

**THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

**CASE NO: SVGHCR 2023/0003
SVGHCR 2023/0004**

BETWEEN:

REX

and

CORNELIUS KENNEDY

Appearances:

Ms. Allana Cumberbatch, Counsel for the Crown
Ms. Shirlan Barnwell, Counsel for the Defendant

**2024: February 9th
March 21st, 26th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag]:** The defendant, Cornelius Kennedy, was originally charged on two separate indictments. One Indictment charged murder, and assault causing actual bodily harm. The other, charged wounding. The indictments were joined into one, and on 9th February 2024, a plea of not guilty to murder, but guilty to manslaughter, was entered. Counsel for the Crown was content with that plea. Guilty pleas were then entered to the remaining two counts. A Social Inquiry Report was ordered, and the case was adjourned to 21st March 2024 for sentence. The facts as agreed, were found in the submissions of the parties, and in the court file. The Social Inquiry Report is dated 13th March 2024, and was filed on 15th March 2024. A Victim Impact Statement was filed on 20th March 2024. Written submissions were filed on 20th March 2024 by counsel for the Crown, and counsel for the defendant. Oral

submissions were received on 26th March 2024. The matter now proceeds to sentencing.

The Facts

- [2] On the evening of 2nd December 2021, the defendant was responsible for a spree of random violence directed at three different, and unrelated individuals. Sadly, on 5th January 2022, one of those persons, Lanceworth Wilson, succumbed to the injuries he sustained. All of these incidents occurred in the downtown area of Kingstown.
- [3] Some time in the evening of 2nd December 2021, Cedric Codougan was walking along Back Street. There was vehicular and pedestrian traffic. He felt a sudden blow to the back of his head, causing pain and a loss of consciousness. He fell to the ground. His next memory is waking up in the intensive care unit of the local hospital. He did not see who struck him. The assailant was identified by other witnesses. Mr. Codougan was medically assessed with compound depressed fractures of the facial bones, left side, and pneumocephalus. He also suffered a hemorrhage to the right retina inferiority, and muscular hemorrhage to the superior aspect. His sense of smell, memory, and left eye vision, have all been affected. He did, however, discharge himself from the hospital early, and of his own volition.
- [4] Witnesses, including Steven Nichols, observed the defendant fighting with his own brother at approximately 5:30 PM on 2nd December 2021. The defendant had a knife. The fight was broken up, and the defendant ran off towards the Kingstown Vegetable Market. He was seen to pick up a piece of steel, and walk up the road.
- [5] Just before 6:00 PM on 2nd December 2021, Strotman Richards was near the Vegetable Market, opposite the Court House. He saw the defendant, whom he knew, but not by name, in an altercation with someone he knew as "Al." It was Lanceworth Wilson. "Al" grabbed the defendant by the neck, and the defendant swung the piece of steel that he was carrying. It struck Mr. Wilson in the foot. This caused him to double over, whereupon, the defendant struck him twice in the head.

Mr. Wilson fell to the ground, and was struck again in the head by the defendant, while he was down. The defendant then ran off towards lower Kingstown.

- [6] At about 7:30 PM, a security guard at the Kingstown Board Car Park, Junior Baptiste, saw the defendant speaking angrily to some children on bicycles. The defendant was known to him, but not by name. Mr. Baptiste addressed the defendant, who turned, and swung a piece of pipe at him. It was the same pipe seen earlier in the possession of the defendant. Mr. Baptiste bent down, and raised his hand to deflect the blow. He was struck in the left hand, and left foot, but managed to grab the pipe and struggle with the defendant. He struck the defendant with the pipe several times on his feet. Mr. Nichols, and others, came to his rescue. They disarmed the defendant, and wrestled him to the ground, where he was held for police.
- [7] Mr. Baptiste suffered swelling and damage to the muscles in his left hand. He was treated but not admitted to hospital.
- [8] A postmortem examination was conducted on Lanceworth Wilson. He suffered a depressed skull fracture with diffuse subarachnoid hemorrhage. A left parietal craniotomy procedure had been conducted in an attempt to treat his injuries. The cause of death was listed as complications from blunt trauma to the head
- [9] The facts of this case confirm that the defendant was known to have mental health issues prior to this incident. Those concerns carried on after he was charged with these offences. As a result, he was examined by Dr. Karen Providence, Registrar in the Department of Psychiatry, attached to the Mental Health Centre. Her report, dated 21st May 2023, indicated that Mr. Kennedy was well known to the Mental Health Services. He is diagnosed with schizoaffective disorder, and mild intellectual disability. He has a history of polysubstance abuse. He has been frequently noncompliant with prescribed medications, and has absconded from the facility many times. With the use of daily medication, he has shown improvement to his mental state. It was confirmed that he understands the charges, is able to instruct counsel, and participate in his defence. He was found fit to plead.

- [10] The Social Inquiry Report was prepared by social worker, Camille McIntosh. It indicates the defendant, Cornelius Kennedy, is also known as "Power." He is 32 years of age, and prior to his incarceration in this matter, resided with his sister in Lowman's Hill. He has fourteen siblings. He is single, with no children.
- [11] The defendant dropped out of school, completing only his primary education. He did, however, go on to take a skills training course in carpentry in Brighton. He later found employment as a carpenter, prior to his incarceration.
- [12] The defendant is in good physical health, but has been an outpatient at the Mental Health Centre since the age of thirteen. He smokes cigarettes and marijuana, and consumes alcohol.
- [13] The criminal record for the defendant was referred to. It has eight entries, including possession of a weapon, and wounding, although some entries are spent, including the relevant entries. The defendant has served custodial sentences in the past.
- [14] When interviewed by the author of the report, the defendant was quiet and polite. As a child, he resided with his mother. He was first admitted to the Mental Health Centre at the age of 13. He described a good relationship with his family.
- [15] As for the incident in this case, the defendant provided a version of the events. He recalled that he consumed alcohol, and was drinking heavily that day. He walked from the central market in Kingstown to the P.H. Veira Supermarket, and got into a fight with his brother. He picked up a nearby metal pipe. When he was approached by another man, who tried to disarm him, a struggle ensued. The defendant said the pipe may have struck the man, in the course of that altercation. The man fell to the ground and the defendant walked away, towards the Singer store. Another man approached the defendant. The defendant said that this man had previously threatened him, so the defendant became frightened, and stuck the man in the shoulder with the pipe.

- [16] The defendant told the report's author that he has been incarcerated for approximately two years, in this matter. During that time, he has had a good relationship with both inmates and prison staff. However, he views the time spent on remand as being wasteful. Had he not been incarcerated, he could have gone further with his work and his life. He stated that he feels bad because he is in prison, and recognizes that he will be there for a "long while." He intends to try not to get into any further trouble.
- [17] Prison officials described the defendant as a calm and cool individual, willing to do any work assigned to him. However, he is easily triggered, and recently got into a fight with another inmate.
- [18] Lowman's Hill is a small community, where the defendant and his family reside. The defendant's mother told the report's author that the defendant first began to "act up" at the age of 9 years. He refused to attend school, and when he did go, he was disruptive. He was also described as disruptive within the greater community. He began smoking at age 13, and shortly thereafter, was admitted for the first time to the Mental Health Centre. He has been an outpatient ever since.
- [19] The defendant's mother presents a troubling description of her son. He is "crazy, disgusting, and disrespectful." He is a "nuisance" both in the home and in the community. He has rushed at her while brandishing a cutlass, cursed at her, stolen from community members, and even killed animals for subsequent meat sale. The poor woman stated that the only time she is at ease is when the defendant is incarcerated. Only then, is her home and the greater community at peace. She hopes the defendant is firmly dealt with in this case.
- [20] Members of the defendant's community were interviewed for the purpose of the report. They described the defendant as very disruptive and disrespectful. He is loud, and people are frightened when he is around. Comments included that when the defendant is not incarcerated, he "gives us hell up here." No one was surprised to learn of the role played by the defendant in this incident. The community lives in fear when the defendant is present.

- [21] Of the three victims and their families, only one cooperated in the production of the Social Inquiry Report. Junior Baptiste failed to appear for an interview, and did not return phone calls. The report's author was unable to make contact with any family members of the deceased, Lanceworth Wilson. She was, however, able to reach Cedric Codougan. That gentleman has, unfortunately, been seriously impacted by this incident. The entire left side of his face was damaged, including his ear, nose, and eye. He has lost the vision in his left eye. He suffers recurring headaches, and has been unable to return to work. He requires ongoing care. Losing his job led to the loss of his residence. His life is no longer stable, and he is effectively homeless.
- [22] The conclusion of the Social Inquiry Report is that the defendant is a threat to public safety. He should have continuous mental health assessments, and receive treatment.
- [23] A Victim Impact Statement was submitted by Cedric Codougan, the victim in the wounding charge. He is 47 years old. On the day of the incident, he had been forced to reschedule some elective surgery. While walking in Kingstown, he was struck from behind, fell to the ground, and lost consciousness. He awoke in the hospital, some days later.
- [24] His movements were restricted, and he indicates he was handcuffed to a bed. He was in and out of consciousness. He indicates that he was confused, and left the hospital. He was returned to the hospital by his employer, but was denied further treatment. The fault, he says, lies with the hospital, not with him.
- [25] His life since then, has been miserable. He suffers from pain and headaches. He is no longer working, and finds it difficult to purchase medicine. He is depressed and angry. He has lost the vision in his left eye, and has a facial scar. He requires financial assistance.

The Position of the Parties

- [26] Learned counsel for the Crown submits that this is a case of manslaughter by diminished responsibility, under **s. 160** of the **Criminal Code CAP 171**, owing to

mental impairment. Reference is made to the Psychiatric Report of Dr. Karen Providence, dated 21st May 2023. That report confirms a history of mental illness for the defendant, with a diagnosis of schizoaffective disorder, and mild intellectual disability.

- [27] Crown counsel submits the court should be guided by the classic sentencing principles of retribution, deterrence, prevention, and rehabilitation.
- [28] Crown counsel submits that, although the Sentencing Guidelines for the Eastern Caribbean Supreme Court for Manslaughter by Unlawful Act are applicable, there are no guidelines for the crime of Manslaughter by Reason of Diminished Responsibility. The court should follow the Sentencing Guidelines for Violent Offences for the crimes of wounding and assault causing bodily harm
- [29] Crown counsel submits that the Seriousness designation in this case should be Level D – Lower, since there was no intention to cause harm, owing to the impaired mental capacity of the defendant. This would result in a starting point of 6 years and a range of non-custodial to 9 years.
- [30] Aggravating factors of the offence are submitted as including the use of a weapon, the offence being committed in a public place, the victim being elderly, and it was part of a spate of unprovoked and unexpected attacks. There are no mitigating factors of the offence.
- [31] Crown counsel submits that aggravating factors of the offender include the numerous convictions the defendant has for crimes of violence. Mitigating factors include the mental ill-health of the defendant, and the assistance given by the defendant to the police.
- [32] Crown counsel also directs the court to the **UK Sentencing Council Guidelines for Manslaughter by Reason of Diminished Responsibility**. By applying those guidelines to the facts of this offence, Crown counsel submits that the level of

responsibility for the offender is in the medium range, with a starting point of 15 years, and a range of 10 – 25 years.

- [33] Crown counsel submits that aggravating factors to be considered as increasing seriousness include the use of a weapon, an unprovoked attack, the offence occurring in a public place, and the victim being unarmed and unprepared.
- [34] Mitigating factors reducing the seriousness are submitted as including no previous conviction for murder or manslaughter, and the mental ill-health of the defendant at the time of the offence.
- [35] The court notes that there is a great difference in the starting points submitted by Crown counsel for the same offence, based on the Eastern Caribbean Supreme Court Sentencing Guidelines, and the UK Sentencing Guidelines.
- [36] Crown counsel directs the court to the Eastern Caribbean Supreme Court sentencing Guidelines for Violent Offences for the remaining two counts, and submits that many of the aggravating and mitigating factors attributable to the manslaughter count, can be considered for those counts.
- [37] Crown counsel submits that the defendant should receive the full one third discount available to him for guilty plea. Any delay experienced in entering the plea, can be attributed to the delay in obtaining the psychiatric assessment. Crown counsel also submits that the defendant should receive credit for time spent on remand.
- [38] Given the dates and times for the offences committed in this case, Crown counsel submits that the sentences imposed for each count should run concurrently.
- [39] By way of ancillary order, Crown counsel recommends that the court consider ordering the defendant to undergo mental health care while serving his sentence, and continue his treatment upon release, with psychiatric progress reports being filed on an ongoing basis.

- [40] Several cases were submitted by Crown counsel dealing with sentences involving manslaughter by diminished responsibility.
- [41] Learned defence counsel submits that this is a case of manslaughter by diminished responsibility, and directs the court to **s. 160** of the **Criminal Code**. Further assistance is found at **s. 8** of the **Mental Health Act CAP 294**, when a court orders detention at the pleasure of the Governor General, and psychiatric hospital admission.
- [42] Case law was provided indicating that a court should focus on the mental health of the defendant at the time of the offence. This may have a great effect on the sentence imposed, while in other cases, it may have little or no effect. It will depend upon the state of the evidence. The court should consider the defendant's degree of responsibility, and the length of time for which the defendant will continue to be a danger to the public. Sentences can range from hospital orders, to short custodial orders, to lengthy custodial orders.
- [43] Defence counsel directed the court to the UK Sentencing Guidelines as the Sentencing Guidelines of the Eastern Caribbean Supreme Court do not deal with Manslaughter by Reason of Diminished Responsibility. Defence counsel referred to the psychiatric report of 21st May 2023, as well as the fact that the evidence showed the defendant was taken by police to the Mental Health Centre on the day of the incident. Police later collected the defendant from the Mental Health Centre on 6th January 2022. The court notes that, at the time, it was indicated by treating physician, Dr. Providence, that the defendant was fit to be interviewed. During the scene visit with police the next day, the defendant murmured and spoke incoherently. Witnesses to the incidents indicated that it was known that the defendant had mental health issues. This indicates, submits defence counsel, that the defendant was suffering from a mental disorder at the time of the offence, and places him in the low to medium category for degree of responsibility.

- [44] Defence counsel submits that, at the time of the offence, there is no evidence that the defendant was under the influence of any illicit substance. He did, however, report to the Social Inquiry Report author, that he drank alcohol heavily on the day of the incident. But no police officer indicated any observations of impairment. There is no record of prescribed medications or a failure to take any, at the time of the offence.
- [45] Defence counsel submits that by considering the factors in the UK Sentencing Guidelines, and applying them to the Eastern Caribbean Supreme Court Sentencing Guidelines, the case falls into the Seriousness Category Level C – Medium. This produces a starting point of 12 years and a range of 6 -16 years.
- [46] Aggravating factors of the offence, it is submitted, include the use of a weapon, and the offence occurring in a public place. Mitigating factors include a lack of premeditation, and provocation.
- [47] Defence counsel submits that there are no aggravating factors of the offender, as entries in the defendant's record for similar offences are spent. Mitigating factors include feelings of sorrow or remorse, a positive report from prison officials, and his current stable mental health when apparently receiving treatment while incarcerated.
- [48] Defence counsel submits that the defendant should receive a one third discount for his guilty plea, and credit for time spent on remand.
- [49] As for the remaining counts, defence counsel submits that the starting point for wounding is 60% or 8.4 years, with a range of 45% - 75%. Aggravating factors for the offence include it being committed in a public area. Mitigating factors include it being an isolated incident, and a lack of premeditation on the part of the defendant.
- [50] Defence counsel submits that there are no aggravating factors of the offender, while mitigating factors include the defendant's mental disability, and his vulnerable personality traits.

- [51] Defence counsel submits the defendant should receive a one third discount for his guilty plea, and be credited for the time he has spent on remand.
- [52] For the count of assault causing actual bodily harm, defence counsel submits the starting point is 45% or 2.25 years, with a range of 30% - 60%. Aggravating and mitigating factors of the offence and the offender, would be the same as those factors already noted for the count of wounding.
- [53] Defence counsel recommends ancillary orders, including that the defendant be assessed by a psychiatrist every six months, for the next two years, or as necessary. He should receive treatment for alcohol, conflict resolution, and behavioural management. Educational courses should be made available to him.

The Law

- [54] There are three counts in this case. Under **s. 163** of the **Criminal Code**, upon conviction for manslaughter, the penalty is life imprisonment. Under **s. 174**, upon conviction for wounding, the penalty is 14 years imprisonment. Under **s. 193**, upon conviction for assault causing actual bodily harm, the penalty is imprisonment for 5 years.
- [55] Sentencing in criminal cases seeks to achieve a fair and equitable penalty. The principles of retribution, deterrence (both general and specific), prevention and rehabilitation, are confirmed in the well-known cases of **R. v Sargent**¹ and **Desmond Baptiste et al v The Queen**². The case of **Renaldo Anderson Alleyne v The Queen**³ from the Caribbean Court of Justice, refers to the principles of punishment, deterrence, and rehabilitation. The goal of sentencing is to promote respect for the law and an orderly society. A sentencing court must consider the facts of the case, as well as the nature and gravity of the offence. It must balance that with the circumstances of the offender, including his age and background,

¹ 60 Cr. Ap. R. 74

² Cr. Ap. No. 8 of 2003

³ [2019] CCJ 06 AJ, 93 WIR 155

whether he has a criminal record, the role he played in the offence, the design and execution of the offence, and his reform and reintegration into society.

[56] The sentencing considerations found in the case of **Renaldo Anderson Alleyne**, are of further assistance in a case of unlawful death. A sentencing court should consider the personal and individual circumstances of the convicted person, the nature and gravity of the offence, the character and record of the convicted person, the factors influencing the conduct leading to the unlawful death, the design and execution of the offence, and the possibility of reform and reintegration of the convicted person.

[57] All of this has been considered by this court in formulating an appropriate sentence in this case.

Analysis

[58] Having received and carefully reviewed the written and oral submissions of counsel for both parties, as well as the Social Inquiry Report, and the Victim Impact Statement, what follows is the sentencing decision. This was an awful day of mayhem and violence, carried out by the defendant on random and unsuspecting victims. It must have shocked the inhabitants of the city of Kingstown. A man was bludgeoned to death on a busy public street, and two others were struck with the same piece of steel pipe. This court has previously noted in other cases that, although the range of sentence for manslaughter convictions are many and varied, because the factual circumstances and the degrees of culpability are wide, the crime still involves the unlawful taking of a human life. The gravity of the objective circumstances must, therefore, be closely assessed.

[59] In crafting this sentence, the Court has been directed to consider the UK Sentencing Guidelines in the area of Manslaughter by Reason of Diminished Responsibility. There is merit in that, since the Eastern Caribbean Supreme Court Sentencing Guidelines do not take into account diminished responsibility, specifically. The court notes, however, that the local guidelines do allow for the consideration of the

defendant's mental disability, ill health, or vulnerable personality trait, under the heading of mitigating factors of offender for Manslaughter by Reason of Unlawful Act. For this reason, the court will examine and make use of the UK Sentencing Guidelines.

[60] The court is satisfied that the defendant was suffering from a mental disorder at the time of the offence. Witness statements confirm that members of the public were aware of the defendant's condition before this incident, as he is unfortunately referred to as the "crazy man." This accords with the formal findings of mental ill-health, in the psychiatric report dated 21st May 2023. The defendant was well known to the staff at the Mental Health Centre, from several admissions. The mental health status of the defendant at the time is further confirmed by the fact that, upon his arrest, he was taken to the Mental Health Centre, where he apparently remained until he was retrieved by the police on 6th January 2022.

[61] While it is difficult to confirm the degree to which the defendant's actions or omissions contributed to the seriousness of the mental disorder at the time, the ongoing nature of the illness is clear. The court notes that the Psychiatric Report indicates the defendant's readmissions to the Mental Health Centre were "often associated with violent behaviours in public places," which is exactly what happened in this case. It further confirms that the defendant was frequently noncompliant with his prescribed medications.

[62] The defendant was candid in admitting to the author of the Social Inquiry Report that he was drinking heavily on the day of the incident.

[63] Taking all of that into account, the court is satisfied that, under the UK Sentencing Guidelines, the appropriate Level of Responsibility is Medium, with a starting point of 15 years' custody, and a range of 10 – 25 years' custody. The balance of the UK Sentencing Guidelines considerations refer to aggravating and mitigating factors, totality principles, reduction for guilty plea and time spent on remand, and ancillary

orders. All of that is also found in the Eastern Caribbean Supreme Court Sentencing Guidelines.

- [64] The court uses that guidance and applies it to the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Homicide Offences, Re-Issue 26th November 2021**. Sentencing for a case of manslaughter by reason of unlawful act, requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused. To establish the starting point for the offence within the relevant range, there are four stages. The first stage is to determine the offence category based on consequence. The consequence of manslaughter is always the death of the victim.
- [65] The second stage involves the consideration of seriousness by assessing the culpability of the offender. Seriousness is confirmed in this case by the defendant using a large, heavy piece of metal pipe to strike blows to the head of the deceased, including when he was down on the ground. Although death was caused in the course of an unlawful act which carried, it must be said, a high risk of death or really serious harm, which was, or ought to have been, obvious to the defendant, the state of the defendant's mental health at the time affects his ability to comprehend that. The court is therefore more comfortable recognizing that the defendant caused death in the course of an unlawful act, which involved an intention by the defendant to cause harm, falling between higher and lower serious levels. The appropriate category must therefore be Level C - Medium.
- [66] Having determined the level of responsibility, the starting point is found by consulting the sentencing guidelines grid, where the sentences are expressed in years, and not as percentages of maximums. This calculation leads to a starting point of 12 years, with a range of 6 – 16 years. The court refers back to the findings under the UK Sentencing Guidelines, as already noted, considers that, and determines the appropriate starting point to be 14 years, which is within the stated range under Eastern Caribbean Supreme Court Sentencing Guidelines.

- [67] Having established a starting point of 14 years, the court must consider the aggravating and mitigating factors of the offence, and adjust the figure upwards or downwards, as appropriate. In this case, the offence involved the use of a weapon, a steel pipe. The sentence is therefore increased for this aggravating factor by 2 years to 16 years. In considering mitigating factors, the court notes that there was no premeditation evidenced in committing the unlawful act. It was a random act of violence committed by someone who was obviously in an angry and agitated state, judging by the other two attacks that he carried out that same evening. This reduces the sentence by .5 year to 15.5 years.
- [68] The court must go on to consider aggravating and mitigating factors pertaining to the offender, and adjust the figure upwards or downwards accordingly. In this case, the defendant has a criminal record, however, the relevant convictions for crimes of violence, are considered spent. That is not an aggravating factor.
- [69] By way of mitigation, the court notes that the defendant “feels bad” about what happened, but also equates that with being in prison, knowing he will be there for a long while. The court is not convinced that this rises to the level of genuine remorse, referred to in the Guidelines. The court notes that the defendant was somewhat helpful to the authorities, and the police investigation. However, with the eye witness statements and evidence, that assistance is reduced. The court does, however, take into account the significant history of mental health issues that the defendant suffers from. Those mental health issues, balanced with the severity of these crimes of violence, demonstrates the conundrum presented to a sentencing court in a case like this. The conditions under which prisoners on remand with mental health issues serve their time in this jurisdiction, is also taken into account by the court, under this heading. This serves to reduce the sentence by 1.5 years, to 14 years or 228 months.
- [70] Those who suffer with mental ill-health and psychiatric disorders sometimes, and often do, end up in conflict with the criminal justice system, especially if their conditions go untreated, or they decline to take their prescribed medication. That is

clear from the psychiatric report, and the Social Inquiry Report, in this case. While on his own, the defendant has struggled at times to deal with his condition. He participates in substance abuse, is noncompliant with his medication regime, and has gone AWOL from treatment facilities. When in a controlled environment, such as incarceration, he is abstinent from substance abuse, receives regular medication to control his symptoms, and shows overall improvement in his condition. This highlights the need for, not only more trained psychiatric professionals, but also, for secure forensic in-patient facilities, in this jurisdiction.

[71] Credit must be given to the defendant for his guilty plea. Although it took some time for him, with the assistance of his counsel, to reach the point of entering a plea of guilty, the state of his mental health clearly played a role in that delay. He cannot be faulted for seeking a psychiatric evaluation, through his counsel, and thoroughly exploring all his options. That took time. Thereafter, further time was required while learned defence counsel worked with the defendant, to evaluate and consider the evidence, his medical condition, and his options. He should receive the full credit that he is entitled to for eventually reaching that point. This will result in a one third reduction in sentence of 76 months, to 152 months, or 12 years and 8 months. The defendant must also receive credit for time spent on remand. In that calculation, the court takes into account the fact that the defendant was initially held in the Mental Health Centre, before going into formal custody. He will receive credit for that time period as well. Following his arrest, therefore, the defendant spent 2 years, 3 months, and 24 days on remand, in custody, until today's date, and his sentence will be reduced accordingly. This reduction will be applied to the total sentence imposed.

[72] As referred to above, the court has taken note of the conditions under which prisoners in this jurisdiction, who suffer with mental health issues like the defendant, serve their time on remand. Many of them are awaiting psychiatric evaluations before their cases can proceed. However, with no psychiatrist capable of conducting such examinations, and producing such reports, currently in residence in this jurisdiction, they are left to languish.

- [73] Inmates with mental health issues are housed at HMP Kingstown, which the court has visited. It is an ancient institution in need of significant repair. While the prison superintendent and his officers carry out their duties admirably, and with compassion, conditions are grim. Inmates with mental health issues are housed in a large open cell area that has beds for about half of them. The rest sleep on the floor. There are no toilet facilities in that cell block. Lockdown is from 3:00 PM to 5:00 AM in HMP Kingstown. Conditions such as those would be difficult for able bodied prisoners of sound mind to endure. But for prisoners with mental health issues, it must be dire indeed. It is to be hoped that the psychiatric evaluation process can soon be addressed, with reports being produced in a timely fashion. It is further hoped that the facilities housing prisoners with mental health issues can be improved, and made more humane, as soon as possible.
- [74] The second count is wounding. Directions in sentencing for that offence are found in the Guidelines under the heading Unlawful Violence Without Intent to Cause Really Serious Harm. This requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused. The first stage is to consider consequence by assessing the harm caused by the offence. The victim in this case was seriously injured. His facial bones were fractured, and he suffered with residual, long lasting injuries, including visual impairment. He lost his livelihood. It is unfortunate, however, that he chose to discharge himself from the hospital prematurely. This leads to the placing of Consequence into Category 2 – High.
- [75] The second stage is to consider seriousness by assessing the culpability of the offender. A weapon, consisting of a metal pipe, was used. This places Seriousness into Level A – High.
- [76] Having determined the consequence and level of seriousness, the starting point is found by consulting the grid. This leads to a starting point of 60%, and a range of 45% - 75%. The court has determined the appropriate starting point to be 65% or 9.1 years.

- [77] The court then moves on to consider aggravating and mitigating factors of the offence, and adjusts the sentence upwards or downwards, as required. This offence took place in a public street, with many other people present. This aggravating factor increases the sentence by .9 year to 10 years. The lack of premeditation, which is supported by the mental health issues that the defendant suffered from at the time, is a mitigating factor that reduces the sentence by .5 year to 9.5 years.
- [78] The court next turns to a consideration of the aggravating and mitigating factors affecting the offender, and adjusts the sentence accordingly. No aggravating factors are noted. A significant mitigating factor is the defendant's mental ill-health, which was at play at the time, and is still present. That has already been discussed at length in relation to count 1. That serves to reduce the sentence by 1.5 years to 8 years or 96 months.
- [79] As also noted above in relation to count 1, despite the time it took to reach the point of a guilty plea, credit must be given to the defendant for that guilty plea. A reduction in sentence of one-third, will therefore be given to him, for a guilty plea to count 2. This reduces the sentence by 32 months to 64 months or 5 years, and 4 months.
- [80] The court has carefully considered the facts in relation to counts one and two. These incidents took place on the same date, within hours of each other, and involved the same weapon. There is a nexus and contemporaneity to them. It was a tragic but continuous and uninterrupted event. The defendant committed one offence, and then moved on to the next location, a short distance away. Bearing in mind the principle of totality, and for all these reasons, the sentence for count 2 is to be served concurrently to the sentence for count 1. Time spent on remand will be deducted from the total sentence imposed.
- [81] The third count is assault causing actual bodily harm. Directions in sentencing for that offence are also found in the Sentencing Guidelines under the heading, Unlawful Violence Without Intent to Cause Really Serious Harm. The sentencing process follows the same path described for count two. This requires an assessment of the seriousness of the offence, including the culpability of the offender, and its

consequences, by reference to the harm caused. The first stage is to consider consequence by assessing the harm caused by the offence. The victim was fortunate to only suffer pain and swelling to his left hand, with no lasting injury. This places the Consequence into Category 3 – Lesser.

[82] The court then moves to the second stage, and considers seriousness by assessing the culpability of the offender. The use of the same weapon, a metal pipe, as used in relation to counts 1 and 2, places the Seriousness into Level A – High.

[83] Having determined the consequence and level of seriousness, the starting point is located by consulting the grid. The starting point is noted as being 45%, with a range of 30% – 60%. The court has determined the appropriate starting point to be 45% or 2.3 years.

[84] Having determined the starting point, the court then considers any aggravating and mitigating factors of the offence, adjusting upwards or downwards, as required. As noted for count 2, this incident occurred in a public street, when other people were present. This aggravating factor increases the sentence by .2 years to 2.5 years. There was, as also noted for count 2, no premeditation. This serves to reduce the sentence by .5 years to 2 years.

[85] The court next considers the aggravating and mitigating factors as they pertain to the offender, and adjusts the sentence accordingly. The court notes there are no aggravating factors. The ongoing mental ill-health of the defendant at the time of the offence, as confirmed in the evidence, is a mitigating factor. That will reduce the sentence by 1 year, to 1 year or 12 months.

[86] The defendant will receive a one third reduction in sentence to reflect the guilty plea. This reduces the sentence by 4 months to 8 months. As in count 2, and for the reasons already noted, the court is satisfied that the sentence for count 3 should be served concurrently to the sentences for count 1 and count 2. This was an ongoing and uninterrupted transaction. Time spent on remand will be deducted from the total sentence imposed.

- [87] The court has also considered the sections of the **Mental Health Act**, as noted above, as well as the portions of the UK Sentencing Guidelines that refer to detention at the pleasure of the Governor General in a psychiatric hospital. The court is not satisfied that would be an appropriate disposition in this case. See also **Blackstone's Criminal Practice 2010, B1.37**. Where the court considers the defendant to be a danger to the public, and there is a danger of a repetition of violence, a hospital order, would not be appropriate.
- [88] In this case, the defendant has a history of violent behaviour, particularly in public places. The Social Inquiry Report confirms that family members and community members, view him as being disruptive, disrespectful, and violent. Further, the court understands that there is no secure forensic facility in this jurisdiction, where the defendant could be housed, should such an order be made. The court is satisfied, however, that the defendant has stabilized, while incarcerated, and appears to be receiving treatment and medication. A determinate sentence in a prison setting is therefore appropriate.
- [89] For all of these reasons, the defendant, Cornelius Kennedy, is hereby sentenced as follows:
- [90] **Count 1:** For the crime of manslaughter, in the death of Lanceworth Wilson, to a period of imprisonment for 12 years and 8 months.
- [91] **Count 2:** For the crime of wounding Cedric Codougan, to a term of imprisonment for 5 years, and 4 months. The sentence for count 2 is to be served concurrently to the sentence for count 1.
- [92] **Count 3:** For the crime of assault causing actual bodily harm to Junior Baptiste, to a term of imprisonment for 8 months. The sentence for count 3 is to be served concurrently to the sentences for count 1 and count 2.
- [93] Taking into account the time the defendant has served on remand, and giving him full credit for that, the total sentence imposed is reduced by 2 years, 3 months, and

24 days. The total sentence as of today's date is therefore, 10 years, 4 months, and 6 days.

- [94] It is hereby ordered that, while incarcerated, the defendant shall be assessed for, and receive treatment and counselling for, substance abuse, psychiatric illness, and mental health issues. Following his release from custody, the defendant is to be monitored, assessed, and treated for ongoing psychiatric and mental health issues by the Mental Health Centre, for a period of two years. Reports are to be provided to the High Court every six months.

Richard G. Floyd
High Court Judge [Ag]

By the Court

Registrar