

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

SUIT NO. DOMHCR2013/0012

BETWEEN:

THE STATE

AND

DARRIS PRINCE

.....
2014: June 11th

July 25th
.....

Appearances:

Ms. Sherma Dalrymple for the State

Mr. Wayne Norde for the Defendant

SENTENCING REMARKS

- [1] On the 10th June 2014 the defendant was indicted by the learned DPP for Causing GBH and unlawful wounding contrary to section 20 of the Offences against the persons act¹.
- [2] On June 11th 2014 the defendant pleaded guilty to the second count of unlawful wounding. The learned DPP withdrew the first count.
- [3] He is now before the court for sentencing.

Facts:

¹ Cap 10:31 of the Revised Laws of Dominica 1990

- [4] On the night of the 10th April 2012 both the accused and the defendant were socializing at the Rosema Bar in Grand Fond. The VC whilst he was purchasing some drinks felt someone push him in his back. Upon turning around he noticed that it was Nayhan Prince the brother of the defendant. The defendant later entered the shop and spoke with the V C.
- [5] Later the night about one hour later the V C left the shop and went onto the public road. He noticed the defendant standing behind a van which was parked nearby.
- [6] While the VC was standing outside of the shop, the defendant who was standing outside on the public road threw a bottle at the VC and ran away.
- [7] The bottle which was thrown connected with the head of the defendant and shattered.
- [8] The VC sustained injuries to his head and right eye. After receiving medical attention the V C was diagnosed as being blind in his right eye. As a result of the loss of vision to the right eye the VC has been suffering with eye strain in the left eye and has been forced to wear glasses.

The law and sentence:

- [9] Section 22 of **The Offences Against the Persons Act**² states:

"any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person with or without any weapon or instrument is liable to imprisonment for two years ..."

- [10] The maximum sentence that can be imposed in matters such these is two years.

- [11] Section 3(1) of **The Criminal Justice (Reform) Act**³ states:

"Subject to subsection 2, where a person who has attained the age of 18 years but is under the age of 23 years is convicted in any court for any offence the court instead of sentencing that person to imprisonment shall deal with him in any other manner prescribed by Law."

Subsection 2 provides:

"subsection 1 does not apply where-

- (a) *The Court is of the opinion that no other method of dealing with the offender is appropriate;*
 - (b) *A sentence of imprisonment is fixed by law;*
 - (c) *Violence or threat of violence has been used in the commission of the offence; or*
 - (d) *The person at the time of the commission of the offence was in possession of a firearm*
- [12] The defendant was 20 years old at the time he committed the offence however it has been submitted by the Learned Prosecuting Counsel that the offence committed is one of violence and therefore section 3(1) of the Act cannot be applied to the defendant.

² IBID

³ Chapter 12:35 of the Revised Laws of Dominica 1990

[13] I agree with the learned Prosecutor in this regard that Section 3(1)⁴ does not apply to the defendant in the case at bar.

Principles of sentencing:

[14] *The Principles of sentencing followed by this court as stated in Winston Joseph et al –v- R*⁵ is that :

*"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors,... A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher."*⁶

[15] Further pursuant to the guidance laid down in **R –v- Sergeant**⁷ I have taken into consideration the principles of sentencing that is in short stated as **"Retribution, deterrence, prevention, and rehabilitation."**

Plea in Mitigation:

- That he has pleaded guilty at the first possible opportunity availing himself of the discount on sentencing
- He has expressed remorse for his actions
- That he comes from a stable Christian house hold and attends church regularly and in fact acted in defence of his brother
- That the court temper mercy with justice and learned counsel for the defendant further urged the Court to give the defendant an opportunity to learn from this unfortunate incident and render him the chance to become a productive member of society.

[16] Learned Counsel for the defendant also urged the court to consider the sentences handed down in the Jamal George⁸ and Shermel Christopher⁹.

Submissions by the state:

⁴ The Criminal Justice (Reform) Act ibid

⁵ Criminal Appeal No 4 of 2000, Criminal Appeal No 8 of 2000 and Criminal Appeal No 7 of 2000 (Consolidated) St Vincent & The Grenadines

⁶ Per Chief Justice Sir Dennis Byron

⁷ 60 Crimal Appeal Reports 74

⁸

⁹

[17] In their written submissions, the state agreed with the mitigating factors as outlined by the defence save that the defendant's plea was not at the first possible opportunity.

[18] The aggravating circumstances identified by the state are that the defendant used a weapon to wit a bottle to commit the act and that his action was deliberate and calculated in that he waited outside of the shop on the VC and that he disregarded the warning of one of the persons around, and that his actions caused serious, extensive and permanent damage to the VC. (I pause here to say to you young man that but for the grace of God you are not standing before me for a more serious offence and that of murder or manslaughter as you could have just as easily taken the life of the VC by your actions).

[19] I have taken in to considerations the following authorities presented to the Court which represent the sentencing trend in matters such as the case at bar:

1. **The State –v- Darnel John¹⁰** – the defendant who was indicted for wounding with intent and unlawful wounding was sentenced to 9 months in prison less six months spent on remand;
2. **The State –v- Ken Wade¹¹** - the defendant was sentenced to pay a fine of \$5,000 in six months in default 9 months in prison;
3. **The State –v- Eustace Leatham¹²** - the defendant was to indicted for wounding with intent and unlawful wounding was fined \$1,000 payable in 5 months in default 6 months.
4. **The State –v- Everson Sabroche¹³** - the defendant was to indicted for wounding with intent and unlawful wounding was fined \$6,000 payable in 2 months in default 9 months, with a compensation order to pay \$5,000 payable in 5 months and in default 6 months in prison
5. **The State –v- Marvin Ferreira** - the defendant was indicted for wounding with intent and unlawful wounding was fined \$3,000 payable in 3 months in default 9 months with a compensation order of \$6,000 payable in 6 months and in default 9 months in prison.
6. **The State –v- Cyprian Romain¹⁴** - the defendant was indicted for wounding with intent and unlawful wounding was fined \$7,000 payable in 3 months in default 9 months, with a compensation order of \$10,000 payable in 6 months and in default 9 months in prison.
7. **The State –v- Pascal Proctor¹⁵** - the defendant was indicted for wounding with intent and unlawful wounding was fined \$7,000 payable in 3 months in default 9 months, with a compensation order of \$10,000 payable in 6 months and in default 9 months in prison.
8. **The State –v- Philsbert Carbon¹⁶** - the defendant was indicted for wounding with intent and unlawful wounding was fined \$10,000 payable in 2 months in default 9 months.

¹⁰ DOMHCR2005/005

¹¹ DOMHCR2006/0019

¹² DOMHCR2006/25

¹³ DOMHCR2006/31

¹⁴ DOMHCR2006/008

¹⁵ DOMHCR2007/10

¹⁶ DOMHCR2007/37

9. **The State –v-Ian Matthew Shillingford¹⁷** - the defendant was indicted for wounding with intent and malicious wounding was fined \$4,000 payable in 6 months in default 9 months, with a compensation order of \$3,000 payable in 6 months and in default 6 months in prison.
10. **The State –v-Trevor Francis¹⁸** - the defendant was sentenced to indicted for wounding with intent and unlawful wounding was fined \$5,000 payable in 3 months in default 24 months, with a bond to keep the peace for 3 years in default 24 months in prison with a compensation order of \$4,500 payable in 6 months and in default 6 months in prison.

[20] It is noted that the sentences handed down in the aforementioned cases would have been dependant on the injury sustained and the circumstances of each case. I am also cognizant of the fact that I ought not to slavishly follow the sentences that have been previously laid down in this said matter at the same time I will take them into consideration as they represent of the sentencing trend of this court.

Pre Sentence Report:

[21] The defendant hails from the village of Grand Fond and was brought up in a stable Christian Home. He attended and graduated from the Castle Bruce Secondary School and is currently a final year student at the Dominica State College.

[22] He has expressed his remorse and sadness over the whole incident. At the time of the incident he was not known to the Police however, he did not have a good disciplinary record at High School and unfortunately his peers in the village do not think very much of him; in that the persons interviewed according to the Probation Officer preparing the report spoke negatively of Darris.

[23] This is a cause of concern as he is seen as an aggressive person and one who is likely to cause trouble. These sentiments have to be weighed against the fact that in spite of these views Darris has no previous conviction involving violence and the expressed sentiment of the VC that a custodial sentence would only ruin Darris' life. It is also noted that Darris is in his final year of studies at the State College.

THE SENTENCE:

[24] Having considered the circumstances of the offence and the established starting point along with the guidelines that have been laid down which requires that the punishment of the offence must be commensurate with the seriousness of the offence. Having considered the aggravating and mitigating circumstances and also taking into consideration that the defendant has pleaded guilty at arraignment which has permitted him access to the 30% discount and having considered the sentencing decisions

¹⁷ DOMHCR2007/40

¹⁸ DOMHCR2010/07

handed down in this Court over the last ten years, the notional sentence in this matter would be that the defendant is sentenced to 18 months in prison suspended for 2 years reduced by 30% to be 12 months in prison suspended for 16 months. Now because I am particularly concerned about Darris' perceived behaviour and aggression I am going to make two additional orders:

- (i) That during the time that his sentence is suspended he is bound over to keep the peace for 16 months and in breach he will serve the time sentenced, that is 12 months;
- (ii) That he is during the time that his sentence is suspended to attend Anger Management and Behavioural Cognitive Thinking. Counselling at or as arranged by the Social Welfare Department. Failure by him to comply with this order he will serve the sentence which has been suspended that is the 12 months.

.....
M E Birnie Stephenson

High Court Judge (AG.)