

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

**CASE NO. GDAHCR 2016/0042
GDAHCR 2016/0043**

BETWEEN:

REGINA

V

KADE RICHARDS

Appearances:

Mr. Howard Pinnock for the Prosecution

Mr. Richie Maitland for the Accused

2017: May 18.

SENTENCING JUDGMENT

Criminal law – Sentencing – Offences of dishonesty – Theft – Robbery - Principles of sentencing - Restorative justice – Aggravating and mitigating circumstances – Impact of custodial sentence – Individual and general deterrence – Duty of prosecution counsel to assist the Court at the sentence hearing – Consecutive and concurrent sentences – Principles of Totality.

[1] **AZIZ, J:** On the 15th August 2016, the Learned DPP indicted the defendant for the offences of wounding and causing grievous harm; that indictment being 2016/0042. The defendant on the 10th October 2016, pleaded guilty to Count 2 ‘wounding’ of Dawn Fletcher. The defendant now comes to be sentenced for only that offence on 2016/0042.

- [2] The maximum sentence under the Laws of Grenada for wounding is 7 years imprisonment.
- [3] On the 15th August 2016, the defendant was also indicted by the Leaned DPP for the offences of Rape & Robbery of Megan Thomas. These offences against Megan Thomas took place on the 26th February 2016. The offences against Dawn Fletcher took place only two days earlier and the defendant pleaded guilty to both offences on the 10th October 2016 and 17th March 2017 respectively upon being re-arraigned.

Facts

- [4] As far as Dawn Fletcher is concerned, she is or was a single woman living with her 7 year old son. On the 24th February 2016 at approximately 8:10 a.m. she was going to a minimart to get something for her child. Whilst on the way, she looked back and saw the defendant, whom she didn't know walking towards her. Dawn Fletcher started walking fast, when she suddenly felt a lash on the back of her head and then being pulled into the bushes. The defendant hit Dawn Fletcher with a piece of wood which was in his hand and hit her again for a second time. Whilst being pulled further in the bushes she struggled to gain freedom, but the defendant dropped the piece of wood and pulled out a cutlass. Dawn Fletcher continued struggling with the defendant until he lost his balance and fell. Dawn Fletcher was able to get away and saw her neighbour who took her to the hospital and police arrived later on. She later found out that the defendant's name was Kellon a.k.a 'Capleton'. The injuries were noted as deep lacerations to the occipital region and abrasions to the forehead, both knees and upper right leg.

Caution Statement

- [5] The defendant referred to getting work from a man, he went to get two cigarettes and on the way back he saw a woman pass him and the man told him that is the

work. The defendant said the man told him to kill the woman and hit her two lash in her head. The defendant told the police he hit the woman two, she grabbed him and told him if he wanted to have sex then they should go into the bushes but the defendant refused. He threw away the cutlass and wood and ran away.

'Rape' & 'Robbery' (Indictment 0043/2016))

Facts

- [6] Ms. Megan Thomas lives with her grand aunt, uncle and cousins. She used to live with her mother in Paradise. She was at the time of the offence a 1st year student at TAMCC. On the 26th February, 2016 she was on her way to school just after 8:00 a.m. and noticed a stranger when she was by Sagicor building and close to an older building. This man started walking behind her, remarking about his phone. Ms. Thomas told him to reboot or reset his phone but the defendant indicated that he had already done so. The defendant then stood in front of Megan Thomas, pulled out a knife from his waist and Megan Thomas bawled 'rape'. She was threatened to be quiet otherwise he (the defendant) said he would kill her. The knife was a brown handled knife with a silver 6" blade. The knife was placed against Megan Thomas' waist. The defendant then took \$10.00 from her. Once the defendant took the money he raised her skirt, pulled down her underwear and performed oral sex on her. As someone approached, the defendant was interrupted, so he took Megan Thomas into some bushes and instructed her to lay down and take off her panty. The defendant put on a condom and inserted his penis into Megan Thomas' vagina. The condom burst, so the defendant stopped and put another condom on and had sex with Megan Thomas for another 20 minutes approximately.
- [7] Megan Thomas also says that she was threatened by the defendant not to say anything otherwise he would shoot and kill them. Megan Thomas stated that before he left the defendant apologized for raping her. He was described as 5'11",

black, scar underneath his right eye, short beard and smelt old like a drake. When Megan Thomas left, she then saw her uncle and told him what happened and also reported what happened to the secretary at school.

- [8] The Doctor noted there was no hymen, no bruises, no abrasions or bleeding however there was a fresh offensive discharge noted.
- [9] The defendant was interviewed and replied 'no reply' but for questions 41-66, whereby he admitted having sex with Megan Thomas for about 25 minutes.

Prosecution Submissions

- [10] Mr. Pinnock for the prosecution set out his submissions in writing in advance of the sentence hearing and the Court is grateful for them. Mr. Pinnock set out a brief chronology of the matter but alluded to a very serious factor which concerned the Court, that being 19 previous convictions, over a 16 year period. This list of antecedents included a previous offence of attempted rape, and other offences of violence. It is clear that this defendant has been in and out of a prison environment and had counselling, and still has not been deterred from crime. These are serious offences with a maximum penalty of 30 years imprisonment for Rape and Robbery and 7 years imprisonment for the wounding.
- [11] Quite rightly Mr. Pinnock has indicated that it is the prosecution's duty to assist the judge at every stage of the trial and that includes at the sentencing stage. The Court has been referred to the case of **Alan Cain et al**¹ where it was stated that:

"The advocate for the prosecution should always be ready to assist the court by drawing attention to any statutory provisions that govern the court's sentencing powers. It is the duty of the prosecuting advocate to ensure that the judge does not, through inadvertence, impose a sentence

¹ [2007] 2 Cr. App. R(S) 25

that is outside his powers. The advocate for the prosecution should also be in a position to offer to draw the judge's attention to any relevant sentencing guidelines or guideline decisions of this court.

There is nothing novel about these propositions."

[12] The prosecution highlighted in their submissions the following factors which they say aggravates the offending. Firstly, the fact that a weapon (knife) was used coupled together with threats to kill before, during and after the offences. Secondly, attempts were made to prevent the victim from telling anyone about the offence or making a report to the police. Thirdly, one of the victims, Megan Thomas, was only 16 years old at the time. Fourthly, there will be psychological and psychosocial harm caused. Fifthly, as far as the rape offence is concerned, the incident lasted for 20 minutes. Sixthly, the defendant has numerous previous convictions and for similar types of offences in nature and character. Seventhly, the prosecution says the crimes were planned.

[13] These offences are a serious infringement of socially acceptable standards and last but not least the prevalence of these offences being committed are too high. Counsel further submits that the sentences ought to be consecutive to one another because the defendant is a repeat and persistent offender, and the offences were committed separately and on different days. Mr. Pinnock submits quite forcefully and with merit that this was a most heinous act leaving scars on a young woman which will not easily be erased and furthermore, this being offending which breaches the socially acceptable standards in society would have affected women in the community and Grenada as a whole.

Mitigation

[14] Mr. Maitland, on behalf of the defendant, submitted that he is truly remorseful and this is evidenced by the following mitigating factors:

1. There was a paper committal in one case that being an indication of not wanting to waste the court's time and expense. Furthermore the defendant did not want the victims of his offending to relive the trauma by giving evidence in court.
2. The defendant pleaded guilty early on in the High Court, and ought to receive full credit.
3. The defendant admitted the offences to the police during his interviews.
4. The childhood difficulties referred to within the social inquiry report and other difficulties with his upbringing.
5. Prison conditions and the medical conditions suffered by the defendant which would be aggravated within the prison.

[15] It is very evident that the aggravating features in both cases outweigh the mitigating factors. This defendant must be deterred from offending as is evident from his criminal record.

[16] Clearly the defendant has been in and out of the prison environment, and the medical conditions referred to in defence counsel's submissions would have been present on the many occasions that the defendant was sentenced to a term of imprisonment and of which did not concern him prior to now, therefore individual and general deterrence is required. The defendant must also be prevented from his offending behaviour and this Court notes that the pattern of offending is escalating. Reformatory and rehabilitative justice is always in mind because one day the defendant must be re-integrated into his community and society.

[17] The cases at bar do illustrate the need for deterrence, prevention and punishment and it is hoped that the reformatory justice will take place within the confines of the prison service. Those who are charged with providing social services, health services which include mental health, education and other counseling services must be properly equipped with resources and funding to ensure that those who

are in need of such services, especially within a secure environment do receive and benefit from them.

- [18] Our communities and society at large are developing and progressing, which in turn will result in greater needs and more innovative solutions as the community gains more consciousness about crime and crime prevention. It is hoped that this will assist in greater public morale and productivity by those who would otherwise consider criminal conduct. The vicious cycle which is evident will hopefully be no more and the consequences resulting in less crime.

Court Considerations

- [19] Rape, Robbery and Wounding are all classed as serious sexual and violent offences. No person should have to suffer the physical and psychological harm that is caused by this type of offending. There will be long lasting effects and Megan Thomas will need to be properly monitored and counselled to assist with her traumatic experience. The Court bears in mind the sentencing principles as enunciated in **Desmond Baptiste v The Queen** and many other authorities setting out the same.
- [20] Offending of this kind is intrusive and only naturally be soul destroying in the most serious way. Victims can and may suffer for the rest of their lives. This Court takes into account the manner in which the offences were committed, and in this instant case it was very serious.
- [21] As this Court has stated on previous occasions and also in **The Queen v Kenny Cadoo**², sexual offences are always serious. Rape is always a serious crime, as stated in **R v Roberts**.³ Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence and this is required for a variety of reasons, first

² GDAHCR2015/0032; GDAHCR2015/0036; GDAHCR2015/0039 1, 8 [16]

³ [1982] 1 WLR 133, per Lord Lane CJ

of all to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last but no means least to protect women. This must now be expanded to include young girls, and young boys.

- [22] The Court has helpfully been provided with some authorities on the issue of a consecutive sentence. The Court considered the case of **R v Warren Dean Greaves and Vincent Jaffer**⁴ in which the Court of Appeal of England and Wales ruled that imposing consecutive sentences was the correct approach when firearms were used in robberies. Although there was no firearm used in the case at bar, a weapon was used. The Court said:

“As to the correct approach to sentencing where arms are used in the carrying out of a robbery, we have no doubt that it is proper sentencing policy, and indeed a policy which should be adopted particularly where a firearm is used, to impose a consecutive sentence. That gives a clear message to those who commit crimes of this nature that if they carry a weapon when committing a robbery they will receive an additional sentence. The length of the sentence should be apparent.....However, that does not mean that the court imposing the sentence should not look at the totality of the sentence....”

- [23] In **Attorney General’s Reference Nos 21 and 22 of 2003 (Lee Hahn and Peter Webster)**⁵ in which the Court took the view that despite the conviction for the use of an imitation firearm in the pursuance of a robbery, it would not order that the sentences run consecutively. This was because it took the view that the sentencing judge took into account the totality principle in passing sentence. The Court did, however, approve of the principle of consecutive sentences in such circumstances. It however did so with conditions:

⁴ [2003] EWCA Crim 3229; [2004] 2 Cr.App. R. (S) 41

⁵ [2003] EWCA Crim 3089; [2004] 2 Cr. App. R. (S.) 63

“The principle of consecutive sentencing is particularly desirable and appropriate when possession or use of a firearm is not the essence, or an intrinsic part of the other offence(s) charged; in such a case there is an ‘add-on’ or aggravating element which clearly requires such recognition of a consecutive sentence....On the other hand, in many cases of robbery or threat of violence may....constitute the very violence or threat of violence which is an essential element of the offence charged. In such a case the requirement for consecutive sentencing falls to be more flexibly considered and applied.”

[24] For completeness, the totality principle was explained as such:

“The effect of the totality principle is to require a sentencer who has passed a series of sentences each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is ‘just and appropriate’.”

[25] It was also noted that where the Court has decided on the sentence for each offence it should not simply carry out an arithmetic exercise and pass the sentence that the addition produces. The Court should consider the ‘*totality of the criminal behavior and ask itself what is the appropriate sentence for all the offences*’. It was also recommended that:

“Where the totality of the sentences does appear to be excessive and some adjustment is necessary, it is usually preferable to make an adjustment by ordering the sentences to run concurrently, rather than by reducing the length of the individual sentences and allowing them to remain consecutive.”

Aggravating circumstances

[26] The following are some of the aggravating factors within the two cases:

1. The age of the victims Megan Thomas and Dawn Fletcher (16 & 38 respectively)
2. Both victims would suffer from physical and psychological harm;
3. Both victims would have been degraded and felt humiliation in some way;
4. Both victims were subjected to threats of violence;
5. A weapon was carried (wood, cutlass, and knife);
6. Time of offending;
7. Location of the offending;
8. The offence was planned and premeditated;
9. This offending is an infringement of socially acceptable standards;
10. Numerous previous convictions for similar offences like wounding/causing harm;
11. Escalation in pattern of offending;
12. Threats to prevent the offences being reported;
13. Prevalence of this type of offending.

Social Inquiry Report

[27] A report was prepared for the Court on the defendant. Two interviews were held by the probation officers and the defendant had many complaints about his current environment's conditions. The defendant appeared flat and disconnected, but was clear that he did not need any sort of help but he would get respect through violence. At the second interview, the defendant maintained that he was innocent, and only admitted the offences because he did not want a long prison

sentence, and also stated that both he and the rape victim were in an intimate relationship.

- [28] The defendant is currently involved in sports and actively participates in sporting activity at the prison. He believes that he is a cool person, but would take the law into his own hands if he is wronged. This is of concern to the Court because it clearly demonstrates a lack of appreciation for others in the community and himself, as it demonstrates a clear lack of consequential thinking skills and addressing conflict situations. In other words he lacks problem solving and social skills.
- [29] Persons in the community stated that the defendant is known to be “a very violent person” and also known to hide cutlasses around person’s property that he has disagreements with. Also of great concern is the fact that members of the community have had enough of the defendant and threaten to take the law into their own hands to ensure justice.
- [30] Although the defendant has a lot of plans to own a house, land and wants to do a lot of things, it is clear that the defendant poses a substantial risk to the public. By admission the defendant accepts having violent tendencies from an early age and appears to be a vengeful person with no inhibitions in using violence. Violence is his preference. The report indicates that the defendant has accepted partial responsibility and is not remorseful
- [31] The victims are afraid for their safety and have been severely traumatized by their experiences. They have seen their lives flash before their eyes and their lives have changed forever. In one case the victim is plagued by the scent of the defendant among other nightmares. One of the victims has thoughts of ending her life so that she can see God and this is the type of serious trauma caused by this type of offending. Both victims will also need counselling for a long time.

Sentence

- [32] The Court has considered all of the factors surrounding the offences and balanced that with the defendant and his circumstances. The Court has listened to all of counsel's submissions and read all the material placed before it to assist in the sentencing exercise. This is a case which, in this Court's estimation, there can be no other sentence but a lengthy and immediate custodial sentence. In doing so the principles of proportionality and totality have been considered.
- [33] The defendant will receive credit for his guilty pleas but it will not be the full credit. The credit for plea shall be 25% and this also takes into consideration the chronology of the matter, the lack of remorse, and the lengthy and colourful antecedent history. The defendant's sentence is as follows:
1. Indictment 2016/0042 – Wounding – 3 years imprisonment
 2. Indictment 2016/0043 – Count 1 Rape – 11 years and 3 months;
Count 2 – Robbery – 6 years imprisonment.
- [34] The sentence on Indictment 2016/0042 shall be consecutive to the sentence imposed on indictment 2016/0043.
- [35] The sentences imposed for the Counts on Indictment 2016/0043 shall be concurrent to each other.
- [36] The total sentence to be served is therefore a term of imprisonment of 14 years and 3 months.
- [37] The time spent on remand of 1 year 6 months and 2 days shall be credited towards the sentence. If the time spent on remand is found to be different to what has been determined today, the correct time shall be credited towards the sentence imposed.

[38] The Court wishes to thank counsel for their assistance through their written submissions and the brief and cogent oral submissions.

Shiraz Aziz
High Court Judge

By the Court

Registrar