

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

CASE NO. DOMHCR2013/0006

BETWEEN:

THE STATE

and

CLEAVER BURTON

Appearances:

Ms. Evelina E-M. Baptiste for the State

Mr. Peter Alleyne for the Defendant

2015: March 13

Judgment on sentencing

[1] THOMAS, J. [Ag.]: on February 12 2015, Cleaver Burton was found guilty of causing grievous bodily harm with intent, contrary to section 20 of the **Offences Against the Person Act**¹. The jury was unanimous in their verdict.

[2] At that date also the court ordered a social inquiry report to be prepared by a Probation Officer.

[3] Such a report was prepared by Anestin Baron, Probation Officer. And based on a consideration of the defendant's family history, his education and his employment. Added to this the Probation Officer conducted interviews with the defendant, the victim, the defendant's mother and other persons.

[4] Arising from all of the foregoing is the Probation Officer's general assessment and conclusion. They are in these terms:

¹ Chap. 10:31

“General Assessment

Based on the assessment, the Honourable Court’s attention is drawn to the following:

- **Cleaver’s Sentiments:** Cleaver expressed remorse for his action for which he said that he has daily regrets and has learnt from experiences. Furthermore, Cleaver has accepted responsibility for his actions. In his view, irrespective of the extent of his action on the victim, he does not desire to receive a custodial sentence.
- **Family History and Sentiments:** Cleaver was raised by his mother with assistance from his maternal grandmother. It was stated that Cleaver was not subjected to any form of abuse during his upbringing and neither did he witness any level of domestic violence within the home environment.
Cleaver’s mother and uncle are of the view that he should not receive a custodial sentence but rather, ordered to pay compensation to the victim. Cleaver was described as a friendly individual who did not possess an aggressive temperament.
- **Victim’s Sentiments:** Brian shared the view that Cleaver’s action has severely affected his daily life. Brian is angry towards the incident and believes that Cleaver should be made to pay for the errors of his actions. Hence, he wishes that Cleaver be ordered to compensate him for his injury which will assist in securing overseas medical care.
- **Public Sentiments:** All individuals interviewed described Cleaver as a friendly individual who has an aggressive temperament. It was generally felt that Cleaver should be held accountable for his actions which seriously affected the victim’s life. As such, views obtained suggested that Cleaver should be ordered to pay compensation to the victim.

CONCLUSION

Cleaver’s act of violence cannot be trivialized. His actions have greatly affected the life of an individual who has clearly stated his sufferings since the incident. From the information gathered, Cleaver’s family does not believe that violence is part of his temperament. However, the community based assessment revealed that although Cleaver is a very friendly individual, he also has an aggressive manner to him. It should also be noted that Cleaver revealed that he is a repeat offender and two of these offences were Battery and Wounding incidents. These offences question Cleaver’s behaviors and his claims that he is not a violent individual.

It has been seen that there is a trend in today’s society whereby young people go around with weapons concealed on their person which often results in injury when an altercation occurs. Cleaver’s action on the day in question could have been fatal. The victim of his action suffered a very serious injury which has hindered his ability to move about without the aid of crutches or a wheelchair. Also, the victim is no longer able to engage in gainful employment and is now dependent on his mother in catering towards his basic needs. Based on the interview with the victim, he has lost his sense of independence and possesses angry sentiments towards Cleaver. Important to note is that the victim’s angry sentiments extend to the desire to kill Cleaver upon his release from prison.

It should be noted that while Brian shared the sentiment of Cleaver not receiving a custodial sentence, his anger towards the accused cannot be taken lightly. One is left to wonder which of the two takes precedence in the mind of the victim.

I have already expressed the view that the nature of Cleaver's action cannot be trivialized. However, the Court needs to consider the medical history of the young man and the circumstances which might have impacted on him. Through his admission and that of his family members, Cleaver was diagnosed with Bipolar disorder about thirteen years ago. It was also noted that it is not always known whether Cleaver takes his medication and whether his medical condition could have influenced his action on the day in question.

Although Cleaver expressed remorse for the offence for which he stands charged, he was unable to give a reason for his action.

I share the view that the victim should to be compensated for the costs of medical care already obtained and prospective medical care. Also, given that the accused and his family revealed that he was diagnosed with Bipolar disorder, I wish to recommend that a request be made to Dr. Griffin Benjamin, registered Clinical Psychiatrist, Acute Psychiatric Unit, for a comprehensive clinical assessment of Cleaver Burton.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Cleaver Burton.”

- [5] The following matters must now be considered in making or determining the appropriate sentence. These are: the nature of the offence, the manner of execution, the maximum penalty for the offence, the age of the defendant, the medical condition of the victim after the injury, the aims of sentencing, mitigating factors, the aggravating factors, the prevalence of the offence, the plea in mitigation, the defendant's record and the matter of compensation.

Nature of the offence

- [6] Causing grievous bodily harm with intent. The element of intent being critical.

Manner of execution

- [7] The defendant, using a bladed instrument stabbed the victim in his upper back. The blade remained in the victim's back and the handle of the instrument broke off. That points to the force used to inflict the wound.

Maximum penalty under the law

- [8] The maximum penalty is 10 years imprisonment for the offence.

Age of the defendant and the victim

- [9] The defendant is now 31 years old. His date of birth is Marc 23, 1983. On the other hand, the victim is now 44 years old.

Medical condition of the victim

- [10] Dr. Paul's evidence: "The patient continues to walk with a limp and uses a stick for support. The patient will never be back to full recovery. His injuries are permanent. The patient has now reached his maximum point of recovery and – no additional therapy and treatment can improve his condition."

Defendant's record

- [11] The defendant has previous convictions.

Aims of sentencing

- [12] In the case of **Desmond Baptiste v The Queen**², Byron CJ noted that: "Perhaps the most difficult and controversial are for the sentencer is fitting the punishment to the crime." The Learned Chief Justice went to identify the following as sentencing objectives: retribution, deterrence, prevention and rehabilitation.

- [13] Chief Justice Byron went on to explain the various objectives as follows:

Retribution

Retribution at the first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in the law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 [**in R v Sargeant**] that society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.'

Deterrence

Deterrence is general as well as specific. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour.

² Criminal Appeal No. 8 of 2003 at para. 20

Of what value however are sentences that are grounded in deterrence?

Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The aim here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarceration and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the defendant in activities that would assist him with re-integration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structure activities to facilitate reform.”

Mitigating factors

The mitigating factors are that the defendant has expressed remorse to the Probation Officer who added that the defendant has indicated that he thinks about the incident quite frequently.

Aggravating factors

Without a doubt the defendant inflicted the severe wound on his friend without cause and without provocation, must be a serious aggravating factor. As a matter of fact the victim was seated when the wound was inflicted. Further the weapon was on the defendant's person.

Prevalence of the offence

Causing grievous bodily harm with intent is a serious and prevalent offence in the Commonwealth of Dominica. This case also exemplifies the height to which the bodily harm can attain.

Criminal record

The records show convictions for battery, wounding, throwing missiles and possession of cannabis.

Plea in mitigation

Sentence

- [14] In this case the court, in terms of the sentencing objectives or aims must focus on retribution, deterrence and prevention and the rationale attached to each one. But, those apart, as the Probation Officer noted the defendant's act cannot be trivialized. This must rest on the nature of the injury and the medical consequences that flowed.
- [15] Another consideration are the facts that the defendant was diagnosed 13 years ago as suffering from a bipolar disorder and needs medication for this disorder and has previous convictions related to violence.
- [16] On the other hand, the victim is fixed with partial paralysis and is unable to work since he cannot stand or walk without crutches; nor can he sit for long periods due to pain. And without the injury he could have worked for at least another 20 years.
- [17] In the circumstances the matter of compensation to the victim is a relevant consideration combined with a custodial sentence. This is based on section 73 (1) of the **Criminal Law and Procedure Act**, Chap. 12:01.
- [18] Having considered the means and circumstances of the defendant and the victim based on evidence adduced in this court, it is hereby ordered that the defendant pays Brian Dominique compensation of \$60,000.00 by 15th September, 2015, that is, in 6 months. If the defendant fails to pay the compensation he will serve 8 years in prison.
- [19] The court further orders that the defendant be released on 16th March 2015, in order to secure the compensation by lawful means. If the compensation is not paid by 15th September 2015, a Police Officer in uniform is hereby authorized to arrest the defendant and deliver him to the State Prison to commence his sentence on 16th September, 2015. Time on remand shall count as part of the sentence.
- [20] The compensation shall be paid into the High Court on behalf of Brian Dominique.

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ERROL L. THOMAS
HIGH COURT JUDGE [Ag.]