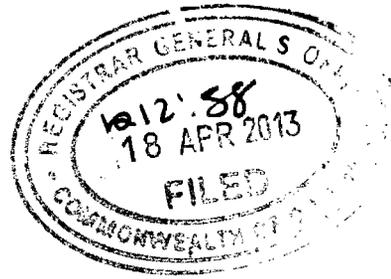


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
DOM HCR2012/021



BETWEEN

THE STATE

AND

ANDY ALEXANDER CASSELL

[25th March 2013]

Appearances:

Mr. Gene Pestaina Director of Public Prosecution with Mr. Clement Joseph and Arthlyn Nesty State Counsel for the State.

Mr. David Bruney for the defendant.

SENTENCING REMARKS

(Criminal Law- Sentencing- Wounding With Intent to do Grievous Bodily Harm-Aggravating and mitigating factors- Considerations in sentencing)

[1] **Stephenson J:** On the 14th September 2012, the accused Andy Alexander Cassel was indicted by the Learned Director of Public Prosecution for the offence of wounding with intent contrary to Section 20 of the Offences against the Persons Act¹ for that he on the 23rd day of July 2008 at Old Street, Roseau, in the Parish of St George, in the Commonwealth of Dominica, unlawfully and maliciously wounded Jovin Williams with intent to do him bodily harm.

[2] The defendant was arraigned on the 18th September 2012 and he pleaded not guilty. An initial trial date was set and the case was traversed on two occasions and eventually set for trial on the 19th

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

February 2013, on that date the defendant applied for the indictment to be reread to him and he changed his plea from not guilty to guilty.

- [3] The salient facts are that on the 23rd July 2008, at around 12:30pm, the virtual complainant Jovin Williams was walking in Roseau along Old Street when he was approached by the defendant who told him **"you have people holding me up"**. The accused then grabbed the virtual complainant and pulled a knife out of his pocket and attempted to cut the virtual complainant's face and in the scuffle that ensued, the accused inflicted cuts on the hands and the left leg of the virtual complainant.
- [4] The virtual complainant collapsed a little way from the scene of the incident and with the help of a nurse and police officer who was in the vicinity was eventually transported to the Princess Margaret Hospital where he was attended to by the doctor on duty at the Accident and Emergency Department.
- [5] Upon his arrival at the hospital the attending physician diagnosed the virtual complainant as being *"in a severe state, he was noted to be in pre hypovolemic shock. His mucus membrane and skin were pale and blood pressure low. He had a deep laceration to his left calf with profuse bleeding and he was unable to move his left leg. The laceration was about 12 cm in length and approximately 6 cm deep. There was no pedal pulse that is there was no pulse in his left foot. He also had small lacerations to his left hand"*.

The Pre Sentence Report

- [6] A pre-sentence report was submitted to the Court by Mr. Leroy Morvan Probation Officer. In preparing his report Mr. Morvan was able to interview the virtual complainant Jovin Williams, the mother of the accused and the persons in the community of Goodwill who are familiar with the accused.
- [7] In the pre-sentence report it was clearly conveyed to the court that the accused has turned over a new leaf in life since the incident and that he has changed and has stopped "hanging on the block" and indulging in negative behaviour. That he has become involved in a stable relationship and has remained employed with his mother working as a vendor in the Tourist market on the Bay Front.
- [8] The virtual complainant did sustain serious injury at the hands of the accused for which he has been put to considerable expense. He said that the wounds that he suffered affected his life to a great extent. His recovery was a long one and he still suffers as a result of the injury sustained. Further he can no longer indulge in his sporting activities and he also has to live with the scars of the injury.

The Plea in mitigation

- [9] Learned Counsel for the defendant urged the court to be extremely lenient on the accused and implored the Court to have mercy on the accused and not impose a custodial sentence.
- [10] In his plea in mitigation for and on behalf of the defendant Mr. Bruney asked the court to find that the defendant has pleaded guilty, thereby saving the court valuable time by avoiding a trial, that the virtual complainant was spared the ordeal of having to relive the unfortunate scenario all over again in front of the judge and jury. Further, that the accused has been living in fear, humiliation, and embarrassment and with the terrifying thought of possible incarceration and that he has been suffering all the emotions that a normal citizen would suffer by way of conscience and genuine remorse. Counsel submitted that these feelings and emotions experienced by the accused may "suffice in terms of retribution required by society"².
- [11] That the incident giving rise to the case at bar occurred in excess of four years ago and in the interim the accused has turned over a new leaf in life and has not re-offended anyway. Mr. Bruney highlighted the statement in the presentence report which made the observation that the accused was no longer seen by the members of his community hanging on the block and the observation that he was home more often.
- [12] That the accused has been in continuous employment and occupation since the incident and that he also now has plans for a future which includes marriage and immigration to England.
- [13] Learned Counsel Mr. Bruney cited the following authorities in support of his contention that the accused ought to be visited with a lenient sentence.
- (i) **The State –v- Ishan Shillingford** ³ a decision of this court where the defendant was found guilty to a similar offence. Like the defendant before the court Mr. Shillingford also had a police record and he received a suspended sentence with an award for compensation.
 - (ii) **Galliard –v- The State**⁴ In this matter the defendant was charged and found guilty with unlawfully causing serious bodily harm with intent. His two year sentence was varied to the extent that the period of imprisonment for two years was suspended for the same period.

Submissions by the State

- [14] Learned Counsel for the State identified the following aggravating factor:
- (i) It was an unprovoked attack.
 - (ii) There was serious injury to the Virtual Complainant's leg (12 cm long and 6 cm deep).

² Paragraph 4 of Defence Counsel's written submissions filed on the 19th March 2013.

³ Unreported – 6th November 2012 (Dominica)

⁴ Barbados Court of Appeal (BB 2006 CA 9)

(iii) Prevalence of the nature of the offence.

- [15] Learned Counsel for the State identified a single mitigating factor that the defendant pleaded guilty.
- [16] Learned State Counsel Mr. Joseph submitted local and regional authorities to assist the court in determining the proper starting point and sentencing range for the offence being dealt with. The local authorities cited were **The State –v- Eustace Leatham**⁵ where the defendant was sentenced to 4 years imprisonment for an unprovoked attack on the virtual complainant. **The State –v- Marcus Augustus**⁶ the defendant was sentenced to three years imprisonment suspended for two years with \$5000.00 compensation to the victim. **The State –v- Denny Shillingford**⁷ The defendant was found guilty of a similar offence and was sentenced to 4 years in prison.
- [17] The Regional authority cited was **Harewood –v- R**⁸ In Barbados the Court of Appeal upheld the 5 year sentence for the offence of wounding with intent.

Court's consideration

- [18] The process of sentencing requires the structured exercise of discretion as follows:
- 1) First to identify the appropriate starting point that is to identify the description that most nearly matches the particular facts of the offence for which sentence are being imposed.
 - 2) Consider relevant aggravating factors, both general and those specific to the type of offence
 - 3) Consider mitigating factors and personal mitigation
 - 4) Reduction for guilty plea
 - 5) Consider ancillary orders, that is the court should consider whether ancillary orders are appropriate or necessary
 - 6) The totality principle, that is to review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.
- [19] The overarching duty of the court is to do justice to every case. In so doing I have had regard to all the surrounding facts and circumstances, of the aggravating and mitigating factors and the principles of sentences.
- [20] In view of the principles of sentencing, the circumstances of the case, the contents of the pre-sentence the appropriate sentence to be imposed on the accused for the offence which he has been charged is \$7,500.00 in 6 months in default 2 years and compensation in the sum of \$30,000.00 on or before the 25th March 2014 in default 9 months in prison.

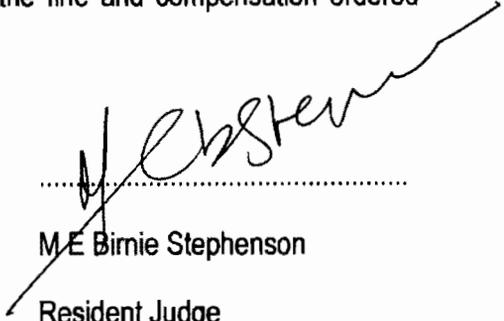
⁵ Unreported DOMHCR 2011/0001 (Dominica)

⁶ (Unreported) DOMHCR 2012/0003 (Dominica)

⁷ (Unreported) DOMHCR 2010/0006 (Dominica)

⁸ (Barbados) HCCRAP No 5 of 1993

[21] Based on the ruling of the Court of Appeal in **William Greenaway -v- The State**⁹, the defendant will return to court to be examined as to his means to pay the fine and compensation ordered herein.



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M.E Birnie Stephenson

Resident Judge

⁹ Op Cit