

IN THE HIGH COURT OF JUSTICE

BRITISH VIRGIN ISLANDS

(CRIMINAL JURISDICTION)

CRIMINAL CASE NO. 25 of 2007

THE QUEEN

and

CHRISTIAN CALLWOOD

Appearances: Tamia Richards, Senior Crown Counsel for the Crown
Joseph Archibald Q.C., Anthea Smith of JS Archibald & Co for the Prisoner

2008: July 29th and Oct.7th

Judgment on Sentencing

(Criminal Law – Sentencing – Guilty Plea – Wounding – Criminal Code 1997 – s. 164 of the Criminal Code – Prisoner a paranoid schizophrenic at time crime committed and condition subsisting)

[1] **Joseph -Olivetti J:** The Prisoner, Christian Callwood was charged with wounding contrary to section 164 of the Criminal Code, 1997 (Act No. 1 of 1997) of the Laws of the Virgin Islands. He pleaded guilty. The court held a sentencing hearing on 29th July and delivered its decision on the same day. I now give written reasons for my decision.

THE FACTS

[2] The gist of the facts as given by the Prosecution is as follows. The Prisoner is 25 years old. He is a diagnosed paranoid schizophrenic who at all material times resided with his parents on the island of Jost Van Dyke, British Virgin Islands. On 25th March 2007 Mr. Christopher Johnson, a tourist visiting from Texas, USA was dining at the Prisoner's parents restaurant in Jost Van Dyke when he was viciously attacked by the Prisoner who cut his throat with a pocket knife. The day before the Prisoner had seen Mr. Johnson talking to his sister on the beach and had arranged accommodation for Mr. Johnson at his

parents' inn. Mr. Johnson received medical attention at the local clinic and at the Peebles Hospital. His wound was mended with some 30 to 40 stitches. He remained in hospital overnight and was discharged the following day. (He not surprisingly, did not attend at the trial.)

- [3] The Prisoner was arrested two days later. He gave a statement to the Police to the effect that he was defending his sister. He was warded at Peebles Hospital for a short period and then he was transferred to a psychiatric facility on Barbados where he has been receiving treatment for about a year prior to his appearance in court. In fact he was released from that institution just before his appearance here.

Mitigation and submissions on behalf of the Prisoner

- [4] The Prisoner spoke on his own behalf. He expressed remorse and said that he had made a mistake as he thought at the time that Mr. Johnson wanted to harm his sister, that he has seen the error of his ways and that he is now on medication and had recovered. He sought the Court's mercy.
- [5] The Prisoner called two character witnesses - his mother, Mrs. Teresa Callwood and Mr. Selvin Chinnery, a family friend and a resident of Jost Van Dyke. The import of their testimony was to the effect that the Prisoner had an impeccable family background, was a very friendly young man and prior to this incident had displayed no signs of violence.
- [6] Mrs. Callwood testified that her son excelled in primary school but that in high school he showed signs of weakness and became emotionally dependant on his younger sister. He dropped out of college in Florida, USA at age 18 years. Upon his return to Jost Van Dyke he became seriously paranoid and was later seen by a doctor in St. Thomas where he was prescribed psychotic drugs. He was monitored by that doctor for a period of one year then he came under the care and supervision of Dr. June Samuel in the BVI from 2003. She stated that after the incident her son was detained at the Peebles Hospital and that most of the time he was isolated and in shackles. Eventually, she was able to have him treated at the institution in Barbados. He is now on an injectable form of medication which is much easier to administer and monitor and that he has been stable since his release. She felt that with the help of a qualified caretaker he would be able to in time lead a normal life.

[7] Learned counsel for Mr. Callwood, Mr. Archibald Q.C. readily recognized that this was a serious charge which would normally merit a custodial sentence. However, counsel submitted that the Prisoner has no prior convictions and asked the court to consider in particular that his client pleaded guilty, that his medical condition with treatment had significantly improved within a year, that he is trying to re-habilitate himself and that his client had expressed remorse. He asked that the court temper justice with mercy and give the Prisoner a chance to make good. Counsel urged the court to impose a combination order to include a community service order and a suspended sentence.

Crown's Submissions

[8] Ms. Richards provided very helpful guidelines in particular the cases of **The Queen v. Chevon Russell (2006)** – guilty plea – unlawful wounding - victim stabbed in the neck - wound 12 centimetres long and 1 centimetre which required 11 stitches – sentenced to four (4) years imprisonment; and **The Queen v. Adrian Hodge 2004** – wounding with a firearm – no prior convictions - Defendant found guilty by jury - Sentenced to 3 years imprisonment for wounding with a firearm; from our High Court and the English case of **Simpson [1998] 1 Cr. App. R. (S) 197** – guilty plea - unprovoked attack upon a stranger – victim stabbed in the arm with a chisel - sentenced to 4 years imprisonment on appeal reduced to 30 months.

[9] The Crown submitted in essence that the aggravating factors outweighed the mitigating factors and identified the mitigating factors as the guilty plea and the medical condition of the Defendant at the time of the offence. Counsel enumerated the aggravating factors as follows:

- (1) extensive injury/wound to delicate area of body;
- (2) premeditated; and
- (3) the use of a weapon.

Court's Consideration

[10] Wounding is no doubt a serious offence as is reflected by the maximum sentence of five years imprisonment which Parliament has imposed (see s. 164 of the Code). However,

punishment is always a matter for the court's discretion having regard to the particular circumstances of the case. Accordingly, the court has a wide discretion in sentencing, both at common law, under the Code and the Criminal Justice (Alternative Sentencing) Act 2005 (CJAS Act), to enable the court to do justice having regard to the particular facts of each case.

- [11] Recently Gordon JA in **Thelbert Edwards v R**.¹ reiterated the paramount considerations in sentencing. He explained:-

“Section 142 of the Criminal Justice Act of England speaks to five purposes of sentencing. They are the punishment of offenders; the reduction of crime (including its reduction by deterrence); the reform and rehabilitation of offenders, the protection of the public; and, the making of reparation by offenders to persons affected by their offences. Section 1102 of the Criminal Code mandates that a court, in sentencing, shall observe the general guidelines set forth in that section. The guidelines are four in number. They are: the rehabilitation of the offender; the gravity of the punishment must be commensurate with the gravity of the offence; the offender shall only be sentenced for an offence of which he has been convicted; and, where a fine is imposed the means of the offender must be taken into account.”

- [12] The authorities relied on by the Crown establish that offences of this sort are viewed as serious and invariably merit a custodial sentence. However it is noted that none of the cases concerned someone suffering from a mental disorder at the time he or she committed the offence. Normally, in sentencing for this type of offence I would have been minded to impose a custodial sentence had it not been for two factors present here – the mental capacity of the Prisoner at the date of commission of the offence and the fact that his condition is such that his medical needs cannot be properly managed in prison as there is no facility for the treatment of prisoners with mental disability at Her Majesty's Prison at Balsam Ghut. I observe that the CJAS Act Part VI (sections 31 – 37) makes provision for rehabilitation and after care orders for persons who have committed offences under the influence of drugs but no provision has been made for persons who have committed

¹ Criminal Appeal No. 3 of 2001 SLU para 43 delivered January 15th 2007

offences whilst suffering from some form of mental disorder and this is a lacuna which ought to be addressed.

- [13] I now have to consider what is a fitting punishment to meet the justice of this case. In terms of aggravating factors, the Prisoner committed an act of wanton violence, a totally unprovoked attack on an unsuspecting person and the injury he inflicted was serious as Mr. Johnson received some 30 - 40 stitches. In addition, the Crown properly indicated that this injury was caused by the use of a weapon.
- [14] As to mitigating factors, I take account of the following: - that the Prisoner was suffering from a mental illness when he committed the offence, the timely plea of guilty, no previous convictions (generally a guilty plea entitles the offender to a reduction), his remorse, his full co-operation with the Police, his attempt to get care and treatment for his condition and that he has benefited from such treatment. Having regard to the victim I note that Mr. Johnson has returned to his home and that mercifully he did not make a claim for compensation. This to my mind indicates that he is trying to put this traumatic and horrific incident behind him and I trust that he will in time make a full recovery from his physical and emotional hurts.
- [15] The Prisoner committed these offences when apparently those who cared for him neglected their duty by not ensuring that he was taking his medication as required to control his medical condition and no doubt the unfounded idea he formed that Mr. Johnson posed some threat to his sister from which she needed defending was an emanation of his illness. To that extent one cannot really regard the offence as premeditated as it was a product of a diseased mind. Thus, paramount in the court's consideration is the fact that the Prisoner is a paranoid schizophrenic and that he was suffering from a mental illness when he committed the offence and still is. Such a person in my judgment requires medical attention, not punishment. And I have already remarked there is not a separate facility for mentally ill prisoners at Her Majesty's Prisons Incarceration without more of a mentally disordered person will not assist with his or her rehabilitation and recovery especially if that person is in restraints and has to be locked away for lengthy periods each day.
- [16] In my judgment, on consideration of all the circumstances of the case and for the foregoing reasons, prison is not an option here and the ends of justice can be served by imposing a

suspended custodial sentence with conditions attached as from the medical report I am satisfied that the Prisoner poses no danger to the public if he takes his medication as scheduled. I think that with the requisite care and supervision the Prisoner can control his illness and so in time become a productive and rehabilitated member of society.

[17] Accordingly, Christian Callwood is sentenced to two year's imprisonment suspended for two years. I note that under s. 29 of the Code that one can give a suspended sentence for a maximum of two years. In addition I find it just and in the interests both of Mr. Callwood and the public to impose the following conditions:-

- (1) The Prisoner must refrain from committing any offence in this Territory within that period of two years and if he does so he may be brought back to court and may be called upon to serve a two-year custodial sentence;
- (2) Mrs. Teresa Callwood, his mother, is within ten days hereof to engage a suitably qualified caretaker to assist him daily, the qualifications of the caretaker to be submitted to the court within ten (10) days of his/her appointment;
- (3) The Prisoner is to submit to medical treatment by Dr. Samuels or anyone else whom Dr. Samuels may recommend as and when his caretaker deems necessary;
- (4) The Prisoner must continue to reside for two years with his parents in Jost Van Dyke, British Virgin Islands.
- (5) The Prisoner is to enter into a recognizance to keep the peace and be of good behaviour which must be supported in the form of two sureties in the sum of \$30,000 each.

Rita Joseph- Olivetti
High Court Judge
British Virgin Islands