

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

CASE NO. AXAHCR 2019/0013

BETWEEN:

REGINA

v

EARL CARTER

Appearances:

Ms. Erica Edwards, Senior Crown Counsel, Attorney General's Chambers of Counsel for the Crown

Ms. Navine Fleming, Libran Chambers of Counsel for the defendant

2019: November 4.

Sentencing – Grievous Harm – Wounding – Sections 204 and 205 Criminal Code, R.S.A. c. C140 – Plea of guilty to lesser offence of wounding – Discount for guilty plea – Approach to sentencing – Aggravating and mitigating factors – Defendant 61 years old at the time of commission of offence – Previous conviction for assault – Defendant an alcoholic – Whether alcoholism a mitigating factor – Character and antecedents of the defendant – Subjective factors influencing the defendant in the commission of the offence – Permissible aims of punishment – Deterrence – Rehabilitation – Whether imposition of a fine appropriate punishment – Whether suspended sentence appropriate in the circumstances – Defendant on Probation at the time of committing offence – Alternative sentencing

JUDGMENT ON SENTENCING

[1] **INNOCENT, J.:** The defendant was originally indicted on various counts of grievous harm and wounding contrary to sections 204 and 205 respectively, of the Criminal Code, R.S.A. c. C140. Upon his arraignment he entered a plea of guilty to the lesser offence of wounding. The prosecution withdrew the remaining counts on the indictment. He is now before the court for sentencing.

- [2] The court had ordered that prosecuting and defence counsel file written submissions on sentencing. A Pre-Sentence Report ('PSR') was also ordered.
- [3] I have had the opportunity to read the written submissions of counsel on sentencing. The Crown has presented a report of the defendant's antecedent offending.
- [4] The charge contained in the indictment arose out of an incident that occurred on 20th March 2018. The undisputed facts are that the defendant and the virtual complainant had a verbal exchange over money owed to the defendant by the virtual complainant. During this conversation a third person intervened and there was a physical confrontation between the third person and the virtual complainant. During this incident the defendant slashed the virtual complainant across the back with a knife. The defendant suffered a laceration 24 cm in length and 3 cm deep from the left upper quadrant of the abdomen to the left flank. He was treated at the hospital and discharged the same day. The defendant was arrested and he gave a confession statement to the police. For all intents and purposes he cooperated fully with the police authorities.

Seriousness of the offence

- [5] In determining the benchmark or starting point the court will have regard to the seriousness of the offence. The prescribed statutory penalty for the commission of the offence is 5 years imprisonment. In any event the starting point or benchmark is not usually the maximum prescribed statutory penalty for the commission of the offence. The court always has the discretion to impose a lesser penalty than that prescribed by law. Nevertheless, the seriousness of this class of offence is reflected in the statutory penalty prescribed for the commission of the same.
- [6] In determining the sentence to be imposed, the court will adopt the following approach. First, the court will determine a benchmark or starting point by determining the seriousness of the offence. The seriousness of the offence will be

determined having regard to the harm caused and the defendant's degree of criminal culpability in the commission of the offence. The court is also mindful of the fact that the sentence likely to be imposed must be commensurate with the seriousness of the offence.

- [7] After determining the benchmark, the court will scale the benchmark upwards or downwards to take account of the aggravating and mitigating factors in the case to arrive at a notional sentence.
- [8] After determining the notional sentence, the court will make deductions to take account of the defendant's guilty plea and any time that the defendant spent on remand.
- [9] The court will also have regard to the permissible aims of punishment in determining the kind of punishment that is best suited to punish the defendant for the subject offence. In so doing, the court will have regard to the subjective factors that might have influenced the defendant in the commission of the offence.
- [10] In addition, the court will make a determination whether any alternative form of sentencing may serve the permissible aims of punishment. In other words, whether any period of incarceration is necessary to achieve the permissible aims of punishment.

Harm

- [11] In assessing the degree of harm the court paid regard to the following features of the present case:
 - (a) The offence was committed in circumstances where there was a serious risk of harm and or personal injury. The virtual complainant received a deep laceration, which although not life threatening most likely resulted in pain, distress and anxiety.

- (b) The offence was likely to cause alarm and distress to persons who were present.
- (c) Location in which the offence was committed. The offence was committed in a public place.
- (d) The financial expense placed on the virtual complainant in seeking medical treatment. The financial loss to the virtual complainant in having to lose time at work.

Culpability

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

- (a) Possession of a highly dangerous and potentially lethal weapon. According to the defendant he inflicted the injury on the virtual complainant using a drywall knife that he had in his possession. Judging from the nature of the injury suffered by the virtual complainant, the implement used must have been very sharp; and must have been applied with a relatively moderate degree of force.
- (b) The defendant disposed of the weapon after the commission of the offence.
- (c) The absence of any reasonable excuse or justification for his conduct. The defendant's conduct went over and beyond what was commensurate to any perceived or real threat.
- (d) The virtual complainant was unarmed at the time.

[13] 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. It appears from the decided authorities that the sentencing range in this jurisdiction for the commission of this offence is between 4 months to 4 years imprisonment.

[14] Despite the court's expression of gratitude for the sentencing guidelines provided by Counsel, 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. Therefore, in the absence of any definitive sentencing guidelines from this jurisdiction, the court will be tasked with constructing a sentence that is based on a suitable benchmark that reflects the seriousness of the offence based on the principles of judicial sentencing.

[15] In the circumstances, after assessing the degree of harm and the degree of criminal culpability the court adopts a benchmark of 3 years imprisonment.

The notional term

[16] In arriving at the notional sentence, the court weighed the aggravating and mitigating factors present in the instant case. The court finds that the aggravating factors outweigh the mitigating factors. Therefore, the court considers it necessary to scale the benchmark upwards to take account of this. Therefore, the court will scale the benchmark of 3 years imprisonment upwards by 1 year thereby arriving at a notional sentence of 4 years imprisonment.

Aggravating factors

[17] The court has identified the following aggravating factors present in the case: -

- (a) The defendant has a previous conviction for an offence involving either the use of violence or violent conduct, namely assault.
- (b) The present offence was committed while the defendant was on probation for the offence of assault mentioned at (a) above.

Mitigating factors

- [16] The court identified the following mitigating factors in the case: -
- (a) The defendant's cooperation with the police. The defendant gave a full confession to the police and assisted them in attempting to recover the weapon.
 - (b) The admissions made by the defendant in the course of the police interview under caution.
 - (c) The defendant's remorse shown towards the commission of the offence.
- [17] Having weighed the aggravating and mitigating factors in the present case the court will fix the notional sentence at 4 years imprisonment.

Discount for guilty plea

- [18] The defendant has pleaded guilty at this stage of the proceedings. This is not the first available opportunity that he had to enter a plea. Therefore, he will not be entitled to a full 1/3 discount from the notional sentence that the court is minded to impose. In the circumstances, the court will discount 1/4 of the notional sentence which amounts to a period of 1 year to take account of the defendant's guilty plea.
- [19] Therefore, the sentence that the court will impose is 3 years imprisonment. However, the court in considering the permissible aims of punishment has had cause to reflect on the defendant's personal circumstances and the subjective factors that might have influenced him in the commission of the offence. In this regard the court is guided by the matters contained in the PSR. Therefore, the court must consider whether the imposition of a custodial sentence is likely to achieve the objective of the permissible aims of punishment, more relevant to the present case would be that of punishment and rehabilitation. The court must achieve a balance between these two permissible aims of punishment.

[20] The defendant is 62 years old and was 61 years old at the time he committed the subject offence. He is married with 2 grown children. The PSR gives a vivid account of the defendant's alcoholism. The defendant's alcoholism may very well have contributed to his behavior on the subject occasion. Therefore, it appears that the defendant requires social intervention, in order to assist him with overcoming his penchant for alcoholic substances. It also appears that previous attempts at intervention have failed. The court is also of the opinion that such intervention may be achieved outside of the prison environment. However, this is not to downplay the seriousness of the offence which clearly must be driven home to the offender by the kind of punishment that the court imposes. The court does not find it appropriate to make a Probation Order in the manner suggested by Ms. Fleming. The defendant is already subject to such an order, which he has breached.

[21] In the circumstances, the court has considered that although a period of incarceration would be justified in the present case, an alternative sentence may very well serve the permissible aims of rehabilitation and punishment.

Suspended sentence

[22] In the circumstances, the defendant is sentenced to 3 years imprisonment on count three on the indictment. This sentence is suspended for a period of 1 year. Should the defendant commit any offences or fails to undergo any programs which the court deems necessary for his rehabilitation, during the period of 1 year he shall be brought back to court for the determination of the length of the remainder of the sentence that he shall serve. The defendant is also ordered to attend counselling for his substance abuse to be supervised by the Department of Probation.

[23] The Department of Probation shall submit a progress report to the court, regarding the defendant, every six (6) months during the abovementioned period of 1 year.

Shawn Innocent
High Court Judge

By the Court

Registrar