IN THE EASTERN CARIBBEAN SUPREME COURT

TERRITORY OF SAINT CHRISTOPHER AND NEVIS

NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE

NEVHCR2022/0005

BETWEEN:

Director of Public Prosecutions

v

Mikey Mills

Patrice Monzack

Appearances:

Ms. Megan Nisbett and Mr. Teshaun Vasquez for the Director of Public Prosecutions

Mr. Brian Barnes and Ms. Leigh Ann Wellington for Mikey Mills

Mr. Jason Hamilton for Patrice Monzack

2023: July 18th
October 13th

JUDGMENT

THOMPSON JR J:

[1] In the early morning hours of November 8th, 2018, Patrice Monzack and Mikey Mills entered the home of John and Karen Yearwood. They were both armed with firearms.

[2] Mr. and Mrs. Yearwood were awakened by the uninvited presence of the Defendants. Mr. Yearwood is a licensed firearm holder and slept with his .38 Smith and Wesson revolver near his bed. Mr. Yearwood challenged and then fired at the Defendants, one of whom, yet undetermined, returned fire. Mr. Yearwood was shot in the leg and the Defendants fled.

[3] The Police carried out investigations and promptly attended at the Sea Bridge in Nevis and found the Defendants seated in motor vehicles on the Sea Bridge Ferry and ostensibly on their way to St. Christopher. They were both suffering from gunshot type injuries and on November 10th,

2018, 2 .38 bullets were removed from the body of the Defendant Mills while 1 .38 bullet was removed from the body of the Defendant Monzack. The injuries sustained by Defendant Mills during his invasion of the Yearwood residence meant that a match for his DNA was obtained from blood in the hallway of the Yearwood residence.

[4] By an indictment filed on October 14, 2022, the Defendants were charged with attempted murder, wounding with intent and burglary.

[5] On July 17th, 2023, the Defendants' matter came on for trial. On the morning of the trial defence counsel indicated in Chambers that their clients wished to seek a sentence indication. The jury array had already been summoned to attend court for the trial and as such this court selected a jury to try the Defendants but did not formally place the defendants in the charge of the jury and excused the jurors until the afternoon of the following day[1]. In this Court's view, this gave a court some flexibility such that if the indication were rejected the trial could proceed apace but if the Defendants accepted the indication, then there was no need for a verdict from the jurors since the Defendants had not been placed in their charge.

[6] This court then proceeded to conduct (in the absence of the jurors) a sentencing indication hearing. With the concurrence of counsel for the Defendants the Defendants were given until the afternoon of July 18th, 2023, to indicate whether they were minded to accept the sentence indication of 7 years imprisonment on the wounding charge and 6 years imprisonment on the burglary charge.

[7] At the sentence indication hearing, this court was at pains to indicate that since the Defendants had only indicated their desire to seek an indication on the morning of the trial the Crown would not have had an opportunity to obtain any victim impact statements. Moreover, the indication was thus limited by the information before the court at that time. See Practice Direction 2 of 2015 and the case of R v Goodyear [2005] EWCA Crim 888 and any further common law developments on this issue.

[8] The Defendants then pled guilty to counts 2 and 3 and the matter was fixed for sentencing hearing on October 13th, 2023. The Crown offered no evidence on the attempted murder charge, thus obviating the need for a trial on that charge and the Defendant then fell to be sentenced by this Court for the offences of wounding with intent and burglary.

[9] Orders for the filing of social inquiry reports, victim impact statements and skeleton arguments were made, and the Defendants were remanded into custody pending sentence.

[10] In passing, this Court notes that while the offence of aggravated burglary[2] is not known to the law of St Christopher and Nevis, since 1968[3] the United Kingdom has recognized that the aggravated form of burglary requires a maximum sentence of life imprisonment. Parliament in

[1] All counsel were agreed that the defendants should receive the maximum discount of 1/3 off of their notional sentence notwithstanding the lateness of their request for a sentence indication.

[2] Unlawful entry into a building when armed with a weapon

[3] See UK Theft Act 1968 Section 9 and 10

St Christopher and Nevis in their infinite wisdom appear to be content with maximum sentences of 20 years imprisonment for all forms of burglary. Incidentally, the 1916 Larceny Act which predated the UK Theft Act of 1968 provided for a maximum penalty of life imprisonment for all burglaries.

[11] Wounding with intent also attracts a 20-year maximum sentence in St. Christopher and Nevis which is again at odds with the historical penalty of life imprisonment under the Offences Against the Person Act of 1861 for the most serious form of wounding[4] short of causing death. This Court's reference to the historical record is purely for the purpose of putting into context the sentencing process. The maximum sentence informs the relevant starting point on the sentencing guidelines and in this court's view it is always useful to look at what obtained before to explain or account for the current starting point.

[12] Everyone agreed that the ECSC Guidelines for Violence and Dishonesty Offences applied and that any sentence imposed for wounding should run concurrently with any sentence imposed for burglary as both offences were committed simultaneously.

[13] At the sentencing hearing, a social inquiry reports prepared by Mr. Isiah Liburd and Ms. Magrel Sargeant were tendered in evidence. Both social workers were cross-examined by counsel for the defendants and confirmed that neither of them specifically asked Mr. Monzack or Mr. Mills whether they felt remorse for their actions. In their view, while both men indicated that they felt badly about the 'situation' neither man appeared to have expressed demonstrable evidence of accountability and/or insight into their offending.

[14] In determining the starting point, counsel for both Defendants submitted that the Defendants offending fell into Consequence, Category 2 – High on the Violence Offences Guideline. The victim impact statements from Mr. and Mrs. Yearwood indicated a significant degree of post-traumatic stress in the case of Mrs. Yearwood and serious physical injuries in the case of Mr. Yearwood.

[15] At the sentence indication hearing the Defendants' offending was classified as Category 2- High since there was not at that stage any evidence of the medical, physical, and psychological impact of the offence on Yearwood's. At the sentencing hearing, that evidence indicated that Ms. Yearwood underwent a course of treatment for Post Traumatic Stress Disorder ("PTSD") and psychological treatment and had suffered a 'severe psychological impact' from this incident. Mrs. Yearwood was a teacher at a secondary school in Nevis and found herself unable to continue her work at the school after the incident as she was found to be crying and shaking and in uncontrolled distress because of her PTSD. Her students thus lost the benefit of "an exemplary and highly dedicated teacher who went above and beyond for her students".

[16] In the case of Mr. Yearwood, he was presently aged 70 and had sustained a shattered femur because of the incident. A titanium rod had to be inserted into his body and despite considerable rehabilitative efforts he will walk with a painful limp for the rest of his life. His mobility has been

[4] See Section 18 of the Offences Against the Person Act of 1861

permanently impaired, and the impact of his wife's PTSD has also caused him significant pain and suffering.

[17] This Court has not found it easy to categorize the Defendants' offending, The impact on the Yearwood's was significant and the distinction between serious and severe physical and psychological harm though occupying much argument before this court is not easily determined. All the same and out of an abundance of caution, this Court found that the Defendant's offending fell somewhere between the upper end of the high category and the lower end of the highest category for the purpose of determining the starting point.

[18] There is no dispute that the Guidelines are exactly that and do not fetter a court in the exercise of its undoubted discretion to craft its sentence to fit the offences before it. Offences are not always easily classified as one or the other and the fact that the actions of the defendants had significant physical and psychological impacts on the Yearwood's cannot be underscored. In the same vein, a court must always keep an eye on the highest category and preserve that for the worst of the worst offenders, which these Defendants are not.

[19] Everyone agreed that the Defendant's offending fell into Seriousness – Level A – High offending on the Guideline since the offence involved some planning and premeditation on their part and the use of a weapon. There was some argument about whether there was forced entry into the home of the victim's home which the Defendants belatedly accepted, and these three significant seriousness factors confirm this court's categorization of their offending.

[20] Everyone agreed that the offence was aggravated by the fact that the firearms used by the Defendants were disposed of and the fact that Mrs. Yearwood was present (presence of others, including the partner of victim is an aggravating factor on the Guideline) aggravated their offending. The sole mitigating factor of this offence was the fact that the offence appeared to be an isolated incident. In this Court's view, there ought to be some clarity about how exactly 'isolated incident' ought to be interpreted but the Defendants were afforded credit for this as a mitigating factor.

[21] Mr. Monzack had a previous conviction for larceny when he was 17 years old. In this Court's view his offending is not aggravated by this conviction coming as it did when he was neither juvenile nor adult. The fact that the maximum penalty was imposed on Mr. Monzack for this offence was not explained[5] and this court was constrained to treat him as having no previous convictions. Mr. Mills had no previous convictions and was thus a man of good character and was afforded credit for this mitigating factor. There are thus no aggravating factors of each offender.

[5] It seems that Mr. Monzack was not the primary offender and was at best a handler of stolen goods.

[22] The Guideline makes it clear that genuine remorse is a mitigating factor. In this Court's view, both defendants expressed regret for the situation that they had found themselves in but this court is not satisfied that they were genuinely remorseful. The allocutus was put to both defendants and this court was struck by the fact that Mr. Mills (a budding musical artiste) appeared disheartened by the fact that this Incident deprived him of the opportunity to 'buss[6]'. Mr. Monzack was less fulsome in his comments but neither Defendant appeared to truly appreciate the irreparable harm they had caused to the Yearwood's.

[23] This court does not lightly weigh up the apologies proffered by the Defendants but notes their timing in the context of the hearing. Moreover, this court reminds itself of the distinction between regret and remorse and finds that these defendants though regret and rueful of their 'situation' did not appear to have demonstrable insight into their offending.

[24] Counsel for the defendants and crown respectively submitted that 12- or 15-year starting points were required but this court opted for a fair and just starting point of 13 years imprisonment having regard to the circumstances of this case.

[25] Mr. Monzack and Mr. Mills accepted that they were acting together and fled together and were found together by the police. No argument was advanced before this court that Mr. Mills should attract a lesser penalty than that to be imposed on Mr. Monzack particularly since Mr. Monzack's previous conviction was at a time when he was a juvenile or 'young person' at the time of commission of that offending though not at the date of sentencing.

[26] No argument was advanced to this court that Mr. Mills and Mr. Monzack were youthful or lacked maturity such that it explained their offending. In those circumstances, had such an argument been made they would not have had success since the defendants would have needed to demonstrate that their relative youth and/or immaturity was linked to the rationale for their offending. No such rationale was advanced and the simple fact of their ages at the date of commission of the offence (24 years, 9 months, and 28 days – Monzack/22 years, 8 months, and 19 days – Mills) without more could not suffice to mitigate their offending.

[27] In this Court's view the aggravating factors outweigh the mitigating factors. A 13-year starting point when uplifted for aggravating factors then reduced for mitigating factors and the full 1/3 discount for their guilty pleas leads to a sentence of 9 years imprisonment. The 7 months and 13 days (Mills) and the 7 months and 27 days (Monzack) that the Defendants spent in custody

[6] This Court was at pains to remind him that one Siccature Alcock ('Jah Cure") managed to 'buss' while he was imprisoned in Jamaica.

before they were admitted to bail was taken into account and credited by this court in arriving at the sentence imposed on the defendants.

[28] Affording the Defendants full credit for their guilty pleas, a sentence of 9 years imprisonment is warranted from July 18th, 2023, being the date of their guilty pleas to the offence of wounding.

[29] There is considerable overlap between the Dishonesty Guideline which would govern the burglary offence and this court does not propose to repeat the analysis it has set out above on the burglary offence. The totality principle confirms that any sentence for burglary should run concurrently with that for wounding and as such a sentence of 7 years imprisonment from July 18th, 2023, on the burglary charge is consistent with the Dishonesty Guideline and other decided cases.

[30] This court is of the view that the deterrent objective in sentencing requires a court to consider whether other members of the society can benefit from the Defendants sharing any insight they may have gleaned because of their imprisonment. Society benefits if these defendants can share their experiences with the public and thus deter aspiring criminals.

[31] Therefore, as, and when determined by the Social Development Department in the Federation, the Defendants are to attend, participate and complete any public education programs as mandated by Social Development Department during the currency of their sentence. In default of compliance with this ancillary order, the Defendants will serve a further 6-month term of imprisonment consecutive to the terms imposed above for burglary and wounding.

[32] For the avoidance of doubt, the onus will be on the Social Development Department to create such a public education program and determine whether the Defendants are suitable. Once they are deemed suitable but refuse to participate, the consecutive 6-month term of imprisonment will then apply.

[33] This Court wishes to put on record its gratitude to counsel for both the crown and the defence for their invaluable assistance in this matter.

Patrick Thompson Jr
Resident High Court Judge

By the Court

Registrar