

THE EASTERN CARIBBEAN SUPREME COURT

IN THE COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

CASE NO. DOMHCR2016/0046

BETWEEN:

THE STATE

V

EDDISON PEMBERTON

Appearances:

Ms. Sherma Dalrymple, State Attorney for the State
Mr. Wayne Nordé for the Defendant

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2017: January 10th

2017: March 17th
.....

JUDGEMENT ON SENTENCING

- [1] **Charles-Clarke, J:** The defendant Edison Pemberton pleaded guilty to unlawfully and maliciously causing grievous bodily harm to Beyanka Blanchard on 23rd October 2015, contrary to section 20 of the **Offences Against the Person Act**, Chapter 10:31 of the Revised Laws of Dominica.

Background Facts

- [2] The virtual complainant and the prisoner shared a common-law relationship and had been living together for two years at the time of the incident. On the morning of the incident, the virtual complainant left home for work at First Domestic Insurance Company on King George IV St. at Roseau. Whilst there she received certain information. She left her work place and went to her home where she met the prisoner and a young lady who was coming out of her bedroom. She

enquired what the young lady was doing in her home. Both the defendant and the young lady indicated that she had come there to use the toilet. There was an exchange of words and the prisoner held onto the virtual complainant while the young lady left. When he released her the virtual complainant asked the prisoner for the key to the house. She locked the door and returned to work using a public transport. The prisoner boarded the same vehicle as her. About half hour later the prisoner came into her work place. At the time she was dealing with a customer. The prisoner sat on a chair and waited until she was through. The prisoner requested the keys for the house saying he wanted to go and collect his things from the house. She refused to give him the keys saying that the last time he had access to her house he broke all her furniture so she was not going to give him the key. She told him she would arrange for her cousin and a policeman to go with him to the house to collect his things. The prisoner told her he would come back on his lunch hour to speak to her. She told him do not come back as she would not change her mind and if he comes back she will call the police at the magistrate's court in order to have him arrested. She knew that the prisoner owed monies to the court so in his presence she called the magistrate's court in Roseau to find out what was the procedure when someone did not pay monies owed to the court. When she was through the prisoner said to her ***'that's what you want to do me, you want to send me to jail'***. He left the office saying ***'I'm coming back'***.

[3] Sometime later the prisoner returned and met the virtual complainant on the phone talking to her cousin about what had transpired. The prisoner who had his left hand behind his back came up to the virtual complainant who was at her desk and removed a cutlass which was wrapped in a cream paper from behind his back. He said to the virtual complainant who was still on the phone talking to her cousin ***'you want me to go to jail, well I will kill you and I will go to jail'***. The prisoner raised the cutlass over his head and struck the virtual complainant with the cutlass on her right hand with which she was holding the mouse of her computer. The cutlass fell from his hand onto the floor.

[4] The prisoner picked up the cutlass and started making blows towards her head and neck. She put up her hand to shield the blows and received two cuts to her left wrist area and laceration to her upper left arm. He made another blow at her hand which knocked the phone from her hand. She used her left foot to try to fend him off and he cut her on her foot. He then stopped and said ***'Tahira next. I must kill Tahira'*** referring to her cousin. He then left with the cutlass. While he was

attacking her the virtual complainant was screaming and called out to one of her co-workers for help.

[5] The virtual complainant was bleeding profusely from the wounds inflicted upon her. She was taken to the Princess Margaret Hospital where she was admitted and she remained there until 1st December 2015. The doctor found that she sustained the following injuries:

- **20 cm laceration to the dorsal aspect of the right hand. All extensor cut , open fracture right radio;**
- **Laceration dorsal aspect of left wrist with open fracture ulnar styloid and extensor of the left wrist as well as cut left finger E.P.L**
- **6cm laceration of left leg anterior aspect with incomplete hairline fracture left tibia.**

[6] The virtual complainant had to undergo multiple surgeries. The doctor noted that despite the severity of her injuries she has regained 60% recovery and use of both hands. The doctor also noted that she will most likely never regain 100% full control of both her hands and wrist due to the severity of her injuries. As a result of her injuries the virtual complainant's hands appear to be deformed and she is presently undergoing therapy. The virtual complainant stated in court that she still requires another surgery as she is yet able to form a wrist or do her daily domestic chores.

[7] Before passing sentence the court ordered a social inquiry report for the prisoner. The Report was based on results of interviews conducted with the prisoner, his brother Earl Toussaint Pemberton, friend Oswald Julien and members of the community of Newton and Point Michel where he lived. The report revealed the prisoner had a normal upbringing and that he had good familial relations with his parents and siblings. He was described as a hardworking, easy going and friendly individual by members of the community and was not known as having a violent disposition.

[8] The prisoner indicated that he shared an intimate relationship with the virtual complainant for six years and they lived together for two years. He described their relationship as normal with good and bad moments. However he had never resorted to physical aggression towards the virtual complainant in the past. In relation to the offence he stated that he is unable to understand what caused him to harm the victim, and although they have engaged in verbal confrontations in the

past he has never been physically abusive towards her. He believes that his actions seem to have been prompted by some evil force. However he added that he has daily regrets about his actions and has contacted the victim to express his remorse and to seek her forgiveness. He indicated his willingness to pay compensation to the victim. The prisoner further indicated that he understands the seriousness of his actions.

[9] According to the report the virtual complainant also expressed surprise at the prisoner's conduct towards her. She indicated that although they have had verbal confrontations in the past it has never escalated to physical violence. However she recalls an incident where he caused damage to her furniture. She indicated that the incident on 23rd November 2015 had caused her both physical and emotional trauma. She still has not regained full use of her hands and has to undergo further surgery. She stated that she still has daily flashbacks as she still works where the incident occurred and these also occur whenever she sees someone with a cutlass. She further indicated that she does not want an apology from the prisoner nor does she desire compensation from him.

[10] In a plea in mitigation on behalf of the prisoner Mr. Wayne Nordé adopted the Social Enquiry Report and stressed the general view expressed by the community about the prisoner's good character. He further advanced the following mitigating factors for the court's consideration;

- i) The early guilty plea – entitlement to one third discount;
- ii) The prisoner has been in custody for 1 year and 4 months awaiting trial;
- iii) His expression of remorse to the social welfare officer;
- iv) The positive report from persons interviewed by the social welfare officer;
- v) The fact that this was an isolated incident in the relationship with the virtual complainant;
- vi) The prisoner still cannot understand how he acted in this manner and blames supernatural forces for his actions;
- vii) His desire to apologize to the virtual complainant and pay her compensation;

[10] Mr. Nordé referred the court to cases from this jurisdiction in which the court awarded compensation as the appropriate sentence. (***The State v Cleaver Burton***¹; ***Kelver Aaron v The State Case***²; ***Kenneth Francis V The State Case***³); and other cases where the sentences have ranged from a fine to between 1 year and 4 years imprisonment.

[11] In their written submissions the prosecution highlighted the following aggravating factors:

- i) the offence was premeditated;
- ii) the injuries received by the virtual complainant are permanent;
- iii) the incident has had psychological effects on the virtual complainant;
- iv) the act was done in a prominent business place;
- v) the use of a weapon or cutlass;
- vi) the prisoner has a previous conviction for a similar offence.

[12] The prosecution urged the court to treat this as a case of domestic violence notwithstanding it was a one-time occurrence. Reference was made to the case of ***The Queen v Vernon Anthony Paddy***⁴ In that case there was a history of an assault and threats to kill the virtual complainant. The court awarded a sentence of 8 years imprisonment on a guilty plea although there were no permanent disabilities.

The Law

[13] Section 20 of the **Offences Against the Person's Act**⁵ of the Dominica Revised Laws provides:

'Any person who unlawfully and maliciously, by any means whatsoever, wounds, or causes any grievous bodily harm to any person,with intent in any of the cases mentioned above, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, is liable to imprisonment for ten years.'

[11] Section 73 of the **Criminal Law and Procedure Act**⁶ of the Laws of Dominica provide that:

¹ DOMHCR2013/0006

² No. 26 of 2013

³ No. 30 of 2015

⁴ BVIHCR2010/0020, paras.

⁵ Chapter 10:31

⁶ Chapter 12.01

'1. Any person who is convicted of an indictable offence may be adjudged by the Court to make compensation to any person injured by his offence; and any sum so adjudged may be recovered by such process, including imprisonment in default of payment, for twelve months as the court may direct.

2. The payment of such compensation shall be a bar to any further action for the same injury.'

The Sentence

[12] In passing sentence the court will apply the classical principles of sentencing established in the case of ***R V Sargeant***⁷, namely: retribution, deterrence, prevention and rehabilitation.

[13] These principles were restated by Byron C.J in ***Desmond Baptiste et al v R***⁸ where he also outlined the other factors to be considered in determining the appropriate sentence. These include: the nature and circumstances of the particular offence; the prevalence of that particular offence in society; the character and antecedents of the offender and; the mitigating and aggravating factors. In determining an appropriate sentence the court will consider the peculiar circumstances of each case. In ***DPP V Shaunlee Fahie***⁹ – George-Creque J.A adopting these principles stated that ***“the sentencing scale will slide up or down depending on the peculiar circumstances of each case”***.

[14] The court considers the aggravating factors in this case are:

- i) the use of a weapon by the prisoner;
- ii) the premeditation by the prisoner who followed the virtual complainant to her place of work, left and returned with a cutlass which he admitted to the police he purchased from a nearby store;

⁷ 1974 60 Cr Ap. R 74

⁸ SVG Crim App. No. 8 of 2008

⁹ BVI HCRAP 2008/003

- iii) the manner in which the injuries were inflicted – the injuries were aimed at the virtual complainant's neck and head which, had she not shielded with her hand could have resulted in fatal injuries;
- iv) The prisoner's intentions when he inflicted these injuries on the virtual complainant – his statement that ***'You want me to go to jail well I will kill you and go to jail'***;
- v) The severity of the injuries and the long term physical and psychological effects on the virtual complainant;
- vi) This case falls within the realm of domestic violence as the virtual complainant was in a common-law relationship with the prisoner and at the time of the incident was directly related to an issue arising from the relationship between the parties and it has all the elements of gender based violence – hence an abuse of trust and power;
- vii) The fact that the prisoner blames an external supernatural force for his actions.

[14] The mitigating factors are the prisoner's early guilty plea and his deep regret at having committed this offence.

[15] The main principles of sentencing applicable in this case are retribution, deterrence and rehabilitation.

Retribution and the harm done

[16] The sentence imposed must reflect society's and the legislature's abhorrence towards this type of offence and the offender. There is no doubt that offences of violence are serious offences and this is reflected by the penalty stipulated by the legislature. Such violent conduct often leads to loss of life and limb and often has a negative impact on the victim and society in general. It causes pain and suffering to the victim as well as emotional and psychological trauma and this is particularly so in cases of domestic violence. It also places a strain on the financial and economic resources of the victim and other persons affected by the incident and the medical and other resources of the State. The prisoner's violent and vicious attack upon the virtual complainant was unwarranted. The doctor indicates that the injuries have resulted in some disability to the virtual complainant who will

never regain full control of both hands. This has affected her ability to perform her everyday domestic chores and will be a permanent reminder to her of this violent incident. The virtual complainant is still fearful of the prisoner and fears that if he is released from prison he may cause her further harm. This court must show its abhorrence for that type of conduct.

Deterrence and Prevention

[17] There is a prevalence of that type of offence in this society. Therefore the sentence imposed must demonstrate zero tolerance for that type of offence. The accused has a previous conviction for wounding in 2002 which counsel indicated is spent and so the court will not take it into consideration as an aggravating factor. According to those interviewed who know him well his conduct on 7th July 2013 is not consistent with his general conduct which has been described as non – aggressive and friendly. However the prisoner has admitted to causing damage to the virtual complainant's furniture on one occasion and also in engaging in verbal confrontations with her. It may be that such conduct was an indication of the prisoner's propensity to be violent which escalated into this violent physical attack upon the virtual complainant on the 23rd November 2015. On that occasion he exhibited a breach of trust and an abuse of power by taking another lady to the home he shared with the virtual complainant. When he could not have his way he manifested a show of uncontrollable rage which resulted in him leaving the work place of the virtual complainant and going to purchase a cutlass with which he attacked her with the clear intention of killing her. He did not strike her once but dealt her several blows. It must have been through sheer luck that she was able to ward off the blows resulting in the injuries she sustained to her hands, forearm and wrist.

[18] It cannot be disputed that this case falls within the realm of domestic violence which is defined in the **Protection Against Domestic Violence Act**¹⁰ of Dominica to include '*physical abusecommitted by a person against a spouse.... who is a member of a household*'. Under Section 2 'Spouse' includes '*common law spouse*'. It is therefore necessary for this court to take account of the overarching principles of the sentencing guidelines indicated for an offence which is committed in these circumstances as stated in **Blackstone's Criminal Practice 2010** Supplemental Material which make it clear that offences of that nature should not be regarded as less serious than those

¹⁰ No.22 of 2001

committed in a non- violent situation. Although there is no history of physical violence towards the virtual complainant in this case the physical and psychological impact and the trauma and fear she continues to experience since the incident is typical in domestic violence cases and cannot be discounted.

[19] It is therefore necessary that the sentence passed seeks to deter the prisoner from further offending and also send a clear message to potential offenders.

Rehabilitation

[20] The prisoner has indicated his regret and remorse and states that he is willing to apologize and make amends by paying compensation to the virtual complainant. Also the prisoner has received a good review in the social welfare report from persons close to him and members of the community where he grew up and where he lived at the time of the incident. However the prisoner seems unwilling to accept full responsibility for his conduct and blames it on some supernatural force or being. It must be noted that remorse is not the only requirement for rehabilitation. The prisoner must also accept responsibility for his actions in order to begin the process of reform and rehabilitation. It should also be noted that the prisoner has already spent over eight months on remand yet he has not learnt to accept full responsibility for his actions.

[21] I am of the view that this offence calls for a custodial sentence for the reasons already outlined. Although counsel has urged the court to make an award of compensation instead of a custodial sentence, compensation is not sought by the virtual complainant. In the various cases referred to from this jurisdiction by defence Counsel where compensation was awarded as the appropriate sentence, it was specifically requested by the victim. While the court always has the discretion to award compensation I do not believe that compensation is the appropriate sentence in this case because of the nature of the offence and because the aggravating factors far outweigh the mitigating factors. Therefore a custodial sentence is warranted. Moreover the virtual complainant has refused the offer of compensation.

[22] The maximum penalty for this offence is ten years. The court will consider the aggravating and mitigating factors relevant to this offence and begin with a starting point of 7 years. The prisoner

having pleaded guilty at an early stage would be entitled to a discount of one third. Therefore a deduction would be made for the guilty plea to 4 years 7 months imprisonment. There are no other mitigating factors which I can consider would reduce the sentence further. The prisoner having spent eight months and 27 days on remand the time spent will be deducted from the sentence imposed by this court. It is also ordered that the prisoner receives counseling and anger management sessions as part of his rehabilitation process. It is my hope that he will fully acknowledge his wrong doing and be prepared to re-enter society as a changed man at the end of his incarceration.

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Victoria Charles-Clarke
High Court Judge