

**IN THE EASTERN CARIBBEAN SUPREME COURT**  
**IN THE HIGH COURT OF JUSTICE**  
**(CRIMINAL JURISDICTION)**

**ANTIGUA AND BARBUDA**

**ANUHCR: 2020/0077**

**THE KING**  
**V**  
**DESBONES St JOHN**

**Appearances:**

Mr Sean Nelson for the Crown

Mr Wendell Alexander for the Defendant

-----  
2023: January 27<sup>th</sup>

February 10<sup>th</sup>  
-----

**JUDGMENT ON SENTENCING**

- [1] **WILLIAMS J:** Mr Desbones St John was convicted on the 22<sup>nd</sup> of November 2022 following a jury trial for the offence of shooting with intent to murder Mr James Elliot.
- [2] Counsel, Mr Wendell Alexander, on behalf of Mr St John, requested that a Social Inquiry Report be provided prior to sentencing. That report, under the hand of Senior Probation Officer, Mrs Carolyn C. Cornelius-Hector, is dated the 16<sup>th</sup> of January 2023.
- [3] The Sentencing Hearing was held on Friday the 27<sup>th</sup> of January 2023.

- [4] Mr Alexander made oral submissions at the Sentencing Hearing. He relied in part on the Social Inquiry Report in his plea of mitigation for his client.
- [5] Mr Sean Nelson on behalf of the Crown articulated the written submissions that he previously submitted on the 16<sup>th</sup> of January 2023.
- [6] The offence of shooting with intent with which Mr St John was convicted is contrary to section 16 of the **Offences Against the Person Act**, Cap 300, of the Laws of Antigua and Barbuda, Revised Edition 1992. It states:

“Whosoever shoots at any person with intent to commit murder, whether any bodily injury be effected or not, is guilty of a felony, and shall be liable to be imprisoned for any term not exceeding thirty-five years.”

**Background:**

- [7] What are the facts upon which the jury was able to find Mr St John guilty of this offence?
- [8] At the time of the shooting incident on the 25<sup>th</sup> of March 2018, Mr St John was a contractor doing restorative work in Barbuda following the devastation caused by Hurricane Irma the previous year. Mr St John was not personally based in Codrington, Barbuda, throughout the construction period but would commute on occasions from Antigua.
- [9] Whenever Mr St John was in Barbuda, he resided at the same premises as his employees. Mr Elliot was one of Mr St John’s employees.
- [10] Mr St John provided Mr Elliot with a cellular phone to use in the course of the business.
- [11] There was a delay in expediting payment to Mr Elliot and the other personnel employed by Mr St John. The employees were becoming increasingly anxious particularly since telephone contact between Mr Elliot on Barbuda and Mr St John in Antigua declined. There were discussions involving Mr Elliot and another of Mr St John’s employees, Mr Roy Tyson, about setting up a separate entity to do construction work in Barbuda. This followed discussions with an individual who was described by Mr Elliot as being “in charge” of rehabilitation efforts on Barbuda. Mr Elliot was “second” to Mr Tyson and two other individuals were also involved in the company.
- [12] One week before the shooting incident, Mr St John returned to Barbuda. He paid off part of the arrears owed to the employees.
- [13] Mr St John left Barbuda and travelled to Antigua for the day, on the 24<sup>th</sup> of March 2018. But before doing so, he asked Mr Elliot to vacate the premises. Later that day, on the 24<sup>th</sup> of March 2018, when Mr St John returned to Barbuda, he had a heated exchange with Mr Elliot. However, by the end of the night, things calmed down and Mr St John took Mr Elliot to a bar and bought the drinks.

[14] The following afternoon, on Sunday the 25<sup>th</sup> of March 2018, Mr St John was doing some repairs to his vehicle at the premises.

[15] Mr Elliot went out that Sunday, (25<sup>th</sup> of March 2018), to work on a project with someone. When Mr Elliot returned to the premises where he resided, he went to where Mr St John was at the vehicle and confronted Mr St John.

[16] Mr Elliot accused Mr St John of scandalizing his name.

[17] Mr St John sought to dismiss Mr Elliot, telling him: "I can't deal with you right now. Me and you will talk later."

[18] Mr Elliot started to walk away towards the house. He stopped, turned back and questioned Mr St John about the outstanding money. But Mr St John countered by asking for the return of the telephone that Mr Elliot was given to use on the job.

[19] Things thereafter quickly escalated. Mr Elliot ended up between the vehicle and Mr St John.

[20] Mr St John grabbed hold of Mr Elliot, drew a firearm from his pants pocket and Mr Elliot was shot at close range in his mouth.

## The Injury

[21] According to the medical report, the initial findings were:

"Laceration noted to upper and lower lips. Frenulum severed on the right side at base of tongue, with active bleeding. Teeth absent on the right upper and lower arches. No exit wound noted. Numbness to right side of face."

[22] The Medical Report of Dr Jessica Charles of the then Mount St John Medical Center (now Sir Lester Bird Medical Centre), dated the 26<sup>th</sup> of April 2018 states:

"James Elliot was the victim of a gunshot wound to the face inflicted at close range. Patient was brought from Barbuda to the MSJMC in Antigua where he was stabilized. Patient noted to have significant right facial nerve paralysis. Right mandibular fracture of the body and ramus, and the absence of the teeth of the upper and lower arches which are embedded in the tongue. Patient was taken to the operating theatre where mandibular fractures were reduced with rigid fixation, and the tongue was explored with removal of multiple foreign body and then reconstructed. Due to significant facial and oral swelling patient also received tracheostomy which was later removed on the 8<sup>th</sup> April 2018. Was later noted to have a dislocation of the temporomandibular joint, same was reduced and placed in bandages for 48 hrs. Patient had a total of 23 days in hospital and was admitted to the ICU for 15 days.

Patient noted to be clinically stable and was discharged on the 17<sup>th</sup> April 2018 with follow up in our clinic. However long term deficits are expected with persistence of the right facial nerve paralysis and asymmetry.”

### **Social Inquiry Report**

[23] Mrs Cornelius-Hector said that she conducted investigations during the period of the 9<sup>th</sup> of December 2022 to the 10<sup>th</sup> of January 2023 in order to prepare the Social Inquiry Report.

[24] The Senior Probation Officer in her report provided an insight into Mr St John’s background. Mr St John migrated to Antigua and Barbuda 40 years ago from the Commonwealth of Dominica. He has been married to his wife for 32 years. He is a Roman Catholic but attends the Moravian Church with his wife. He is the father of 8 children.

[25] Mr St John is a businessman; he owns the Sunshine Builders which does sub-contract work for National Housing and Urban Development. At the time of the incident in March 2018, he had jobs in Barbuda through the National Office of Disaster Services following the devastation of Hurricane Irma in 2017 to repair the Sir Mc Chesney George Secondary School and to build an apartment for teachers.

[26] Individuals interviewed by Mrs Cornelius-Hector, including officials from the National Housing and Urban Development as well as the National Officer of Disaster Services, describe Mr St John variously as “having a quiet disposition”, “very professional and pays attention to detail” and “never showed disrespect”. They expressed surprise at the offence for which Mr St John was convicted and concluded that it was “out of character.”

[27] The final two paragraphs of Mrs Cornelius-Hector’s Social Inquiry Report address (1) the community report and (2) the assessment. Mrs Cornelius-Hector stated that she:

“...interviewed several members of the Upper Gambles community to learn about the characteristics of the defendant Mr St John. Everyone described him as hard working, one who cares about family and community. They shared that he has helps (sic) many persons do repairs to their property even without being paid. The community of Upper Gambles says that he is missed because he takes time to keep the neighbourhood clean. Persons from the community asked for the court to have mercy on him.”

“...interviewed family, employers and members of the community and the adjectives used to describe the defendant are consistent. It has been established that the defendant is a family man and that his family depends solely on him. It has also been determined that the defendant has not only made significant contributions to his immediate community but to the nation of Antigua and Barbuda. The defendant has expressed remorse over the incident and is asking the court to be lenient in the sentence offered.”

### **Submissions on behalf of Mr St John**

[28] Counsel for the Defendant, Mr Alexander, was of the view that Mr St John's conviction was "a very peculiar case."

[29] Mr Alexander noted that while provocation was not available as a defence to Mr St John in this matter, "there were provocative circumstances."

[30] Mr Alexander noted that Mr St John was 59 years old. Counsel pointed out that Mr St John had no previous convictions for any offence whatsoever. Mr Alexander stressed that those two factors are quite significant, in that Mr St John had previously lived an exemplary life, and that it was only now that Mr St John was entering into his senior citizenship years that he has transgressed.

[31] In relation to Mr St John's age, Counsel urged that any term of imprisonment "be not too severe" so that he ends up spending the balance of his life in prison.

[32] The Social Inquiry Report, Mr Alexander noted, spoke to Mr St John's good character. Mr Alexander stated that his client was a "good citizen" and "supported the police." Counsel said that Mr St John made regular donations towards the hosting of police week celebrations, gifted security lights to the police and is the recipient of 'Certificates of Appreciation' from the Commissioner of Police. However no copy of any certificate was exhibited to the Court.

[33] Mr Alexander's plea was to "temper justice with understanding and mercy. Be as lenient as possible." Time, counsel noted, cannot be recovered.

### **The Crown's Submissions**

[34] Crown Counsel Mr Nelson noted that there are no Sentencing Guidelines from the Eastern Caribbean Supreme Court for the offence of shooting with intent to murder.

[35] Mr Nelson urged that the approach by Moise J at paragraph [36] in **Director of Public Prosecutions v Alston Phillip**, NEVHCR 2019/002 be adopted. The Judge said:

"Although there are no specific sentencing guidelines for attempted murder, counsel from the crown referred the court to the compendium of the practice direction for violent offences. I will adopt that approach and would place these offences of attempted murder in category 3 of the compendium as no physical harm was caused to Miskin Brookes and Erica Williams. I would however place the offences in Level A, given the use of a firearm and the fact that the attempted murder conviction can only be on the premise that there was an intention to cause more serious harm than what actually occurred. The starting point is therefore approximately 45% of the maximum and a range between 30% to 60%."

[36] Mr Nelson pointed to the injuries sustained by Mr Elliot, including permanent scarring, missing teeth, partial paralysis to the right side of the face, blurred vision in the right eye and the fact that the lead from the bullet is still lodged in Mr Elliot's head.

[37] In Counsel's view, the only mitigating fact that he saw related to the offender, in that Mr St John had a good character prior to this incident. Mr Nelson said that on the other hand, he was of the view that there were aggravating factors regarding the offence, such as:

- Mr St John following the shooting handed the gun to another person;
- The offence was committed in the presence of others; and
- When Mr St John went to the police station to report the incident, he sought to shift responsibility from himself.

[38] Mr Nelson surmised that if one were to apply those factors to the guidelines for violent offences, then the offending would be in the range of 60% to 90% with a starting point of 75%.

## **Review**

[39] There is much to commend the approach adopted by Mr Justice Moise in **DPP v Alston Phillips**, given the absence of sentencing guidelines. It is also noted that the judge in the cited case was sentencing an offender who was convicted of murder and two counts of attempted murder, although none of the two persons were injured in the course of the attack.

[40] The maximum penalty for attempted murder in Saint Christopher and Nevis is ten years, while in Antigua and Barbuda, shooting with intent to murder is "not more than thirty five years."

[41] If one applies the approach suggested by Mr Nelson one would end up with a starting point of twenty six years and four months. This would result in a sentence being imposed for shooting with intent ending up being in excess of sentences that are being imposed for manslaughter.

[42] Also, an error in the reasoning advanced by the Crown is the double counting in relation to the use of a firearm as being an aggravating factor – as it is for sentencing for offences of violence - when that is already an absolutely necessary element of the offence of shooting with intent to murder for which Mr St John was convicted.

[43] To be sure, the Antigua and Barbuda legislature clearly intended the punishment for the offence to be grave. That intention must be honoured and respected.

[44] The absence of the specific offence in the compendium of the Eastern Caribbean Supreme Court does not mean that the methodology that it utilizes cannot be applied. The fact of the matter is that the first stage of the sentencing process must always be to establish the starting point. Having established the notional sentence, the offender is given credit for the various mitigating factors if present, or conversely the sentence is increased if there is a preponderance of aggravating factors.

Then there is to be an appropriate discount for an early guilty plea if applicable. Any time spent on remand is also to be accounted for. In some cases it may also be necessary to make consequential orders.

[45] Mr St John is entitled to a number of significant mitigating factors both in relation to the offence as well as himself.

[46] With regard to the factors concerning the offence, the balance is decidedly in favour of Mr St John. It is noted that:

- Only a single shot was discharged from the semi-automatic firearm.
- It was not a sustained attack.
- Mr St John did not pursue the victim after the initial injury.
- No threats were made.
- There was the complete absence of any pre-planning, with the incident arising almost spontaneously.

[47] Without seeking to re-victimise Mr Elliot, one may well say that but for Mr Elliot's own actions, he may not have been injured that evening. It was Mr Elliot who approached Mr St John on two occasions before the tragic incident and even when told to leave persisted in distracting Mr St John from what he was doing. There was substantial provocation, fueled in part by the deteriorating industrial and human relations between the two parties, and the disgust Mr Elliot may have felt that his own name was being "scandalized" by Mr St John whom he felt owed him money. Mr Elliot was also a part of the individuals involved in setting up a separate construction company to do work on Barbuda.

[48] The aggravating factors in relation to the offence include the disproportionate response, when Mr St John introduced a weapon in quick time to the encounter with Mr Elliot. The fact that Mr St John handed the weapon to one of his workers, (Mr Anthony Eugene), in a paper bag and Mr St John's subsequent conduct at the hospital appear to be efforts to cover up his own transgressions.

[49] As far as the factors relating to the offender are concerned, the mitigating factors outweighs any apparent aggravating factors. Mr St John led an unblemished life for almost six decades. Even though Mr St John did not take the opportunity to personally express his remorse in court, it is accepted that he has expressed his contrition by other means. The Social Inquiry Report is also overwhelmingly in his favour.

[50] While the Crown has posited that the sole aggravating factor in relation to the offender is that Mr St John "has shown absolutely no remorse for his actions," the content of the Social Inquiry Report shows otherwise. As Mr Alexander on behalf of Mr St John stated: "remorse can be shown in many ways."

## **Sentence**

[51] Given the seriousness of the offence for which Mr St John has been found guilty and the severity of the penalty prescribed by Parliament, the appropriate starting point is 8 years imprisonment. From this figure, the mitigating factors both in relation to the offence as well as those in relation to the offender when combined reduce the sentence by 4-years. Accordingly, Mr St John is sentenced to a term of imprisonment of 4 years to commence from the date of conviction, the 22<sup>nd</sup> of November 2022.

**Colin Williams**

High Court Judge

**By the Court**

**Registrar**