

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

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

CASE NO: DOMHCR2022/010

BETWEEN:

THE STATE

and

JAMES GEORGE

Appearances:

Ms. Sherma Dalrymple, Director of Public Prosecutions and Ms.
Marie Louise Pierre-Louis, Counsel for the State
Mr. Peter Alleyne, Director of Legal Aid, Counsel for the Defendant

**2023: January 31st,
February 1st, 2nd, 3rd, 10th,
March 24th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J.:** The defendant, James George, was originally charged with causing grievous bodily harm, and unlawful wounding. On 3rd February 2023, following a trial with a jury, during which the complainant and the defendant both testified, the defendant was acquitted of causing grievous bodily harm but convicted of unlawful wounding. A Social Inquiry Report was sought by counsel for the defendant, and counsel for the State. The case was adjourned to 24th March 2023 for sentence. The Social Inquiry Report was filed on

3rd March 2023. Written submissions were filed on 10th February 2023 by counsel for the State. Counsel for the defendant declined to file written submissions. Oral submissions were received on 24th March 2023. However, State counsel relied upon her written submissions. The matter now proceeds to sentencing.

The Facts

- [2] The defendant and the complainant both lived in Massacre, some 300 feet apart. They had known each other for approximately 7 years, at the time of the incident. On 12th August 2018, at about 9:00 pm, the complainant, Dennison Langlais, was on his way to the shop. It was dark. He saw someone, and heard a stuttering voice asking about clothes. He recognized the person as the defendant, James George. He was then struck several times with a piece of bay leaf wood, approximately 4 feet long. The blows he described were to his left hand, right arm, left hip or thigh, right hip or thigh and rib cage. He fell to the ground, and heard the defendant say he was going to kill him. He tried to get up, and as he did, he saw the stick again. He raised his left arm to protect himself, and was struck. His arm was injured. He got up, and ran all the way to the shop at the bottom of the hill. An ambulance was called, and he was taken to the hospital, where he remained for two days. He had a cast placed on his forearm, which he described as being fractured, although no medical evidence was tendered at this trial. When he left hospital, he reported the incident to police. He was off work for a month, but only saw a doctor once after leaving hospital.
- [3] The police located the defendant on 24th September 2018. After being cautioned, the defendant said, *"I tried warn Mr. not to take my stuff. He took my stuff."* The defendant was then arrested. He was

interviewed again under caution at the police station. In that statement, the defendant said that he met the complainant on the night of 12th August 2018. He asked him a question about his stolen clothes and shoes. He said the complainant confronted him, and was attempting to take something out of his bag; that caused the defendant to take up a stick. He then struck the complainant twice, but not on the left arm. In convicting the defendant, the jury did not accept the defendant's position that he was defending himself.

- [4] The defendant, James George, testified at his trial. He said that he was there on 12th August 2018. He had come from a friend's house up the hill with a bucket for water, and a cutlass, going for rabbit feed and to the river. He heard a cough, and knew it was Dennison Langlais. He had known Mr. Langlais for some time. He called out to him, asking where his clothes and shoes were. The complainant had a bag on his back. The defendant saw the complainant reach into the bag. This concerned him. He felt threatened. He therefore took up a stick to protect himself, and lashed the defendant twice. As noted, the jury did not accept the self defence argument of the defendant, and convicted him of unlawful wounding.

- [5] 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 23rd December 1963. He is 59 years old. He has eleven siblings, with whom he maintains a good relationship. Although raised by his grandmother, he described his relationship with his parents as "okay." The defendant was the subject of corporal punishment from his father. Both parents are now deceased. He was raised a Christian, and continues to follow that path.

- [6] The defendant left school without completing his primary education. He has found employment in construction, machine operation, farming, and held a long-term position on a cargo ship. After returning to Dominica in 2007, he worked in landscaping, painting, maintenance and cultivation. He admits consuming alcohol and marijuana. Mr. George was married but lost his wife to cancer. He has 5 children, with whom he enjoys a good relationship.
- [7] The defendant knew the complainant as a friend for several years. In fact, his sister was married to the complainant's brother. With regard to the incident, he believed that the complainant had stolen his clothes, and went in search of him. It was the complainant who approached him, however, and in striking him, the defendant was only defending himself. He had no wish to harm the complainant. This was the position of the defendant at trial, which was not accepted by the jury. The defendant expressed remorse to the report's author, for what he had done.
- [8] The complainant confirmed that he has known the defendant for approximately seven years. He had no issue with him until this incident happened, although he did warn the defendant away from his daughter at one point. The complainant denied stealing clothes from the defendant. After he was struck by the defendant, the complainant was hospitalized for two days and was unable to work for two months. He maintains that he still does not have full use of his arm. The complainant does not, however, fear Mr. George.
- [9] Members of the community described the defendant as being a loner, and reserved. He was very helpful to others, not aggressive or violent. They described the complainant as also being very helpful, not a troublemaker. However, he was known to take things that did not belong to him.

The Position of the Parties

- [10] Learned counsel for the State submits that, owing to the amount of time the defendant has spent on remand for this offence, the sentence should be one of time served.
- [11] Nonetheless, State counsel took the court through the appropriate Sentencing Guidelines, with reference to case law in support. She highlighted the serious physical harm suffered by the complainant, including a fractured left hand, and the use of a weapon. As mitigating factors, she also pointed to the lack of any premeditation on the part of the defendant, his good character, and the fact that he has no previous criminal convictions. At stage one of the first step of sentencing, State counsel submitted that Category 2 – High was appropriate. However, in the starting point calculation at the third stage, State Counsel referred to Category 1 – Highest. This artificially elevated her starting point from 60% to 75%. Therefore, the calculations that followed, were somewhat higher than intended. A sentence of 1 year, 1 month and 6 days or 13.2 months was proposed. However, recognizing the amount of time the defendant has spent on remand, a sentence of time served was quite correctly submitted for the court's consideration.
- [12] Learned defence counsel also submits that the appropriate sentence is one of time served. He relied upon the facts presented at trial and the Social Inquiry Report. However, he took issue with the reference in the report of the defendant being involved in theft. Defence counsel submits there is no record of any such incident.

The Law

- [13] Under **s. 22** of the **Offences Against the Person Act**¹, upon conviction for unlawful wounding, the penalty is imprisonment for up to two years.
- [14] Sentencing in criminal cases involves many considerations in order to achieve a fair and just 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**² and **Desmond Baptiste et al v The Queen**³. The more recent case of **Renaldo Anderson Alleyne v The Queen**⁴ 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, and the nature and gravity of the offence, balanced 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 the reform and reintegration into society of the offender.
- [15] The case of **R. v Parranto**⁵ emphasizes the importance of sentencing in the criminal justice process. Sentencing requires judges to consider and balance a range of 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, and evaluate all of the mitigating

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

⁵ [2021] SCC 46

and aggravating factors to best reflect the circumstances of each case.

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

Analysis

- [17] 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. A weapon was used and a significant injury was caused. Disputes or disagreements over property must never be allowed to degenerate into such violence. Peace and an orderly society must be preserved. Those that would disrupt the community and injure their neighbours, must be deterred from doing so.

- [18] 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 unlawful wounding 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. Although the complainant was injured in this case, no medical evidence was tendered to confirm the degree of the injury sustained. Further, although the defendant testified that he continues to have some residual problems with his arm, and so advised the author of the Social Inquiry Report, the long-term impact

appears to be minimal. The appropriate classification is therefore found to be Category 3 – Lesser.

[19] The second stage involves the consideration of seriousness by assessing the culpability of the offender. Seriousness in this case is confirmed by the use of a weapon, and threats accompanying the assault. This leads to a determination of the appropriate category being Level A – High.

[20] Having decided the consequence and level of seriousness, the starting point is determined by using the sentencing guidelines grid. This calculation leads to a starting point of 45%, with a range of 30% - 60%. In this case, the court has determined the appropriate starting point to be 45% or 10.8 months.

[21] Having established a starting point of 10.8 months, the court must consider the aggravating and mitigating factors of the offence, and adjust upwards or downwards if required. In this case, although the defendant was motivated by a desire to retrieve his belongings that he believed had been taken by the complainant, it does not reach the level of “*revenge*” referred to in the guidelines for aggravating factors. No aggravating factors are therefore considered. By way of mitigating factors, the court considers the lack of any apparent premeditation. The incident appears to be an isolated one. The sentence is therefore reduced by 1 month to 9.8 months.

[22] The court must next consider aggravating and mitigating factors pertaining to the offender, and adjust the figure upwards or downwards, as appropriate. In this case, the court can find no aggravating factors. In mitigation, the court takes into account the defendant’s good character. He has no previous criminal record. The defendant indicated remorse for this incident when interviewed

for the Social Inquiry Report. These considerations will therefore serve to reduce the sentence by 1.8 months, to 8 months.

[23] No credit is available to the defendant for a guilty plea as this was a conviction after trial. However, the defendant must receive credit for time spent on remand. Following his conviction on 3rd February 2023, the defendant was remanded into custody. At the request of the Office of the Director of Public Prosecutions, he was, however, brought back to court one week later, on 10th February 2023. The court was advised that the defendant had remained in custody for some time after his initial arrest, and prior to being granted bail. In fact, a report from the Dominica Prison Service indicates that, as of 7th February 2023, the defendant was on remand for 1 year, 4 months, and 2 days. Add to that, 3 further days, and the total time spent on remand equates to 490 days. The defendant will therefore receive credit in that amount. This far exceeds any sentence this court would impose upon him, and the sentence must therefore be one of time served.

[24] Due to the diligence of the prosecution service, the defendant was brought back to court on 10th February 2023 and released on consent with conditions of bail. The court recognizes the efforts of State counsel and the Office of the Director of Public Prosecutions. Their work to ensure the release of the defendant on bail as soon as his remand situation was clarified, exemplifies the pursuit of fairness and justice, in the finest traditions of the prosecution service.

[25] For all of these reasons, and taking into account the time he has served on remand, giving him full credit for that, the defendant, James George, is hereby sentenced to time served.

Richard G. Floyd
High Court Judge

BY THE COURT

REGISTRAR