

THE EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO. 26 OF 2013

BETWEEN:

THE STATE

AND

KELVER AARON

Appearances:

Ms. Fernillia Felix for the State

Mr. Peter Alleyne for the Defendant

2015: November 27

JUDGMENT

[1] **Thomas, J [Ag]:** The matter before the court is the sentencing of the defendant Kelter Aaron, who was found guilty by a jury of the offence of causing grievous bodily harm with intent to cause grievous bodily harm. Also for consideration is an application of compensation by the victim, Myron George, under section 73 of the **Criminal Procedures Act** Chap. 12:01.

[2] One of the prerequisites to the sentencing is the consideration of certain relevant matters. These are: the nature of the offence, the background to the offence, the manner of execution, the maximum penalty under the law for the offence, the defendant's previous convictions, if any, the ages of the defendants and the victim, principle of sentencing,

aggravating and mitigating factors, the plea in mitigation, sentences for the offence in Dominica and the Social Inquiry Report.

Nature of the offence

- [3] The offence is causing grievous harm with intent. The offence is aimed at serious bodily harm caused to a person by an assailant.

Background of the offence

- [4] The background to the offence is the start of carnival celebrations in Colihaut in the Parish of St. Peter. At the relevant time, persons were gathered outside of Mr. Randy Shillingford's shop when there were exchanges between various groups; including the defendant and the victim.

Manner of execution

- [5] The evidence revealed that there was an initial exchange between the defendant and the victim with attempts to hit each other. At some distance from the shop on the premises of the exchanges continued with bottles being thrown. At this point the victim approached the defendant with mortar pestle which led the defendant throwing a stone at the victim and the injury which he inflicted to the left side of the victim's face which cause multiple fractures in that area.

Maximum penalty under the law

- [6] The maximum penalty under section 20 of the **Offences Against the Person Act**, Chap. 10:33 is 10 years imprisonment.

Previous conviction

[7] There are no previous convictions.

Ages of the defendant and the victim

[8] The defendant is 27 years while the victim is 23.

Principle of sentencing

[9] The principles of sentencing as elaborated upon by Byron CJ in **Desmond Browne v R**¹ are retribution, deterrence, reformation and protection. These principles will be placed in context at a later stage in this judgment.

Aggravating factors

[10] The aggravating factors are to be deduced from the fact that after the initial encounter the defendant later went in pursuit of the victim at the home of Ms. Harris.

[11] The other fact is the Dr. Pascal's evidence in which he described the injuries suffered by the victim. The doctor revealed the following regarding the victim:

- a) Multiple abrasions to the nasal pyramid and left cheek with surrounding swelling and tenderness.
- b) Decreased patency of the nasal airways.
- c) Decreased sensation in the distribution of the left infra-orbital nerve below the left eye.
- d) CT scan of the orbit/ facial bones revealed a depressed fracture of the inferior and medial wall of the fracture of the right orbital floor, multiple displaced fractures of the left maxillary sinus and multiple fractures of the nasal and septum and left frontal bone.

¹ Criminal Appeal no. 8 of 2003

- e) The injuries could have been caused to trauma that is force that comes into contact with the body.
- f) The force could be moderate to severe.
- g) Any force with a certain degree of force could have caused the injuries.
- h) A single blow could have caused the injuries.

[12] And while high medical expenses are not strictly speaking an aggravating factor there is some merit in mentioning the fact that the victim had to undergo surgery in Barbados since there is no specialist in facial surgery in Dominica.

Mitigating Factors

[13] The court is unable to identify any mitigating factors.

Sentences for the offence in Dominica

[14] Sentences in Dominica for grievous bodily harm from 2010 onwards have ranged from 1 year to 4 years imprisonment to fine of \$5,000 to \$15,000 in 18 months to compensation of \$2000 to \$6000.

Social Inquiry Report

[15] At the time of fixing the date for sentencing, the court also ordered a social Inquiry to be prepared by a Probation Officer of the Welfare Department.

[16] The report was prepared by Mandise Ducreay, who said that the objective of the report is to relay the information received during the interviews, one make an overall assessment of the information derived from the interviews.

[17] This was done by providing information on the defendant's social context and interviews with a number of persons including the defendant and his mother, the victim and her mother, the defendant's ex-girlfriend and a community assessment.

[18] The conclusion reads, in part as follows:

"CONCLUSION:

Violent related offences are considered atrocious act within our society that need to be deterred. These offences happen frequently in our communities, in our schools and in our homes. The impact of these acts on the victims are sometimes irrevocable and can impede the social functioning of that individual as well as their emotional, mental or physical well-being. Unfortunately, the aftermath of some these violent events are often with tremendous regret but due to its severity cannot be redeemed. Evidently many young persons in our society have the inability to manage conflict which often results in fatality, injuries or death. These conflicts can be solved at a community level but it requires the initiative of community stake holders who can provide mediation for some of these problems. On the other hand, it also takes the initiative of the parties involved to seek mediation as well.

Based on the interview conducted with Kelter, he was adamant that his fists were used rather than a stone to harm the victim. He does not declare being innocent for his actions but the sentiments he expressed towards the victim only made mention of a clear conscious and a lack of interest of him. It can be deducted that he has overlooked and has downplayed the severity of the harm he caused the victim and the effects it has on his family, specifically his mother. The impact of his actions however should not trivialize as the victim endured major physical scarring and irreversible injuries to his face. Furthermore, the actions of the accused would likely have impeded the social, emotional as well as the mental functioning of the victim.

Interviews conducted however, did not portray Kelter as someone with a negative personality or as someone who engage in violent activities. He was depicted mostly as a business driven person and a reformed young man. Public sentiments also did not view his actions as unforgivable but rather as an unfortunate circumstance between two young men who were once very good friends.

It is interesting to note however, that there were statements made by certain individuals in the community that the victim has had conflicts with law due to fighting. Mention made that the victim is 'troublesome' does raise concerns that he may have a provocative personality."

[19] The probation Officer has painted a picture of a defendant who is more concerned with business matters rather than violent conflict. It is the contention also that persons in the community also have that opinion of him.

Plea in mitigation

[20] Mr. Peter Alleyne in his plea in mitigation highlighted certain aspects of the Social Inquiry Report. He also indicated that the defendant was involved in business to help himself and his mother. The business indicates poultry farming. Learned counsel also said he had no objection to payment of compensation. He added that the defendant was able to look after the injury to his face.

Principles of sentencing in context

[21] As noted above, the principles of sentencing are retribution, deterrence, rehabilitation and protection. The context is that of a defendant who inflicted a very serious injury on his victim. The injury was of such a nature that Dr. Irving Pascal an ear, nose and throat (ENT) specialist who saw and examined the victim at the hospital said he could not carry out the surgery on the victim as he was not a maxillary facial surgeon. In the circumstances the victim had to journey to Barbados so that Dr. Judy Ward could perform the surgery.

[22] The nature and extent of the injury plus the total cost to the victim and his mother give the principles the immediately applicable as society would desire its retribution for this type of senseless crime. The principle of deterrence is also applicable in order to deter the defendant and others from this type of crime. This in turn leads to the principle of protection for the society as a whole.

Application for compensation

[23] In this case the question expenses loom large because the victim had to see or be seen by three specialist doctors, being Dr. Irving Pascal, Dr. Hazel Shillingford-Rickets and Dr. Judy Ward. This may be subsumed under sentencing principle of deterrence.

[24] Calculation of an appropriate sentence for wounding cases the sentence in law is confined to imprisonment or a fine. But this case it is different since the court is in receipt of an application seeking compensation arising out of the expenditures incurred on the trip to Barbados for medical attention. This, the court accepts and will award appropriate compensation.

[25] Receipts have been supplied for the vast majority of the expenses incurred which amount the sum of \$32,470.00 covering medical expenses at the QEH Barbados, fares for the victim and his mother accommodation for the victims mother meals plus local related expenses. To venture into the area of civil law these would go towards special damages. Additionally, in this context to the matter of general damages also arises for pain and suffering. And ether is no reason why a sum should be awarded in this regard given the injuries suffered and the medical procedures.

Submissions

[26] As ordered by the court learned counsel for the State, Ms. Fernilia Felix, in her written submissions examined the general law and cited a number of cases relating to the award of general damages for pain and suffering.

[27] In reference to the case of **Black v Drigo** learned counsel said this:

“The plaintiff suffered a nasal bone fracture for which he underwent closed Reduction Surgery on his nose. Post-surgery the plaintiff was left with a culminated crushed dislocation of the nasal septum, a significantly displaced left nasal airflow and appearance but that his nose could not be restored to its pre-assault stage. General Damages of \$14,000 and punitive damages of \$5000 were awarded.”

[28] Learned counsel ends as follows:

“It is submitted that in light of the authorities submitted above that award of \$20,000 for pain and suffering should be considered as fair compensation.”

[29] Learned counsel for the defendant did not file any submissions but explained the reason for his failure to do so in open court. However, in the end, learned counsel contends for the submission by State are reasonable.

[30] The court also agrees with the sum of \$20,000 for pain and suffering.

ORDER

[31] The Order of the court is as follows:

1. The defendant, Kelter Aaron shall pay to Myron George compensation of \$32,470.00 as damages. With respect to medical and related expenses incurred with respect to the injuries suffered; plus the sum of \$20,000 or for pain a suffering- a total of \$52, 470.00
2. The \$52,470.00 shall be paid in full one year from the date of this order.
3. Where 50% or less of the compensation ordered is paid within the defendant shall serve imprisonment for 9 months.
4. Where between 51% and 90% of the compensation ordered is said within the time ordered, the defendant serve 6 months imprisonment.
5. The defendant has liberty to apply to the court for an extension of time to pay the compensation if payments to Myron George amount to 50% or more of the compensation, within the time ordered.
6. The total award \$52,470.00 shall bear interest at the rate of 5% from the date of this judgment until payment in full.
7. Where a police officer has been informed by the Registrar of the High Court the defendant's failure to comply with this order, then this order shall be a sufficient warrant to arrest the defendant and bring him forthwith to the High Court to be ordered to serve imprisonment in accordance with this Order.
8. An arrest under paragraph 8 shall be made by a police officer in uniform.
9. The defendant shall be released from prison by the superintendent of Prison on 30th November 2015.

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Errol L. Thomas
High Court Judge [Ag]