dominica. State Counsel noted that it was done recently in the case of **The State v Ronnie Leslie DOMHCR: 2023/0017**. In that case, Mr Leslie who was a few years older than Mr Joseph, was found guilty of the identical offence of causing grievous bodily harm; Mr Leslie similarly used a cutlass and caused permanent disability to the victim.

62. Section 6 (1) of the **Criminal Justice (Reform) Act** provides:

“A Court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, 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 (hereinafter referred to as the ‘operational period’), the offender commits in Dominica another offence punishable with imprisonment for a period exceeding six months (hereinafter... referred to as a ‘subsequent offence’) and thereafter a Court having power to do so orders under section 7 that the original sentence shall take effect.”

63. Having computed the sentence to be three years imprisonment, the legal principle of *stare decisis* requires that courts adhere to previous judgments while resolving a case with comparable facts.

64. In this case however, while the provision of the **Criminal Justice (Reform) Act** will be applied, the Order will be stated in a manner appropriate to the circumstances of this case.

Sentence

65. For the offence of causing grievous bodily harm to Mr Franz Desiree with intent so to do, Mr Etinoffe Thomas is sentenced to a term of imprisonment of three years, suspended for three years. If during that operational period of three years Mr Thomas is convicted in the Commonwealth of Dominica for any subsequent offence that carries a term of imprisonment for a period exceeding six months, Mr Thomas will be sentenced for both this offence and the subsequent offence.

66. Mr Thomas shall pay compensation of Thirty Thousand Dollars Eastern Caribbean Currency (EC\$30,000.00) to Mr Franz Desiree:

- i. A lump sum payment of \$5,000.00 on the 24th of May 2024.
- ii. An installment payment of \$5,000.00 due by Friday the 31st of May 2024, in default six months in prison.

- iii. An installment payment of \$10,000.00 due by Friday the 30th of August 2024, in default nine months in prison.
 - iv. An installment payment of \$10,000.00 by Friday the 29th of November 2024, in default nine months in prison.
 - v. Payment of the installments are to be paid in to court and not directly to Mr Desiree.
67. If Mr Thomas pays only a part of any installment by the stated deadline, the default term of imprisonment shall be pro-rated.
68. The default terms of imprisonment are to be served in full, consecutively, and cannot be subject to any remission time.
69. There is no further penalty or fine. The time Mr Thomas spent on remand since his conviction on the 10th of May 2024 is considered to be sufficient *in lieu* of a fine.

Colin Williams
High Court Judge

Registrar

By the Court