

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA**

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

CASE NO: DOMHCR2022/007

BETWEEN:

THE STATE

and

KEEGAN THOMAS

Appearances:

Ms. Sherma Dalrymple, Director of Public Prosecutions and Ms. Marie Louise
Pierre-Louis, Counsel for the State
Mr. Julien Prevost, Counsel for the Defendant

**2023: February 10th
: March 24th
: April 6th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J.:** The defendant, Keegan Thomas, was originally charged with causing grievous bodily harm, and unlawful wounding. On 10th February 2023, a guilty plea was entered to count 1, causing grievous bodily harm. In light of that, State counsel withdrew count 2, unlawful wounding. The defendant was remanded into custody. A Social Inquiry Report was ordered and the case was adjourned to 24th March 2023 for sentence. It was further adjourned to 6th April 2023. An agreed statement of facts was filed on 14th February 2023. The Social Inquiry Report was filed on 6th March 2023. Written submissions were filed on 14th March 2023 by counsel for the State and on 6th April 2023 by counsel for the defendant. Oral submissions were received on 6th April 2023. The matter now proceeds to sentencing.

The Facts

- [2] The defendant resided at the Morne, St. Joseph, with his common law partner and her two children, including the complainant, whose date of birth is 3rd August 2015. The defendant and his partner were in a relationship at the time of the offence. The family was at home in the late evening hours of 23rd April 2020, and into the early morning hours of 24th April 2020. The complainant child was age 4 years at the time, while the defendant was age 33 years. The adults were watching television, and the complainant was playing on the floor, at approximately 10:00 pm.
- [3] The child complainant indicated a desire to urinate, and stood up. The defendant, however, made her stand with her hands in the air, which was a form of parental discipline used by the defendant. In doing so, the complainant began to urinate on herself and the floor. This angered the defendant, who then struck the complainant in the stomach. In his police statement, given under caution, the defendant admitted striking the child complainant because she was being disrespectful. He said he gave the child three or four slaps to her back and waist. She slipped, and fell on her stomach.
- [4] The mother of the complainant, who had dozed off, was awakened by the screams of the child. She observed the child lying face down on the floor while the defendant directed his foot downwards upon the child's back, in a stamping motion. She shouted for the defendant to stop. The complainant was crying and complaining of stomach pain. She began to vomit. There was blood in the vomit. The child's lips turned purple. The child's mother described the defendant as being very angry, and said the defendant later told her that he had lost control.
- [5] The complainant was rushed to the St. Joseph Health Centre by the defendant, as the complainant's mother had to remain at home with the second young child. Due to the serious nature of the injuries, the complainant was transferred by ambulance to the Princess Margaret Hospital. The complainant was admitted to hospital, where

she remained for one month, undergoing two surgeries. During her testimony at the preliminary inquiry on 15th December 2020, the complainant described her stomach as feeling “okay.”

- [6] Dr. Theodore Thomas testified at the preliminary inquiry on 18th May 2021. Dr. Thomas examined the child complainant on 24th April 2020. He noted multiple old scars on the 4 year old child’s thigh, buttocks and back. Due to the abdominal pain, an ultrasound examination was conducted. As a result, exploratory laparotomy surgery was carried out. Internal bleeding was discovered coming from a 5 cm right lobe hepatic injury. Seven days later, the child’s body temperature was elevated. An x-ray and another ultrasound were ordered, revealing right plural effusion. A second surgery was carried out, with the insertion of a right hepatic chest tube for drainage. The child’s injuries were described as right-side thoracic injury and laceration to the liver caused by blunt trauma. Fortunately for the complainant, Dr. Thomas described her as having recovered very well on the ward.
- [7] The defendant was arrested and charged on 8th May 2020. In his statement to police under caution, the defendant said: “*I regret doing what I did.*” The complainant’s mother confirmed, when testifying at the preliminary inquiry, that she was no longer in a relationship with the defendant.
- [8] The Social Inquiry Report was prepared by Welfare Officer Anya Gage, and Chief Welfare Officer Delia Giddings-Stedman. It confirms that the defendant was born on 24th October 1986. He is 36 years old. He has four siblings, with whom he has a good relationship. He also had a good relationship with his parents, especially his mother. He was the subject of corporal punishment at the hands of his father, who passed away in 2005. His mother suffered a stroke approximately three years ago.
- [9] The defendant obtained a high school diploma, and excelled at sports. After leaving school, the defendant worked in construction, electrical trades and as a bus driver. He is a recreational marijuana user and consumes alcohol. Although he has two children, and maintains a relationship with them, he lived alone until the

complainant child, a sibling and their mother moved in. The defendant later had a child with the complainant's mother, however, he has no relationship with that child. His stated life goal is to get married, have a family, and support them.

- [10] When the complainant child resided with the defendant, he would discipline her by forcing her to stand with her arms in the air. He admitted striking the child "*once or twice*." The defendant was unable to articulate what caused him to commit this offence, but confirmed that he took the child to the St. Joseph Health Centre for treatment immediately afterwards. He sought spiritual guidance after the offence, and continues to follow that path.
- [11] The defendant indicated that he is very remorseful and regrets his behaviour. He wishes he could go back and change things. He apologized to the complainant after it happened, and has tried to reach out to the child's father to apologize.
- [12] A community member who has known the defendant since primary school, described him as quiet and reserved. He was hard-working, ambitious, and supportive of his children. However, he had anger issues, lacked self-control and had a "*short fuse*." This person confirmed that the defendant had attended church, where he displayed great emotion and remorse for what he had done. He accepted responsibility and sought spiritual guidance. One year after this incident, the defendant was baptised.
- [13] In the community generally, the defendant was described as a quiet, hard working person. However, he was also viewed as a threat to himself and others.
- [14] The complainant is now 7 years of age. She said that the defendant would discipline her by having her stand or kneel with her hands in the air. He sometimes struck her. The incident has caused her to have nightmares and flashbacks. After it happened, she felt bad, disappointed, angry, and afraid to talk. Remarkably for one so young, she stated that, notwithstanding all of that, she forgives the defendant for hurting her. She wishes he could change his ways. To her very great credit, the

complainant said that she did not want anything bad to happen to the defendant, for she knows that God has a future for him.

[15] The grandmother of the complainant described her as having come a long way since the incident occurred. She referred to the child's injuries as including a ruptured liver, which required two surgical procedures. It has affected the child's performance in school, where she has trouble focussing. Her academic standards dropped, and her relationship with her mother deteriorated.

[16] The mother of the complainant confirmed that she was living with the defendant at the time of the incident. She also confirmed the defendant's methods of discipline for the child. When this incident occurred, she saw the defendant "*stomp*" on her daughter. The child was injured, and the defendant took her to the Health Centre. The incident has affected her relationship with her daughter. The child questioned why she did not protect her. The child resides with her grandmother, while mother and daughter are working to rebuild their relationship. The complainant's mother does not hold a grudge against the defendant. She simply wishes to move on with her life.

The Position of the Parties

[17] Learned counsel for the State submits that this was a serious incident, where the complainant suffered severe physical harm, and long-term psychological effects. The complainant experiences nightmares, flashbacks, feelings of anger and fear. State counsel submits that this places the offence in the highest consequence category, and the high level of seriousness category, in the sentencing guidelines.

[18] State counsel lists aggravating factors as the presence of relatives of the complainant when the incident occurred, the child complainant's young age, and the abuse by the defendant of his position of power and trust. She also describes the incident as an example of domestic violence. However, one must be cautious in using that phrase. Generally, the concept of domestic violence refers to physical or mental abuse directed towards one's partner in an intimate relationship. The United

Nations and many other governmental agencies have described domestic violence as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. While this incident took place in the home of the complainant, and involved a family member, the court would not classify it as domestic violence.

[19] State counsel refers to the good character of the defendant, and his genuine remorse, as being mitigating factors. She acknowledges that reductions in sentence should be applied for the guilty plea and for time spent on remand. Taking all of that into account, State counsel submits that a fit sentence would be 5 years, 2 months, 1 week and 1 day. She also acknowledges that the court may consider ancillary orders, such as a compensation order.

[20] A number of authorities were filed in support of the position of State counsel. However, direction in sentencing is found in the **Eastern Caribbean Supreme Court Sentencing Guidelines**. In fact, in the case of **R. v Evanson Mitcham**¹ at **para 28**, the Learned Justice Morley reminds us that the effect of the guidelines has been to supersede old case law on previous sentences, so that while such cases are of interest, and where appropriate are helpful and of weight, they are no longer automatically persuasive or binding; in the main, the reason for supersession is sentences have varied too widely.

[21] Learned defence counsel accepts the facts as agreed, but advised the court that the defendant does not remember the details of the incident. He admits slapping the child complainant and striking her with the cord of an iron, due to her constant crying. Defence counsel advised the court that the complainant had difficulty sleeping, which caused her to be agitated and often crying. The complainant slept better when not in the family home. This led the defendant to believe the child and the home were possessed by evil spirits. Such was the concern, that the complainant was taken to religious ministers for blessing, and another pastor was invited into the house to cleanse it. The emotional behaviour of the complainant on

¹ SKBHCR 2001/0035

the night in question, it is submitted, provoked the defendant, and he lost control. He regrets his behaviour, and is disgusted with himself.

- [22] Defence counsel submits the defendant is a family man, who provides for his elderly and frail mother, as well as his three children. He offers to provide compensation to the complainant, as part of his sentence. Defence counsel asks the court to give the defendant full credit for his guilty plea, which was always his intention to enter, as well as time spent on remand.

The Law

- [23] Under **s. 20** of the **Offences Against the Person Act**², upon conviction for causing grievous bodily harm with intent, the penalty is imprisonment for up to ten years.
- [24] Sentencing in criminal cases involves many considerations in order to achieve a fair and equitable penalty. The sentencing goals of retribution, deterrence (both general and specific), prevention and rehabilitation, are confirmed in the well-known cases of **R. v Sargent**³ and **Desmond Baptiste et al v The Queen**⁴. The case of **Renaldo Anderson Alleyne v The Queen**⁵ 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 this with the circumstances of the offender, including his age and background, 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.

² CHAP 10:31

³ 60 Cr. Ap. R. 74

⁴ Cr. Ap. No. 8 of 2003

⁵ [2019] CCJ 06 AJ, 93 WIR 155

- [25] The case of **R. v Parranto**⁶ further emphasizes the importance of sentencing in the criminal justice process. The task of sentencing requires judges to consider and balance many factors. The process is governed by clearly defined objectives, but remains a discretionary exercise for courts in balancing all relevant factors to meet the basic sentencing objectives. The goal in every case is a fair, fit, and principled sanction. Sentencing is approached on an individual, case-by-case basis. The court must determine which objectives of sentencing merit greater weight, while evaluating all of the mitigating and aggravating factors to best reflect the circumstances.
- [26] All of this has been considered by this court in formulating an appropriate sentence in this case.

Analysis

- [27] Having received and carefully reviewed the written and oral submissions of counsel for both parties, as well as the Social Inquiry Report, what follows is the sentencing decision. This was a crime of violence, perpetrated by a person who stood in loco parentis to a young child. A significant injury was caused. This was not a case of excessive discipline. No amount of perceived misbehaviour on the part of a child can ever justify inflicting such an injury. Our children are our most precious resource. They are to be protected and nurtured within our community. The intentional application of physical force to a child, causing injury, is highly morally blameworthy. An adult offender ought to know that such an action can seriously injure a child. Children are extremely vulnerable. The fact that the victim in this case was a child, increases the offender's degree of responsibility. Such behaviour must be denounced. Those who would seek to harm a defenceless child must be dealt with severely. A message of deterrence must be sent that such behaviour will not be tolerated, and will result in incarceration.

⁶ [2021] SCC 46

- [28] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Violence Offences, Re-Issue 8th November 2021**. Sentencing for a case of causing grievous bodily harm with intent 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 involves the consideration of the consequence by assessing the harm caused by the offence. The child complainant suffered an injury that required surgery. Although she recovered from that, she still bears the scars, both physical and emotional. She experiences nightmares, flashbacks, and feelings of anger, and fear. Her academic standards fell, and her familial relationships were affected. There has been serious psychological and physical harm done to her. Consequently, the appropriate classification is found to be Category 2 – High.
- [29] The second stage involves the consideration of seriousness by assessing the culpability of the offender. Seriousness is confirmed in this case as the complainant must be characterized as a vulnerable person. She was a 4-year-old child who was deliberately targeted by the defendant. The appropriate category must therefore be Level A - High.
- [30] Having determined the consequence and level of seriousness, the starting point is found by using the sentencing guidelines grid. This calculation leads to a starting point of 60%, with a range of 45% - 75%. In this case, the court has determined the appropriate starting point to be 60% or 6 years.
- [31] Having established a starting point of 6 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, other people were present when the offence occurred, including the complainant's sibling and her mother. There can also be no doubt that the defendant abused his position of trust towards the complainant. He was the partner of the complainant's mother, and therefore a quasi-parent. The

victim was a child. These aggravating factors increase the sentence by 6 months, to 6 years and 6 months. By way of mitigating factors, the court notes that there was no premeditation, and the defendant took the child to receive medical attention. The sentence is therefore reduced by 3 months, to 6 years and 3 months.

[32] 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 court can find no aggravating factors. By way of mitigation, the court takes into account the defendant's good character. He has no previous criminal record. The defendant also demonstrated remorse for his actions when interviewed under caution by police, and in the Social Inquiry Report. This serves to reduce the sentence by 3 months, to 6 years or 72 months.

[33] Credit must be given to the defendant for his guilty plea. Although it was not entered as early as it might have been, the court is prepared to grant a one third reduction in sentence. It saved the young complainant from going through the difficult experience of having to testify at trial. This reduces the sentence by 24 months, to 48 months or 4 years. The defendant must also receive credit for time spent on remand. Following his arrest, the defendant spent 7 months on remand, prior to receiving bail on 8th December 2020. Following his guilty plea, the defendant was remanded into custody again until today's date. This gives him credit for a further 2 months. The sentence is therefore reduced by 9 months to 39 months.

[34] For all of these reasons, the defendant, Keegan Thomas, is hereby sentenced to a period of 48 months imprisonment for causing grievous bodily harm with intent. Given the length of the custodial disposition, the court declines to make a compensation order. Taking into account the time he has served on remand, and giving him full credit for that, the sentence imposed is reduced to 39 months, as of today's date.

Richard G. Floyd
High Court Judge

By the Court

Registrar