

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CASE NO. DOMHCR2016/0018

BETWEEN:

THE STATE

AND

CHRISPIN LEBLANC

Appearances:

Ms. Anne Riviere assisted by Ms. Carlita Benjamin led by Ms. Sherma Dalrymple
for the State;

Mr. Tiyani Behanzin for the Defendant

2017: February 1st
: March 10th

JUDGMENT ON SENTENCING

Background facts

- [1] **CHARLES-CLARKE, J:** The offender was convicted by a unanimous jury of assault occasioning actual bodily harm to Ian Paul at Bense in the parish of St Andrew on 17th December 2011 contrary to section 48 of the **Offences Against the Person Act, Chapter 10:31** of the Revised Laws of the Commonwealth of Dominica. The matter was adjourned for submission of a social inquiry report for the accused.

- [2] The facts are that on 17th December 2011 the offender and the virtual complainant were at a rum shop in Bense when they became involved in an altercation. The defendant held the virtual complainant in a headlock as a result of which the virtual complainant sustained injuries to his neck. The doctor found that the virtual complainant's cervical 5 (C5) was out of place and this caused pain in the neck and compression of the nerve going to the hand and foot. He needed surgery to decompress the nerve and put it in place, a plate and screws on the neck to keep C5 and C6 without movement. The virtual complainant underwent surgery in Guadeloupe and recovered very well. The doctor's prognosis was 90% recovery.
- [3] At the sentence hearing the prosecution indicated that the virtual complainant was seeking compensation with respect to his hospital bills and medical fees, in the sum of EC\$30,000. However at that time he was not able to provide the court with the documentary evidence to substantiate the amount claimed.
- [4] The Court although inclined to award compensation had to determine a fair amount of compensation and requested information regarding the expenses relating to the injuries which the virtual complainant was claiming. The matter was adjourned to allow the prosecution and the virtual complainant to provide same.
- [5] In passing sentence, I am enjoined by the classical principles of sentencing as set out by Byron CJ in **Desmond Baptiste et al**¹ and restated by George-Creque JA in **DPP v Shaunlee Fahie**² as :

- 1) **Retribution** –in recognition that punishment is intended to reflect society's abhorrence of the offence and the offender;
- 2) **Deterrence** – to deter potential offenders and the offender himself from recidivism.

¹ SVG Crim App. No. 8 of 2008

² BVI HCRAP2008/003(2)

- 3) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of society; and
- 4) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a member of society.

[6] To these I will add the principles of reparation or restorative justice – (See **The Queen v Monalyssa George**³ Ramdhanie J. (Ag.) referred to the case of **R v Proulx**.⁴

[7] The cases relating to sentencing have considered other factors which will assist in determining the appropriate sentence such as; the prevalence of that particular offence in society; the character and antecedents of the offender; and the mitigating and aggravating factors. Also in determining an appropriate sentence the court will consider the peculiar circumstances of each case. In **Shaunlee Fahie** –George-Creque J.A stated that *“the sentencing scale will slide up or down depending on the peculiar circumstances of each case.”*

[8] In making his plea in mitigation on behalf of the offender Defence Counsel referred to the Social Welfare Report which highlighted the childhood upbringing, economic status, familial and community relations and the behavior and character of the offender. The factors highlighted and which the court will consider in mitigation are as follows:

- i) The offender grew up in a nuclear family. Although from an impoverished family he had a good upbringing and shared a close relationship with his mother and siblings. He was described as a non-aggressive, friendly and hardworking person by members of his

³ SLUCHRD2013/ 1682

⁴ 1 SCR 61)

family. Members of the community described him as quiet and co-operative in the community.

- ii) The offender had never been in conflict with the law and so was a first offender.
- iii) He expressed remorse about the incident.

[9] In the Social Welfare Report the virtual complainant indicated that the incident has changed his life forever as he is unable to be gainfully employed and currently has an exorbitant medical bill. He now depends on his wife and siblings to provide towards his welfare. In his testimony the virtual complainant indicated that he still experiences pain and discomfort in his neck and whenever it is cold and there is lighting he receives shocks in his neck from the screws placed there.

[10] The Court also has to take into account the aggravating factors some of which were highlighted by the prosecution:-

The aggravating factors:

- i) The seriousness of the offence;
- ii) The injuries sustained by the virtual complainant;
- iii) The permanent discomfort and pain suffered by the virtual complainant;
- iv) The effect on the virtual complainant's ability to engage in gainful employment;
- v) The psychological effect of the incident on the virtual complainant;

[11] Taking into consideration the facts and circumstances of this case, the social welfare report and the aggravating and mitigating factors I find that the main principles of sentencing applicable in this case are deterrence or prevention, retribution and the harm done and reparation.

Retribution and the harm done

[12] Offences of violence are serious offences and this is reflected by the penalty stipulated by the legislature. They impact both the victim and society in general. Acts of violence not only causes pain and suffering to the victim but also creates a financial burden on the victim and also on the medical resources of the State. Therefore it is imperative that the sentence passed reflect society's abhorrence of that type of crime.

Deterrence and prevention

[13] In this case the accused was convicted of the less serious offence of assault occasioning actual bodily harm. However the injuries which the virtual complainant suffered were serious enough to warrant surgery and continue to cause him discomfort and pain. It has affected the victim's economic status and limited his ability to earn a livelihood as well as his independence and self-esteem. These are long term effects which can alter the victim's life forever. The accused may not have contemplated the full consequences of his actions but this often occurs in cases of violence. That is why the sentence passed must deter the offender and potential offenders.

Reparation or restorative justice

[14] This is a modern approach to sentencing where the needs of the victim are taken into consideration in arriving at a sentence which is fair and ensuring that justice is served. In the case of **The Queen v Monalyssa George**⁵, Ramdhanie J. (Ag.) referred to the case of **R v Proulx**⁶ where the Supreme Court of Canada stated:

⁵ SLUCHRD2013/ 1682

⁶ 1 SCR 61

“Restorative justice is concerned with the restoration of the parties that are affected by the commission of an offence. Crime generally affects three parties: the victim, the community, and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in a manner that addresses the needs of the parties involved. This is accomplished in part, through the rehabilitation of the offender, reparations to the victim and the community, and the promotion of a sense of responsibility by the offender and acknowledgement of the harm done to the victims and the community.”

[15] It is therefore necessary that the victim be placed as far as possible in the position he was prior to the incident which resulted in the injury he sustained. The closest the court can come to achieving this in cases of physical violence is by way of making an award of compensation to the victim.

The Sentence

[16] The maximum penalty for this offence is two years. There is a strong argument that cases of violence should attract a custodial sentence. One of the main aims of a custodial sentence is reform and rehabilitation. However in this case the offender has expressed remorse and regrets his action. This is a necessary pre-condition in the process of reform and rehabilitation. This is not a case for which a custodial sentence is required in order to punish the offender and to achieve the objectives of reform and rehabilitation.

[17] I am of the view that the offender has recognized the severity of his actions and having spent time in custody awaiting sentence would have done some reflection and have a greater appreciation for his freedom and hence the need to refrain from using violence and keep on the right side of the law. The Prisoner being a first time offender and in light of the good report given about him by community

members he will be given another opportunity to redeem himself and remain on the right side of the law.

[18] While the general objectives of prevention and deterrence are of paramount importance in cases of this nature in this case I also believe that the need for reparation and restorative justice should be equally considered. I am of the strong view that this case does not warrant a custodial sentence and that justice would best be served by the payment of compensation to the virtual complainant. The virtual complainant has requested compensation to enable him to recover the costs of the surgery and medical expenses incurred. As indicated in the Social Welfare Report the offender's action has affected his ability to be gainfully employed. Prior to the incident he was employed as a baker. Since the incident he has not been able to continue work as a baker. This is a matter which the court must take into account in arriving at the appropriate sentence.

[19] The prisoner has indicated his willingness to pay compensation to the virtual complainant. The award of compensation as a form of sentence is not new in this jurisdiction. Section 73(1) of the **Criminal Law and Procedure Act** of the Commonwealth of Dominica provides for it.

[20] In **The State v Cleaver Burton**⁷ a case from this jurisdiction the learned trial Judge Justice Errol Thomas awarded compensation to the victim in the sum of \$60,000. In this case the victim sustained injuries to his back which resulted in permanent injuries resulting in him walking with a limp and having to use a stick.

[21] In the case of **The Queen v Greenidge Foster**⁸ compensation was awarded where the victim sustained severe injuries to his back and had to use a crutch or wheel chair to get around and was clearly disfigured. He was fined five thousand

⁷ **HCR2013/0006(3)**

⁸ HCR2016/0019

dollars to be paid in three months in default two years imprisonment and ordered to pay compensation to the virtual complainant in the sum of \$55,000.

[22] In the instant case the prosecution indicated that they were seeking compensation in the sum of EC\$30,000.00. They based this on the accused medical expenses in Guadeloupe which amounted to about EURO 10,000. Some receipts were presented in support of that claim which included hospital bills, accommodation in Guadeloupe and travel cost. The accused also indicated that his loss of earnings was in the amount of EC\$ 12,500.00.

[23] Accordingly it is the sentence of this court that Chrispin Le Blanc shall pay compensation in the sum of \$29,000 to the virtual complainant. This amount will be paid as follows: \$9,000 to be paid by 30th August 2017; \$10,000 to be paid by 30th December 2017; \$10,000 to be paid by 30th July 2018. In default twelve months imprisonment. Leave granted to apply to vary in the event accused is unable to make the payments.

[24] The accused is also placed on a bond to keep the peace for a period of two years in default two years imprisonment.

Victoria Charles-Clarke
High Court Judge

By The Court

Registrar