

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

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

CASE NO: ANUHCR 2023/0033

BETWEEN:

**THE KING
and
JAHQUAN FRANCIS**

Appearances:

Mr. Daniel Lattery, Counsel for the Crown
Mr. Chaku Symister, Counsel for the Defendant

2023: July 21st

SENTENCING DECISION

- [1] **WILLIAMS, J.:** Mr. Jahquan Francis on the 21st day of July, 2023 at his arraignment, pleaded guilty to a charge of unlawful wounding.
- [2] The Prosecutor, Mr. Daniel Lattery, detailed the facts of the case. Prosecuting Counsel also made oral submissions on sentencing.
- [3] Mr. Francis accepted the facts presented by the Crown, and Mr. Francis made brief remarks after the allocutus was read to him.
- [4] Defence Counsel, Mr. Chaku Symister, mitigated on behalf of Mr. Francis.
- [5] Mr. Francis was ordered to pay a fine of ECC\$1,000.00 by the 31st July, 2023 with the proviso that if Mr. Francis failed to do so, he was to serve nine months in prison.
- [6] The non-custodial sentence imposed on Mr. Francis for the offence of unlawful wounding which involved the use of a weapon departs from the 'Sentencing Guidelines of the Eastern Caribbean Supreme Court for Violence Offences' which was re-issued on the 8th November, 2021. Practice

Direction 8A, No: 1 of 2019 of the Eastern Caribbean Supreme Court addresses General Sentencing Principles. It states: “Any departure from the guidelines must be explained as part of the reasoning.”

- [7] The reasons for departing from the Sentencing Guidelines will be outlined in the course of this judgment.

The Indictment

- [8] The Learned Director of Public Prosecutions on the 28th day of February, 2023 filed an indictment against Mr. Francis containing two counts in relation to an incident in December 2020 when the virtual complainant, Mr. Alistan Cummings, was stabbed. Both counts were for offences contrary to the **Offences Against the Person Act**, Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992. The counts were in the alternative: the First Count for Wounding With Intent (to do grievous bodily harm), contrary to section 20 of the **Act**; and the Second Count for Unlawful Wounding, contrary to section 22 of the **Act**.
- [9] Mr. Francis pleaded not guilty to the First Count and guilty to the Second Count of Unlawful Wounding.
- [10] The ‘Particulars of Offence’ to which Mr. Francis pleaded guilty stated:
- “Jahquan Francis on the 3rd day of December 2020, at Mary Pigott Drive, in the Parish of Saint John in Antigua and Barbuda, unlawfully and maliciously wounded Alistan Cummings.”
- [11] According to section 22 of the **Act**, a person convicted of unlawful wounding “shall be liable to be imprisoned for any term not exceeding five years.”

The Facts

- [12] Mr. Francis and the virtual complainant, Alistan Cummings, were both students of the Ottos Comprehensive School in December 2020. Mr. Francis had just turned 18 years old two months earlier and Mr. Cummings was 17 years old – three months from his 18th birthday.
- [13] In the early afternoon of Thursday 3rd December, 2020 Mr. Francis and a female student, Kiara, were walking along Mary Pigott Drive, heading in the direction of the East Bus Station. Mr. Cummings was also walking along the same road. Upon reaching the vicinity of the Seventh Day Adventist School, there was an argument involving Mr. Francis and the Virtual Complainant. Mr. Cummings said that he felt a thump to his back and he saw Mr. Francis holding a pair of scissors in his hand. A fire officer held on to Mr. Cummings and took him to the Sir Lester Bird Medical Centre. At the emergency room, Mr. Cummings was diagnosed as having a stab wound to the left upper

posterior chest. Mr. Cummings was kept at the hospital under medical care for 72 hours then discharged. According to the Crown, Mr. Cummings had made a full recovery and there was no long term impact of the injury.

- [14] Mr. Francis was interviewed by Police Constable No. 756 Damon Valentine on 24th December, 2020. Mr. Francis acknowledged that he stabbed the Virtual Complainant with a pair of scissors and at the end of the interview when Mr. Francis was asked if there is anything that he would like to say, he stated: "I would like to just see he [Mr. Cummings] and tell he sorry."
- [15] During the custodial interview, Mr. Francis was also questioned about what Kiara may have told him about an incident earlier in the day on 3rd December, 2020.
- [16] According to the Virtual Complainant's statement in the deposition, when he arrived at school on the morning of 3rd December, 2020 Kiara hit him on his left shoulder and began to run. Mr. Cummings said that at break time, he saw Kiara and kicked her three times; she retaliated by slapping him. Mr. Francis said that Kiara told him that "she and a boy got into an altercation."

Sentencing Submissions

- [17] Mr. Francis expressed in open court his remorse about the incident. He said:
- "I would like to say sorry for what happened. I hope Alistair forgives me for what happened on that day.
- [18] Mr. Symister in his plea of mitigation on behalf of his client noted that from the very outset, Mr. Francis was penitent and remorseful. Counsel also highlighted the fact that Mr. Francis was:
- A teenager at the time of the incident.
 - Hitherto of good character; it was his first offence.
 - Gainfully employed in Barbuda.
 - Without any further transgression since this incident.
- [19] Counsel also noted that Mr. Francis saved judicial time and pleaded guilty at the very first opportunity.
- [20] The Prosecutor, Mr. Lattery, in his submission was of the view that 'but-for' the use of the pair of scissors, the seriousness level of the offence would be in the lower category, for which the starting point was a non-custodial sentence. Mr. Lattery also conceded that given Mr. Francis's antecedent history, age, absence of pre-meditation and that it was a one-off isolated event, the mitigating factors were pointedly in favour of Mr. Francis.

Application

- [21] The sentencing objectives are: retribution/punishment, deterrence, prevention and rehabilitation.

- [22] The principle most applicable to Mr. Francis was punishment.
- [23] Following the incident, Mr. Francis was permitted to finish his formal schooling. There was no further incident between Mr. Francis and the Virtual Complainant. Mr. Francis has also secured gainful employment.
- [24] In the consolidated judgment in **Desmond Baptiste v The Queen**, Saint Vincent and the Grenadines Criminal Appeal No. 8 of 2003, the panel comprising Sir Dennis Byron, Chief Justice, (as he was then), Hon Mr. Adrian Saunders, JA, (as he was then) and Hon Mr. Michael Gordon, QC, JA (ag), agreed at paragraph [30] that:
- “On the issue of age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects.”
- [25] In the course of the **Desmond Baptiste** judgment, their Lordships reviewed the case of **Renrick Bascombe v The Commissioner of Police**, Saint Vincent and the Grenadines Magisterial Criminal Appeal No. 29 of 2003. Mr. Bascombe was described as being “a young man of the same age of the complainant.” The Court of Appeal substituted the one year term of imprisonment with a fine and an order for compensation, with terms of imprisonment in default. Their Lordships said, at paragraph [38]:
- “Mr. Bascombe pleaded guilty at the earliest available opportunity and has no previous convictions. In those circumstances, and given the insignificance of the injury we are of the view that a custodial sentence was not appropriate here.”
- [26] The reasons, therefore, for departing from the sentencing guidelines and imposing upon Mr. Francis a monetary penalty instead of custodial sentence are apparent:
- i. Mr. Francis at the date of the offence was a young man of tender years (18 years 2-months).
 - ii. There was no notable disparity in the ages between Mr. Francis and the Virtual Complainant.
 - iii. The impact of the injury inflicted by Mr. Francis on the life and livelihood of the Virtual Complainant was rather negligible, with no noted or identified long term effects.
 - iv. Mr. Francis had no previous convictions.
 - v. The principles enunciated by the Court of Appeal point to an undesirability of incarcerating young first time offenders.
 - vi. Mr. Francis from the very outset of this matter, in his custodial interview, acknowledged his offending.
 - vii. Mr. Francis was penitent and demonstrated what appeared to be genuine remorse.
 - viii. Mr. Francis pleaded guilty at the very first opportunity.
 - ix. The offence was committed without any premeditation.

- x. The offence appeared to be a one-off incident, during which a dispute quickly escalated.
- xi. Punishment must be just; a sentence of imprisonment would be disproportionate in the circumstances of this case.

[27] In the circumstances of this case, the appropriate penalty is that Mr. Francis pays a fine of ECC\$1,000.00 on or before the 31st of July, 2023 if in default nine months in prison. There is no order for compensation. Mr. Cummings of course is at liberty to pursue any civil remedy if he so desires.

Colin Williams
High Court Judge

By the Court

Registrar