

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

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

CASE NO: ANUHCR 2021/0037

BETWEEN:

**THE KING
and
DENZEL OTTO**

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Mr. George Lake, Counsel for the Defendant

2022: November 22nd
December 13th

SENTENCING DECISION

- [1] **WILLIAMS J.:** Mr. Denzil Otto, a 70 year old farmer, on the 22nd day of November, 2022 pleaded guilty to wounding Mr. Rohan Hector, a laborer aged 18 years at the time of the wounding. Mr. Otto was fined \$2,500.00 to be paid by the 31st of October, 2023 in default 9 months in prison and ordered to pay compensation of \$1,000.00 to Mr. Hector by the 31st of December, 2023 in default 6 months in prison.
- [2] The sentence imposed on Mr. Otto departs from the 'Sentencing Guidelines of the Eastern Caribbean Supreme Court for Violence Offences' which was re-issued on the 8th of November, 2021.
- [3] Whenever a sentencer seeks to depart from the guidelines, it is necessary that the reasons for doing so be clearly stated. As documented in the Practice Direction 8A, No: 1 of 2019 which addresses General Sentencing Principles: "Any departure from the guidelines must be explained as part of the reasoning."

The Indictment

- [4] The indictment against Mr. Otto that was proffered by the learned Director of Public Prosecutions contained two counts. Both counts were for offences contrary to the **Offences Against the Person Act**, Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992. The counts are in the alternative – the first for Wounding with Intent (to cause grievous bodily harm), contrary to section 20 of the **Act** and the second for Unlawful Wounding, contrary to section 22 of the **Act**.
- [5] Mr. Otto initially pleaded not guilty to both offences.
- [6] Mr. Otto pleaded guilty to the second count of Unlawful Wounding during the course of the trial.
- [7] Section 22 of the **Act** provides that:
- “Whosoever unlawfully and maliciously wounds, or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, is guilty of a misdemeanor, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding five years.”
- [8] The ‘Particulars of Offence’ on the indictment stated:
- “Denzil Otto on the 28th [day of] September 2020, at Sanderson in the Parish of Saint Paul in Antigua and Barbuda, unlawfully and maliciously wounded Rohan Hector Jr.”

Jurisdiction

- [9] Section 4 of the **Criminal Proceedings (Trial By Judge Alone) Act** No. 8 of 2021, (as amended by **Act** No. 7 of 2022), makes it mandatory for offences contrary to sections 20 and 22 of the **Offences Against the Person Act** to be tried by a Judge, sitting alone without a jury.

Virtual Complainant’s Testimony

- [10] The Crown led evidence from the virtual complainant, Mr. Hector and from the virtual complainant’s employer at the time, Mr. Kenford Jarvis. It was at this stage that Mr. Otto chose to change his plea to ‘guilty’.
- [11] On the day in question, Mr. Hector went to work at Mr. Jarvis’ farm at Sanderson. The virtual Complainant was assigned duties. On his way to the eastern side of the farm, he left Mr. Jarvis’ property and went into an adjacent plot of land where there were fruit trees. He considered it to be an abandoned parcel of land which had tangerines, mangoes, sugar cane and other trees growing.

He picked some tangerines and placed them in his pocket. He heard some dogs barking. He however saw some more tangerines on the tree and went to pick them; he then left with some fruits in his hand.

- [12] Mr. Hector got back onto the road that separated the parcel of land from Mr. Jarvis' farm. Mr. Hector was peeling one of the tangerines when he heard a voice saying: "Hello, those are my tangerines, put them down." He turned around and saw a male figure whom he did not know but who turned out was Mr. Otto.
- [13] The virtual Complainant said he was startled and he put down the tangerines that he had in his hands, keeping the fruits that were in his pocket.
- [14] After Mr. Hector finished placing the tangerines on the ground, the man said to him: "go ahead." The virtual Complainant said that as he walked away stones were pelted at him. He turned and saw Mr. Otto with a cutlass in hand.
- [15] Mr. Otto swung the cutlass at the virtual Complainant saying: "Me ah go finally get fu kill one ah are yo; me can't get ah yo fu keep off me land." According to the virtual Complainant, he fell to the ground and Mr. Otto swung the cutlass again. Mr. Hector said that he raised his hand to defend himself and sustained an injury to the palm of his hand.
- [16] Counsel Mr. George Lake cross examined the virtual Complainant in some detail. Mr. Hector admitted that the day in question was not the first time he had gone to pick fruits on the land; Mr. Hector conceded that it was more than ten times he had done so. Mr. Hector agreed that he knew where the dogs that he heard barking were because he had seen them located near to a structure that is on the land. Mr. Hector however said he felt that the land was abandoned because the dogs did not look like they were properly cared for and the land had a lot of grass on it. Mr. Hector admitted that when he was ordered to put down the tangerines, he did not put down all, as he "still had fruits in my pocket."

The Neighbour

- [17] Mr. Jarvis in his testimony said that he knew that the farm next to his was owned by Mr. Otto, whom he knows as 'Tito'.
- [18] Mr. Jarvis testified that the virtual Complainant worked with him and on the day in question Mr. Hector was given a wheel barrow and assigned duties in the direction of Mr. Otto's land. However Mr. Jarvis said that he did not see the virtual Complainant performing the assigned tasks. Mr. Jarvis left to locate Mr. Hector, but only saw Mr. Otto and the police. "I was looking around for Mr. Hector. I don't see him. I heard Mr. Otto tell the police he [Mr. Otto] chop a guy and the guy run and fell."

- [19] According to Mr. Jarvis, he was familiar with Mr. Otto who came once a week to collect animal feed from his (Mr. Jarvis's) farm to take to the animals on his (Mr. Otto's) farm. Mr. Jarvis agreed with Defence Counsel, Mr. Lake that praedial larceny was a serious issue plaguing farmers in the area: "I encounter it a lot. People always come and steal things planted there."

Evidence of Injury

- [20] The medical report of Dr. Nadine Pile regarding Mr. Hector's injury stated:

"On physical examination he was conscious and oriented and his vital signs were stable. There was a laceration to the palmar aspect of his left hand extending from the first web space to the ulnar aspect of the wrist and he was actively bleeding."

"Radiographic studies did not reveal any fractures."

"He was taken to the operating theatre where the wound was further explored. Severed muscles and tendons were identified and repaired. He was treated with antibiotics and analgesics and asked to follow up at the outpatient clinic."

- [21] Mr. Hector did not give much evidence about the injury itself. He detailed his journey to the clinic at All Saints and then being transferred to the Mount Saint John Medical Centre where he underwent surgery.

Sentence Considerations

- [22] As noted earlier, the maximum sentence for a person convicted of unlawful wounding is five years imprisonment. The sentencing guidelines provide only for terms of imprisonment. The fact that Mr. Otto used a cutlass as a weapon would place his culpability at Seriousness - Level A – High. The Consequence – Category 3 would place Mr. Otto in the range of 30% to 60% of the maximum sentence. That range amounts to 18 months to 3 years.

- [23] It is apparent that a custodial sentence was inappropriate and unnecessary in the circumstances of this case. The interest of justice did not require Mr. Otto to be visited with a term of imprisonment. There are a number of factors which support a non-custodial sentence:

- i. Mr. Otto is a 70 year old farmer who never transgressed before. He maintained an impeccable record for three score and ten years. He is a senior citizen with an unblemished record.
- ii. The act of wounding Mr. Hector cannot be condoned. However, it must be placed in and understood in the context of the circumstances of this case. Mr. Otto was a

senior farmer frustrated, affected and annoyed by the repeated instances of praedial larceny, having his crops being stolen by trespassers. Mr. Otto's retaliation and loss of self-control must be reasonably punished.

- iii. The virtual Complainant was not blameless. Mr. Hector treated with scant regard the property of another. He made it a habit of stealing Mr. Otto's goods because in his view the farm was abandoned.
- iv. The injury suffered by the virtual Complainant was not life-threatening. The wound inflicted by Mr. Otto did not cause any permanent injury. According to the medical report the virtual Complainant was taken to surgery and discharged from the hospital. It also came out in evidence that Mr. Hector is no longer a farm laborer but in fact was employed at a tyre repair shop. This new employment suggests that there are no after effects from the cut, which Mr. Hector sustained, to the palm of the hand.
- v. The evidence showed that it was in fact Mr. Otto who went to the police and reported the offence. Immediately after wounding the virtual complainant, Mr. Otto went to the All Saints Police Station where he reported the matter and returned to the scene with the police where he pointed out things to the police.
- vi. Mr. Otto did not enter a guilty plea on the first occasion. He did so after two of the seven witnesses listed on the back of the indictment testified. He must be credited still with entering an early guilty plea – that is, pleading guilty before the close of the crown's case. Counsel for the Defendant was however able to elicit important aspects of Mr. Otto's mitigation from the two witnesses, such as the problem that praedial larceny posed to farmers in the area, as well as the fact that the virtual Complainant repeatedly entered the defendant's property and took fruits.
- vii. When the settled principles of sentencing are considered, that is to say retribution, deterrence, prevention and rehabilitation, the only applicable principle is retribution, in that the punishment must fit the crime. The fitting punishment does not require the imposition of a term of imprisonment.

[24] Having considered the abundance of positive factors in favour of Mr. Otto and recognizing that no useful purpose could be served by sending him to jail, it was determined that a fine and an order for compensation, with accompanying default provisions could meet the interest of justice in this case.

Colin Williams
High Court Judge

By the Court

Registrar