

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2011/0026

BETWEEN:

THE QUEEN

Claimant

AND

MIKEL SCOTLAND

Defendant

Appearances:

**Mr. Leslie Mondesir Counsel for the Defendant
Mr. Stephen Brette Crown Counsel for the Crown**

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2012: April 18
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** On the 7th November 2011 the defendant was indicted by the Director of Public Prosecutions for the alternative offences of dangerous harm and grievous harm allegedly committed on Bradley Henry on the 8th January 2011. On the 31st January the defendant at his arraignment pleaded guilty to the offence of dangerous harm which was the first count in the indictment.

[2] **THE FACTS**

On the 8th January 2011 Bradley Henry (the Virtual Complainant) along with his siblings Curtriss, Curtricia and Curtis Welch were walking along the Careille road having left a bar-b-que when an altercation occurred between the Virtual Complainant and his sister Curtriss during which he held her by the collar causing a beaded chain which she wore at the time to be broken. The chain belonged to the defendant who was at the time the boyfriend of Curtriss. The defendant intervened and took out a knife and stabbed the Virtual Complainant several times which resulted in the following injuries:

- 2cm stab wound to the right anterior chest
- 3cm stab wound to the left lumbar region

[3] The degree of force used was considered to be significant and in the opinion of the doctor the injuries could have been inflicted by a knife. The Virtual Complainant was hospitalized and treated for his injuries from which he made a full recovery.

[4] The defendant was restrained and finally dragged away from the Virtual Complainant by the Virtual Complainant's sisters among whom was Curtriss the girlfriend of the defendant. He eventually turned himself in to the police on the 10th January 2011.

[5] **THE HEARING**

The court upon receipt of the defendant's guilty plea ordered a pre-sentence report be prepared. The contents of this report proved to be quite helpful to the court in learning of the history of the defendant as it related to his upbringing, his characteristics and the opinions of members of the community in which he resided.

- [6] The defendant was from an early age raised by persons other than his biological parents. His biological father migrated to the United Kingdom with the intention of having the defendant join him there eventually. This never materialized and the view is expressed that this caused the defendant to feel unwanted by his parents and as a result he became a bitter and angry person. He exhibited a strong resistance to discipline both at school from which he was suspended and never returned. He was known to keep company with undesirable persons and was also considered to be loud, aggressive and prone to violence and fights. He was not meaningfully employed and spent time on the block smoking cannabis. Members of his family however consider him to be a loving, pleasant, respectful and helping individual. The probation officer in the pre-sentence report sums up the varying opinions of the defendant's personality thus;

“There are conflicting reports about Mikel’s behaviour around his relatives and in the community. His family generally describes him as a quiet and respectful individual, community residents describe him as a loud person who has the tendency to behave aggressively. Mikel admits to having a problem with his ability to manage his anger. Mikel dropped out of school in form 3 and reports indicate that he has not pursued any formal education since. Additionally, Mikel has not been gainfully employed.”

- [7] Counsel for the defendant Mr. Mondesir submits the following to be the aggravating and mitigating factors herein:

MITIGATING FACTORS

- (a) The defendant has pleaded guilty at arraignment (see also rule 10.2 (2) (c) Criminal Procedure Rules 2008) to count one of the dangerous harm;

- (b) The defendant has no previous convictions;
- (c) The young age of the defendant: 19 years old;
- (d) The defendant has been on remand since 31st January 2012;
- (e) The genuine remorse expressed by the defendant to the probation officer;
- (f) The defendant surrendered himself to police custody;
- (g) The acceptance by the defendant that there is an anger management issue, and a desire to rehabilitate his life.

AGGRAVATING FACTORS

- (a) A knife was used by the defendant;
- (b) Two stab wounds were involved.

The defendant submits that on a consideration of the aggravating and mitigating factors and the applicable law, the mitigating factors outweigh the aggravating factors.

- [8] Counsel contends that the defendant has indicated his willingness to make compensation to the Virtual Complainant in the sum requested and is determined to change his ways in that he will discontinue his use of cannabis and become a productive and law abiding citizen. He further contends that the defendant will be assisted in the rehabilitation process by one Nicholson Alexis a retired Assistant Superintendant of Police who is the father of the defendant's stepmother and Mr. Francis Louis. Mr. Alexis has offered to have the defendant reside at his home and to serve as his mentor while Mr. Louis who owns and operates Santo's Construction has offered him employment and added supervision.

[9] It should be mentioned that at the sentencing hearings both of the aforesaid persons were present. Mr. Alexis gave sworn testimony stating that he will be responsible for the payment of compensation to the Virtual Complainant in the sum of \$8,571.95.

[10] Mr. Mondesir has stressed the hitherto clean criminal record of the defendant, his extreme remorse, his youthful age and his intention to fully compensate the Virtual Complainant in the sum required as compelling reasons for the imposition of a non-custodial penalty on his client.

Crown Counsel Mr. Stephen Brette on the other hand has submitted the following as the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

- (a) The seriousness of the offence;
- (b) The offence was committed with the use of a weapon on the Virtual Complainant;
- (c) There were multiple stab wounds;
- (d) The extent and location of the injury – potential to be life threatening without timely medical intervention;
- (e) The weapon came to hand by the defendant already being armed with it concealed on his person;
- (f) The Virtual Complainant was unarmed at the time the defendant inflicted the injury;
- (g) The defendant did not stop stabbing the Virtual Complainant on his own volition. He was wrestled off by the Virtual Complainant's sisters;
- (h) The incident which caused the defendant to commit the offence occurred between the Virtual Complainant and his sister – not the defendant and the Virtual Complainant;

- (i) The defendant resorted to the use of life threatening force to resolve what can be regarded as a trivial domestic dispute.

MITIGATING FACTORS

- (a) A plea of guilty at the first reasonable opportunity which presented itself;
- (b) The defendant was the one who turned himself in;
- (c) The remorse expressed to the probation officer.

[11] Mr. Brette opined that the aggravating factors outweigh the mitigating ones. He contends that the age and hitherto clean criminal record of the defendant ought not to be taken in to account in the defendant's favor when the seriousness of the offence is considered. He reminds the court that the pre-sentence report does not paint a glowing picture of the defendant and that residents of his community take a dim view of his behavior and character in general.

[12] Crown counsel has conceded however that the imposition of a custodial sentence together with the payment of compensation may defeat the whole purpose of the grant of compensation as if the def is incarcerated he may well be unable to pay compensation.

THE LAW

A useful starting point would be to examine the classical principles of sentencing. The classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation were laid down by Lawson LJ in the celebrated case of *R v James Henry Sargent* 1974 60 Cr. App. R. 74. in that decision Lawson LJ stated that:

“any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing”

[14] In **Desmond Baptiste v Regina** CJ Sir Dennis Byron embraced and applied these principles. I will now apply these principles to the case at bar.

[15] **RETRIBUTION**

The defendant used a knife which he commonly carried around to inflict the injuries aforesaid on the Virtual Complainant. So vicious was his attack on the Virtual Complainant that he had to be physically pulled away and restrained from inflicting further injuries on him by persons in whose company he was which included his girlfriend. In the opinion of the physician who attended to the Virtual Complainant, the degree of force used was significant.

[16] **DETERRENCE**

Deterrence is general as well as specific in nature. The former is intended to be a restraint against the particular criminal relapsing into recidivist behavior. The defendant has admitted using and abusing cannabis which he claims helps him to relax. When however I take into consideration the community's views of his character and personality I find that the contrary to be the effect of his drug use in that he is considered to be loud aggressive and prone to violence. If left unaddressed his drug use would undoubtedly be a trigger to recidivism.

[17] **PREVENTION**

Notwithstanding his unsavory habits and lawless conduct in the past the defendant has a clean criminal record. I am of the view however that until he has addressed his drug use and anger management issues preventative steps should be taken to ensure that the defendant does not re-offend.

[18] **REHABILITATION**

The defendant has indicated a desire to turn his life around and to become a law abiding citizen. I am heartened by the offers of mentoring from Mr. Alexis a retired police officer and employment by Mr. Louis. I find that this type of support mechanism would be of invaluable assistance to the defendant in surmounting that hurdle to elevate him from the ranks of the lawless to achieve good character status.

[19] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence;
2. The use of a weapon carried around by the defendant;
3. The trivial nature of the incident which sparked the defendant's outrage;
4. The Virtual Complainant was unarmed.

MITIGATING FACTORS

1. The hitherto clean criminal record of the defendant;
2. The defendant's expression of remorse and offer to compensate the Virtual Complainant;
3. The defendant's plea of guilty at the first available opportunity.

[20] I have carried out a balancing exercise of the aggravation and mitigating factors herein in light of all the circumstances of this case. I do not consider the defendant's age at the time of the commission of this offence to be a mitigating factor. At age 19 the defendant is already a father and as such in more than one regard has assumed the mantle of adulthood. Having successfully climbed the ladder of life to attain the rungs of adulthood the defendant is estopped from relying on the lifeline of adolescent immaturity to justify his wrongdoing as an adult. Taking responsibility for your actions is synonymous with being a man and being a parent. I find that the aggravating and mitigating factors to be evenly balanced.

[21] **FINDINGS**

The seriousness of the offence committed by the defendant cannot be over emphasized. Moreover the cause for the inflicting of serious injuries on the Virtual Complainant with significant force is another cause for concern. I accept that the defendant is genuinely remorseful for what he has done as is evidenced in his early guilty plea and his expressions of remorse to the probation officer.

[22] I find that the defendant's exhortations and promises to turn his life around without more to be no more than a pipe dream. As stated aforesaid however I am heartened by the intervention by Mr. Alexis and his family into the life of the defendant as the support mechanism for the defendant's achievement of his stated intentions.

[23] It's clear that this matter started out as no more than a sibling dispute into which the defendant intervened and went over the top blowing it totally out of proportion. The defendant's girlfriend is the sister of the Virtual Complainant. The court has been urged by defence counsel to give the defendant an opportunity to make good on his stated intentions to turn his life around and become

a productive and law abiding citizen. Mr. Mondesir has also asked the court to consider in the defendant's favour the offer to pay compensation to the Virtual Complainant in the sum requested. Crown counsel in his written submissions appears not to be averse to this proposition.

[24] I find that healing is an essential element in the settlement of disputes between parties. The defendant's offer to pay compensation is regarded as further evidence of his true sense of remorse and an attempt at reconciliation. I am satisfied that the defendant will have all the required support necessary to make the rehabilitation process a success. I find however that a system of checks and balances together with certain safeguards must be put in place to minimize the likelihood of recidivism.

[25] In the circumstances the court makes the following orders;

1. that the defendant shall pay the sum of eight thousand, five hundred and seventy one dollars and ninety five cents (\$8,571.95) by way of compensation to the Virtual Complainant in monthly installments for a period of 6 months commencing May 1st 2012;
2. That upon the defendant's failure to pay compensation in the manner aforesaid he shall serve a period of imprisonment of four (4) years
3. The defendant is fined the sum of five thousand dollars (\$5000.00) or four (4) years imprisonment. The fine shall be paid within twelve (12) months from the date hereof;
4. The defendant is placed on a bond on his own recognizance to keep the peace and be of good behavior for a period of three (3) years. In the event of a breach of this bond the defendant is liable to be re-sentenced by the High Court;
5. The defendant shall attend counseling for anger management, dispute resolution and drug abuse for as long as is required under the supervision of the Director of the Family Court.

6. The defendant's failure to attend counseling sessions as directed by the Director of the family Court shall constitute a breach of his bond for which he is liable to be resented by the High Court.



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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE