

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

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

CASE NO: DOMHCR2022/015

BETWEEN:

THE STATE

and

RUBEN TALBERT

Appearances:

Ms. Sherma Dalrymple, Director of Public Prosecutions and Ms. Daina Matthew,
Counsel for the State

Mr. Peter Alleyne, Director of Legal Aid, Counsel for the Defendant

2023: January 12th
March 24th

JUDGMENT ON SENTENCE

- [1] **FLOYD J.:** The defendant, Ruben Talbert, was originally charged with causing Grievous Bodily Harm, and Unlawful Wounding. On 12th January 2023, a guilty plea was entered to count one, causing Grievous Bodily Harm. In light of that, State counsel withdrew count two, unlawful wounding. A Social Inquiry Report with a psychiatric component was ordered, and the case was adjourned for sentencing. The Psychiatric Report was filed on 16th February 2023, and the Social Inquiry Report was filed on 17th February 2023. Written submissions were filed on 23rd March 2023 by counsel for the State. Counsel for the defendant declined to file written submissions. Oral submissions were received on 24th March 2023, and State counsel

indicated that she would rely upon her written submissions. The matter now proceeds to sentencing.

The Facts

- [2] The defendant, Ruben Talbert, is the uncle of the complainant, Joan Jno. Baptiste. At the time of the offence, they resided in the same yard, in an area known as Peru, in Bellevue Chopin. At the time of the incident, they were both 72 years of age. In the early morning hours of 6th September 2019, the complainant was approached by the defendant, as she walked along the street. He accused her of taking his clothes, to which she replied that she had not done so. The inquiry about his clothes, made by the defendant, was overheard by a passerby, who knew both the defendant and the complainant. Also nearby, was the complainant's brother, Eric Joseph. Mr. Joseph's attention was attracted to the scene by the cries of the complainant. He saw the defendant strike the complainant with a cutlass, and he ran towards them. However, he quickly retreated, after being warned off by the defendant. He then flagged down a passing police officer, Sgt. Alexander, and directed him to the scene.
- [3] The complainant was struck on the right knee by the defendant, and she fell to the ground screaming. The complainant raised her arms to protect herself from further blows. She was struck on her right hand, and then on her left hand. The defendant discontinued his attack, saying he would go back and wait for the police. Sgt. Alexander arrived on the scene to find the complainant down and injured. He transported her to the Grand Bay Health Centre, where she was assessed and then transferred to the Dominica China Friendship Hospital, for treatment.
- [4] Both the defendant and the complainant were known to Sgt. Alexander. After assisting the complainant, he attended the defendant's residence, that same day. The officer cautioned the defendant, who then told him that the complainant had stolen his clothes and sent him a piece of rope, saying he should hang himself. This caused him to "*lose his head*." Sgt. Alexander saw a cutlass and a length of nylon

rope in the yard. When asked if that was the cutlass used to injure the complainant, the defendant replied "Yes." He was arrested at that point, and taken into custody.

- [5] Later, on 6th September 2019, the defendant gave an inculpatory statement to police under caution, admitting that he used the cutlass on the complainant because he got "*vexed with her*" for taking his clothes. He confirmed that he had administered three blows to her. He identified the cutlass he used. He said that he had no problems with the complainant before that day.
- [6] The complainant was interviewed by police and also testified at the preliminary hearing. She denied taking the defendant's clothes and denied sending a rope to him. Although she did agree that after she had been attacked by the defendant, she told him to take the rope she had in her bag, and go hang himself.
- [7] Dr. Julien De Armas is an orthopedic surgeon. He treated the complainant in hospital on 6th September 2019. She had suffered lacerations to her right hand, left hand and right knee. The left thumb tendon was lacerated and the metacarpal was fractured. The right knee tendon was lacerated. The right-hand palm and fifth finger tendons were also lacerated. Dr. De Armas performed three surgeries on the complainant. The left thumb was repaired, using pins on the bone, and suturing the tendon. A cast was applied. The patella and tendon in the right knee were surgically repaired, and a cast applied. The tendon and nerve in the fifth finger of the right hand were also surgically repaired. A cast was applied. The complainant was discharged after three days. Follow-up monitoring occurred in the outpatient clinic. The pins and casts were eventually removed, with the last examination occurring on 18th February 2020. Although the complainant testified at the preliminary hearing that she still had difficulty using one hand, Dr. De Armas followed the complainant post-operatively, and ultimately noted that she had "*good function of the limbs. Three limbs were affected, and she was discharged from the (outpatient) clinic.*" In his opinion, a sharp object such as a knife, cutlass, axe, or sword, could have caused the injuries.
- [8] The Social Inquiry Report was prepared by Welfare Officer Toussaint, and Chief Welfare Officer Giddings-Stedman. It confirms that the defendant is age 76 years,

having been born on 28th February 1947. He is one of thirteen children, with four surviving siblings. He is the product of a stable home environment, and had a close relationship with his extended family. However, the time he has spent on remand has placed a strain on that.

[9] The defendant has resided in Bellevue Chopin for most of his life. His formal education ceased at the primary level, and he has worked as a farmer for most of his life. Although not married, the defendant has three adult children. He attends church regularly. His health is generally good, but he receives medication for a diabetic condition.

[10] Just as he did with the police investigator, the defendant freely admitted committing this offence to the authors of the report. He expressed no remorse, referring to a momentary loss of control, due to upset caused by the complainant's theft of his clothes.

[11] The complainant is age 76 years, and is also a long-time resident of Bellevue Chopin. She is the defendant's niece. She described a close relationship with the defendant prior to this incident, which has had a significant impact upon her. For over one and a half years, following her release from hospital, she required assistance with daily living. She still walks with a cane, and never regained full use of both her arms. She is therefore no longer capable of carrying out the work associated with farming, which was her livelihood. She has moved residence since the incident. Returning to her former home only serves to bring back painful memories. She remains fearful of the defendant.

[12] The defendant's sister confirmed Mr. Talbert to be a hardworking farmer and a good person. She was surprised to learn of this incident. Members of his community offered a similar description of a hardworking person who kept to himself. This violent incident came as a surprise to many.

[13] Officials at the State Prison described the defendant as someone who got along well with prison officers, and did not cause any problems.

- [14] The Psychiatric Report of Dr. Nadia Wallace was filed on 16th February 2022. The defendant was found not to be suffering from any major psychiatric illness. He exhibited no signs of acute psychosis. At the time of the assessment on 9th February 2022, the defendant manifested no clinical feature of any medical illness. He confirmed his occupation as a farmer. He has three children, lives alone, and has a good relationship with his family. He was candid when discussing the offence, admitting responsibility, but expressing no remorse. The conclusion of Dr. Wallace was that the defendant is mentally fit to stand trial. He is mentally competent, and understands the court procedures.

The Position of the Parties

- [15] Learned counsel for the State submits that the complainant suffered severe, long term physical harm from this attack. Under the sentencing guidelines, this places the harm consequence at the highest level. The use of a weapon in this repeated assault increases the seriousness consideration to the high level. State counsel also refers to the complainant as a vulnerable person, presumably because of her age at the time. Although counsel for the State submits that there was an intention on the part of the defendant to commit more serious harm than actually resulted, the court is not persuaded that the facts support that.
- [16] In considering aggravating factors relating to the offence, State counsel refers to threats being made to another individual, the brother of the complainant, who came to her assistance. She also refers to the defendant being motivated by revenge for the theft of his clothes. Of interest, is the submission that an aggravating factor is the gender of the complainant. She is a woman. Aggravating factors pertaining to the offence, in the sentencing guidelines, refer to the victim being a child or young person, or particularly vulnerable, including through poverty. The victim's gender does not fall into that category.

- [17] As a mitigating factor, State counsel correctly refers to the good character of the defendant. He has no previous criminal record of conviction. However, as an aggravating factor, counsel for the State incorrectly refers to a lack of remorse. As this court has pointed out previously, remorse is not actually an enumerated aggravating factor in the sentencing guidelines section pertaining to the offender. While genuine remorse is a mitigating factor, a lack of remorse cannot be construed as an aggravating factor. At best, it is neutral.
- [18] State counsel submits that an appropriate sentence for this offence is a custodial disposition of 5 years and 3 months, less credit for time served on remand.
- [19] Learned defence counsel relies upon the reports filed, and submits orally that the defendant was provoked by the behaviour of the complainant in sending him a rope, and suggesting he hang himself. The courts notes, however, that the timing of that behaviour is unclear in the facts provided, and also notes that the defendant does not refer to that behaviour when interviewed by the author of the Social Inquiry Report.

The Law

- [20] Under **s. 20 of the Offences Against the Person Act¹**, upon conviction for causing grievous bodily harm with intent, the penalty is imprisonment for up to ten years.
- [21] Sentencing in criminal cases involves many considerations in order to achieve a fair and equitable result. The goals of retribution, deterrence (both general and specific), prevention and rehabilitation, are confirmed in the well-known cases of **R. v Sargent²** and **Desmond Baptiste et al v The Queen³**. The more recent case of **Renaldo Anderson Alleyne v The Queen⁴** from the Caribbean Court of Justice, refers to the

¹ Chap 10:31

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

principles of punishment, deterrence, and rehabilitation. Sentencing seeks 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 that 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.

[22] The case of **R. v Parranto**⁵ describes the importance of sentencing in the criminal justice process. 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 basis. In each case, the court must determine which objectives of sentencing to give greater weight to, while evaluating all of the mitigating and aggravating factors, in order to properly reflect the circumstances.

[23] All of this has been considered by this court in formulating an appropriate sentence in this case.

Analysis

[24] Having received and carefully reviewed the written and oral submissions of counsel for both parties, as well as the Social Inquiry Report, and the Psychiatric Report, what follows is the decision on sentencing in this case. This was a crime of extreme violence, using a weapon. A woman was attacked in the street by a family member. Serious injuries were caused, which required surgical intervention. It is only by sheer good fortune that the complainant was not more seriously injured or killed. A message of deterrence must be sent that such egregious behaviour will not be tolerated and will result in incarceration.

⁵ [2021] SCC 46

- [25] 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, with reference to the harm caused. A starting point for the offence within the relevant range, must be established. The court must first consider the consequence by assessing the harm caused by the offence. The complainant suffered an injury that required surgery, and although the medical evidence indicated that she recovered good function in her affected limbs, the Social Inquiry Report revealed a lasting injury that affected her mobility and her ability to earn a living. The appropriate classification is therefore found to be Category 2 – High.
- [26] The second stage involves the consideration of seriousness by assessing the culpability of the offender. The use of a weapon, a cutlass, to administer multiple blows on the same victim, places this case into the category Level A - High.
- [27] 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%, which is 6 years or 72 months.
- [28] Having established a starting point of 72 months, the court must consider the aggravating and mitigating factors of the offence, and adjust the figure upwards or downwards, accordingly. This incident occurred on the street in a public area. Other people were present, including the brother of the complainant. That is an aggravating factor. However, the defendant and the complainant were family members with no apparent history of animosity or problems. This was an isolated incident. That is a mitigating factor. These features cancel each other out, and the sentence remains at 72 months.

- [29] The next step involves a consideration of the aggravating and mitigating factors pertaining to the offender. 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 achieved the age of 76 years without any criminal record. As a general principle of sentencing, good character is a mitigating factor for an offender. This serves to reduce the sentence by 9 months, to 63 months.
- [30] 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. This reduces the sentence by 21 months to 42 months. The defendant must also receive credit for time spent on remand. All offenders are entitled to receive credit for the time they have served in custody, on remand, for the offence charged. Mr. Talbert has been in custody on this charge since his arrest on the day the incident occurred. This equates to just under 43 months. This exceeds the custodial sentence the court would impose for this offence. The sentence must therefore be one of time served.
- [31] This was a serious incident. It was a crime of violence, perpetrated with a bladed weapon. The complainant was injured. However, as the court has noted, sentences must be fit, just and appropriate. It is therefore unfortunate that the defendant has endured a period of incarceration greater than that which the court would have imposed upon him for this offence. This serves to illustrate the need for counsel to examine their cases and explore the possibilities of resolution in a timely and measured fashion. This is not the first case where the court has passed a sentence of time served, with the offender having served a greater term of imprisonment than was deserved. It is to be hoped that, whenever possible, and in the interests of justice, this will not continue to occur.

[32] For all of these reasons, and considering the time he has served on remand, giving him full credit for that, the defendant, Ruben Talbert, is hereby sentenced to time served.

Richard G. Floyd
High Court Judge

BY THE COURT

REGISTRAR