

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

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

CRIMINAL CASE No. 43 of 2020

BETWEEN:

THE QUEEN

and

RAYNARD MATTHEW

Appearances: Mr. Kael E. London, Counsel for the Crown
Mr. Michael Maduro, Counsel for the Defendant

**2021: March 3rd, April 19th, July 6th,
July 13th**

JUDGMENT

- [1] **FLOYD J:** The Defendant was born on 3rd April, 1991 in the Territory of the Virgin Islands. He was charged with one count of Wounding, contrary to **s. 164** of the **Criminal Code 1997**. On 3rd March, 2021, at the request of the Defendant, a Goodyear Indication was provided. A Social Inquiry Report was ordered, particularly as there were apparent mental health issues for the Defendant. Further appearances were made on 19th April 2021 and 6th July, 2021. On the latter date, the Defendant was arraigned and entered a guilty plea. This matter now proceeds to sentencing.

THE FACTS

- [2] The Defendant lived in a residence on Virgin Gorda with his mother and his uncle, Tobias Prince, the Complainant. On 18th May, 2020 an argument occurred between the mother of the Defendant and the Complainant. Later that evening, after the Complainant had retired to bed, he noticed the

Defendant standing over him. He was then struck a blow to the right side of his neck with a machete. The Defendant fled. The Complainant called police, tried to bind his wound and thereafter was taken by ambulance to the Medical Clinic. The Complainant suffered a 20 cm. laceration to his neck, requiring sutures.

- [3] The Defendant turned himself into the local police station later that day. His comment to police was "I am tired. I did what I did." The Defendant is known to police and therefore was taken to the Medical Clinic, where he was given his medication and discharged. After being brought back to the station, the Defendant struggled with police and escaped. However, he was quickly recaptured and taken back into custody. Later that same day, the Defendant took police to a location where he pointed out a rusty machete with blood stains. This was confirmed to be the weapon used to attack the Complainant. The Defendant admitted to police under caution that he was responsible for the injury to the Complainant. The Defendant was arrested and charged accordingly on 18th May, 2020. He was remanded into custody where he has remained ever since.

SENTENCING BACKGROUND

- [4] A Social Inquiry Report was received from Social Worker Gaskin and Chief Social Development Officer Frett. An earlier Report from Social Worker Williams dated 5th August, 2005 was included in the material filed. A Health Services Report dated 15th September, 2020 from psychiatrist Dr. J.D. Torno was also provided. All of this material was very helpful to the Court.
- [5] The Report of Dr. Torno confirmed that the Defendant has been a patient of Community Mental Health Services for several years. He has a diagnosis of chronic schizophrenia and has been treated with oral medication and intramuscular injections. He has been in and out of hospital and is not always compliant with his medication regime. He was assessed by Dr. Torno on 14th September, 2020 at the out-patient clinic. Although impulse control and judgment were described as only fair and insight into his situation was also described as only fair, he was described as stable. It was highly recommended that his treatment should continue, even while incarcerated.

- [6] Mental illness encompasses a wide variety of disorders including developmental disabilities, personality disorders, cognitive impairments caused by brain injury and intellectual disabilities. These individuals may suffer impairments relevant to their moral blameworthiness. However, prisons generally struggle to accommodate such individuals when they become incarcerated.
- [7] The Social Inquiry Report indicates that, despite a tumultuous childhood, encompassing many run-ins with police and many referrals to community agencies, the Defendant disclosed what appears to be a generally positive childhood and family relationship. He did, however, spend two years in a residential children's home due to behaviour and academic problems. He also got into trouble and spent time in custody as a juvenile.
- [8] The Defendant has had long standing mental health issues since childhood, being treated with oral and injectable medication. The mother of the Defendant was not aware of any formal diagnosis. Of note is the comment from the Defendant's mother, attributing the cause of the incident that led to this charge, to a change in the Defendant's medication and the resulting affect that had upon him.
- [9] The Defendant has generally resided on Virgin Gorda all his life. He did not complete primary school and his literacy skills appear to be minimal.
- [10] The Defendant's employment history appears sporadic at best and is centered around manual labour. Significantly, the Defendant maintains that he was forced to discontinue at least one job due to the medication he was taking and the affect it had upon him.
- [11] Although not currently attached to any particular church, the Defendant appears to be a very devout person, enjoying personal bible studies and attending the chapel at HM Prison.
- [12] The Defendant confirmed that he currently receives monthly intramuscular injections to, in his words, "keep me calm." He has been on medication for several years, commencing at age 10. When speaking to the authors of the Report, the Defendant described a common problem for patients with mental health issues, especially those involved in the criminal justice system, and that is, that due to side-effects he attributed to his medication, he unilaterally discontinued taking the medication.

Unfortunately, that can lead to decompensation. Such non-compliance resulted in the Defendant being placed on a medical injection program.

- [13] Of concern is the comment by the Defendant concerning his medication. He considers himself “healed” and he believes that he “can function 100% without them but they make me take the meds to say something wrong with me.”
- [14] The Report referred to the information received from Dr. Torno already noted above. The last hospital admission was described as being in October, 2019. Unfortunately, since the Report of Dr. Torno, there was a transfer of the Defendant from HM Prison to the local hospital on 15th June, 2021. Further, it appears that while incarcerated, there have been instances of non-compliance by the Defendant in the taking of his medication.
- [15] On the positive side, the Defendant has been a generally successful prison inmate, being of good behaviour, cooperative and compliant with regulations. He has accepted counseling for anger management, coping skills, dealing with peer pressure and conflict resolution.
- [16] The Report indicates that the Defendant acknowledged that he had been incarcerated as a youth, although he was unable to clearly articulate an understanding as to why that was done to him. Information was received from police sources that the Defendant has a record dating back to 2005. Of note, he was also charged with property damage while at the Behaviour Health Ward and has been involved in altercations with his mother and his uncle, the Complainant in this case.
- [17] The Report reveals an overall concern with the Defendant not having a grasp or understanding of his condition. Sadly, the concluding remark in the Social Inquiry Report indicates that the Defendant “requires a secure, structured, therapeutic facility which, unfortunately, the Territory still does not have the capacity to provide at this time.” It is clear, however, that HM Prison cannot provide such a therapeutic environment.

[18] Structured, focused, purpose-built facilities with the capacity to deal with people like Raynard Matthew, are often not available in many communities. The lack of forensic units that can successfully treat and help people suffering with mental illness, is a problem that is not restricted to this Territory. However, without such facilities and a recognition of the need for them, people who struggle with mental illness and a lack of support, will continue to end up in the criminal justice system. Prisons do not represent the ideal therapeutic setting. That system is not designed to provide the treatment, assistance and care that is required. People in that situation would fare much better in the health care system as a patient, not as an inmate. Until such facilities are available, the Court can only do what it can to tailor sentences accordingly, balancing deterrence with rehabilitation and emphasizing the latter.

[19] The Court takes note of the Report dated 5th August, 2005 by Social Worker Williams indicating that “the judicial system is at a loss as to how to reform this young man”. As early as 2003, he was diagnosed with conduct disorder and poor impulse control. His brother also apparently suffered from a mental disorder and has been on medication for years. Some concern was also raised over potential mental health problems suffered by his mother.

THE LAW

[20] Sentencing in criminal cases involves many considerations. In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles set out in cases such as **R v Sargent, 60 Cr. App. R. 74**, referred to with approval by our appellate court in the seminal case of **Desmond Baptiste v The Queen, Saint Vincent and the Grenadines Cr. App. No. 8 of 2003**. In the words of Lawton L.J. in the case of **R v Sargent**, the court endeavours to answer the question, “What ought the proper penalty to be?” Sentencing seeks to promote respect for the law and an orderly society. The sanctions imposed by a sentencing court when fashioning the proper penalty are based upon the classic principles of sentencing. In **R v Sargent**, those principles include:

- (a) Retribution, the court must reflect society’s abhorrence of particular types of crime through punishment of such unlawful conduct.
- (b) Deterrence, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences.

- (c) Prevention, to protect the public from offenders who persist in committing crimes by separating them from society.
- (d) Rehabilitation, to engage offenders in activities designed to assist them in their reintegration into society.

- [21] The court in the **Desmond Baptiste** case confirmed at **paragraph 20** that “perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed.” The court went on to state that the age of the offender and the presence or lack of any criminal record were factors to consider.
- [22] Sentencing considerations go further. Although denunciation may be required, there is also a need to promote a sense of responsibility in the offender and to acknowledge the harm done. To do that, one must return to a weighing of characteristics of the offender with the facts surrounding the offence. The sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender. Has, for example, a guilty plea been entered? Courts must also consider the conduct and moral blameworthiness of an offender and determine if the public interest is best served by either rehabilitating the offender or removing the offender from the community. All of these considerations play a role in determining a fit sentence.
- [23] The offence of Wounding carries a maximum penalty of imprisonment for a term not exceeding five (5) years. This offence is enumerated in the Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court. Assistance is provided therein for crafting sentences generally and in particular as it relates to violent offences.
- [24] Crown Counsel referred the Court to several cases, the first being **The Queen v Christian Callwood, ECSC BVI No. 25 of 2007**. In that case, the Defendant was convicted of wounding, having taken a knife to the victim, resulting in an injury requiring 30-40 stitches. Like the case at bar, the Defendant in the **Callwood** case suffered from schizophrenia. He was given a two-year suspended sentence with conditions, including ongoing medical treatment.

[25] Joseph-Olivetti J. in the **Callwood** case at **para 12** noted that the condition of the Defendant “is such that his medical needs cannot be properly managed in prison as there is no facility for the treatment of prisoners with mental disability at Her Majesty’s Prison at Balsam Ghut.” Unfortunately, thirteen years later, this continues to be the situation. The learned Justice went further at **para 15** when she held that, since the Defendant suffered from a mental illness at the time of the offence and continued to do so, an alternative to incarceration should be considered. She stated: “Such a person in my judgment requires medical attention, not punishment. And I have already remarked there is not a separate facility for mentally ill prisoners at Her Majesty’s Prison. Incarceration, without more, of a mentally disordered person, will not assist with his or her rehabilitation and recovery.” Such reasoning remains true today.

[26] Crown Counsel also submitted the case of **The Queen v Robert Riley, ECSC BVI 2020**. For a charge of Wounding, which resulted in a laceration to the victim’s forehead requiring ten stitches, a twenty months’ suspended sentence was given. The basis for that order was described as “special circumstances.” Conceivably, therefore, the mental illness of an offender may fit into that category, allowing for a non-custodial disposition.

[27] Two Regional cases were also tendered by Crown Counsel wherein non-custodial dispositions were given for charges of Wounding. In **The State v Darris Prince, DOM HCR 2013/0012**, the victim was injured by a blow to the head resulting in blindness to the right eye. Notwithstanding such an injury, the Court passed a suspended sentence with conditions for counselling. In **The State v Andy Alexander Cassell, DOM HCR 2012/021**, the victim suffered a deep laceration to his leg. The Court sentenced the Defendant to a fine and compensation order. All of these cases are of assistance to the Court in the case at bar.

THE POSITION OF THE PARTIES

[28] Crown Counsel submitted that the Court should consider a starting point for sentencing at the 30% level, taking into account the harm caused by the offence as being in the Significant - High Category and the culpability of the offender as being in the Medium Category. He went on to cite what he described as several aggravating factors including the severity of the injury, the unprovoked nature

of the attack, the use of a weapon and the prevalence of this type of offence in the community. In mitigation, Crown Counsel refers to the Defendant's lack of any previous convictions as an adult.

[29] In relation to the issue of the prevalence of this type of offence, the Court refers to **Practice Direction 8A No. 1 of 2019** which holds that judicial notice can be taken of local circumstances, if appropriate. The Court can also receive evidence from local police, prosecutors, probation officers or other appropriate persons. Without such evidence having been tendered in this case, the Court declines to take judicial notice of the prevalence, if any, of this type of offence.

[30] Defence Counsel candidly submitted that aggravating factors in this case include injury to the Complainant, the unprovoked nature of the attack, the use of a weapon and a possible intention to commit more serious harm to the Complainant than was actually inflicted. In mitigation, Defence Counsel points out the mental health problems suffered by the Defendant, the assistance and cooperation he gave to the police, the early plea of guilty, the lack of any adult record for the Defendant and the claims by the Defendant that he suffered emotional and physical abuse from the Complainant. Defence Counsel also reminds the Court of the time spent on Remand by the Defendant.

[31] Defence Counsel submitted several authorities to support his position. However, of particular note is the case of **R v Godwin Modeste, ECSC Case No. GDAHCR 2016/0064**. Aziz J. pointed out at **para 25** that "people with mental disorders are more likely to exhibit the kinds of behaviors that will bring them into conflict with the criminal justice system." The learned Justice went on to observe at **para 28** that "once the mentally ill are within the criminal justice system, their condition may deteriorate as a result of inadequate treatment and because the circumstances of life behind bars are likely to exacerbate their condition." Further, without appropriate arrangements for treatment and services once offenders leave prison, there is a substantial risk that they will fall back into a lifestyle that can lead to conflict with the criminal justice system.

[32] The **Godwin Modeste** case is referred to in **Practice Direction 8A No. 1 of 2019** which confirms that mental impairment is a relevant sentencing consideration when it is supported by a report from a qualified professional, as in the case at bar.

FORMULATION OF SENTENCE

- [33] In crafting this sentence, the Court has relied upon the general provisions of the Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Violence, specifically, Inflicting Unlawful Violence With Intent to Cause Serious Harm. In establishing a starting point for sentence, the court has considered several issues. In assessing the harm caused by this offence, there can be no doubt that the Complainant suffered serious physical harm. The nature of his injury is illustrated in the forensic photographs. The medical report confirms a nasty wound to his neck, necessitating medical attention. The impact upon the Complainant must have been substantial, arising as it did, after he had retired to his bed. To be awakened and attacked must have been traumatic indeed. I therefore place this matter in Category 2, High Consequence.
- [34] In terms of the culpability of the offender and the level of seriousness, I note that, although a weapon was used, none of the other characteristics that would otherwise place this into the High Category are present. The attack upon the Complainant occurred shortly after he had argued with the Defendant's mother, in the presence of the Defendant. There appears to have been little planning on the part of the Defendant. After witnessing the treatment of his mother, he reacted violently, although totally inappropriately and wrongly. He acted alone and ran away immediately after striking the Complainant. I would therefore assign this to Level B, Lesser Seriousness.
- [35] By combining the first and second stages, I find the starting point for sentence to be 35% or 21 months.
- [36] When examining the aggravating and mitigating factors relating to the offence, it appears that the Defendant's mother, who was also the sister of the Complainant, was present in the house at the time. Although the incident occurred in the home of the Complainant, the Defendant also resided there. I have already noted that a machete was used in the assault and resulted in an injury to the Complainant. The assault itself consisted of a single blow, following which, the Defendant fled. Although the Defendant initially hid the weapon, upon his arrest, he took the police to the hiding place and turned the weapon over to them. The aggravating features would increase the sentence by 6 months and the mitigating features would reduce it by 2 months for a total of 25 months.

- [37] In considering the aggravating and mitigating factors as they relate to the offender, I note that when the Goodyear Indication was given, it was understood that the Defendant had no previous criminal record. The Social Inquiry Report, however, refers to a record and a formal record of convictions was obtained from the Royal Virgin Islands Police Force. The record showed four entries, all from 2005. At that time, the Defendant would have been 14 years of age. He has no record as an adult and even as a youth, he has no entries on his record for this sort of offence. He cooperated with the police, giving a statement under caution and leading them to the weapon. He admitted his role in the offence and accepted responsibility for his actions.
- [38] Of particular importance is the mental disorder that the Defendant suffered from at the time of the offence and indeed for many years before. As noted, the mother of the Defendant advised of a change to the medication that the Defendant was receiving at the time of this offence, and the impact that had upon him. The diagnosis of chronic schizophrenia and the long-standing nature of that condition are confirmed in the Social Inquiry Report and the Report of Dr. Torno. In addition to the other mitigating factors, I find the mental health problem suffered by this Defendant to be significant and I would therefore reduce the sentence by 10 months for a total of 15 months.
- [39] I give the Defendant full credit for his guilty plea, entered as it was at an early opportunity. By doing so, he spared the Complainant from having to testify about his ordeal and he saved the Court valuable trial time. This reduces the sentence by a further one third to 10 months. That was the disposition indicated in the Goodyear Indication. However, additional time continued to be served thereafter. The Defendant has been incarcerated on this charge since he was arrested on 18th May, 2020. He has now served approximately 421 days or approximately 1 year and two months. This Defendant has therefore already served any custodial sentence that this Court would impose upon him.
- [40] I take all of these considerations into account when formulating an appropriate sentence in this case. This is a very serious matter. Fortunately, the Complainant was not more seriously injured and there is no indication that he has suffered any residual problems. Although the Defendant has suffered from chronic schizophrenia for some time, including at the time of the offence, there is no suggestion that he was incapable of appreciating the nature and quality of his actions or of knowing that it was

wrong. The Defendant's medical condition must be considered. Rehabilitation and treatment are the prime considerations for mentally disordered offenders and this case is no exception.

[41] Where moral blameworthiness is reduced by reason of mental illness, the principle of proportionality requires a more lenient sentence and the range of sentencing objectives and outcomes should be modified accordingly. Specifically, the goals of deterrence and denunciation should not be emphasized. Instead, the Court must consider the protection of the public either through rehabilitative or custodial sentences, having regard to proportionality as determined by the circumstances of the offender and the offence. Court Orders and probationary terms can be imposed to attempt to foster treatment and increase the rehabilitation of the offender. Although the Court is troubled by the propensity of the Defendant to discontinue his use of medication, contrary to the recommendations of his treating physicians, it is simply wrong to incarcerate him for the purpose of treatment. However, the Court can impose an order that the Defendant accept such treatment as medical professionals determine. The Defendant has taken responsibility for his actions and entered a guilty plea. He is still a young man. He has served a lengthy pre-trial term of detention. However, his behaviour and his mental health indicate that he requires ongoing treatment. The Reports confirm that.

[42] A conviction is therefore registered. The record will show a sentence of time served. Under the provisions of **s. 21 of the Criminal Justice (Alternative Sentencing) Act**, I am satisfied that, having regard to all of the circumstances, including the nature of the offence and the character of the offender, including his mental health, it is not expedient to inflict any further punishment upon him, other than probation. The Defendant will therefore be placed on probation for a period of 18 months. The terms of the order will be as follows:

- (i) Keep the peace and be of good behaviour.
- (ii) Report to and be under the supervision of a probation officer.
- (iii) Appear before this Court when required to do so.
- (iv) Notify the probation officer and this Court in writing and in advance of any change of address or employment.

- (v) Attend for and accept such treatment and care as may be arranged by and under the direction of Dr. J.D. Torno, or any other duly qualified medical practitioner, in the area of chronic schizophrenia or any other mental health condition.
- (vi) Not to have any contact or communication with Tobias Prince.
- (vii) Not to be within 25 feet of Tobias Prince.
- (viii) A written progress report shall be submitted to this Court by the probation officer at the 90 day and 6-month periods of the probation term.

Richard G. Floyd
High Court Judge

By the Court

Registrar