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

SAINT LUCIA
CASE NO. SLUCHRD2010/0322

BETWEEN

THE QUEEN

vs.

LINCTUS CHARLES

Appearances:
Mr. Alfred Alcide for the Defendant
Mr. Leon France Crown Counsel for the Crown

2015: March 4, 5, 6, April 30, May 8, 21, 22
July 14

Criminal Law - Sentencing - Dangerous Harm – Life Threatening Injury - Application of Principles – Maximum Sentence 20 years - Serious Offence – Prevalence - Custodial Sentence Appropriate - General Ranges of Sentence – Two Degrees of Culpability – Targeting Vulnerable Victim – Use of Weapon - Group Attack - Offence Committed with Higher Degree of Culpability – Young Offender – Expression of Remorse – Benchmark Sentence 7 years - Delay in Proceedings Influencing Sentence – Use of Victim Impact Statement.

DECISION ON SENTENCING

[1] **RAMDHANI J. (Ag.)** The defendant, Linctus Charles, was indicted on the 6th August 2012, for the offence of causing dangerous harm to William Thomas committed on the 4th October 2010, at Palmiste, Soufriere. He was also charged on the events arising out of the same incident, with the alternative lesser offence of causing grievous harm to the William Thomas. At his trial before a jury he was convicted by a unanimous verdict of nine of his peers of the offence of dangerous harm. The second alternative count thereupon fell away.

[2] The evidence in this case as presented to the jury which must have been accepted by the jury as facts show that the defendant and another man known as Jamal launched an attack on the virtual complainant sometime around 9.15 on the 4th October 2010 during which the defendant inflicted a stab wound to the neck of the virtual complainant.

[3] This incident saw its genesis in events occurring earlier that same day at about 6 p.m. when the defendant and Jamal had approached the virtual complainant and gave him money to run an errand for them – to buy 'spice rum' for them in Soufriere Town. They did not see the virtual complainant return with any rum and concluded that he had appropriated the money for himself.

[4] The defendant and Jamal became upset about this, and later that day, when they again saw the virtual complainant walking along the same road accosted and launched a vicious attack on him. During this attack, the defendant pulled out a knife from his waist and repeatedly swung it at the virtual complainant who began taking evasive action to escape the knife. Jamal then rushed the virtual complainant and kicked him in the abdomen and the virtual complainant fell to the ground. As the he scrambled to get up, the defendant continued his attack and stabbed the virtual complainant on his neck.

[5] The virtual complainant then managed to get away holding on to his wound, which at that stage was bleeding profusely. He ran all the way to the casualty department of the Soufriere Hospital, where he was medically examined by Dr. Joseph, who having assessed the nature of the wound, rushed him in an ambulance to the Victoria Hospital. Dr. Joseph went along and was continuously administering medical treatment to staunch the blood flow. In fact Dr. Joseph actually placed his finger in the wound on the neck and applied pressure throughout the journey to Victoria Hospital. He opined that if he had not done so, this virtual complainant might have been a dead man as this injury was a dangerous one, and was likely to have caused death if not given urgent emergency treatment.

[6] At the end of the trial and verdict, the court ordered a pre-sentence report, a victim impact statement, and a date was fixed for the sentencing hearing.

The Pre Sentence Report – The Defendant

[7] At the date of sentencing, the defendant was presented to this court as a 24 year old unemployed man with two previous convictions. He has once worked for a period of one year as a labourer in the construction industry.

[8] Prior to his arrest for this offence, he was living with girlfriend in a three-bedroom wooden and concrete dwelling shared with his mother and two other siblings and his niece. The pre-sentence reports notes that all the basic amenities were available to him and that the 'family lived under decent circumstances'.

[9] This man appeared to have had a decent upbringing even though his father did not play a significant role in his life. He has attended school, dropping out in form four. His explanation was that another student stabbed him and since that incident he decided not to return to school. He is described in the pre sentence report as being semi literate. It is worthy to note that following the stabbing incident he was part of a group of young men who, in 2008, attended conflict resolution sessions at the Probation Department.

[10] He describes himself as 'non nonsense individual who has been involved in conflicts in the past'. His mother describes him as a loving individual who has been involved in a few altercations in the community. She opines that his 'troubles' are caused by negative peer pressure and suggest that he may have been searching for a 'father figure' and went astray.

[11] Other family members have expressed a view that when the defendant is provoked he retaliates. The community resident who contributed to the pre sentence report stated that they did not feel that the defendant was a menace to the community and that they found him to be pleasant, though disrespectful and sometimes can be an 'instigator'.

[12] The defendant, who claims to be a social drinker, has admitted to the probation officer that he uses marijuana and cigarettes regularly having started since he was fourteen years old. He has no known medical and emotional health concern, except that his left arm has been incapacitated as a result of a fight two years ago.

[13] At the date of this sentencing he has two previous convictions appears to have arisen from one incident when he was convicted on the 14th February 2014, by the summary courts for using insulting words and for being armed with a dangerous weapon. One the first offence he was fined $500.00 and placed on a bond for a year. On the second offence he was also fined $500.00 and placed on a similar bond.

Victim Impact Statement

[14] The victim, this 43 year-old man resident at Palmiste, Soufriere who has accepted that he is a cocaine addict and engages in odds jobs for a livelihood, has testified that the wound has had a lasting effect on him as his left side is presently incapacitated. He insists that he should receive some form of compensation and that the defendant should be sent to prison.

Use of Victim Impact Statements

[15] It is appropriate that in this case I make some comments on the use of Victim/Family Impact statements.[1] This court has invariably asked that victim impact statements be prepared and produced to the court.

[16] It is recognized now that a sentencing court is entitled to take into account the harm or the impact that the crime has had on the victim, relatives and the community in fashioning the

[1] I have noted that in the UK courts are also presented with 'community impact statements – prepared by the police to 'make the court aware of particular crime trends in the local area and the impact of these on the local community." See the Practice Direction (CA (Crim Div): Criminal Proceedings: General Matters) [2013] 1 W.L.R. 3164 at paragraphs H.1 to H6. In St Lucia at present, the pre sentence reports assists the court tremendously in getting a sense in how the crime in questions affected the relevant community.

sentence.[2] The sentencing court's knowledge of the harm or impact of the crime serves not only the interests of the victim, and those affected, but also the separate public interest that the court only proceeds on all the salient facts at every stage of the proceedings.[3]

[17] The guidance found in **R. v Perkins (Robert)** [2013] 2 Cr. App. R. (S.) 72 regarding the use of victim impact statements are sensible and I consider it useful to set those out in full here. The criminal division of the English Court appeal dealt with the relevant principles in the following terms:

> *"H.4 The decision whether to make a statement must be made by the victim personally. Victims must be provided with information which made it clear that they were entitled to make a statement. No pressure, either way, should be brought to bear on their decision. They were entitled to make statements, and they were entitled not to do so. They should be informed of their right, and allowed to exercise it as they wished: in particular, the perception should not be allowed to emerge that if they chose not to do so, the court might misunderstand or minimize the harm caused by the crime.*
>
> *"H5 When the decision whether or not to make the statement was being made, it should be clearly understood that the victim's opinion about the type and level of sentence should not be included. If necessary, victims must be assisted to appreciate that the court was required to pass the appropriate sentence in accordance with decisions of the Court of Appeal, and definitive guidelines issued by the Sentencing Guidelines Council or the Sentencing Council, and make a judgment based on all the facts of the case, including both the aggravating and mitigating features.*
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> *H6 The statement constituted evidence and must be treated as evidence. It must be in a formal witness statement, served on the offender's legal advisers in time for the offender's instructions to be taken and for any objection to the use of the statement or part of it if necessary to be prepared. The Court was concerned that a somewhat haphazard and slovenly approach to the time when the statement was served might have developed.*
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> *H7 Just because the statement was intended to inform the sentencing court of specific features of the consequences of the offence on the victim, responsibility for presenting admissible evidence remained on the prosecution. It followed that the statement might be challenged in cross-examination, and it might give rise to*

[2] Note Attorney General's reference No 59 of 2006 [2006] EWCA Crim 2096, judgment delivered 7 August 2006. In which the court held that 'a victim impact statement which was not put before a sentencing judge could not be considered for the purpose of deciding whether or not a sentence was unduly lenient, but it could be taken into account when, having found a sentence was unduly lenient, the court turned its attention to what sentence would be appropriate.' See also R. v Black (Joseph Christopher) [2006] EWCA Crim 2306

[3] R v P 39 FCR 276

disclosure obligations, and might be used, after conviction, to deploy an argument that the credibility of the victim was open to question.

H8 Properly formulated statements provided real assistance for the sentencer. Experience had shown that in the overwhelming majority of cases, after a statement had been prepared, it was put before the sentencing court in the usual way, and then summarised, or sometimes in whole or in part read aloud in open court by the prosecuting advocate. The judge below would have read the statement himself, and might sometimes choose not only to indicate that it had been taken into account, but quote any relevant passages in court. In the selection of any passages for quotation or summary, the advocate and the judge must be very sensitive to the position of the victim, and on occasions the need to respect the victim's privacy. The application of these principles meant that it would be very rare for the victim to read out his or her statement, but the process was sufficiently flexible for the judge to permit it in an appropriate case.

[18] The point was made in **Perkins** that since this victim impact statement is to form part of the sentencing exercise in the trial, responsibility for presenting it to the court and serving it in good time on the defendant falls on the shoulders of the prosecution. Having regard to the role of the prosecutor being required to act as a minister of justice it is important that the prosecution, either directly or through agents, should not be responsible for actually preparing these statements. This statement should ideally be prepared by a third party who is not only neutral but is also perceived as neutral.

[19] This is what currently exists in St. Lucia. It is the probation officer, who has no perceived interest to serve either for or against the defendant who interviews the victim and prepares this statement. The probation officer should continue to prepare this statement and he or she must approach this with the usual care lest it be assumed that he or she is acting as an advocate either for or against the victim.[4]

[20] There is good sense in the caution in **Perkins** that the material contained in the victim impact statement should be admissible material upon which the court can act. Some courts have taken the view that if the victim impact statements,

"….contain material damaging to the accused which is neither self-evidently correct nor known by the accused to be correct (and this includes lay diagnoses of medical and psychiatric conditions) they should not be acted on. The prosecution

[4] R v P 39 FCR 276 where the Federal Court of Australia approved of the fact that the preparers of the pre sentence reports were also the ones responsible for the victim impact statements.

should call the appropriate supporting evidence. It is unfair to present the accused with the dilemma of challenging a statement of dubious probative value, thereby risking a finding that genuine remorse is lacking, or accepting that statement to his or her detriment."[5]

[21] It is for the sentencing court to carefully assess the assertions of fact contained in the victim impact statement.[6] It has been said that:

"[e]xcept where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim."[7]

[22] This is statement in which victims and related persons perhaps get the first real chance to speak on how the offence has affected them. When people speak their minds, it is expected that it will contain some amount of inadmissible hearsay. While attorneys should be alert to any unfairness any part of the statement may cause, it is has been the practice so far before this court that advocates hardly make any objections to matters contained in the statements. They are aware that they are quite entitled, and it would be proper to object to those inadmissible matters that may carry great weight with the court. Often this Court has identified certain portions of either the pre sentence report or the victim impact statement during the sentencing exercise, and has asked whether there was any objection to the court using the identified portion. On the rare occasion, this court has actually excluded portions of the victim impact statement from consideration. Fairness would require that on such occasions, express mention be made that such portions were not considered.[8]

[23] I can see no need at present for this court to take another approach and demand too many formalities except to suggest that in the future the victim impact statement should be taken down on the approved witness statement form. If two or more persons are interviewed each should be required to give his or her statement on a separate form containing the relevant certificate. That much should not aggravate the burden on the already

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[5] R v Singh [2006] QCA 71,
[6] Court of Appeal of Queensland in R v Evans [2011] QCA 135
[7] Practice Direction (CA (Crim Div): Criminal Proceedings: General Matters) [2013] 1 W.L.R. 3164 at paragraph F.3
[8] See R v Swift 169 A Crim. R 73

overburdened system of criminal justice here. It may in the long run actually save time and more resources.

Maximum Penalty, Range of Sentences and Relevant Principles to be Applied

[24] This offence as an indictable offence carries a maximum of twenty (20) years imprisonment.[9] And in fixing the appropriate sentence in this matter, I am duty bound to approach this matter having regard to all of the relevant legal principles.

[25] The Criminal Code of St. Lucia is the starting point for the source of these principles. One of the underlying principles of this Code and reflective of the common law rule is that a court may not impose a custodial sentence on a convicted man unless it is satisfied that the offence is so serious that it warrants such a sentence. A custodial sentence may also be appropriate where in cases involving sexual or violent offences, the court considers that the offender presents a risk of harm to members of the public. Where in any event a custodial sentence is appropriate, a court is also entitled to give a greater than commensurate sentence where the offender is considered dangerous to the public.

[26] Even in the context of all this, it is to be noted that section 1102(2) of the Code requires the court to have due regard to the rehabilitation of the offender as being one of the aims of sentencing.

[27] There are no other specific statutory guidelines, but all of the general common law principles or aims of sentence are applicable to the sentencing exercise here in the region. Our own Eastern Caribbean Supreme Court in **Desmond Baptiste v The Queen** has embraced the common law four classic principles of sentencing as was set out in **R v James Henry Sargeant** (1974) 60 Cr. App. R. 74 were relevant to any sentencing exercise by a court, these being (1) retribution, (2) deterrence, (3) prevention, and (4) rehabilitation of the offender.

[9] Section 99 of the Criminal Code, Cap 3.01

[28] In any given case each of these principles will have varying degree of influence on the eventual determination of the appropriate sentence. This would be so, as for example in some cases, a court may consider that having regard to the particular offender, the class of offence, or the manner of its commission, substantial elements of deterrence and punishment should be the primary consideration whilst the others given less weight.[10]

[29] I am also guided that in fashioning an appropriate sentence, I am to consider both the personal mitigating factors of the defendant and the aggravating features associated with the offence. This is to be an evaluative exercise which, taken together with a measured and balanced application of the relevant principles, will guide a court to fashion an appropriate sentence fitting the crime and the offender. It is well established that the weighing of these factors may result in a greater or lesser sentence in any given case. The approach is not to be a mechanistic one, but the court must consider all the circumstances in the round and impose a sentence that is suitable in the any given case.

Range of Sentence – The Cases

[30] As noted earlier, this offence when charged indictably carries a maximum of twenty years imprisonment. No specific ranges or starting points have been set for this offence. A number of cases from this jurisdiction show that the sentences ranging from about 5 years to 10 years have been considered as appropriate having regard to the various circumstances of those case.

[31] In **Ali Mohamed**, the 18 year-old defendant became involved in a dispute with the victim whilst the latter was dancing with a certain lady who was not associated at all with the defendant. A scuffle ensued and the defendant stabbed the victim with a knife. He continued stabbing until he was stopped. The victim had to undergo two surgeries by way of treatment. The defendant who was regarded as a troublemaker and rebellious, admitted to using marijuana and cocaine had five previous convictions for stealing and assault. He showed no remorse for the injuries. The court found that the location and nature of the

[10] See for example R. v Foxley (Gordon) (1995) 16 Cr. App. R.(S.) 879

injury was potentially life threatening. The only mitigating factors were his age at the time of the offence and the fact that he pleaded guilty at the first possible opportunity. The court considered the risk factors associated with him reoffending and felt that if this man had gone to trial he would have gotten 10 years. He benefitted from a five-year reduction for his early guilty plea.

[32] I was also asked to note **Linzie Polimus aka Ponney v The Queen**. In this case, the defendant attacked and inflicted serious injuries on the victim. His plea of guilty at the earliest opportunity to the offence of dangerous harm taken together with the other mitigating and aggravating factors resulted in a sentence of five years.

[33] In its sentencing guidelines the prosecution asked me to consider **R v Marcus Lee Godwin** [2012] EWCA Crim 2903, a case in which the defendant was found guilty of an offence of wounding with intent contrary to section 18 of the English Offences Against the Person Act 1861. The injury was considered serious but not life threatening. The court considered that having regard to the fact that this was a 'vicious attack in public and at night and had the sadistic element of involving [a] knife', the appropriate starting point was 13 and a half years. The court then took his age (17 years), his lack of maturity and the matters highlighted in the presentence report concerning the efforts made by the defendant to improve his life and reduced the sentence to eight years detention in a young offender institution. I must note here that the maximum penalty under section 18 is life imprisonment.

[34] I have also considered the UK Sentencing Guidelines to provide some assistance in fashioning starting points and general ranges for this offence. Those guidelines do not specifically treat with the offence of dangerous harm but lump together a serious of personal injury offences together ranging from simple assault from one end of the scale to causing grievous bodily harm with intent to cause such harm.

[35] What is usefully extracted from these guidelines is the measure of culpability for these types of offences. On the one hand the guidelines indentify the degree of harm cased, and

then join it with the degree of offender's culpability in the commission of the offence for this offence in our jurisdiction, the degree of harm is already identified as dangerous harm which has been defined as 'harm endangering life'.

[36] Culpability is seen to be either as higher or lesser culpability. The UK Sentencing Guidelines list a number of factors that will inform a court's finding of greater culpability. These include:

- Offence racially or religiously motivated;
- A significant degree of premeditation;
- A use of a weapon or its equivalent;
- Intention to commit more serious harm than was actually caused;
- Deliberately cause more harm than is necessary for the commission of the offence;
- Deliberately targeting a vulnerable victim;
- Leading Role in Group or Gang;
- Offence motivated by, or demonstrating hostility based on the victim's age, sex, gender identity (or presumed gender identify).

[37] A finding of lesser culpability would be justified on a number of factors including:

- Subordinate role in group or gang;
- A greater degree of provocation than normally expected;
- Lack of premeditation;
- Mental disorder or disability when linked to commission of offence;
- Excessive self defence

[38] I now turn to identify and evaluate the aggravating and mitigating features in this case.

The Aggravating and Mitigating Factors

[39] In assessing the degree of the defendant's culpability in this case, it is necessary to look to the aggravating features of the case.

[40] This offence falls in that category of offences when the defendant being aware of the vulnerability of the victim – the local and everybody's errand boy who is a cocaine addict – launched a vicious attack on this man.

[41] It is an aggravating feature of this offence that the defendant used a knife that he had carried with him to the attack and stabbed at the victim's neck, leading to a life threatening injury.

[42] It is an aggravation that the defendant did not act alone, but he acted with another in attacking this victim.

[43] It is further aggravating that the attack even continued when the victim was defenseless on the ground. But for grace of God this man would likely to have perished from this injury.

[44] What was also aggravating about this offence is that this defendant had some degree of pre-mediation involved in this matter is that this defendant having been duped out of his money, was on the look out for this man to get even with him. There was some provocation but this attack was out of all proportion with this and all for the price of a bottle of spice rum.

[45] I now turn to consider the mitigating features of the offence and the offender.

[46] In this case, the guidelines did not identify any mitigating factors pointing out that he was not even of previous good character having had two previous summary convictions. I do not quite agree.

[47] I note that the defendant is now a young man of 24 years of age but was 20 when he committed the offence. At that date he did not have any previous convictions. This matter took nearly five years to be tried. If he had been tried at any stage before February 2014,

when he was convicted for the two summary offences, he would have had the benefit of being regards as a man of previous good character.

[48] Apart from treating him as a first time offender, it is also a mitigating feature that he was just 20 years old when he committed this offence.[11] I would also consider that there was a degree of provocation in this matter when the victim took the money to buy the spice rum and made off with it. It is not much a mitigating feature as persons should not retaliate and attack others when they believe that they have been victimized. I have nonetheless factored it in on this end of the scale.

[49] He has expressed remorse in this matter and has apologized through this court to the victim and has even indicated that he is prepared to pay some compensation. I will give him the benefit of the expression of his remorse.

[50] These matters have all mitigated the sentence downwards.

The Appropriate Sentence

[51] This is a serious offence. It has been committed with a higher degree of culpability. I have to take judicial notice of the prevalence of these type of offences, and the fact that many of the cases of this nature coming before the courts involve persons arming themselves with concealed weapons as they go about their daily lives. This group of persons, at least those before the courts, is primarily comprised of young men. They arm themselves with knives and machetes and firearms. Being armed with dangerous weapons provides these young men with opportunity for their spontaneous use and potential for harming others.

[52] Some young people are very prone, it seems to resorting and allowing themselves to be easily provoked into using weapons to retaliate and resolve everyday issues which could be better dealt with by simple discussions and when that fails by the employment of law

[11] The English Authorities show that a 25% discount has been given to offenders aged 16 and 17 – see the case of R. v Brookes (Dominic)[2015] 1 Cr. App. R. (S.) 5

enforcement. It is for this reason that I give due weight to the deterrent and punishment factors in deciding to impose a custodial sentence on this defendant.[12]

[53] The appropriate sentence must show society's distaste for this category of offences where persons arm themselves with knives and similar weapons and launch attacks on others often without provocation.

[54] Having regard to all the aggravating factors in this case and the court's view that a custodial sentence is appropriate, the penalty for this offence falls in the higher end of the scale. I have considered that there was a low degree of provocation in this case when the victim made off with the money given to him to buy the spice rum, and so I fix a notional sentence in this case of 8 years imprisonment.

[55] Having factored in the mitigation related to the offence itself, namely, the low degree of provocation, and it is my view that a benchmark in this case would be a seven-year sentence.

[56] The defendant had expressed remorse for this offence, saying that he and the virtual complainant get along very well, and that the latter continues to run errands for his mother. He says that he willing to pay some form of compensation to the virtual complainant in his bid for leniency.

[57] The probation officer has opined that:

> *"The defendant…appears to be a troubled young man. However he seems to have a good rapport with family members and community residents who spoke favorable of him. Other protective factors specific to the defendant include stable accommodation, and pro social family ties. The risk factors include lack of employment skills, low academic achievement, poor decision making skills, low socio economic status, aggressive tendencies, association with delinquent peers, instability in the community and previous conviction record. …the defendant might be at risk for reoffending…"*

[12] R. v Nicoll (Stuart) 2008 WL 924968 Courts Martial Appeal Court 2008-03-19

[58] I have given weight to the rehabilitation of this offender. I have considered all of his personal mitigating features and I am of the view that an appropriate commensurate sentence in this matter is six years imprisonment.

The Delay

[59] Having set the sentence, I turn to consider the fact that he has had to wait some five years to have this matter tried. This matter was simply in the queue awaiting trial for some time. During this time he has had this matter hanging over his head. It did not fully keep him on the straight and narrow but it must have been some form of punishment during these years. This too will mitigate this sentence.[13] In the exercise of the court's discretion I will deduct one year from the sentence.[14]

[60] He is sentenced to serve a five-year term of imprisonment. All time spent on remand will be taken into account in calculating his term. I have considered the rehabilitation aim of sentencing and in this regard he is to benefit from all programmes, including those related to anger management, which may assist his rehabilitation at Bordelais and reduce the risk of him re-offending on his release.

Darshan Ramdhani
High Court Judge (Ag.)

[13] Winston Joseph v R Criminal Appeal No. 4 of 2000 at para. 20; R. v McGuigan (Mark) 2014 WL 7253716
[14] Winston Joseph v R Criminal Appeal No. 4 of 2000 at para. 20