

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

[CRIMINAL]

CASE NO. 30 OF 2015

BETWEEN:

THE STATE

V

KENNETH FRANCIS

Appearances:

Ms. Evelina E.M. Baptiste, Director of Public Prosecutions for the State

Mrs. Zena Dyer-Moore for the Defendant

2015: November 13

JUDGMENT ON SENTENCING

[1] **THOMAS J. (Ag.):** Kenneth Francis is before the court for sentencing, having pleaded guilty to the offence of causing grievous bodily harm with intent, contrary to section 20 of the **Offences Against the Persons Act**, Chap. 10:31, Revised Laws of Dominica, 1990.

[2] In the circumstances the court must examine the following in order to calibrate a sentence that is fair and just: the nature of the offence, background to the offence, manner of execution, the maximum penalty under the law, previous convictions, if any, the defendant's age, the principles of

sentencing in context, the mitigating factors, the aggravating factors, the Social Inquiry Report and the plea in mitigation.

Nature of the offence

- [3] The offence is causing grievous bodily harm with intent. This means in law causing serious bodily harm to another with intent.

Background to the offence

- [4] The defendant and the virtual complainant are cousins. They played video games together and the defendant went to the virtual complainant's home and vice versa. However, on 26th June 2012 at Fond St. Jean where the virtual complainant and his mother live, sometime after the virtual complainant had secured the house the defendant entered the house, without an invitation and proceeded to stab the virtual complainant with an ice pick.
- [5] In his deposition the virtual complainant deposed that the defendant used to go to the psychiatric ward, he never knew him to be violent, he was stabbed some 17 times, there were stabs to the chest, back, head and knee, he spent 2 days at Alford Ward, Princess Margaret Hospital.

Maximum penalty under the law

- [6] The maximum penalty under the law for the offence is 10 years imprisonment.

Defendant's conviction if any

- [7] The defendant has no previous convictions.

Defendant's age

- [8] The defendant is 27 years old.

Principles of sentencing

- [9] The principles of sentencing were enunciated by our Court of Appeal¹ developing what was previously enunciated in an English case in this regard. The principles are retribution, deterrence,

¹ See: Desmond Browne v R., Criminal Appeal No. 8 of 2003

retribution and protection. They all apply to the society as a whole and converge at the time of sentencing.

[10] Any society must be protected from persons who commit serious crimes. But where the crime is causing grievous bodily harm with intent, the protection becomes imperative

Mitigating factors

[11] The mitigating factor is the plea of guilt entered by the defendant.

Aggravating factors

[12] The aggravating factors are: the entry into the virtual complainant's home where he lived with his mother, the virtual complainant deposed that at the time of the offence his mother was asleep and he also fell asleep at about 1:00 am while watching a movie; the number of wounds inflicted with an icepick and the arbitrary and unprovoked nature of the attack.

Social Inquiry Report

[13] Upon the defendant's guilty plea the court ordered that a Social Inquiry Report be prepared on the defendant by a Probation Officer and filed at the High Court. The report was authored by Lester George who after interviews with the defendant's mother, father, sister and the defendant himself arrived at the following conclusion:

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

It should be noted that Jimmie Joseph has expressed that he desires if Kenneth Francis is ordered to pay compensation, rather than receiving a custodial sentence.

Although Kenneth express remorse for the offence for which he stands charged, he was unable to give a reason for his actions. It should also be noted that based on discussions, Kenneth is an out-patient for the Acute Psychiatric Unit and was reportedly diagnosed with a mental condition for which he is on medication. Based on the interviews, violence does not appear to be part of Kenneth's temperament. From all account, it appears that Kenneth's action on that day was due to the medical condition which he suffers with. Seemingly, such condition places Kenneth in a situation where he had no control over his actions.

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

[14] The point about the report is that the defendant is an ill person who although remorseful could not account for his actions.

Application for compensation

[15] The matter of sentencing has been superseded in part by an application by the victim, now applicant, for compensation. This is contemplated by section 73 (1) of the **Criminal Law and Procedure Act**². The application seeks compensation on account of the injuries inflicted on him by the Respondent/Defendant.

[16] At the end of oral examination of the applicant, the respondent and his father were examined concerning the consequences of the injuries and the means of the respondent to pay the damages, the court ordered that submissions be filed in the matter.

Submissions on behalf of the applicant

[17] In submissions on behalf of the applicant learned counsel, Ms. Fernilia Felix, cited the case of **Cornilliac v St. Louis**³ in which the broad heads in awarding damages for personal injuries are enunciated. These are: nature and extent of the injuries sustained and the nature and gravity of the resulting physical disability; pain and suffering endured; loss of amenities and the impact of pecuniary prospects.

[18] **Learned counsel** also placed a reliance on a dictum of Lord Hope of Craighead in **Wells v Wells**⁴ which reads thus:

“The amount of the award to be made for pain and suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum, within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court’s best estimate of the plaintiff’s general damages.”

[19] Further reliance was placed on the case of **The Queen V Mike Scotland**⁵ in which the following obtained:

² Chap. 12:01, Revised Laws of Dominica

³ [1964] 7 WIR 491

⁴ [1998] 2 ALL ER. 481

⁵ Criminal Case No. SLUCRD 2011/0026

1. The victim suffered two stab wounds at the hands of the defendant
2. The first wound was a 2cm stab wound to the right anterior chest
3. The second wound was a 3cm stab wound to the left lumbar region
4. The victim was hospitalized and made a full recovery
5. The defendant pleaded guilty to a charge of dangerous harm.
6. The defendant was ordered to pay the victim \$8,571.95 by way of compensation in equal installments over a period of 6 months.
7. The alternative to compensation was imprisonment for 4 years for failure to pay as ordered

Submissions on behalf of the Respondent

[20] In submissions on behalf of the Respondent learned counsel, Mrs. Zena Moore Dyer, also cited the case of **Cornilliac v St. Louis** and its legal import. The submissions go on to make the following analysis of the matter:

1. The virtual complainant received injuries but the doctor's deposition says that the wound were caused by moderate force.
2. The virtual complainant's evidence on affidavit that the injury has affected his work in construction which is not supported by medical evidence.
3. There is no necessity to replace the entire sliding door but merely the glass at a cost of \$203.15 rather than \$1,100.00 to \$3,000.00 quoted by the applicant;
4. The income loss stated by the applicant is not contained in his affidavit but given viva voce.
5. The applicant is entitled to damages for pain and suffering but not for loss of amenities as there is no evidence in support.
6. There is no evidence to support the amount the applicant earned and there is no independent evidence in this regard. No assumptions can be made by the court.
7. There is no independent evidence that the applicant was unable to work for 10 months.
8. An award of \$6,500.00 should be made to the applicant for pain and suffering plus the cost of the door and the labour.
9. No award should be made for loss of income and loss of amenities as there is no evidence in support.
10. The mitigating factors on the part of the respondent should be considered being that the Social Inquiry Report does not portray him as being violent and his actions are due to psychiatric illness. Additionally the respondent pleaded guilty and showed remorse.
11. The court should award \$6,500.00 for pain and suffering and a non-custodial sentence imposed.

Reasoning and conclusion

[21] It is common ground that the case of **Cornilliac v St. Louis** is the seminal case in the Commonwealth Caribbean common law jurisdictions on the award of damages for personal injuries. It must also be common ground that in the award of such damages there can be no precision in the calculation and courts must resort to decided cases with similar facts and circumstances, as Lord Hope restated.

[22] This is very apparent in the submissions filed in the matter in that both sides cited and relied on the case of **The Queen V Mike Scotland** which involved stab wounds to the anterior chest and left lumbar region.

[23] But learned counsel Mrs. Dyer sought to distinguish the case of **The Queen v Mike Scotland** on the basis that severe force was used in that case compared to the moderate force in this case. However what learned counsel has overlooked is the fact that the applicant suffered some 17 stabbed wound to various parts of the body. The wounds were to the right shoulder blade, the right and left scapula, at the internal border and on the blade, the right infra clavicular region, at the 6th and 7th intercostal space at the left infra mammillary line, right flank, right knee and two puncture wounds to the head.

[24] In short then, the wounds were spread over the applicant's body and he initially complained of difficulty in breathing. In all the circumstances he spent two days at the Princess Margaret Hospital which goes to the gravity of the wounds.

[25] With that said, the court accepts that the applicant would have been unable to work for some time but the precise time was not established by credible evidence. As such the court rejects the contention of the 10 month's inability to work. And in the circumstances would accept the evidence of \$70.00 per day earned by the applicant and would award \$1,400.00 as nominal damages for loss of earnings for 4 weeks being, \$70.00 per day by 20 days.

[26] This rests on the principle that a court can award nominal damages where in the circumstances the applicant/or claimant is entitled to damages but is unable to prove the same. This rests on a ruling of the Privy Council in the case of **Greer v Alston Engineering Sales and Services Ltd**⁶

[27] In addition the \$7,500.00 advanced by learned counsel Ms. Felix for the applicant for pain and suffering is accepted by the court based on the **Mike Scotland** case. To this must be added \$500.00 to cover the cost of the glass as the court rejects the replacement of the entire sliding door.

ORDER

[28] The court therefore makes the following order for damages to the applicant as follows:

Damages for pain and suffering	\$7,500.00
Nominal damages for loss of earnings for one month	\$1,400.00
Damages for replacement of glass and associated labour	\$500.00
Total award	\$9,400.00

The total award for damages must be paid within six [6] months from the date of this order failing which the respondent shall serve six [6] months in prison upon being so ordered when he is brought before this court for resentencing.

The court further orders the respondent to continue to receive his treatment at the Psychiatric Unit in accordance with the schedule notified to him.

The respondent shall be released from prison by the Superintendent of Prisons on 16th December 2015.

Errol L. Thomas

High Court Judge [Ag]

⁶ Appeal No. 61/2001