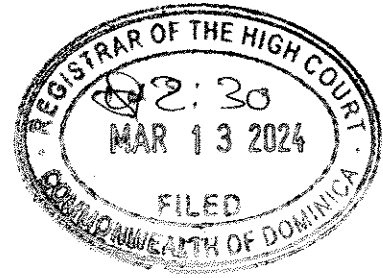


IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)



COMMONWEALTH OF DOMINICA

CASE NO: DOMHCR: 2023/0017

BETWEEN:

THE STATE

V

RONNIE LESLIE

APPEARANCES:

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

Mr Wayne Norde and Mr Bernard Pacquette for the Defendant

2024: March 6th, 12th

SENTENCING

1. **COLIN WILLIAMS J:** On Friday the 1st of March 2024, Mr Ronnie Leslie was found to be guilty of the offence of wounding with intent to cause grievous bodily harm. It was a unanimous decision of a nine-member jury panel.
2. The 'Particulars of Offence' for which Mr Leslie was convicted stated that:

"[O]n the 12th day of November, 2017, at Cabawie, St Joseph, in the Parish of St Joseph, in the Commonwealth of Dominica, in the District aforesaid did unlawfully and maliciously cause grievous bodily harm to Hendricks Felix Morancie with intent to do the said Hendricks Felix Morancie grievous bodily harm."

3. Causing grievous bodily harm with intent to do so is an offence "Contrary to section 20 of the **Offences Against the Person Act, Chapter 10:31** of the Laws of the Commonwealth of Dominica, Revised Edition 1990."
4. A person who is guilty of contravening section 20 of the **Offences Against the Person Act** is "liable to imprisonment for ten years."

The Facts

5. Although there were competing narratives as to precisely how the altercation began between Mr Leslie and the victim, Mr Morancie, on the morning of Sunday, the 12th of November 2017, and as to precisely where the ultimate infliction of the injury took place, what is clear is that the jury was satisfied that the wound inflicted by Mr Leslie was not done by accident, neither was Mr Leslie acting in self defence.
6. The case for the State was that Mr Morancie left his home sometime after 6.00 am on the day of the incident to go to the beach. While he was passing the area of Mr Leslie's home, Mr Leslie started hurling abuses towards the complainant and Mr Morancie responded.
7. (Mr Leslie's narrative is that he was at home, repairing the fence that was damaged during the Hurricane when Mr Morancie came to the premises).
8. Mr Morancie said that he went to the beach and on his return, he saw Mr Leslie approaching. Mr Leslie had a cutlass in his possession. Mr Morancie said that Mr Leslie "jack me three times" and threatened to plan him with the cutlass. Mr Morancie got away from Mr Leslie and pelted two bottles at Mr Leslie. One of the bottles connected with Mr Leslie. The complainant said he then ran, but was pursued by Mr Leslie who then chopped the complainant on his foot, in the area of the ankle.
9. Mr Morancie's timeline is not in sync with the State's witness, Mr Earl Christopher. He said he was in bed around 6.30 am. He heard noise outside and went on his porch. He saw the complainant and Mr Leslie nearby in an argument. He called out to them and went back inside to put on some clothes. When he went back outside he saw Mr Morancie on the beach, close to the road. Mr Morancie had an injury to his leg.
10. Mr Christopher transported the complainant to the Saint Joseph Health Center. From there Mr Morancie was taken to the then Princess Margaret Hospital. Dr Adrien Dechusay who saw the complainant at about 8.30 am the same day assessed the injury and considered that amputation of the right leg at the level of the ankle was necessary. Mr Morancie agreed to have the emergency surgery done.
11. Mr Morancie was discharged from the hospital after spending four to five days post-surgery. He is now fitted with a prosthetic leg.

Sentencing Hearing

12. At the Sentencing Hearing on Wednesday the 6th of March 2024, Mr Leslie testified on oath saying:

“I am very sorry. Deep in my heart; very sorry. I would say sorry about that [to the virtual complainant, Mr Morancie] and hope he accept my apology.”

13. Mr Leslie said that he was employed for the past ten years and earns \$1,000.00 a fortnight. He said that he was willing to compensate Mr Morancie.
14. The Learned Director of Public Prosecutions, DPP, Ms Sherma Dalrymple, questioned Mr Leslie, about what sum he considered to be reasonable compensation to Mr Morancie. Mr Leslie initially indicated that he would like some advice as to a suitable figure, but when pressed by the DPP on the matter he said \$40 to \$50,000.00.
15. Three persons testified in mitigation on behalf of Mr Leslie. Those persons were his sister, Ms Ingrid Pierre, who is a police officer. Mr Leslie's common law companion, Ms Edith Augustus. And Mr Jason Jackman, a retired police officer who is Mr Leslie's cousin. They generally testified that Mr Leslie was peaceful, non-violent, soft-spoken, caring, kind, helpful and hard working.
16. Counsel, Mr Wayne Norde, urged that a non-custodial sentence be imposed. He submitted that there were exceptional circumstances in this case.
17. The State called Mr Morancie to testify regarding the impact that the offence has had on him.
18. According to Mr Morancie, prior to the incident, he did construction work. He used to earn \$1,500.00 a fortnight. He does not work anymore. He has hospital bills going back to the incident in 2017 amounting to \$7,000.00. He has a bill for a prosthetic leg costing \$5,375.00 and he also has an outstanding bill for a doctor amounting to \$1,183.00.
19. Mr Morancie said that since the incident, he is in a lot of pain. Bathing is a problem. Changing his clothes is a problem. There is a loss of independence; he has to be dependent on others to do things for him. He does not work and his five children assist in his maintenance.
20. Mr Morancie said that he considered that compensation of \$100,000.00 to be reasonable. He was not interested in hearing any apology from Mr Leslie, saying “Why now? It's too late.”
21. Mr Morancie in response to Mr Norde stated that he is not working because he “cannot stand up.” He stated that since the amputation he is unable to keep his balance. Mr

Morancie resisted the suggestion from counsel that he could indeed find gainful employment by doing something other than his former profession in construction.

Submissions

22. Mr Norde urged that:

- Justice be tempered with mercy.
- A non-custodial sentence be imposed.
- Innovation be applied to sentencing

23. Mr Norde stated that “at first blush,” the nature of the offence and the extent of the injury suffered by the complainant may warrant a custodial sentence. He noted that there were Sentencing Guidelines for violence offence, but he felt that there were exceptional circumstances in this case to take the matter outside of the strictures of the Guidelines.

24. Counsel asked that consideration be given to reparations for the complainant. He said that there can be reasonable compensation. Mr Norde said that if Mr Leslie was sent to prison, justice will be absent. He advocated that a suspended sentence be imposed and there be an order for compensation with an appropriate default provision.

25. Mr Norde referred to the **Criminal Justice (Reform) Act, Chapter 12.35** of the Laws of the Commonwealth of Dominica as support for his submission for imposing a suspended sentence.

26. Ms Dalrymple on behalf of the State stated that the suspended sentence in the **Criminal Justice (Reform) Act** would only apply in particular circumstances. The Learned DPP detailed how she viewed the different stages of the Sentencing Guidelines as they may be applied to the circumstances of this case.

Sentence Reform

27. The **Criminal Justice (Reform) Act** was entered into force on the 29th of January 1981. Its stated purpose was to “provide for reform of sentencing powers of the Courts and for matters incidental thereto and connected therewith.”

28. The Act provides for such things as attendance at day training centres, community service orders, suspended sentences, probation orders, and generally measures that are associated with juvenile offenders. The Act however does not specifically state any such limitation regarding its application.

29. The only provision which suggests that the Act may be geared towards young persons is at section 3, where the side note states it deals with: “Other punishment in lieu of imprisonment in certain circumstances.” The section provides:

“...where a person who has attained the age of eighteen years but is under the age of twenty-three years is convicted in any Court for any offence, the Court, instead of sentencing that person to imprisonment, shall deal with him in any other manner prescribed by law.”

30. Mr Norde however relied on section 6 (1) of the **Criminal Justice (Reform) Act**. It 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.”

31. The term used in the section is “any offender.” It is without any limitation with regard to age.

32. Section 9 of the **Criminal Justice (Reform) Act** provides for a suspended sentence supervision order to be made. The Supervision Order places the offender under the supervision of a probation officer for a specified period, to observe applicable conditions. There are consequences for the offender if there are breaches of the Order.

Types of punishment

33. The Part IX of the **Criminal Law and Procedure Act, Chapter 12:01** of the Laws of the Commonwealth of Dominica, provides for the different kinds of punishment that may be imposed. It addresses things such as:

- terms of imprisonment,
- the imposition of penalties,
- the power to impose fine or recognizances, and
- discretion of the sentencer.

34. Two provisions of Part IX of the **Criminal Law and Procedure Act** may be referred to at this stage. First, section 50 (1):

“Where any written law prescribes a penalty to which a person convicted of an offence shall be liable, such provision shall be construed to mean that, unless the contrary intention appears, the offence shall be punishable by a penalty not exceeding the penalty prescribed and the Court may, subject to such conditions as

it may think fit, dispense with any or (in exceptional circumstances) with all of the forms of punishment it has power to impose."

35. Then, at section 51 (1) it provides:

"Upon a conviction of any person for an offence whether indictable or summary, under any written law, notwithstanding the absence of any provision in such written law to that effect, the Court shall have a discretion in lieu of or in addition to any imprisonment prescribed, to impose such fine as it thinks fit, an in addition to or in lieu of any imprisonment or fine prescribed, to require the offender to enter into his own recognizances and to find sureties both or either for keeping the peace or for good behavior for a reasonable time to be specified in the order and to be imprisoned until the recognizances are entered into; but no person shall be imprisoned under this section for a period exceeding one year."

36. The payment of compensation is not addressed in Part IX of the **Criminal Law and Procedure Act**. However, in Part XIII, which deals with 'General Provisions,' an "Order for compensation on conviction of indictable offence" is addressed in section 73, as follows:

"(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."

37. Compensation may, therefore, be ordered to be paid. If it is paid, the injured party cannot obtain any other or further payment with respect to the injury for which the compensation has been paid. If the sum or any part of it remains unpaid, then the injured party would have to institute "such process" to recover that sum. The convicted person may be imprisoned for a period of up to twelve months for any default in making good the compensation order.

A previous decision

38. Mr Norde placed reliance on a sentence imposed nine years ago by High Court Judge Mr Justice Thomas (ag) in **The State v Cleaver Burton, DOMHCR No: 2013/0006**, (on the 13th of March 2015).

39. Mr Justice Thomas in the Cleaver Burton case received prior to sentencing a report from a Probation Officer, who conducted interviews with members of the community. No such report is available in this matter.

40. There are significant similarities between the Clever Burton case cited by counsel and this matter with Mr Leslie. There are, as well, important differences.
41. In the referenced case, Mr Burton like Mr Leslie, was found guilty of causing grievous bodily harm with intent, contrary to section 20 of the **Offences Against the Person Act**. Mr Burton was aged 31 years at the time of sentencing. Mr Leslie is 56 years old.
42. Mr Burton used a bladed instrument and stabbed the victim in his upper back. The blade remained in the victims back and the handle of the instrument broke off. The victim, aged 44 years at the time of sentencing, received permanent injury. The victim cannot stand or walk without the aid of crutches; nor can he sit for long periods due to pain. Mr Morancie, the victim in this matter, received a chop wound with a cutlass in the area of his right ankle. His injury is permanent. He is now 63 years old. He moves around with the aid of a prosthetic. He said he has experienced "seven years of pain."
43. The Judge in assessing the award of compensation in Burton's case found that the victim, at 44 years at the time of the incident, "without the injury he could have worked for at least another 20 years." Mr Morancie was, however, 12 years older at the time of the incident than the victim in Burton's case.
44. Mr Burton, as the Judge noted, at page 5 of his decision in Burton, "the defendant inflicted the severe wound on his friend without cause and without provocation." This he found to be "a serious aggravating factor." In this case, Mr Leslie and Mr Morancie were also friends at one time. Notably, there was the incidence of provocative acts by the victim prior to the chop being inflicted by Mr Leslie.
45. The victim in Mr Burton's case was described as being "angry towards the incident" and possessing "angry sentiments" towards Mr Burton. In this matter, Mr Morancie seems not open to appreciating or accepting an apology from Mr Leslie.
46. Mr Burton was diagnosed with Bipolar disorder thirteen years prior to the offence. He also had a series of previous convictions – for battery, wounding, throwing missiles and the possession of cannabis. No report has been made of Mr Leslie suffering from any medical condition. He does not have any previous conviction.
47. Mr Justice Thomas ordered Mr Burton to pay compensation of \$60,000.00 in six months. He said that: "If the defendant fails to pay the compensation he will serve 8 years in prison."
48. The Cleaver Burton case may be helpful in some respects. But its Order cannot be followed.
 - i. There are significant differences with regard to the circumstances of Mr Burton and those of Mr Leslie.

- ii. Also, it appears that the default sentence imposed on Mr Burton is in breach of section 73 (1) of the **Criminal Law and Procedure Act** under which it was said to have been imposed. That subsection states that the term of imprisonment in default of payment is twelve months.

Sentencing Guidelines

- 49. The **Eastern Caribbean Supreme Court Compendium Sentencing Guidelines** does not contemplate a non-custodial sentence for inflicting unlawful violence with intent to cause really serious harm.
- 50. It was noted earlier that the maximum sentence that can be imposed for this offence is ten years. The starting point for the computation of the sentence in accordance with the Guidelines is based on the maximum sentence.
- 51. The consequence of this offence is Category 2: High. There was serious physical harm to Mr Morancie. The complainant's foot below the ankle had to be amputated and he now has to function with a prosthetic.
- 52. The seriousness level is Level A: High. This is because there was the use of a weapon. Although Mr Norde submitted that a cutlass is not inherently a weapon, the fact is, a farming or domestic tool was used as a weapon in carrying out the offence. The implement was transformed into a weapon.
- 53. The intersection of Consequences Category 2 with Seriousness Level A on the grid places the starting sentencing range at 45% to 75% of the maximum sentence, with a recommended starting point of 60% of the maximum. In other words, a range four and a half years to seven and a half years. The recommended starting point of six years is considered to be appropriate in this case.
- 54. The next step is to adjust the starting point by considering the aggravating and mitigating factors of the offence.
- 55. There are no aggravating factors regarding the offence.
- 56. There are a number of mitigating factors with regard to the offence. There was a lack of premeditation. It was an isolated incident. Only a single chop was administered. The complainant was not pursued beyond the initial attack. And, there clearly was significant provocation by the complainant: Mr Leslie was at his home when the complainant passed by and said things and the complainant pelted bottles at Mr Leslie before the chopping occurred.

57. Mr Leslie is therefore entitled to a significant reduction for the preponderance of mitigating factors with regard to the offence.
58. There must be a further adjustment for the aggravating and mitigating factors with regard to the offender.
59. There were no aggravating factors with regard to the offender.
60. Several mitigating factors in relation to the offender can be identified. Mr Leslie had no previous convictions for any offence; he can be described as being a person of good character. Mr Leslie has shown genuine remorse, even if the 'olive branch' he sought to extend to the complainant was not accepted. And some steps, though limited, were taken to address the offending behavior in that Mr Leslie spoke to an offer of compensation as a possible measure.
61. For the overwhelming mitigating factors, a total of eighteen months each, for the factors related to the offence and the factors related to the offender, is considered to be appropriate. Accordingly, the 36 months must be subtracted from the six years, leaving a balance of three years.
62. Mr Leslie is unable to get any credit for an early guilty plea. That may seem somewhat unfortunate given the recent history of this matter. Mr Leslie at his arraignment on the 21st of February 2024, initially entered a guilty plea. He was unrepresented at the time. A lawyer who was present in Court asked to be given an opportunity to speak with Mr Leslie. At the end of the lawyer's conversation with Mr Leslie, the indictment was read once again to him. Mr Leslie entered a not guilty plea. He then had a few days to engage another counsel to represent him.
63. There are Practice Directions of the Eastern Caribbean Supreme Court that provide for Maximum Sentence Indications and Early Guilty Pleas. These facilities are however not being sufficiently utilized. As can be seen in Mr Leslie's case, this failure to proceed with and early guilty plea or to ask for a maximum sentence indication can have serious detrimental effects for accused persons.
64. The computation of Mr Leslie's sentence in accordance with the ECSC Sentencing Guidelines reflects that with a starting point of six years, the appropriate sentence after deductions for mitigating factors is three years imprisonment.

Objectives of sentencing

65. What are the objectives of sentencing and how do they relate to the facts and circumstances of Mr Leslie?

66. The four classical objectives of sentencing are: retribution, deterrence, prevention, and rehabilitation.
67. Of the four sentencing objectives, the only one which applies to Mr Leslie's case is retribution. The words of Lawton LJ in **R v Sargeant [1974] 60 Cr App R 74** at page 77 are often quoted - that society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass. In other words, the punishment must fit the crime.
68. Deterrence can be general or specific. Sir Dennis Byron, CJ, (as he was then), in **Desmond Baptiste v The Queen, Criminal Appeal No: 8 of 2003** (Saint Vincent and the Grenadines), noted at page 20 of that consolidated judgement: "Specific deterrence may be an ineffective tool to combat criminal behavior that is spontaneous... Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time." The present matter is seven years old and a sentence passed in respect of an offence that can be considered stale may be of little, if any, deterrence. It is however accepted that causing grievous bodily harm is prevalent in the Commonwealth of Dominica and even though the sentence of another may be of limited effect, there is a need for the Courts to do what they can to restrain citizens from engaging in potential criminal conduct.
69. Prevention is not applicable in this matter, since its aim is to protect society from individuals who persist in high rates of criminality. Mr Leslie is a first time offender; there is no need to protect society from him.
70. There is no need for rehabilitation which is geared towards reintegrating offenders into society. There is no indication that Mr Leslie has any anti-social tendencies. He has been described as hardworking and has been employed for the last 10 years by the same employer.

Non-application

71. This does not appear to be an appropriate case for an order of compensation to be made. This is because:
- 1) There is a gulf between the parties as to what is an appropriate figure: \$40 - \$50,000.00 or twice that sum, that is, \$100,000.00.
 - 2) There is insufficient information before the Court to base a fair and just compensation order. Indeed, matters of compensation are best suited to be comprehensively addressed in the civil jurisdiction.
 - 3) It is apparent that Mr Leslie does not immediately have the means of satisfying any order. He has not put aside funds over the years to pay any

compensation and he will be dependent on the generosity of siblings who live overseas and friends to meet any award.

72. There are substantial reasons as demonstrated earlier for departing from the Sentencing Guidelines.

- Mr Leslie lived almost two score and ten years before this incident without any infraction of the law.
- It was an offence which when he first appeared at Court in February 2024 he seemed ready and willing to throw himself at the feet of mercy.
- The **Criminal Justice (Reform) Act** provides for persons with sentences of terms of three years or less to be dealt with in a particular manner.
- The State was dilatory in the prosecution of this matter, taking nearly seven years to get the matter before the High Court. The delay is inexcusable.
- Mr Leslie is now 56 years old. He has not transgressed since this offence in 2017. He has remained gainfully employed for the past ten years and is closer to retirement than the commencement of his work life.

The Order

73. Mr Ronnie Leslie, for the offence of causing grievous bodily harm with intent on Mr Hendricks Felix Morancie on the 12th day of November 2017, you are sentenced to a term of imprisonment of three years, suspended for three years. If during that operational period of three years you are convicted in the Commonwealth of Dominica for any subsequent offence that carries a term of imprisonment for a period exceeding six months, you will be sentenced for both this offence and the subsequent offence.

74. Mr Leslie will be subject to a Supervision Order. He shall:

- 1) Report to Ms Anestin Baron, Principal Probation Officer (ag) at the Probation Unit, Welfare Department, within 48-hours of this sentence.
- 2) Reside at his present residence in Cabawie, Saint Joseph, and not change residence without timely full and proper notification to the Probation Officer, indicating the intended date of his relocation, and the location of the residence he intends to relocate to.
- 3) Be subject to the supervision of the Probation Officer for the District of Saint Joseph in which Mr Leslie resides, or any such officer assigned by the Principal Probation Officer.

- 4) Comply with all directions and instructions of the Probation Officer given to him from time to time.
- 5) Be brought back before the High Court if there is a breach or non-compliance with the terms of this Order.
- 6) Observe the conditions of the Supervision Order for a period of three years commencing today.
- 7) Attend Court when summoned, at the end of 12 months, 21 months and 30 months, to report on the progress of the Supervision Order.

75. Mr Leslie shall execute a bond in the sum of Forty Thousand Dollars to keep the peace and be of good behavior for the next three years.

Colin Williams J
High Court Judge

By the Court

