

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

GRENADA

CASE NO. GDAHCR2022/0003

BETWEEN:

THE KING

And

DALLON WARREN

Appearances:

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

2024: February 16; 29.

JUDGMENT ON SENTENCING

- [1] **INNOCENT, J.:** The defendant was initially arrested and charged for the subject offence on 18th August 2021. The defendant was subsequently indicted on 2nd April 2022 for the offence of causing maim contrary to **Section 208** of the **Criminal Code** in relation to events that occurred on 16th August 2021. On 10th June 2022 he pleaded not guilty to the single count in the indictment.
- [2] The matter came on for trial on 1st March 2023. A jury was empaneled and the trial proceeded but was aborted owing to the victim's mental capacity which apparently affected his ability to testify at the trial. No evidence had been called at the aborted trial.

- [3] The matter came on for trial again on 29th January 2024. On even date the court gave directions for a sentence indication in accordance with the procedure laid out in **R v Goodyear**¹ and the matter was adjourned to 1st February 2024. On 1st February 2024, the defendant through the medium of his counsel elected to take a particular course of action with respect to his previous plea and the matter was adjourned to 2nd February 2024.
- [4] When the matter was recalled on 2nd February 2024, the defendant was re-arraigned on the same indictment and changed his plea to guilty. This plea was accepted by the prosecution. The sentencing hearing was adjourned to 16th February 2024. On 16th February 2024 the court heard submissions from counsel on sentencing.
- [5] The facts of the present case are indeed unfortunate. The facts which are not in dispute can be summarised in the following manner.
- [6] The defendant and the victim knew each other for approximately three years prior to the incident. Sometime prior to the events giving rise to these proceedings, it would appear that the defendant and the victim had a physical altercation wherein the victim is alleged to have struck the defendant in the back with a machete. Despite the defendant having sustained an injury in the altercation with the victim, it appeared that they patched up their differences and continued on good terms thereafter.
- [7] On 16th August 2021, both the defendant and the victim were present at a refreshment house. The defendant purchased a beverage for the victim and then left the premises.
- [8] Shortly thereafter a masked individual returned to the premises with a machete in his possession and approached the victim. The victim was attacked by the masked assailant and in the process his right hand was completely severed. The victim

¹ [2005] 3 All ER 117

recognised the masked assailant as the defendant when the masked became dislodged in the commotion that ensued. The cutlass fell and the victim made his escape. The victim's hand was later retrieved by the police authorities on the scene.

[9] The victim was taken to a medical facility where he was treated for his injury. The medical report disclosed that upon presentation at the hospital the victim appeared to be in painful distress. The victim's right forearm had been amputated at the wrist with the carpal bones partially attached. He also presented with mild active bleeding. The victim was later referred to the operating theatre where surgical intervention was undertaken.

[10] Upon his arrest the defendant gave an interview under caution statement to the police. In his statement the defendant alleged that the victim had attempted to attack him. He described the attack in the following manner:

"I was walking and he walked up behind me, he make a strike at me I don't know what was it and a cutlass was at reach I picked it up and I make a chop at him and that was it."

[11] He also said that he made a chop and ran back. He claimed that he was later informed that the victim's hand "fell off". He also said that after hearing the news "he must feel a way".

Approach to sentencing

[12] The maximum penalty prescribed by law upon conviction for the offence of causing maim is 20 years' imprisonment². The court, being mindful of the fact that the maximum sentence prescribed by law is not necessarily the starting point sentence will apply the following approach in determining the starting point or notional sentence which the court will impose.

[13] The court will determine the starting point sentence by first considering the seriousness of the offence having regard to the consequences or harm in the

² Section 35 of the Criminal Code (Amendment) Act

commission of the offence and the defendant's degree of criminal culpability in the commission of the offence.

- [14] After arriving at the starting point, the court will adjust this figure upwards and downwards depending on the assessment of the aggravating and mitigating factors attendant on the commission of the offence.
- [15] Following this assessment and adjustment, the court will make a further adjustment having regard to the aggravating and mitigating factors relative to the defendant.
- [16] The court will then be required to determine the extent of credit that ought to be given to the defendant occasioned for his guilty plea at the current stage of the proceedings.
- [17] In determining the sentence, the court should have regard to whether any additional period of incarceration is necessary or required to take into account the question of dangerousness, which includes an assessment of whether there is a need to protect the public from serious harm from the defendant; and the need for rehabilitation of the offender.
- [18] The court will then apply the appropriate discount for the period of time which the defendant has been remanded in custody.
- [19] Finally, the court will determine whether any ancillary orders are required having regard to the personal circumstances of both the defendant and the victim.

Seriousness – Consequences – Harm

- [20] In the present case, there is serious physical harm which can be evidenced by the nature of the injuries caused to the victim. The nature of the injuries sustained by the victim are permanent and obviously will result in a permanent disability which appears to be inimical to the development of his future prospects. Additionally, given the victim's age and the mental disability from which he already suffers it is more than quite likely that the nature of his permanent injury is and will continue to be a

source of embarrassment and humiliation to him. The victim has been permanently disfigured.

- [21] The court was provided with a Victim Impact Statement (hereafter referred to as “VIS”). Although, the VIS in this instance serves as a valuable source of information to the court, the court makes the following observations without in any way intending to downplay the value or relevance of the VIS to the sentencing proceedings.
- [22] The court pauses at this juncture, in furtherance of its duty, to deal with the question of the evidential value of a VIS and the weight to be attached to them. More importantly, the court’s comments herein are intended for guidance to prosecutors. What purported to be a VIS was a report compiled by a Probation Officer. The prosecution intended to rely on the VIS at the sentencing hearing. The VIS was merely filed in the court. However, the correct procedure should have been by way of filing witness statements, with the authors available for cross-examination. In the court’s view, the procedure for the preparation and reliance on a VIS cannot be overstated as has been repeatedly laid out by the courts in this jurisdiction.
- [23] VIS are intended to assist the court in assessing the impact of the commission of an offence on the victim or the victim’s family in the sentencing exercise. VIS are useful in enabling the sentencing court to be aware of the harm done by the offender to the victim and the victim’s family so that the sentencing judge has a better understanding of the gravity or seriousness of the offence.
- [24] Additionally, they are intended to assure victims and their families that the sentencing process includes them by ensuring they are not irrelevant and forgotten. Furthermore, they may provide an avenue for comfort and may be a useful means of bringing closure to a grieving family by providing them with a means to vent and express the emotional hurt and anger at the plight of their loved ones.
- [25] Therefore, it is necessary that the sentencing court’s knowledge of the harm suffered by the victim or the victim’s family serves not only the interest of the victim and their family, but also the public interest by ensuring that the sentencing court

proceeds only on the basis of salient facts established by cogent and admissible evidence at every stage of the criminal proceedings.

- [26] These observations resonate in the case of **R v Perkins (Robert)**³ where certain pronouncements were made regarding the presentation of victim impact statements. A VIS constitutes evidence and must be treated as evidence. It must be in a formal witness statement, served on the offender's legal advisers in time for the offender's instructions to be taken and for any objection to the use of the statement or part of it, if necessary, to be prepared. In addition, just because the statement was intended to inform the sentencing court of specific features of the consequences of the offence on the victim or the victim's family, responsibility for presenting admissible evidence remained on the prosecution. It followed that the statement might be challenged in cross-examination, and it might give rise to disclosure obligations, and might be used, after conviction, to deploy an argument that the credibility of the victim was open to question.
- [27] The material contained in the VIS should be admissible material upon which the court can act. This court adopts the view that if the VIS contains material damaging to the defendant which is neither self-evidently correct nor known by the defendant to be correct (and this includes lay diagnoses of medical and psychiatric conditions) they should not be acted on. The prosecution should call the appropriate supporting evidence. It is unfair to present the defendant with the dilemma of challenging a statement of dubious probative value, thereby risking a finding that genuine remorse is lacking, or accepting that statement to his or her detriment.
- [28] It is for the sentencing court to carefully assess the assertions of fact contained in the VIS. It has been said that except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. Therefore, the evidence presented to the court in the form of a VIS should

³ [2013] 2 Cr. App. Rep. (S.) 460

not incline the court to speculate about the consequences of the offence for the victim.

[29] In the circumstances, and for the reasons highlighted above, the court in the present instance, has not taken the VIS into account when considering the degree of harm caused by the commission of the offence or as an aggravating factor present in the commission of the offence. The VIS presented to the court fell woefully short of what is legally required to assist a sentencing court.

[30] Notwithstanding the pronouncements made by the court herein concerning the VIS, it appears from the VIS that the victim has a history of mental illness and drug abuse and has been admitted to a mental health facility on several occasions for varying periods of time. These findings are fortified by the record of these proceedings.

[31] Additionally, the victim is presently entirely destitute and not presently engaged in any significant form of employment. The statement suggests that the victim, prior to the commission of the offence was employed as a bus conductor. Upon his discharge from hospital, the victim was cared for by his family; however, familial support has become scant owing to the pressures placed upon family members. Additionally, it appears that the victim is incapable of providing for his daily needs and caring for himself including taking care of his own personal hygiene. In short, the victim has experienced and continues to experience a high level of personal disability in his everyday life.

[32] In the premises, the court has determined that the consequence of the offence in terms of the degree of harm occasioned by the commission of the offence to be at the highest.

Seriousness – Culpability

[33] It is clear that the commission of the offence was preceded by some degree of planning and premeditation by the defendant. The commission of the offence involved the use of a very dangerous weapon. The court also took into consideration

that the machete must have been applied to the victim's body with a sufficient degree of force to have resulted in the total amputation of the victim's hand.

[34] It is arguable that the defendant was aware of the mental challenges experienced by the victim consonant with his drug and alcohol abuse and his prevailing psychological and or psychiatric condition. Therefore, on the foregoing basis it is safe to conclude that the defendant was aware of the victim's vulnerability. It would not be unreasonable in the circumstances for one to presume that the defendant may have been embolden in the commission of the offence by the very fact of the victim's vulnerability and with the hopeful expectation that the victim's vulnerability may have assisted him in evading the consequences of his unlawful act.

[35] On the facts presented to the court it is fair to conclude that the defendant was motivated to commit the offence by the need for retaliation or revenge.

[36] In the circumstances, and having regard to the factors which the court has alluded to, this places the commission of the offence at a high level in terms of the defendant's degree of culpability.

[37] Therefore, the court has concluded that given the level of seriousness of the offence based on the consequences and the defendant's degree of criminal culpability, a convenient starting point sentence would be 75% of the statutory maximum which is 15 years and within a range of 60% to 90% depending on the aggravating and mitigating factors inherent in the case.

Aggravating factors – offence

[38] The following aggravating factors are highlighted on the facts presented. The defendant in this case took steps to conceal his identity by becoming a masked assailant. The court has also taken the view that the defendant by his own admission took steps to evade detection by discarding the offensive weapon used to commit the offence.

[39] In addition, the court resists the temptation to overlook the fact that the offence occurred in a public place and in the presence of members of the public. It is undeniable that this must have been a ghastly scene for the persons assembled in proximity to where the offence occurred.

Mitigating factors – offence

[40] In the court's view, there are no mitigating factors attendant on the commission of the present offence. The defendant's allusion in his statement to the police to his having been attacked by the victim, which appears to be reliance on self-defence is unsubstantiated and conflicts with his plea of guilty herein. Therefore, the court declines to give this oblique reference to self-defence any consideration as a mitigating factor. In any event, were the defendant's assertions true, he would have obviously used excessive force in self-defence.

[41] Reference has been made to the defendant's statement to the police wherein he would have shown what has been described as some remorse for his unlawful act towards the victim. It must be remembered that regret must not be conflated with remorse. Remorse shown by a defendant on a criminal charge must be genuine remorse shown in an objective or tangible way such as seeking assistance for the victim or reporting the incident immediately after its occurrence. There is no demonstrable evidence of any genuine remorse shown by the defendant in the present case. In the premises, the court declines to regard this as a mitigating factor in the commission of the offence.

[42] The court is also fortified in its view by the perception which arises from the conduct of the defendant after the commission of the offence which the court has already treated as an aggravating factor which obviously negatives the existence of any genuine remorse on the part of the defendant. Finally, the entering of a guilty plea clearly cannot be a sign of remorse; but may properly in some instances be regarded as an act of contrition on the part of a defendant.

Aggravating factors – offender

- [43] The defendant's antecedent history of offending was presented to the court. It appears that the defendant has a long history of offending dating back to 2012. However, much of his offending forms part of a remote and distant past and were offences forming part and parcel of the same transaction.
- [44] It appears from the defendant's antecedent history that he was sentenced to 2 years' imprisonment on 27th January 2017 for the offences of wounding and disorderly conduct. Therefore, it is apparent that the defendant would have committed the present offence upon his release from prison. The defendant is presently remanded in prison on a charge of robbery with violence in an unrelated incident. The defendant was granted bail in relation to the subject offence on 6th March 2023. On or about November 2023 he committed the offence of robbery with violence and was remanded on this subsequent charge on 21st November 2023.
- [45] It does not appear that the defendant has taken active steps to address his reoffending. This is emblematic of his history of offending which appears to have commenced from very early in his adult life.

Mitigating factors – offender

- [46] The court is incapable of discerning any mitigating factors that can assist this offender save and except his guilty plea.
- [47] For the preceding reasons relative to the aggravating and mitigating factors inherent in the case, the court has concluded that the notional sentence should be adjusted upward within the prescribed range which would be 80% of the sentence prescribed by statute. Accordingly, the court adopts a notional sentence of 16 years imprisonment.

Discount – guilty plea

- [48] Given the procedural history of this matter it cannot be said that the defendant entered his plea of guilty to the offence at the first available opportunity. In the

premises, the court is not minded to credit him with the usual one-third discount from the notional sentence. Given the timing of the defendant's plea and the court having taken cognizance of the fact that there has been some interruption in court proceedings in the jurisdiction, the court has determined that the defendant is entitled to a discount of one-quarter ($\frac{1}{4}$) of the sentence that the court is minded to impose. Therefore, the defendant will receive a discount of 4 years' imprisonment from the notional sentence on account of his guilty plea. Therefore, the notional sentence is reduced to 12 years' imprisonment.

Dangerousness

- [49] The court has addressed its mind to the question of dangerousness of the offender. The question of dangerousness involves the consideration of whether there is a need to protect the public from serious harm from the defendant and for the purposes of his rehabilitation and whether any term of imprisonment above the notional sentence is required to achieve this objective.
- [50] Dangerousness cannot be assessed in a vacuum. There must be some empirical basis upon which the court can make an assessment of dangerousness. The fact that the defendant has previous convictions is insufficient to ground the conclusion that he is dangerous and that the public requires protection from this defendant and that any additional period of incarceration is required for that purpose.
- [51] However, in the court's view, the very nature of the defendant's reoffending suggests that there is perhaps the need for rehabilitation. Unfortunately, it is unclear from the information provided to the court whether the object of rehabilitation can be achieved in the current prison environment. Therefore, the court makes no finding as to whether there is the need for any additional term of imprisonment to achieve the aim of rehabilitation in the case of this offender.
- [52] The court has noted based on its experience in this jurisdiction that the criminal docket is replete with offences of violence against the person of a similar nature and otherwise even more egregious. However, there is no empirical data to guide the

court in its assessment of the prevalence of these kinds of offences. This is indeed unfortunate. Therefore, prevalence whether as a means of deterrence or otherwise is not a consideration that the court intends to give any thought to in these proceedings as no basis for same has been provided to the court.

- [53] Having said all of the above, it seems fitting that the court recommends refraining from a culture of slavish adherence to a mechanical approach to sentencing based primarily on a mathematical approach derived from sentencing guidelines. There are many pitfalls and dangers in relying on an arithmetical approach which the court herein describes. The court, in its experience, is becoming increasingly aware of the tendency on the part of offenders to have strategic recourse to the sentencing guidelines in anticipation of a particular length or type of sentence. The court has seen this tendency particularly in the timing of guilty pleas and considerations of time spent on remand especially in criminal justice systems that are plagued by systemic delay. This is unacceptable.
- [54] The court has discerned an increasing penchant for such an approach particularly from the prosecution. The court must be provided with cogent, salient and objective information based on which the court can make a comfortable assessment regarding the permissible aims of punishment such as statistical data regarding the rate and prevalence of offences, the facilities available at correctional facilities for rehabilitation and education of inmates, and information of a like nature.
- [55] It all appears as if the permissible aims of punishment that are to be served in evolving societies such as ours in keeping with the dictates of constitutional propriety have been either whittled down or lost in the abyss of arithmetical equation of permutations and combinations. The latter is not the manner in which justice is to be achieved.
- [56] At a sentencing hearing the court ought to be provided with all necessary information to make a comprehensive, fair and balanced assessment of what is required to do justice in the case of both offenders and victims in criminal cases. Not only must the sentence be commensurate with the crime there must also be proportionality which

serves the offender, the public and society at large. Constitutional dictates must not be overshadowed by the principle of *lex talionis*. It is not merely by sentencing offenders that justice is achieved.

[57] The sentencing guidelines were devised to achieve proportionality in sentencing and not to stifle the operation of the permissible aims of punishment in a just and democratic society. Much more is required however from our criminal justice system if the courts are to fulfill their constitutional mandate of protecting the people we serve.

[58] Therefore, the court's sentencing judgment or remarks must be crafted in such a way that not only the offender understands the basis and/or reasons why he has been sentenced in a particular way, but also that the public understands the same and understand the underlying policy of the courts in dealing with crime and punishment. In such a way transparency and accountability is achieved and confidence in the criminal justice system is achieved. This is also one of the reasons why sentencing judgments ought to be published and disseminated.

Time on remand

[59] The defendant is entitled to credit for all time spent on remand. The time spent on remand must be calculated with precision. In the present case, there are two obstacles to achieving such precision. The prison authorities must be made aware that the calculation of the time a prisoner has spent on remand must be calculated or reckoned as a matter of days up to the date of sentencing. In the present case, the information provided is that the defendant has been on remand for a period of 1 year, 6 months, and 15 days from 19th August 2021 to 6th March 2023. It appears that the calculation as a matter of days has been left up to the court. This practice must be deprecated. The court is to be provided with an official record provided by the prison authorities. Simply providing the information in its current form, that is, in written submissions is an unacceptable practice.

[60] After having sought and being provided with the relevant information, it appears that the defendant has been on remand in respect of this offence for a period of 566 days. Therefore, the period of 566 days shall be deducted from the sentence of 12 years imposed by the court in this instance. Therefore, the defendant shall serve a period of 12 years' imprisonment.

Ancillary orders

[61] The court is not well placed to make any ancillary orders given the circumstances of the present case. The defendant is obviously incarcerated and has no meaningful form of income. Therefore, the court is in no position to make an order for compensation for the injury which the victim has suffered. This is indeed unfortunate.

[62] The defendant shall benefit from his enrollment and engagement in any vocational and or educational skills programs conducted at His Majesty's Prison Richmond Hill during the period of his incarceration.

[63] In addition, the defendant shall be enrolled and shall participate in any counselling for anger management and drug and alcohol addiction provided at the correctional facility aforesaid during the period of his incarceration.

The sentence

[64] The sentence of the court is as follows:

1. The defendant shall serve a term of 12 years' imprisonment.
2. The period of 566 days spent on remand in relation to the present offence shall be deducted from the sentence of 12 years' imprisonment.
3. The defendant shall benefit from his enrollment and engagement in any vocational and/or educational skills programs conducted at His Majesty's Prison Richmond Hill during the period of his incarceration.

4. The defendant shall be enrolled and shall participate in any counselling for anger management and drug and alcohol addiction provided at the correctional facility aforesaid during the period of his incarceration.

Shawn Innocent
High Court Judge

By the Court

Registrar