

THE EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO. 34 OF 2015

BETWEEN:

THE STATE

AND

CORNIEL MAXIMEA

Appearances:

Ms. Evelina Baptiste Director of Public Prosecutions for the State

Mr. Darius Jones for the Defendant

2015: December 18

JUDGMENT ON SENTENCING

[1] **Thomas, J [Ag]:** Corniel Maximea is now 19 years old. At the time of the offence he was 16 years old.

[2] He is before the court for sentencing having been found guilty of the offence of causing grievous bodily harm with intent. It is an offence created by section 20 of the **Offences Against the Persons Act**¹

¹ Chap. 10:31 Revised Laws of Dominica

- [3] For the purposes of sentencing the court ordered that a Social Inquiry Report be prepared by a Probation Officer of the Welfare Department. The assignment fell on Mr. Lester George. This is his conclusion:

Conclusion

"Corniel's act of violence cannot be trivialized. His actions have affected the life of Kim Sebastien who has clearly stated his limitations since the incident. From the information gathered, Corniel's family does not view him as one who possesses a violent temperament. This view was also shared by community person interviewed.

It should be noted that Kim Sebastien has expressed that he desires if Corniel Maximea is ordered to pay compensation, rather than receiving a custodial sentence. It must also be noted that Corniel is desirous of being ordered to compensate the victim Kim Sebastien.

It is rather unfortunate the level of violence which exists within society among our young persons. The age of the accused at the time of the incident suggests that he was at an age where he should have had an understanding of right and wrong doings. Such acts of violence should not be tolerated.

I wish to share the view that the Honourable Court gives due consideration to the request of the victim for compensation for the cost of medical care already obtained rather than handing down a custodial sentence on the offender. This, it is hoped, would provide a chance for restoration.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Corniel Maximea."

Relevant considerations

- [4] The matter of the appropriate sentence must necessarily begin with a consideration of certain relevant considerations. These are as follows: the nature of the offence, background to the offence, manner of execution, maximum penalty under the law, previous convictions, if any, age of the defendant and the victim, the principles of sentencing aggravating factors, mitigating factors, the Social Inquiry Report and the plea in mitigation.

Nature of the offence

- [5] The offence is directed at bodily harm caused to another where the nature of the harm inflicted infers and intent to cause serious bodily harm.

Background to the offence

- [6] The offence was committed on the afternoon of Friday, 31st May 2013 when a number of school boys came to Roseau from outlying districts of Campbell and Colihaut for various reasons. And whatever differences there may have been between the groups ended with serious harm to Kim Sebastien of Colihaut. The locus of the offence was the Colihaut bus stand in Roseau.

Manner of execution

- [7] After verbal exchanges between opposing members of the groups, this was followed by some wrestling and finally the defendant threw two stones, which he took from his bag, at the victim. One hit the victim on his forehead but the other missed him.
- [8] The damage caused to the victim from the single blow was so serious that he had to be taken to Antigua for a scan at the Belmont Clinic, the St. Johns Medical Centre, then to the Westshore Medical Centre for neurological surgery, and further treatment in England.

Maximum penalty

- [9] The maximum penalty under the law is 10 years imprisonment.

Previous convictions

- [10] The defendant has no previous convictions

Ages of the defendant and victim

- [11] At the time of the offence the defendant was 16 years old and the victim was also 16 years old.

Principles of sentencing

- [12] The case of **R v Sargeant**² and **Desmond Baptiste v R**³ established that the sentencing principles are retribution, deterrence, reformation, and protection. The essence is as follows: the retributive element is intended to demonstrate public revulsion for the offence and to punish the offender for his or her conduct. Deterrence is aimed not only at the present offender but also potential offenders. Reformation is aimed at the offender in an effort to change his inclination to commit

² [1974] 60 Cr. Appeal R. 74 per Lawton LJ

³ Criminal Appeal No. 8 of 2003 per Byron CJ

crimes. Protection is all encompassing as it seeks to have the entire society protected by the sentence.

Aggravating factors

[13] The aggravating factor is the fact that the defendant carried a blue or black bag from which he took the two stones which he threw at his victim. The reasonable inference is that he carried the stones for an anticipated event.

Mitigating factor

[14] The mitigating factor is the defendant's age

Social Inquiry Report

[15] The Social Inquiry Report has not raised any social issues that would have some connection to the defendant's conduct. Rather, it stresses the serious nature of this violence

Plea in mitigation

[16] Learned counsel for the Defendant, Mr. Darius Jones, raised the following issues: the defendant's age, where he grew up, the closeness of the family, the effect of the issue on the defendant's family, remorse expressed by the defendant, the contention that the defendant's life has been blighted by the event, and the further contention that he has a contribution to make, the defendant's prior unblemished record both in relation to his school and otherwise, and the fact that he is gainfully employed with his father. In the circumstances learned counsel asked the court to refrain from imposing a custodial sentence.

The sentencing matrix

[17] Central to the sentencing matrix is the age of the defendant and the nature of the offence and the manner of execution. The age of the defendant also points to the fact that the episode involved two groups of school boys from Campbell and Colihaut involved in some kind of rivalry.

[18] The rivalry is evidenced by the wrestling between both sides and the two stones which the defendant had in his bag which was both thrown at the victim but only one hit him. This was on the

left side of his forehead. The evidence also revealed that one school boy from the defendant's group actually pulled out a cutlass in the midst of the wrestling involving the two sides. But while this instrument was not used in the course of the commission of the offence, it points to the gravity of the rivalry between two small groups of school boys from Campbell and Colihaut.

[19] The age of the defendant also triggers an examination of the **Justice (Reform) Act**⁴ which seeks to alternative procedures that may be employed by the court in sentencing.

The sentence

[20] The **Justice (Reform) Act** excludes the defendant because in section 6 (3) of the Act as it expressly empowers the court to exclude a defendant if it considers a suspended sentence to be inappropriate, which the court does in this case. However section 51 (i) of the **Criminal Law and Procedure Act**⁵ does empower the court to impose a fine in certain circumstances.

[21] The order of the court is as follows:

ORDER

1. The defendant is sentenced to pay a fine of \$10,000.00 within six [6] months of the date of this order
2. Failure to pay as ordered the defendant will serve 1 year in prison
3. The defendant shall provide 2 sureties for his good behaviour for a period of six [6] months in the sum of \$5,000.00 each.
4. The defendant shall be released from prison upon the Registrar of the High Court being satisfied that the defendant has provided the recognisances and the Registrar directs the Superintendent of Prisons to release him after approval by the Court.

Errol L. Thomas

High Court Judge [Ag.]

⁴ Chap. 12:35

⁵ Chap.12:01