

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
CRIMINAL CASE NO. 13 OF 2021**

**REX
and
GARY ANTHONY GONSALVES**

**Appearances: Ms. Patrice Hickson, Senior Crown Counsel for the Crown
Mr. Stephen Daniels, Counsel for the Defendant**

**2023: January 10
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JUDGMENT ON SENTENCING

THE FACTS

- [1] **T.W.R Astaphan, K.C., J:** The Virtual Complainant, Neville Alphonso ("**Neville**"), is the Uncle of the Accused, Gary Anthony Gonsalves ("**Gary**").
- [1.1] At the time of the incident, they lived together at Vincent Morris Apartments in Hannah's Estate in Tortola, Virgin Islands.
- [1.2] They shared a bedroom, and sleep on a bunk bed.
- [1.3] According to the V.C. they "...usually have a good relationship and never had any issues ..." until this incident.
- [1.4] They lived together prior to the incident for "...about three years..."

- [1.5] On Saturday, 13th March, 2021, Gary was sleeping in the bedroom. Neville entered the room and turned on the lights. Gary got up and turned them off.
- [1.6] Neville then turned them back on.
- [1.7] According to the Crown's submissions, Neville began teasing Gary, and an argument ensued and Gary punched Neville several times in the stomach, causing him to fall, and then Gary punched him some more while he was on the ground.
- [1.8] Neville sustained an internal injury - a ruptured bowel - which necessitated surgery.
- [1.9] The Indictment against the Accused that was proffered by the learned Director of Public Prosecutions contained one count of Inflicting Grievous Bodily Harm, Contrary to Section 164 of the Criminal Code 1997, as amended of the Laws of the Virgin Islands.
- [1.10] Gary has, according to the Crown at page 3, paragraph 8 (v) of their submissions, "expressed genuine remorse,"

FORMULATION OF SENTENCE

- [2] I am required to take into account the case of **Desmond Baptiste, et. Al. v R. Crimm App No. 8 of 2008 (SVG)** which sets out the following principles of sentencing:
- (i) Retribution – in recognition that punishment is intended to reflect society's and the legislature's abhorrence of the offence and the offender;
 - (ii) Deterrence – to deter potential offenders and the offender from recidivism;
 - (iii) Prevention – aimed at preventing the offender through incarceration from offending against the law and thus protection of the society; and
 - (iv) Rehabilitation – aimed at assisting the offender to reform his ways so as to become a contributing member of society.
- [2.1] I am also required to apply the Eastern Caribbean Supreme Court's Sentencing Guidelines.

[3.0] The Guidelines – applied in Sentencing

[3.1] Step 1 -The Seriousness of the Offence:

(a) First Stage:

- (i) This stage is to consider consequences by assessing the harm caused by the offence. I therefore look at the evidence which I have set out in paragraphs [1.8] and [1.10] above.
- (ii) In so doing, the inescapable conclusion is that this is a **Category 1 – Highest consequence**, given the physical harm suffered by the victim which resulted in surgery.

(b) Second Stage

- (i) The second stage is to consider seriousness by assessing the culpability of the offender.
- (ii) There are none of the Level A – High elements present on the evidence of this offence.
- (iii) Thus, I am obliged to find that this is in the **Level B – Lesser category of seriousness**.

(c) Third Stage

- (i) The third stage is to find a starting point (SP) based upon the two findings above, using the grid provided by the Guidelines.
- (ii) The **SP** at Category 1 and Level B is **50% of the maximum sentence** which, for this offence, is 5 years, with the range being **between 35% and 65% of the maximum sentence**. SP is therefore 2.5 years (30 months) with a range between 1.75 years (20 months) and 3.25 years (39 months).

(d) Fourth Stage

Step 1

- (i) This stage requires the Court to consider the **Aggravating and Mitigating factors of the offence**.

- (ii) The **Aggravating Factor**, on the evidence, is that this offence is likely to be considered "Domestic Violence". There are no other aggravating factors of the offence.
- (ii) The **Mitigating Factors** on the evidence, are: Lack of premeditation, and it being an Isolated incident.
- (iv) I find that the Mitigating Factors far outweigh the Aggravating Factors. Accordingly, I deduct from the SP 1 month, which puts the sentence at 2 year and 4 months at this point.

Step 2

- (i) At this stage the Court is required to assess the **Aggravating and Mitigating factors of the offender**.
- (ii) On the evidence, there are no **Aggravating Factors of the offender**.
- (iii) On the evidence there are the following **Mitigating Factors**: the offender is of previous Good Character, and he has shown genuine remorse.
- (iv) I find that the Mitigating Factors outweigh the Aggravating Factors and accordingly I reduce the sentence by 1 month, so that at this point the sentence is 2 years and 3 months.

Step 3

- (i) Credit of 1/3 is to be given for the Guilty Plea entered on the 10th day of January 2023. Therefore, 27 months minus 9 months is 18 months, which is where the sentence now stands.

Step 4 Step 4 is not relevant to this offence.

Step 5

- (i) Credit must be given for time on Remand. The Convict was on remand for 21 months and 19 days. He has therefore served his full sentence.

Step 6

Step 6 is not applicable to this case.

SENTENCE

- [4] Mr. Gonsalves is sentenced to time served on Remand.
- [4.1] Further, in that circumstances, Mr. Gonsalves is fined U.S. \$100.00 to be paid within three months, failing which he shall spend 2 days in prison.
- [4.2] I find that, on the facts of this case, and Mr. Gonsalves having served more time than the sentence imposed, that these are extenuating circumstances and, therefore, acting pursuant to the powers given to this Court by section 38 (c) of the Criminal Justice (Alternative Sentencing) Act, 2013, no conviction shall be recorded.

Thomas W. R. Astaphan K.C.

High Court Judge (Ag.)

By the Court


Registrar