

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2018/0003 & 2020/0057

REGINA

V

ANTHONY CORNELIUS

APPEARANCES

Ms Shannon Jones Gittens for the Crown.

Mr Lawrence Daniels for the defendant

2020: June 17

SENTENCE

**For unlawful wounding and later assault with intent to rob,
with a background of psychosis induced by cannabis use,
and where poor records were kept of the proceedings.**

- 1 **Morley J:** Anthony Cornelius aged 25 (dob 14.12.94) falls to be sentenced for unlawful wounding on 15.09.16 (case 3/18), and then while on bail, for assault with intent to rob on 31.08.18 (case 57/20). He has a mental health history and pleaded guilty at the first practicable opportunity on respectively 22.06.18 and 11.06.20.

- 2 Concerning the unlawful wounding, on 15.09.16 Gershom Henry then aged 53 went to play dominoes with friends under a mango tree, and as he approached he was rushed by Cornelius, then 21, unprovoked, who stabbed him about his body, superficially to his stomach, shoulder, right hip, and then twice through his left thigh, leading to stitches and Henry being in hospital for four days. In interview, Cornelius said he had felt threatened by Henry, had punched him in the face, and using a knife he had with him said chillingly he had 'inserted' it into him.
- 3 Concerning the assault with intent to rob, on bail for the unlawful wounding, on 31.08.18 Steadroy Challenger then aged 56 was in his superette serving two elderly women, when Cornelius, then 23, came in, premeditated with a face mask and gloves, armed with a hammer disguised in a black sock, declared 'this is a robbery, hand over all the money', and tried to hit Challenger in the head with the hammer, who received soft tissue trauma to his right hand in the ensuing struggle. Cornelius said nothing to police in interview.
- 4 Cornelius has relevant convictions, notably battery, assault, throwing missiles, resisting arrest and escaping lawful custody recorded on 02.07.15 for which he was fined \$4000ec, and then possession of cannabis recorded on 25.09.17 and 05.02.18 for which he was fined \$100ec each time (noting these appear also to be offences on bail).
- 5 The history of proceedings appears as follows:
 - a. On the unlawful wounding on 15.09.16, Cornelius was remanded in custody (including a month in Clarevue psychiatric hospital) from his arrest in September 2016 until October 2017, when then he was bailed.
 - b. On 12.04.18, he first appeared on bail at the High Court, before me, Morley J, when issues about his mental health were raised, so that his fitness to plead was delayed until June, when on 22.06.18 he pleaded guilty to unlawful wounding, count 3, on a three count indictment alleging wounding with intent to murder, and wounding with intent, as counts 1 and 2. Able Crown Counsel Adlai Smith sought a trial on at least count 2, as the evidence suggested the stabbings unprovoked and deliberate, and so the matter went on 30.07.18 for trial to my brother judge, Thom J.
 - c. On the assault with intent to rob on 31.08.18, it seems Cornelius remained on bail.

- d. On 03.10.18, confusion arose, as it appears there was no record made on the brief by Counsel Smith of events on 22.06.18, whereby Crown Counsel Shannon Jones Gittens before Thom J wrongly thought there had yet to be any plea, or if there had it had been somehow 'withdrawn', and mistakenly believing unlawful wounding had been said by Counsel Smith to be an acceptable plea, then accepted a plea to unlawful wounding, so that the count was put again to which Cornelius entered a (redundant) plea of guilty a second time. I will have more to say on this confusion later.
 - e. At this point on 03.10.18, it seems Cornelius was remanded into custody pending a social inquiry report, which was filed by probation officer Nakitia Williams on 22.11.18. As part of that report there were appended school results and a letter from Dr James King dated 24.10.18 on Cornelius' mental health, so that on 14.12.18 he was remanded by Thom J to Clarevue for assessment and review in 6 months, namely by 14.06.19.
 - f. Cornelius next appeared before me, Morley J, on 24.01.20, Thom J having retired in May 2019. On the file was an assessment by Dr King dated 20.06.19 he was fit to be sentenced.
 - g. No longer in need of assessment at Clarevue, on 31.01.20, Cornelius was remanded back to the prison, at which point the court was made aware of the assault with intent to rob as pending at the magistrates court to be sent up to the High Court, so that sentence on the unlawful wounding was adjourned for it to catch up.
 - h. Various delays arose compounded by covid, so that the second case finally joined the first on 05.06.20, whereupon he pleaded on 11.06.20, leading to both cases being opened on 16.06.20, with mitigation offered, hearing evidence from both Gershom Henry and the defendant's mother Jacqueline Cornelius, then adjournment overnight for these sentencing remarks to be written and delivered today, 17.06.20.
- 6 Concerning evidence heard on 16.06.20, Gershom Henry reported he still had pain in his stomach from the stab wound, though his other injuries have made a good recovery, and he explained he had received no compensation directly from Jacqueline. However, Jacqueline reported, (aside from how her son needed rehab for his cannabis use which had made him go 'flighty'), she had made an arrangement on 11.10.16, with Gershom's son Gregory, a responsible fire officer, to pay \$60000ec in compensation to his father, but who wished the

money paid to him as his father has an intoxication problem (which indeed seemed sadly evident to the court when he briefly gave evidence) so that it would be paid into a fixed deposit account for funds to be released as needed, for example as \$200ec at a time. A document was shown recording payments to Gregory on 11.10.16, 31.10.16, 01.12.16, 29.12.16, 01.01.17, 01.03.17, 04.04.17, 04.05.17, 07.06.17, 07.07.17, 05.08.17, 02.09.17 and 04.10.17, totalling \$26500ec. I am satisfied, and the Crown does not seek to gainsay (reporting on 05.06.20 it likely true a large sum has been paid) that indeed a sum of \$26500ec has been settled on the son of Gershom Henry in compensation in trust for his father. When asked why, Jacqueline responded, though evidently of modest means, it seemed right, and she was hoping it would help with leniency, while as to the amount offered she had taken no legal advice. I note in passing the monthly payments appeared abruptly to stop after Cornelius was bailed in October 2017.

- 7 Concerning Cornelius' mental health, Dr King reported in his letter of 24.10.18 he has a 'cannabis induced psychotic order vs shizoffective disorder bipolar type', there is a note he assaulted staff with a blade at Clarevue causing laceration to the face of ward assistant Glenmore Roberts on 17.12.18, and on 20 and 21.06.19 at Clarevue tested positive for cannabis use. In the psychiatric assessment of 20.06.19, Dr King reports Cornelius was his patient during 28.09-23.10.17, returning on 14.12.18, on medication, making poor progress, though fit to be sentenced, saying robotically of Gershom Henry, 'I stabbed him, he was drunk, I was high on cannabis...he violated my breathing space, so I punched him in the face then I stabbed him six times in his abdomen...I was wrong to the point of stabbing him so much...cannabis triggers the aggression in me.'
- 8 As to his social inquiry report, he has a poor relationship with his father, who is scathing of him, though his mother remains attentive and told me she never imagined he would turn out as he has, it being noted he was expelled from school and has only three cxcs.

Seriousness

- 9 The court knowing the history of the case, as it annotates assiduously as for all cases, the assault on Gershom Henry was to have been prosecuted at least as wounding with intent, where the maximum sentence is 15 years, as had first been the position of Counsel Smith, as recorded for 22.06.18 in the judge's notebook¹. I anticipate it would have been by Counsel Jones Gittens had there been a clearer or any note on Counsel Smith's brief from 22.06.18, no doubt a rare oversight, though she very fairly will not now seek to unseat the plea acceptance as it has stood for so long since 03.10.18.
- 10 I wish to remind all counsel, prosecuting or defending, as part of the professional duty to keep accurate records of cases, counsel should on each brief make a short record of outcome at each hearing, usually handwritten on the backsheet called an 'endorsement', like how a doctor keeps handwritten notes on a patient's file. This is not something for others to do, like the court police officers or assisting junior counsel, as they may be get it wrong or miss important points. It is done so instructed counsel can readily remind the court, and themselves, accurately of a case history and different counsel picking up the brief can quickly grasp it. I have noticed counsel often do not attend court with their case papers, and wonder how this practice sits with keeping a timely record of what has happened, recalling in my day at the Bar, learned from pupillage, all papers were required daily at court, or if seriously impracticable at the very least the backsheet for immediate endorsement. For lack of a clearer record available to Counsel Jones Gittens, it seems to me Cornelius may have been under-prosecuted for unlawful wounding, the maximum sentence being 5 years, when in a cannabis haze unprovoked, possibly in self-induced paranoia, he deliberately stabbed a man 6 times.
- 11 Moreover, concerning the assault with intent to rob, it has been prosecuted under **s33(3)** not **s33(1) Larceny Act** cap 241, where the maximum is 5 years instead of 15 years, notwithstanding there was an offensive weapon proffered which could have justified the more serious charge. I would have anticipated both on the indictment, and thought might have then been given to pleading out to the lesser, yet it was not discussed at the Magistrates court at which the committal was on the lesser charge only. I would respectfully remind Crown Counsel to consider all appropriate armoury.

¹ If needed, see Morley J judge's notebook 10 ps 41 and 46, and endorsements on the judge's backsheet for 22.06.18.

- 12 I mention these discomforts because there may be a strong argument Cornelius is 'dangerous', becoming aggressive on cannabis, to which he seems addicted and which to him is schizoaffective, noting the assault at Clarevue, possibly meriting an extended sentence for protection of the public from further offences of serious violence. However, as the Crown has proceeded on the lesser charges, which is generous, in my judgment it would now be unfair to make a dangerousness finding.

Constructing the sentences

- 13 Concerning the unlawful wounding, for the offence the starting point for injury with any blade is 3 years, here aggravated high on cannabis by lack of provocation and the number of times Cornelius stabbed Henry, namely six, to 4.5 years. Turning to the offender, he has relevant previous convictions, increasing the sentence by 6 months to 5 years, which is the maximum. In my judgment his psychiatric history is not mitigation as it is self-induced by voluntary consumption of cannabis, caused by him rather than not his fault. However the 5 years must now be reduced in fairness taking into account he has through his family voluntarily paid substantial compensation to Henry of \$26500ec, reducing the sentence 18 months to 3.5 years, being 42 months. Turning to the plea, it merits a discount of one-third, reducing to 28 months. As to ancillary issues, in light of the history, I note compensation in the sum of \$26500ec has been paid and make no further order.
- 14 Concerning the assault with intent to rob, for the offence the starting point is 2 years, aggravated to 4 years being armed with a hammer (as notwithstanding the lesser charge it remains a feature), while having caused a soft tissue injury. Turning to the offender, as before, he has relevant previous convictions, increasing the sentence by 6 months to 4.5 years, which is 54 months and his psychiatric history is not mitigation as it is self-induced by voluntary consumption of cannabis, caused by him rather than not his fault. Turning to the plea, it merits a discount of one-third, reducing to 36 months.

- 15 The second offence was while on bail for the first and therefore merits a consecutive sentence, so that the overall sentence is 28 months plus 36 months, making 64 months.
- 16 Turning now to totality, the sentence needs adjustment to reflect how Cornelius has spent 14.5 months in Clarevue, being from 28.09-23.10.17 and 14.12.18-31.01.20, noting this is not time the prison will set against his earliest date of release. However, time at the hospital is not the same as time on remand at the local prison, so in my judgment ought not automatically to be treated pro rata, so that an appropriate adjustment would be to reduce the sentence by 10 months to 54 months, which I will apply to the sentence for assault with intent to rob, reducing it from 36 months to 26 months, to add to the 28 months for the unlawful wounding, making the appropriate total of 54 months.
- 17 Of the 54 months, Cornelius can be expected to serve two-thirds, namely 36 months, or 3 years, before being eligible for automatic release on remission if of good behaviour, being I calculate 17.06.23, noting he has been on remand at the prison 15.09.16-28.09.17, then 03.10.18-14.12.18, and then 31.01-17.06.20, which I calculate is $378+72+139=589$ days, so that 589 days should be deducted from 17.06.23, leading to an earliest date of release as 06.11.21. Insofar as my math is mistaken I defer to the prison.
- 18 *Antony Cornelius, please stand up.* For the reasons I have explained, and adjusting for the time you spent at Clarevue, for the offence of unlawful wounding on Gershom Henry on 15.09.16 the sentence will be 28 months, and for assault with intent to rob Steadroy Challenger, the sentence consecutively will be 26 months, as it was on bail for the first, so that the total sentence of imprisonment will be 54 months, or 4.5 years. Time on remand at the prison shall count, to be deducted from calculation at the two-thirds point to take account of automatic release for remission if of good behaviour, and which I calculate, though I may be wrong, and defer to the prison, will mean an earliest release date of 06.11.21. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

17 June 2020