

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(ANGUILLA CIRCUIT)
(CRIMINAL)
A.D. 2019**

CASE NO. AXAHCR 2019/0008

BETWEEN:

REGINA

v

GLENROY HODGE

Appearances:

Ms. Nakishma Rogers-Hull, Senior Crown Counsel, Attorney General's Chambers
of Counsel for the Crown

Mr. Devin Hodge, appearing amicus for the defendant

2019: November 29;
December 13.

Sentencing – Causing Grievous Bodily Harm with Intent – Section 204 Criminal Code, R.S.A. c. C140 – Defendant originally indicted for Attempted Murder – Plea of guilty to lesser offence of Causing Grievous Bodily Harm with Intent – Possession of Firearm and ammunition – Sections 20 (1) (b) and 20 (4) Firearms Act, R.S.A., c. F30 – Discharge of firearm in a public place – Sections 23 (1) and 23 (3) Firearms Act – Defendant pleading guilty to firearm related offences – Approach to sentencing – Seriousness of offence – Culpability and harm – Aggravating and mitigating factors – Public officer – Prison Officer – Previous convictions for dissimilar offences – Character and antecedents of the defendant – Subjective factors influencing the defendant in the commission of the offence – Whether provocation a mitigating factor to be considered – Permissible aims of punishment – Deterrence – Rehabilitation – Victim Impact Statement – Whether imposition of a fine appropriate punishment – Whether suspended sentence appropriate in the circumstances – Whether Probation Order appropriate – Alternative sentencing

JUDGMENT ON SENTENCING

[1] **INNOCENT, J.:** The defendant was originally indicted on a five count indictment filed on 3rd April 2019 for the following offences: (1) attempted murder contrary to section 191 of the Criminal Code, (2) Causing grievous bodily harm with intent contrary to section 204 of the Criminal Code, (3) Discharging a firearm in a public place contrary to section 23 (1) as provided for by section 23 (3) of the Firearms

Act, (4) Possession of firearm contrary to section 20 (1) (b) as provided for by section 20 (4) of the Firearms Act and (5) Possession of ammunition contrary to section 20 (1) (b) as provided for by section 20 (4) of the Firearms Act.

- [2] The defendant was arraigned and entered pleas of guilty to the counts charging causing grievous bodily harm with intent, possession of firearm and possession of ammunition. The Crown withdrew the remaining counts on the indictment.
- [3] At the allocutus stage of the proceedings the sentencing exercise was deferred to permit Mr. Hodge who appeared amicus to assist the defendant in making his plea in mitigation. A Pre-Sentence Report ('PSR') was also ordered the court having recognized the seriousness of the offences which invariably would attract a custodial sentence. The court also directed counsel to file written submissions along with an agreed statement of facts. All of these requirements having been complied with the defendant now stands before the court for sentencing.

Agreed facts

- [4] At the time of the incident giving rise to these proceedings the virtual complainant was employed as a correctional officer at Her Majesty's Prison ('HMP') in Anguilla. It appears that the virtual complainant and the defendant knew each other prior to the incident, that is during the time that the defendant had been incarcerated at HMP for unrelated offences. During that time the defendant and the virtual complainant shared a less than perfect correctional officer-inmate relationship.
- [5] On the morning of 28th August 2017 the virtual complainant left his home in the Farrington and jogged along a route that took him along Rock Farm Road. While proceeding with his morning run he heard a male voice behind him. He turned around and saw the defendant whom he recognized as someone known to him previously holding a firearm that was pointed towards his head. The virtual complainant attempted to run away but the defendant soon caught up with him. While the virtual complainant was attempting to flee his assailant, the defendant discharged the weapon in the virtual complainant's direction. The projectile

discharged from the weapon, struck the virtual complainant on the upper right hand side of his back, near the area of his shoulder.

- [6] The virtual complainant wrestled with the defendant in an attempt to disarm him. During this episode the defendant struck the virtual complainant in the head with the firearm.
- [7] The incident was reported to the police who responded by attending the scene where the virtual complainant was discovered and taken to the hospital.
- [8] At the hospital, the virtual complainant presented what the attending physician described as a laceration to the forehead secondary to contusion injuries, a gunshot wound to the right axillar and scapula region and abrasions to the knees.
- [9] At the material time the defendant was not the holder of a permit to keep a firearm.
- [10] The defendant was subsequently arrested and taken into police custody. He was interrogated by the police. In an interview under caution statement he confessed his participation in the commission of the offence to the police authorities. In his confessional statement he provided the police with the details of all the events leading up to the shooting, including the reasons that motivated him to commit the offence, the manner in which he disposed of the firearm and the location where he disposed of the firearm. The firearm was never recovered.
- [11] In the interview under caution statement, the defendant intimated that he had been assaulted by the virtual complainant while in prison. The allegation was seemingly that which was suggestive of an assault of an unnatural kind. Further to that the defendant stated that, after his release from prison, on more than one occasion would blow kisses at him while he walked along the street. It is uncertain whether these allegations were independently and conclusively ascertained.

The approach to sentencing

- [12] In sentencing this offender, the court will strive to arrive at a sentence that is fair and just in all the circumstances of the case; that is, a sentence that is commensurate with the gravity of the offence and in keeping with the permissible aims of punishment. In constructing the appropriate sentence, the court will first determine a benchmark or starting point sentence by having regard to the seriousness of the offence. The seriousness of the offence will be determined based on the defendant's degree of culpability in the commission of the offence and the degree of harm caused by the commission of the offence.
- [13] After arriving at a suitable benchmark, the court will seek to arrive at a notional sentence that will be derived from weighing the aggravating and mitigating factors present in the case. When conducting this exercise, the court will either scale the benchmark upwards or downwards depending on the court's assessment of where the balance lies between the aggravating and mitigating factors.
- [14] In establishing the appropriate notional sentence, the court will consider the permissible aims of punishment; and must direct its attention to the question of whether the sentence imposed best serves any or all of the permissible aims of punishment. In conducting this exercise, the court will consider whether the permissible aims of punishment may be better served by any other method of punishment other than incarceration.
- [15] The court will also consider whether any additional period of detention is necessary to take account of the need to protect society from the likelihood of risk of serious harm from the offender.
- [16] In determining the appropriate length of the custodial sentence, in the event that one is warranted, the court will also take into consideration the question of whether a sentence that is greater than that which is commensurate with the seriousness of the offence is necessary for the purpose of the permissible aims of punishment.

- [17] In making this assessment the court will pay regard to the subjective factors, if any, that influenced the defendant in the commission of the offence. Factors such as the defendant's age, level of maturity, psychological dysfunction if any, and his character, personal circumstances and antecedent history will be considered by the court.
- [18] After arriving at a sentence that is proportionate, the court will then go on to consider whether the defendant is entitled to any reduction from the notional term to take account of the defendant's guilty plea, time spent on remand, any systemic delay in bringing the matter before the court, cooperation with police authorities, or any other factor which the court deems deserving of a reduction from the notional sentence.
- [19] When passing sentence in cases which involves the commission of several offences, the court will consider the totality principle and determine what sentence will ultimately reflect the defendant's degree of offending or the totality of his offending. Also, the court will have to determine whether the sentences should run concurrently or consecutively.
- [20] Ultimately, the court will determine whether the permissible aims of punishment can be met by the imposition of some other alternative means of punishment other than imprisonment.

The benchmark

- [21] In determining the 'benchmark' or 'starting point sentence', the court has paid regard to the seriousness of the offence as reflected by the defendant's degree of criminal culpability in the commission of the offence and the degree of harm caused in the commission of the offence.

Grievous bodily harm

- [22] The seriousness of the offences with which this defendant is charged is also reflected in the statutory penalties prescribed for the commission of the subject

offences. Section 204 of the Criminal Code prescribes a sentence of life imprisonment on conviction for the offence of causing grievous bodily harm with intent.

Possession of firearm and ammunition

- [23] Section 50 (b) of the Firearms Act prescribes a penalty of 14 years imprisonment and a fine for the offences of possession of a firearm and ammunition.
- [24] In determining the benchmark for each of the subject offences, the court is mindful of the fact that the benchmark is not necessarily the maximum penalty prescribed by law for the commission of the subject offences. The court is mindful of the discretion that it has to impose a lesser penalty than that prescribed by law for any offence.
- [25] The court is also aware of the fact there are no established sentencing guidelines emanating from the Eastern Caribbean Supreme Court in relation to the subject offences. Counsel has urged the court in their written submissions to rely on the UK Sentencing Guidelines for guidance.
- [26] Counsel on both sides have ably assisted the court by providing decisions from both Anguilla and other jurisdictions in the Eastern Caribbean involving sentencing for similar offences. The court does not hesitate to applaud counsel for their efforts. However, the court must be mindful of the fact that to some extent some of these decisions may be of limited assistance to the court, in so far as the approach to sentencing adopted by the sentencer may not be readily apparent or may not necessarily amplify the underlying basis for arriving at a particular sentence.
- [27] However, the decided cases have significant utility value to the extent that they serve as an indicator of the range of sentences imposed for similar offences that may as near as possible involve similar factual considerations. This may, in large measure, assist the court in arriving at a sentence that is proportionate and consistent, to the extent that it reflects a sentence that is commensurate with other sentences that may involve similar factual matrices. However, this concession is

qualified to the extent that ultimately what the sentencing court strives to achieve is consistency in approach rather than consistency in the type and length of sentences imposed.

- [28] In exercising its discretionary sentencing powers, a court ought not to be restricted to sentences imposed within a range set by decided cases. Each case and each offender should be assessed on its merits. What the law seeks to achieve in each case is proportionality. This principle of proportionality is a reflection of the concept that punishment must fit the crime and that in sentencing offenders the sentencing court must of necessity take into account all the surrounding factors involved in the commission of the offence including the circumstances of the offender.

Benchmark – grievous harm

Seriousness – degree of culpability

- [29] In assessing the defendant's culpability, the court took the following factors into account, namely:
- (a) use of an illegal, dangerous and potentially lethal weapon in the commission of the offence;
 - (b) the offence involved a sustained and repeated attack on an unarmed helpless victim;
 - (c) the offence was planned and premeditated;
 - (d) the offence was committed against a public officer albeit a person in authority as a form of reprisal; and,
 - (e) there was an attempt by the defendant to conceal the commission of the offence by secreting away or disposing of the weapon used in the commission of the offence.

[30] Relying on the UK Sentencing Guidelines, the prosecution has submitted that the commission of this offence can be categorized as a Category 1 offence denoting a high degree of culpability, with a starting point of 12 years custody with a category range of 9 – 10 years. In their written submissions the prosecution argued that this is an appropriate starting point and sentencing range given the fact that the commission of the present offence involved a high degree of harm and culpability.

Seriousness – degree of harm

[31] In assessing the degree of harm involved in the commission of the offence the court took into consideration the following matters, namely:

- (a) the serious personal injury caused to the virtual complainant;
- (b) the fear, anxiety and psychological harm caused to the defendant; and
- (c) the financial loss to the defendant.

[32] I agree entirely with the prosecution's argument that the commission of this offence imports a high degree of culpability and harm.

[33] Mr. Hodge on the other hand concedes that the commission of the subject offence falls within a Category 1 offence based on the UK Sentencing Guidelines. However, notwithstanding this concession, Mr. Hodge submits that the degree of culpability falls at the lower end of the scale. In support of this argument Mr. Hodge contends that the allegations made by the defendant against the virtual complainant amounted to what he described as "peculiar circumstances that no ordinary heterosexual man would reasonably be expected to endure 'unphased'".

[34] Mr. Hodge has not sought to rely exclusively on the UK Sentencing Guidelines. Instead he relied on the range of sentences in the decided cases presented to the court. According to Mr. Hodge, the cases relied on by the Crown in their written submissions illustrate a sentence range of 4 -10 years.

- [35] Therefore, Mr. Hodge contends, that the court should pay regard to “the nature and cumulative effect of the acts of the defendant in making an evaluative judgment” as to the sentence to be imposed.
- [36] In the circumstances, Mr. Hodge says, that an appropriate starting point would be 9 years imprisonment. That is, at the lower end of Category 1. The court disagrees.
- [37] Mr. Hodge drew the court's attention to the case of **The Queen v Alexander Wheatley**¹, where the offender was charged with the offence of wounding with intent to do grievous bodily harm. The offender, while being arrested by three police officers, stabbed a woman police constable in her back with a knife. He pleaded guilty and was sentenced to 2 years imprisonment.
- [38] The case of **The Queen v Evans Joseph**² was also drawn to the court's attention in Mr. Hodge's written submissions. In that case, the defendant was charged with attempted murder and wounding with intent of a prison officer. The defendant was convicted of the lesser offence of wounding with intent and was sentenced to 6 years imprisonment.
- [39] The distinguishing feature of the present case from the cases cited in argument by Mr. Hodge, is that the instant case, the commission of the offence lacked spontaneity and did not arise in response to any immediate threat. What stands out however, is that the commission of the subject offence must have involved some degree of planning and premeditation.
- [40] In the circumstances, the court will adopt a benchmark of 12 years imprisonment for the offence of causing grievous bodily harm with intent.

¹ BVIHCR 2001/0017

² BVIHCR 2005/0010

Notional sentence – grievous bodily harm

Aggravating factors

[41] In arriving at the notional sentence, the court was able to distill the following aggravating factors, namely:

- (a) the defendant intended to inflict greater harm on the virtual complainant than that which actually resulted from the commission of the offence;
- (b) the defendant opted to take the law into his own hands; and
- (c) the firearm used in the commission of the offence was never recovered;

Mitigating factors

[42] The court considered the following matters to be the mitigating factors present in the case:

- (a) the defendant cooperation with police authorities;
- (b) the defendant has no previous convictions for any similar offence;
- (c) the defendant's good character and the community's perceptions of him;
- (d) the remorse shown by the defendant; and,
- (e) the defendant's admission of guilt at the earliest opportunity in terms of his confessional statements.

[43] Although Mr. Hodge conceded the aggravating factors identified by the prosecution, he argued that the mitigating factors outweighed the aggravating factors present in the case. In a most novel argument, Mr. Hodge sought to identify provocation as an aggravating factor that would not only diminish the defendant's degree of criminal culpability, but also palliate the degree of harm.

- [44] Mr. Hodge made a most passionate plea in mitigation. According to Mr. Hodge, the court ought to consider passing a noncustodial sentence for the following reasons. First, he says, that the defendant's character and antecedents suggest that his conduct giving rise to the commission of the subject offences was out of character for the defendant. Second, he submitted that the defendant's conduct was the result of a prolonged and consistent pattern of behavior on the part of the virtual complainant towards the defendant, the results of which were humiliation, embarrassment and emasculation endured by the defendant. According to Mr. Hodge it was these feelings that drove the defendant to a breaking point.
- [45] In a rather surprising submission, Mr. Hodge argued that although provocation in its strictest sense is not a defence to the offence, it may be regarded as a mitigating factor. Mr. Hodge submitted that the humiliation, assault and feelings of emasculation endured by the defendant at the hands of the virtual complainant coupled with the virtual complainant's persistent conduct towards the defendant after he had left HMP, had a negative impact on the defendant that drove the defendant to the point of no return, to the extent that he held the desire to right the wrongs that he felt that the virtual complainant has perpetrated against him.
- [46] The court accepts that in many instances, provocation, quite separate and apart from being a partial defence to a charge of murder, can afford substantial mitigation to a defendant at the sentencing stage of criminal proceedings. However, this cannot be regarded as a proper case in which the court can apply this principle. This principle has been applied to cases of murder and manslaughter where there has been persistent provocative conduct by the deceased towards the defendant such as in domestic violence cases.
- [47] The court declines to follow Mr. Hodge's reasoning. The defendant in this case, notwithstanding his claims of being molested and harassed by the virtual complainant over a sustained period, decided to take matters into his own hands. The manner and execution of the subject offence suggest that there was some degree of planning and premeditation. This must be contrasted with a situation

where the circumstances of molestation, harassment and ridicule were extant. This was hardly the case in this instance. Notwithstanding the court's rejection of Mr. Hodge's argument, the court cannot refuse to accept the virtual complainant's behavior as being a trigger setting off the defendant's conduct. Therefore, the court is minded to treat it as a mitigating factor even though to a limited extent.

[48] The defendant in his interview under caution statement to the police went into elaborate detail in explaining his reasons for committing the offence. He also expressed remorse and lamented not having dealt with the virtual complainant's behavior towards him by reporting the same to the relevant authorities as opposed to taking matters into his own hands. He also expressed remorse in his interview with the writer of the PSR.

[49] The court finds that the aggravating factors outweigh the mitigating factors in the present case. Therefore, the benchmark sentence of 12 years imprisonment will be scaled upwards by 3 years to take account of this fact. Hence the notional sentence for this offence will be 15 years imprisonment.

Benchmark – firearm offences

Seriousness – degree of culpability

[50] The seriousness of this class of offence is reflected in the statutory penalty prescribed for the commission of the same. Section 50 (b) of the Firearms Act prescribes a penalty of a fine or imprisonment for a term of 14 years or both on conviction upon indictment.

[51] In assessing the defendant's degree of criminal culpability in the commission of the offence the court took into account the following factors: -

(a) the purpose for which the defendant unlawfully had the firearm in his possession and the use to which the firearm was put;

(b) the firearm was loaded at the time; and

(c) the firearm and ammunition were never recovered.

Seriousness – degree of harm

- [52] In assessing the degree of harm in the commission of this class of offence, the court took into account similar factors as highlighted for the offence of causing grievous bodily harm with intent. Therefore, to avoid duplication or double counting the court will consider these factors in accordance with the totality of the defendant's offending.
- [53] In arriving at a suitable benchmark, the court also paid regard to sentences imposed for similar offences in this jurisdiction. In this regard the court is grateful to counsel for providing the necessary authorities.
- [54] The court has discerned that although these decisions give an indication of the final sentence, they do not assist the court in distilling the approach to sentencing taken by the sentencer when imposing the sentence. Also, no indication is given with respect to the starting point adopted.
- [55] Therefore, in the absence of any definitive sentencing guidelines from this jurisdiction the court will be left to construct a sentence that is based on a suitable benchmark that reflects the seriousness of the offence and one that is based on the principles of judicial sentencing.
- [56] Nevertheless, it appears that the sentencing range for the commission of this type of offence is 2 years imprisonment to 7 years imprisonment.
- [57] In determining the seriousness of the offence the court sought guidance from the dicta of Lord Bingham CJ in the case of **R v Avis and Others**³ cited in **Kashorn John v The Commissioner of Police**⁴ where his Lordship said:

“The appropriate level of sentence for a firearm offence, as for any other offence will depend on all the facts and circumstances relevant to the

³ [1998] 1 Cr App Rep 420

⁴ [2008] ECSCJ No. 87

offence and the offender, and it would be wrong for this Court to seek to prescribe unduly restrictive sentencing guidelines. It will however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What if any use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specified criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearm offence or other crimes of violence."

[58] In the circumstances, after assessing the degree of harm and the defendant's degree of criminal culpability the court adopts a benchmark of 10 years imprisonment. The court finds the defendant's culpability to be high based on the factors that the court has taken into account. The court also finds that the degree of harm, resulting in actual physical and mental harm, to be high given the circumstances in which the offence was committed. Therefore, the court finds that the benchmark of 10 years imprisonment is justified in all the circumstances of the case.

Notional sentence – firearm offences

- [59] The court has determined that the aggravating and mitigating factors present in the commission of the firearm related offences are ostensibly the same as for the offence of causing grievous bodily harm with intent. Therefore, to avoid duplication the court gives way to the principle of totality.
- [60] Notwithstanding this, the court finds the aggravating factors outweigh the mitigating factors. In fact, the court finds that there are no mitigating factors save and except that the defendant has no previous convictions for any similar offences. Therefore, the court has adopted the view there exist the need to scale the benchmark upwards after weighing the aggravating and mitigating factors. In the circumstances, the court will scale the benchmark upwards by 2 years. Accordingly, the notional sentence that the court will adopt will be 12 years imprisonment for each of the firearm related offences.

Subjective factors

- [61] The court in constructing the appropriate sentence has paid regard to the character and antecedents and the subjective factors that might have influenced the defendant in the commission of the offence. In this regard the court was assisted immensely by the PSR.
- [62] The defendant is 25 years old. He was 23 years old at the time that he committed the subject offences. He is unwed and has no children. Prior to the commission of the offence he resided with his paternal grandmother.
- [63] The defendant revealed to the writer of the PSR that he used cannabis from the age of 12 to 23 years of age.
- [64] The Probation Officer who interviewed several relatives and close associates of the defendant, received what can be described as favourable reports regarding the defendant's character in the community and the public's perception of him.

- [65] The PSR also revealed that the defendant did not complete his secondary school education and he is therefore without any formal certification.
- [66] The remorse shown by the defendant is reflected in the PSR, where he relates to the writer that he felt harassed by the virtual complainant, but, however, in retrospect he should have reported the incidents to the relevant authorities rather than taking matters into his own hands.
- [67] The PSR revealed that the defendant has a previous conviction for unlawful and malicious grievous bodily harm. At the material time, the defendant was 15 years old hence a juvenile. He was dealt with by the imposition of a 12-month Probation Order. The court will not take this previous offending into account in determining sentence. Instead this previous conviction will be treated as part of the defendant's remote and distant past.
- [68] The defendant has a total of 8 previous convictions dating back from 6th March 2016; 5 of which involved traffic offences, and the other 3 related to possession of cannabis. The defendant served a period of 8 months imprisonment for defaulting on the payment of the fine for the cannabis offences and a period of 1 month incarceration for defaulting on the payment of a fine for another offence. The court will not treat these previous convictions as relevant to the present sentencing exercise.
- [69] The PSR has categorized the defendant as posing a medium risk of reoffending without intervention; and, as posing a medium risk of harm to others.
- [70] The court also considered a Report from HMP in relation to the defendant's deportment and conduct while on remand. This report gives an account of the defendant being an inmate who presented with some challenges during his initial period of remand. However, based on the Report the defendant appears to have become more settled and has displayed a much improved behavior.

Victim Impact Statement

- [71] In his Victim Impact Statement, the virtual complainant described the incident as being a very painful and harmful experience. He stated that after he was discharged from the hospital he spent several weeks at the police station. The court takes this to mean that he was kept there for his own protection.
- [72] The virtual complainant states that since the incident he has suffered physically, emotionally, psychologically and financially. The Victim Impact Statement reveals that after the incident he was placed in a witness protection program that severely interrupted the useful pattern and course of his life. The virtual complainant claims that he was sent back to his country of origin because he feared that his life was in danger. He claims to suffer from headaches, insomnia and recurring nightmares because of the incident. As a result, he says, he was referred to a psychiatrist for evaluation and treatment. He stated that he has been diagnosed with post-traumatic stress disorder a condition for which he has been placed on medication and cognitive behavioural therapy. The virtual complainant stated that he still suffers from anxiety and panic attacks. He also claims that his short term memory and attention span have also been affected negatively.
- [73] Although there is no way of verifying these facts by way of independent evidence, it seems self-evident that a victim sharing a similar experience as that of the virtual complainant in this case would more likely be similarly impacted.

Deduction – guilty plea

- [74] The defendant in this case will be credited for his early guilty plea. Therefore, a period equivalent to 1/3 of the notional sentence will be deducted for each offence. Accordingly, with respect to the offence of causing grievous bodily harm with intent a period of 5 years will be deducted from the notional sentence of 15 years imprisonment. For the offences of possession of firearm and ammunition a period of 4 years imprisonment will be deducted from the notional sentences of 12 years imprisonment. In the circumstances, the notional sentence will be reduced to

10 years imprisonment for the offence of causing grievous bodily harm with intent and 8 years imprisonment for the firearm related offences.

Deduction – cooperation with authorities

- [75] Although the defendant appeared to have made a valiant attempt to cooperate with police authorities, the court does not find that this warrants any deduction from the notional sentence. This is the case because the defendant's cooperation with the police failed to lead to the recovery of the firearm used in the commission of the offence. In all the circumstances of the case, apart from the defendant's confessional statement when confronted with the incriminating facts, no further assistance was rendered to the police authorities in recovering a dangerous weapon which may very well be unlawfully at large and quite likely capable of being used in the commission of other offences.

Deduction – time spent on remand

- [76] The defendant is entitled to be credited for all the time that he has spent on remand prior to sentence. The defendant has spent a period of 2 years 3 months and 7 days on remand (a total of 835 days). This period of 835 days will be deducted from each of the notional sentences imposed by the court. Therefore, from the sentence of 10 years imprisonment on the charge of causing grievous bodily harm with intent, and from the period of 8 years imprisonment on charges of possession of firearm and possession of ammunition respectively, a period of 2 years 3 months and 7 days will be deducted therefrom.
- [77] In the circumstances, the defendant will serve a period of 7 years 8 months and 24 days imprisonment on the charge of causing grievous bodily harm with intent from today's date. On the charges of possession of a firearm and possession of ammunition, the defendant will serve a period of 5 years, 8 months and 24 days imprisonment from today's date.

Totality principle

- [78] All the offences arose out of the same transaction or series of events and were perpetuated against the same victim. In the circumstances, the court sees no reason why the sentences ought not to run concurrently. The court is of the view that the overall sentence to be served by the defendant is adequate to reflect the totality of the defendant's wrongdoing.

Alternative sentencing

- [79] Given the seriousness of the subject offences, the court is of the view, that no other sentence other than the imposition of a custodial sentence will suffice to serve the permissible aims of punishment in the present case. The sentence imposed by the court must reflect society's abhorrence for the commission of this type of offence by meting out a sentence that punishes the offender for his wrongs, and at the same time acting as a deterrent to would be offenders. The court does not see the need, based on the defendant's personal circumstances, which the court has set out above and which is also reflected in the PSR, to impose a sentence that is more than commensurate with the seriousness of the offence to take account of the need to protect the public from serious harm from this offender.
- [80] The court is also of the view that a suspended sentence is not the appropriate method of dealing with this offender. This is so again because of the seriousness of the offence. Also, the court does not see how a sentence of imprisonment is likely to derail the defendant in his future prospects.

Order

- [81] In the circumstances, the order of the court is as follows:
- (a) For the offence of causing grievous bodily harm with intent, the defendant is sentenced to 7 years, 8 months and 24 days imprisonment from today's date.

- (b) For the offence of possession of firearm, the defendant is sentenced to 5 years, 8 months and 24 days imprisonment from today's date.
- (c) For the offence of possession of ammunition, the defendant is sentenced to 5 years, 8 months and 24 days imprisonment from today's date.
- (d) The sentences are to run concurrently.

Shawn Innocent
High Court Judge

By the Court

Registrar