

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CASE NO. GDAHCR2016/0064

BETWEEN:

REGINA

V

GODWIN MODESTE

Appearances:

Mr. Anselm Clouden for the Defendant

Ms. Crisan Greenidge for the State

2017: March 9.

SENTENCING REASONS

(Criminal Law - Sentencing - Offences Against the Person - Dangerous Harm - s.208 Criminal Code - s.35 Criminal Code (Amendment) Act 2012 - Sentence - Aggravating and Mitigating Factors - Guilty Plea - Discount for Guilty Plea) - Commercial Concerns - Mental Health – Mental Disorders.

[1] **AZIZ. J:** On the 31st January 2017, the Defendant Mr. Godwin Modeste now 63 years old entered a guilty plea to the offence of intentionally and unlawfully causing Dangerous Harm to Andrew Frederick. The offence is contrary to section 208 of the Criminal Code as enacted by section 35 of the Criminal Code (Amendment) Act 2012.

[2] The Laws of Grenada states that a person who intentionally and unlawfully causes a maim or any dangerous harm to any other person commits an offence and is

liable on conviction on indictment to a term of imprisonment not exceeding twenty years. A Social Inquiry Report was ordered on the 31st January 2017 and prepared which the Court received this morning prior to the sentence hearing.

The Facts

- [3] Mr. Frederick, a 77 year old man, lives in an area called Springs, St George's and the defendant Mr. Modeste lived close by on the opposite side of the road. They seemed to have an okay relationship. Mr. Frederick was the uncle-in-law of a lady called Samantha Coutain who would visit Mr. Frederick daily and assist him with daily chores. Prior to this incident, Mr. Frederick was able to do his own washing, cooking and go into town to sort his affairs out. On Sunday 15th May 2016, Ms. Coutain was alerted to some difficulty at Mr. Frederick's home and went over to his house. On arrival she heard quite a bit of banging, and glass being broken. The police were called. Officers arrived and they saw Mr. Modeste inside Mr. Frederick's home with what appeared to be a piece of board in his hand. He was told to drop the board but refused and went further into the building. Mr. Modeste was seen in a corner with what was later found to be a piece of ½ inch pipe which was 2 feet 7 inches long, and which was thrown at D/Sgt. Roberts. After a little show of bravado Mr. Modeste was arrested by both D/Sgt. Roberts and D/C Felix.
- [4] Inside of the house, on the living room floor in a pool of blood was Mr. Frederick. He appeared to be motionless with blood seen about his body and clothing. Upon closer observation, his left ear was hanging off and flesh on his head was seen. Inside the house several items were damaged including tables, chairs, TV, phone and ornaments. Mr. Frederick was taken to hospital and admitted, whilst Mr. Modeste was admitted to the Mt. Gay Mental Health Hospital. Mr. Frederick appeared to have multiple injuries, head injuries and loss of consciousness. When Doctors examined him he appeared agitated and confused. Mr. Frederick had a Glasgow Coma scale 14 on 15 which was a mild coma. A CT Scan was done and there was soft tissue scalp haematoma on areas on his head, cerebral contusions

on his frontal and parietal lobes. He had incoherent speech for a few days. Dr. La Rose opined that a fair amount of force was used to cause such injury. The Doctor was very concerned about a bleed that can occur in the subdural compartment of the brain which can lead to death and that was his greatest concern with Mr. Frederick. There was also a closed fracture to the left hand on the 4th metacarpal. This was classed as a minor fracture. Mr. Modeste was released from the mental hospital into the custody of the CID. There he commented "I hit uncle Freddy three lash of iron, one on his head, one on his shoulder and one on his back. After I lash him he fall down and was bleeding in his head because it got bust. While he was on the ground he asked me why I did that to him and I told him I don't know what is going on".

Crown's Submissions

- [5] Ms. Greenidge submitted that it was clear that Mr. Modeste's pattern of offending was escalating. The list of antecedents (7 convictions) demonstrated that there were several offences for disruptive and disorderly type behavior, although it was noted that five of Mr. Modeste's convictions were on the same day (14/04/11) whereby he was reprimanded and discharged on some offences and fined on the others. The Crown also submitted that the injuries sustained were very serious highlighting the issue of chronic subdural haematoma which could be a complication for Mr. Frederick. Dr. La Rose explained in his report that it's a bleed in the subdural compartment of the brain which grows with time creating a conflict of space which results in death. He stated that this was his main concern with Mr. Modeste and that it was highly likely. These injuries are such that affect Mr. Frederick long term or even the rest of his life.
- [6] Ms. Greenidge also noted that there seemed to be a shifting of position from Mr. Modeste in how the events on the day occurred. She referred the Court to the caution statement already mentioned above and also to what was contained within the body of the social inquiry report. The Court was also reminded in fairness by

Ms. Greenidge of the remand time spent (23rd May 2016 – 9th March 2017) which is 291 days, and also the current psychotic disorder due to use of psychotropic substances. It was further submitted that breach of trust was also an aggravating factor as the victim and defendant were friends and would talk and he would help the defendant. The use of a weapon to cause the injuries and also the fact that Mr. Frederick's home was invaded were also aggravating features of the offending.

Defence Submissions

- [7] Mr. Clouden was brief and there is virtue in brevity. He submitted from the outset that Mr. Modeste was a Psychiatric Patient who has had previous admissions to the mental institution known as Mt. Gay Hospital. This was made clear from the social inquiry report and was said to be a significant mitigation factor. Mr. Clouden referred the Court to several passages and highlighted some key phrases to demonstrate his point such as “unstable individual” “overwhelming behavior¹” and “Known to be a mentally ill patient according to community²”.
- [8] Mr. Clouden also submitted that Mr. Modeste entered an early guilty plea which demonstrated an acceptance of responsibility for this offence and went further to show that there was an admission of the offence when Mr. Modeste was being questioned by the police at the CID after being arrested. Quite helpfully Mr. Clouden reminded the Court that even when being interviewed by the probation officers Mr. Modeste stated that he regretted that the incident occurred “not because I'm here, I'm sorry of the blow he got to his head, because it was a dangerous blow”. This he submitted was another illustration of genuine remorse. For this genuine remorse Mr. Clouden strongly submitted that Mr. Modeste should be afforded the maximum credit for his guilty plea and the Court agrees with that submission in this case.

¹ Social Inquiry Report – Page 7

² Social Inquiry Report – Page 12

[9] Mr. Clouden had one character witness who was the Defendant's son, Mr. Garen Horsford, 30 years old who in summary stated that, Mr. Modeste is his father and says that while growing up Mr. Modeste never showed any mental illness signs and only after retirement exhibited signs of mental illness. Mr. Horsford indicated that his father was at Mt. Gay Mental Hospital a couple of times. He stated that Mr. Modeste was always a good father and he would come by and share what he had and spent time with his children. Mr. Horsford stated that his father was always there for them and that he would arrange alternative accommodation if he were not to receive an immediate custodial sentence.

[10] Mr. Clouden also submitted that in this case incarceration is not useful and will not be a deterrent. He submitted that Mr. Modeste is doing well and coaching sports teams at Her Majesty's Prison. He says that treatment is necessary and not necessarily incarceration, but Mr. Clouden fairly accepts that the aggravating factors outweigh the mitigating factors.

Court Considerations

[11] Dangerous Harm is considered to be a serious and violent offence, and in this case carried out against an elderly and vulnerable man. This is unacceptable in today's society. Mr. Frederick, a vulnerable victim had to go through an ordeal and experience that no person should ever have to be subjected to, especially in the comfort of his own home. As has been said for other types of offences, this type of offending is intrusive and soul destroying in the most serious way; in addition to which this type of offending causes physical, psychological and psychosocial trauma.

[12] Any defendant's actions, deliberate and intentional will have caused their victims to suffer for a very long time, if not for the rest of their lives. The Court must take

into account the manner in which the offences were committed, and in the instant case this was of the most serious kind.

[13] A custodial sentence is ordinarily necessary for a variety of reasons. First of all, to mark the gravity of the offence; Secondly, to emphasize public disapproval; Thirdly, to serve as a warning to others; Fourthly, to punish the offender, and last but not means least, to protect members of the community. The length of the sentence will depend on the circumstances. It must be remembered that each case turns on the individual facts and the sentencing judge must conduct a balancing exercise between the offence and the offender.

[14] I have also borne in mind the pivotal principles in relation to sentencing as set out in **R v Desmond Baptiste**. Those are: Prevention, Rehabilitation, Deterrence and Retribution.

[15] These principles as stated above have been referred to in a number of notable cases including **R v Camillus Paris**³ where the learned judge quoted from **R v Sargeant**⁴ in which Lawton L.J. emphasized 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”.

[16] A sentencing court must embark upon an evaluative process **R v Kenny Cadoo**⁵ and 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”.

³ BVIHCR2010/0014 at [20]

⁴ 60 Cr. App. R. 74

⁵ GDAHCR2015/0032, GDAHCR2015/0036, GDAHCR2015/0039

Social Inquiry Report and Mental Health Report

- [17] A court report was prepared from Mt. Gay Mental Hospital on the 23rd February 2016, which indicated that Mr. Modeste was a known psychiatric patient who had previous admissions along with a history of aggressive behavior and drug abuse, which included using marijuana and alcohol from the time he was a teenager. The report indicated that despite Mr. Modeste being well attired, friendly and having good communication skills, also being well oriented, good memory and good attention, he had delusional ideas and was diagnosed as having a psychotic disorder.
- [18] The Social Inquiry Report highlighted that although his childhood was peaceful and loving, it was also very clear that Mr. Modeste was a heavy consumer of alcohol, marijuana and crack, which resulted in his children putting him on a ban from smoking and drinking. As a result of this behavior, he was described by persons in the community as an “unstable individual”. Another member of the community stated “the village is presently quiet and peaceful as a result of his incarceration”. It was also stated that Mr. Modeste is “a trouble maker in the community” and “harasses and distress persons only when he consumes illegal substances”.
- [19] The picture was also painted clearly that because of his (Mr. Modeste) abuse of illegal substances his behavior changed drastically which resulted in his admission to the Mt. Gay Mental Hospital, and that he needs assistance to curb his illicit substance use.

General Aggravating and Mitigating Factors

- [20] There is a list of aggravating and mitigating factors which have been cited in a number of earlier authorities that deal with sexual offending. This list of factors

both aggravating and mitigating⁶ have also been set out the in UK Sentencing Guidelines, which took effect on 1st April 2014. Some of those aggravating factors include:

- ❖ Age(s) of the victim(s)
- ❖ Psychological and Physical harm
- ❖ Degradation and humiliation caused to a victim
- ❖ Detention within their home or personal space
- ❖ Actual and Threats of Violence
- ❖ Infringement of socially acceptable standards
- ❖ Timing of the offence
- ❖ Location of the offence
- ❖ Others present, especially children
- ❖ Weapon present
- ❖ Any steps taken to prevent the reporting of the incident and/or preventing the victim from receiving assistance from the police or supporting the prosecution
- ❖ Offence committed whilst on bail.
- ❖ Offence committed under the influence of drink and/or drugs
- ❖ Previous Convictions

Some of the mitigating factors include:

- ❖ Age of Offender at time of commission of the offence
- ❖ Early Guilty Plea
- ❖ No previous convictions or no relevant and/or related previous convictions
- ❖ Remorse (Genuine)

⁶ The non exhaustive list of aggravating and mitigating factors are not all applicable to this individual case but will be applicable to all cases of a sexual nature. The Sentencing Court will have to consider all of the factors that are applicable to the individual case and then conduct the evaluation and balancing process necessary as part of the sentencing procedure.

- ❖ Mental Disorder, Learning difficulties especially where related to the offending
- ❖ Single Blow
- ❖ Isolated Incident
- ❖ Determination and/or demonstration of steps taken to address offending behavior

[21] Society must be made to understand that this type of offending ought not and cannot be further tolerated as it harms individuals, families, homes, communities and Grenada as a whole. A message must be sent out through the courts, that physical abuse and assaults in any manner will not be tolerated, and the appropriate custodial sentence will be meted out to anyone who commits these types of crime.

[22] The Court has considered all of the factors surrounding the offence and the offender, listened closely to the submissions made. There must necessarily be a balancing exercise done to ensure justice for all parties concerned. The sentencer may wish to take into consideration “commercial concerns” which include the prison conditions.

In Grenada the prison population currently stands at well over 400 inmates, and was designed to accommodate half that number. Although there are educational and apprenticeship programs, whereby persons who have spent time within the prison system ought to leave with a qualification or skill, it is not ideal or even appropriate to house juveniles or those with mental health disorders.

Commercial Concerns and Mentally ill Defendants

[23] Unfortunately in Grenada there is no other specialised institution⁷ with a medium to secure unit for persons with mental health disorders to be accommodated long or short term receive the necessary assessments, appropriate treatment and counseling. Therefore where an immediate custodial sentence is the only option then as stated in the past, such custodial sentence must be for such a period to ensure all of the sentencing objectives being:

1. Retribution (suitably punished according to his culpability and the seriousness of the crime committed),
2. Deterrence (general and specific),
3. Rehabilitation,
4. Reformation and prevention (physical incapacitation of an offender, where he can do no more harm) are achieved.

[24] We must be very aware that the vicious cycle between the prison and our streets is propelled by untreated mental illness and co-occurring substance abuse disorders as described by Dr. Rivero as psychotic disorders, among individuals who have committed relatively minor and at times serious crimes. This population includes the homeless and those mentally challenged people whose untreated and undetected mental illnesses lead to repeated “nuisance crimes” and then prison.

[25] People with mental disorders are more likely to exhibit the kinds of behaviors that will bring them into conflict with the criminal justice system, particularly under current policies of “zero tolerance” and arrests for “quality of life” crimes.

[26] As a referencing point according to the Bureau of Justice Statistics in the United States, prisoners with mental illnesses were twice as likely as other inmates to

⁷ There is Mt Gay Mental Hospital but which cannot cater for long term assessments or house those who have been found to have committed serious offences but suffer from mental disorders.

have been homeless prior to their arrest; forty percent were unemployed; and nearly half said they were binge drinkers.⁸

- [27] Lack of coordination between systems results in people who have been incarcerated leaving prison without any connection to support services such as community agencies or federal entitlement programs to provide health coverage or money to live on, or simply surviving upon release.
- [28] Once the mentally ill are within the criminal justice system, their condition may deteriorate as a result of inadequate treatment and because the circumstances of life behind bars are likely to exacerbate their condition. For example, the overcrowding that is endemic in prisons today leads to greater levels of violence, a lack of privacy, excessive noise, and other stressful conditions that are hard on everyone but particularly so on those subject to emotional and psychiatric problems. When they leave prison, if no appropriate arrangements are made for treatment and services on the outside, they are likely to return to the lifestyle and disruptive behavior that brought them into the system in the first place and the cycle will be repeated”.

Sentence

- [29] This is a case in which there is no other option for the Court but to impose an immediate custodial sentence commensurate with the seriousness of the offence but the fact that Mr. Modeste suffers from a psychotic disorder. The principles of totality and proportionality have also been applied in determining the sentence.
- [30] The credit given for this early guilty plea is the full one third, as Mr. Modeste admitted the offence whilst being interviewed by the police and also entered his

⁸ The Sentencing Project January 2002 – Mentally Ill Offenders in the Criminal Justice System – Washington DC

guilty plea at the earliest opportunity. The mental health disorder has also been a significant factor in mitigation.

[31] The Court has considered the cases including **The Queen v Craig Nelson**⁹; **R v Ali Mohammed**¹⁰ in which Cumberbatch J. indicated that a suitable benchmark for cases involving dangerous harm was 10 years imprisonment, but in that case the defendant was sentenced to 5 years imprisonment considering all the factors. In the case of **Vernon Paddy**¹¹ a sentence was passed of 8 years imprisonment. In the case of **Brad Augustine**¹² a sentence of 7 years imprisonment was passed and in the case of **James Valton**¹³ a sentence of 6 years imprisonment.

[32] It would seem that none of these cases was there the mitigating feature of psychotic disorder which is classed as a mental health mitigating point, having considered the UK Sentencing Guidelines as a reference point as has been done in a number of previous cases by the Eastern Caribbean Court of Appeal and also other High Courts within the OECS.

[33] I find that the appropriate starting point for sentence in the case at bar is a sentence of 8 years imprisonment. With the reduction for the early guilty plea, the sentence of this court would be a term of imprisonment of 5 years and 4 months. I am also reducing that sentence by a period of 12 months for personal mitigation. The total time that has spent on remand 291 days shall be taken into account and credited to the sentence imposed. For clarity the sentence is 4 years 4 months minus time spent on remand.

[34] Furthermore Mr. Modeste is to engage with the probation services and attend an enhanced thinking skills or such like course for a period of 18 months. He must also attend any courses recommended to deal with addressing substance abuse

⁹ SLUHRD2012/0556

¹⁰ Case No. 929 of 2011

¹¹ BVI Case No. 20 of 2010

¹² Case no. 484 of 2009

¹³ Case no. 2187 of 2011

and offending behavior for a period of 18 months. If he breaches this part of the sentence, then in default he will be liable to serve a term of imprisonment of 12 months consecutive to the term of imprisonment imposed.

Shiraz Aziz
High Court Judge