

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

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

CASE NO. ANUHCR 2022/0042

BETWEEN:

**THE KING
and
NEKWEMA GORDON**

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Accused appears in person

2023: July 3rd, 5th

SENTENCING DECISION

- [1] **WILLIAMS, J.:** An incident at Her Majesty's Prisons in Saint Johns, Antigua and Barbuda, on Saturday 31st October, 2020 has forever altered the life of two inmates of Her Majesty's Prison. One of the inmates, Mr. Conroy Jones, is now confined to a wheel chair. He is the Virtual Complainant. The other inmate, the defendant, Mr. Nekwema Gordon, faces an extension of his custody at the penal institution.
- [2] Both the Virtual Complainant and the Defendant at the time of the incident were serving sentences at what is more familiarly known as "1735" – the year of the construction of the prison.
- [3] On the day of the incident, Mr. Jones left his duties in the kitchen of the prison compound to go and wash his bed sheet and pillow case. There was only one pipe in the prison yard at which the prisoners could do their laundry. That day, the water running through the pipe was sparse; there was low water pressure.

- [4] Mr. Jones had his linen in a black bucket. When he got to the pipe, there was another bucket, a grey one, with clothing under the pipe. Mr. Jones removed the grey bucket from under the pipe, placed his own bucket under the pipe and proceeded to do his laundry.
- [5] The grey bucket that was there previously collecting water belonged to the Defendant. Mr. Gordon returned to the area and there was a verbal confrontation between the Defendant and Mr. Jones. The Defendant left the area and returned with a bladed weapon. On Mr. Gordon's return, he inflicted two stabs to the body of Virtual Complainant. One stab wound was to the neck. The other stab wound was to the forehead. Mr. Jones collapsed in the yard of 1735.
- [6] Mr. Jones was taken to the Sir Lester Bird Medical Centre, where he was hospitalized for more than a month. As a result of Mr. Jones's injuries, he is now confined to a wheel chair and suffers with a number of ailments, including paralysis of the left side of his body and a constant shaking on the right side. He also has also suffered some biological malfunctions.
- [7] The Defendant accepted that he was the one who inflicted the injuries to the Virtual Complainant. Among the matters which Mr. Gordon canvassed during his cross-examination of the Virtual Complainant, was that Mr. Jones at the time was a much bigger person than he (the Defendant) was. Mr. Jones was 6' 2", weighed close to 200 pounds and 'worked out' in the gym. The Defendant also elicited from Mr. Jones that prior to this incident, there was no 'bad blood' between them.

The Indictment

- [8] Mr. Gordon was indicted on two counts. Count One was for wounding with intent to murder. Count Two was in the alternative to the first count and charged the Defendant with wounding with intent to cause grievous bodily harm to the Virtual Complainant.
- [9] During the course of the trial, after the Crown adduced evidence from four of their witnesses, Mr. Gordon requested that the indictment be put to him again. He then entered a plea of guilty to Count Two - wounding with intent to cause grievous bodily harm.
- [10] The charge of wounding with Intent to cause grievous bodily harm was stated to be contrary to section 20 of the **Offences Against the Person Act**, Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992.
- [11] Section 20 of the **Offence Against the Person Act** as it relates to this matter provides that:
- "Whosoever unlawfully and maliciously, by any means whatsoever, wounds, or causes any grievous bodily harm upon any person, with intent, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, is guilty of a felony, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding fifteen years, with or without hard labour."
- [12] The 'Particulars of Offence' on the indictment stated:

“Nekwema Gordon on the 31st day of October 2020, at Her Majesty’s Prisons in the Parish of Saint John in the State of Antigua and Barbuda, unlawfully and maliciously wounded Conroy Jones with intent to do the said Conroy Jones grievous bodily harm.”

- [13] The Crown tendered the statement under caution that Mr. Gordon gave to the police hours after the incident. In it he described being frustrated. He said:

“To tell ah yo de truth. Ah bare frustration in prison every day. This morning me go by the pipe fu full me bucket and just ah cool. Yard Man just come over and move my bucket from underneath the pipe. Same time me see dat, me tell he, ‘Ah wha you move me bucket for?’ Yard Man start to get on pan me and say to me ‘Bwoi, ah punk you be’ and start pose pon me cause he feel he bigger than me, me fraid he and me just get frustrated even more that me just loose me mind and me just stab he wit wan scissors and he drop down right there.”

- [14] During the trial, Mr. Gordon sought to challenge the admission of the caution statement, citing that everything that he said was not included in the statement.
- [15] Mr. Gordon in his mitigation said that on the day in question, he sent another prisoner to get the scissors and some wrapping paper to facilitate them smoking some marijuana. He said that the scissors was in the pocket of the track pants he was wearing when the confrontation occurred between himself and the Virtual Complainant. Mr. Gordon claimed that after the incident, when he went to collect his bucket, he realised that his hand was injured. He also said that while narrating his statement to the police, he informed them that his hand was injured, but no notice was taken then by anyone of his complaint.
- [16] (It is noted that during the case management stage of this matter, prior to the commencement of the trial, there were adjournments for checks to be made by the Crown at the Sir Lester Bird Medical Centre to ascertain whether there was any record for the Defendant in relation to a fracture of his hand in October 2020. What was retrieved related to 2019, which pre-dated this incident with Mr. Jones).
- [17] Mr. Gordon also indicated that following the incident, he wanted to help Mr. Jones and that he, Mr. Gordon, even spoke to the Superintendent of Prisons at the time, stating that he would love to help. According to the Defendant, because of the response he got from the Superintendent, he did nothing further.
- [18] Mr. Gordon said that he was not a violent person; he did not have any prior fight while at 1735; and said that he was sorry for his actions. He asked for leniency.

Constructing the sentence

- [19] Of the four sentencing principles – retribution, deterrence, prevention, and rehabilitation – the factors that are most applicable to this case are retribution and rehabilitation.

- [20] The Sentencing Guideline of the Eastern Caribbean Supreme Court as it relates to violence offences such as wounding with intent to cause grievous bodily harm was re-issued on the 8th November, 2021. Several steps are required to be taken to arrive at an appropriate sentence.
- [21] The first step is to establish the starting point. To do this, there has to be an evaluation of the seriousness of the offence (or culpability of the offender) and the consequences of the offence by reference to the harm caused.
- [22] The Consequence is Category 1 – Highest. This is because of the severe permanent injury suffered by the victim, who is now disabled. The Seriousness is Level A – High. This is based on the fact that a weapon was used in the attack. The intersection of Category 1 and Level A places the offence in the range of 60% to 90% of the maximum sentence, with a possible starting point of 75%.
- [23] Given the maximum sentence is 15 years, the starting range is between 9 years and 13 and a half years.
- [24] Given the severe consequences of the Defendant's actions, a starting point of 12 and a half years, which is year less than the maximum starting point in this range, is considered to be fair and reasonable.
- [25] With regard to an assessment of the aggravating and mitigating factors of the offence, the aggravating factors outweigh the mitigating factors. This is because the weapon used in the attack was concealed and even though the assault was in the confines of 1735, it was not produced to or retrieved by the authorities. Further, there was an element of premeditation, given the fact that the Defendant left the scene of the argument with the Virtual Complainant and returned to inflict the injury. The only mitigating factor is that this can be considered an isolated incident.
- [26] With regard to the evaluation of the aggravating and mitigating factors of Mr. Gordon, this assessment is overwhelmingly weighted in favour of the aggravating factors. The Defendant admitted being in possession of contraband behind the prison walls – he had a scissors and flaunted the rules, admittedly smoking marijuana on the compound. His stabbing of Mr. Jones was performed even as the Defendant was in a penal institution doing a sentence for previously transgressing the law.
- [27] Mr. Gordon's statement during his mitigation of remorse and his expression of a desire to help the Virtual Complainant ring hollow, given the fact that Mr. Gordon not only forced the paralyzed man to attend court, but subjected Mr. Jones to cross examination during which the Virtual Complainant was accused of being the aggressor.
- [28] Having determined that the aggravating factors, both with regard to the offence as well as the offender, exceed the mitigating factors, a year is added to the previous figure of 12 and a half years to take it to 13 and a half years.
- [29] The Defendant did enter a guilty plea. He must be given credit for that. His plea of guilty came after four witnesses, including the Virtual Complainant had testified. The arresting officer and the

physicians did not testify as yet. Had the plea been entered prior to trial, the Defendant would have been entitled to a significant discount. In this instance, a reduction of six months is given.

Conclusion

[30] Accordingly, for the offence of wounding Mr. Conroy Jones with intent to do grievous bodily harm on 31st October, 2020 while at Her Majesty's Prison in Saint Johns, Antigua and Barbuda, Mr. Nekwema Gordon is sentenced to a term of 13 years imprisonment with effect from 3rd July, 2023.

Colin Williams
High Court Judge

By the Court

Registrar