

**EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR2018/0005

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

and

PAULUS RICHARDSON

Appearances:-

Ms. Greatess Gordon, Mr. Teshawn Vasquez and Ms. Lanein Blanchette, Crown Counsel for the Director of Public Prosecutions.

Mr. Hesketh Benjamin for the Defendant.

2018: May 17th

JUDGMENT ON SENTENCE

Introduction

[1] **WARD J.:** On 6th March, 2018 the defendant was convicted by the jury on a count of unlawful wounding. The court ordered that a Social Inquiry Report be prepared and deferred sentencing pending its receipt. The court has since received a Social Inquiry Report dated 13th April, 2018 authored by Probation Officer, Gerald Connor.

[2] The court heard oral submissions on sentence and considered written submissions submitted by the prosecution. This is the court's judgment on sentence.

The Facts

[3] The defendant is the nephew of the virtual complainant. He had loaned his uncle EC \$1,080.00 and on 26th November, 2014 called at the virtual complainant's house enquiring about the repayment of the money. He instructed the virtual complainant to come outside and asked him when he was going to get the sum that was owed. The VC told him that he should return on Friday because he expected to be paid that Thursday. This response did not satisfy the accused who became agitated. The virtual complainant asked him to leave but the defendant was adamant that he would not.

[4] When he refused, the virtual complainant pushed him off the porch and turned to go inside. As he started to do so he looked back and was struck in the face with a hammer which the defendant had pulled from a bag he was carrying. He touched his face and discovered that it was bleeding profusely. He said to the defendant *"Paulus you buss down mih face man."*

[5] He went inside and returned armed with a machete. The defendant told him, *"Come. This time I turn the hammer round and claw down your face."* With that said, the accused backed out of the yard.

[6] The virtual complainant got into his car and drove to the police station. He was eventually conveyed to the Joseph N. France Hospital where he underwent surgery for a fractured jaw and was warded for about a week thereafter. He also attended follow-up therapy and treatment at Dr. Brooks' Clinic in Nevis for about three months. To this day numbness persists in the jaw.

The Pre-Sentence Report

- [7] The defendant is now 48 years and has no previous convictions. A resonating theme throughout the Social Inquiry Report is the close bond previously shared between the defendant and the virtual complainant prior to this incident and the genuine remorse expressed by the defendant when interviewed. Friends and neighbours who were interviewed expressed surprise on learning of the incident, viewing it as out of character of the defendant whom they knew as a friendly, helpful person who has walked away from situations before.
- [8] The court also heard evidence from the defendant's sister and nephew. His nephew described him as the counsellor of the family as, whenever a problem arose in the family, he would always be there to proffer advice and mediate.

Plea in Mitigation

- [9] Learned Counsel, Mr. Hesketh Benjamin, advanced an eloquent and stirring plea in mitigation on behalf of the defendant. Counsel highlighted the fact that the defendant has no previous convictions and stressed that the defendant was genuinely remorseful and had asked that an apology be conveyed to the virtual complainant through counsel. Additionally, learned counsel indicated that the defendant was willing to offer compensation to the virtual complainant.
- [10] Mr. Benjamin asked the court to view these as mitigating factors.
- [11] On behalf of the prosecution, Learned Crown Counsel Ms. Blanchette submitted that the aggravating features of this case are:
- (i) The serious nature of the injury sustained by the virtual complainant;

- (ii) The use of a weapon in the attack;
 - (iii) The age of the virtual complainant.
- [12] Learned Crown Counsel accepted that the defendant's previously clean record was a mitigating factor.
- [13] A number of authorities were cited by Learned Crown Counsel which imposed sentences ranging from 3-4 years.
- [14] In **Kasim Buchanan**¹, the defendant and his brother got into an altercation with the virtual complainant. When he fell to the ground the defendant kicked and stomped him about the face. For about 10-13 minutes. According to the evidence. The defendant was convicted of unlawful wounding and sentenced to four years imprisonment.
- [15] In **Julian Samuel**², the defendant was involved in an altercation with the virtual complainant. With a broken bottle, he sliced the virtual complainant's stomach. The defendant was found guilty of unlawful wounding and sentenced to three years imprisonment.

Discussion

- [16] In the Federation of St. Christopher and Nevis, the maximum penalty prescribed for unlawful wounding is seven years imprisonment pursuant to section 19 of the Offences Against the Person Act Cap 4.21.
- [17] In performing the sentencing exercise the cardinal principles of sentencing are uppermost in my mind:
- Punishment:** The objective here is to reflect society's abhorrence of criminal conduct especially of this type of offence;

¹ SKBHCRAP2012/0016

² SKBHCR 2014/0024

Deterrence: This is aimed at not only deterring the particular offender from committing further offences but also to deter like-minded people from engaging in similar deviant behavior;

Prevention: This is aimed at protecting society from the particular offender re-offending against the law by incarcerating him;

Rehabilitation: Here, the court considers whether the offender is capable of rehabilitation and reintegration into society as a contributing member of society. The court is concerned to shape the sentence in a way that assists in achieving this objective.

[18] In some cases, all of these aims may not necessarily be met. The duty of the court is to consider which of these will be best served by the sentence to be passed on a particular offender.

[19] The first task, therefore, is to identify an appropriate starting point, meaning the sentence appropriate when aggravating and mitigating circumstances relating to the offence are taken into account, but excluding aggravating and mitigating features personal to the offender. These are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging the seriousness of the offence and, in particular, whether a custodial sentence is presumptively appropriate. In other words, the starting point is the sentence considered appropriate for the particular offence after a contested trial.

[20] The court considers the following matters constitute aggravating factors relative to the offence:

- (a) The serious nature of the injury inflicted. The virtual complainant sustained a fractured jaw which required surgery and follow up sessions. Numbness of the jaw persists to this day.
- (b) Use of a weapon –a hammer- to inflict the injury;
- (c) The age of the victim.

- [21] I am unable to discern any mitigating circumstances relative to the offence.
- [22] In the court's assessment, having regard to the foregoing matters, this offence is in the mid-range on the seriousness scale. Accordingly, I have determined that a custodial sentence is presumptively appropriate with a starting point of four years.
- [23] This starting point sentence is susceptible to upward or downward adjustment depending on the existence of aggravating or mitigating factors personal to the offender unless there is a cancelling out; in which case there will be no adjustment at all. These subjective circumstances of the offender inform the degree of culpability of the particular offender.
- [24] There are no aggravating factors relevant to the offender. On the other hand, I recognize that the defendant has attained the age of 48 years without having attracted any previous convictions, has expressed genuine remorse and has offered and paid compensation in the sum of EC \$25,000.00 to the virtual complainant. These matters constitute strong mitigation and would purchase a significant discount of the sentence to 2 years.
- [25] It is settled that a prisoner who fails to be sentenced should be credited for time spent in pre-sentence custody. The court has ascertained that the defendant has spent two months and 10 days in pre-sentence custody on this charge and this period is credited to him leaving one year, eight months and twenty days.

Disposition

- [26] The sentence at which the court has arrived has been informed by the contents of the Social Inquiry Report, the submissions of counsel and the

authorities cited. Ordinarily, an immediate custodial sentence would have been appropriate. However, I am persuaded that this is a case where the defendant's action was an isolated event, out of character, rash and stupid given the seemingly universal sentiment that he and his uncle enjoyed a very good relationship up to that point. Everything that I have heard about the defendant convinces me that he presents as a good prospect for rehabilitation.

- [27] Given the strong mitigation advanced on his behalf and with a view to promoting the rehabilitation of the defendant and the healing within the family, the sentence of the court is as follows:

ORDER

- [28] Paulus Richardson is sentenced to imprisonment for 1 year, 9 months and 20 days. This sentence shall not take effect unless within a period of twenty-four months from today's date you commit within the Federation another offence punishable with imprisonment for a period exceeding six months. In that event this sentence shall take effect.

- [29] In simple terms, should you breach this order by committing another offence punishable by imprisonment for 6 months within the next two years, the sentence can be activated and you will be taken into custody to serve the sentence.

Trevor M. Ward, QC
Resident Judge

By the Court
Registrar