

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 2017/0018

REGINA

V

LINDON FERGUS

APPEARANCES

Mr Oris Sullivan, Director of public prosecutions, for the Crown.

Mr David Brandt for the defendant.

2018: MARCH 12

SENTENCE

Concerning grievous bodily harm with intent

- 1 **Morley J:** Lindon Fergus, aged 39, falls to be sentenced for inflicting grievous bodily harm with intent on 26.05.17, following a plea at the earliest opportunity on 01.12.17.

- 2 Fergus struck Venice Wilkins, aged 19, on the head a single blow with a wooden weapon causing a depressed fracture of the skull in retaliation over an earlier scuffle. The incident arose out of Wilkins acting as doorman to a basketball game, requiring the public to pay \$5ec entry. Fergus had earlier sought to enter and it appears was pushed back by Wilkins using a stool, which caught Fergus in the face. Fergus reported this to a retired sergeant, named Chambers. Fergus went away and found what has been called a 'stick', returned to where Wilkins was with two others, no longer at the door, approached from behind, told Wilkins he

- had violated him, both momentarily squared off warning each other neither knew what each was capable of, and then Fergus quickly reached into his waist, withdrew the weapon, and struck a deliberate blow, accepted by the defence to be in retaliation for the earlier incident and not in self-defence. Wilkins became unconscious, suffering a laceration to the left top side of his head, where there was in addition a *'compound depressed fracture with small underlying epidural haematoma and contusion in the setting of a traumatic brain injury'*. He was medivaced to Barbados, and has incurred huge medical expenses, and though is expected to make a full recovery, is lucky not to be more severely injured.
- 3 In his victim impact statement of 24.01.18, Wilkins says he can no longer play contact sports, including basketball, which was his hobby, and some months after had lost all feeling in his left side for three days. He lives in fear of further attack, wanting others to walk alongside or in front but not behind. He is often tearful. His left arm has weakened and so he no longer is pursuing a career as a mechanic, but instead now works for Montserrat Utilities.
- 4 In the pre-sentence report prepared by Stanford Kelly filed on 06.03.18, Fergus expressed remorse at para 3.1, supported by his early plea. He had been on Montserrat for exactly two years prior to the incident, coming from England, where he has six children, aged 12, 11, 9, 4, 4 and 1. He has worked on farms and in construction. Here, he owns a car worth \$4000ec and plot of land worth \$15000ec. Though without previous convictions locally, he has in the UK a caution for a battery against his partner on 12.01.15, which I ignore for this sentence, approaching him as being of essentially good character.
- 5 Turning to the sentence, while I have been helpfully referred to **R v Vernon Paddy 2011 BVIHCR 2010/0020**, I have also sought help from the UK sentencing guidelines for the identical offence¹, the offence in both jurisdictions carrying a maximum of life imprisonment. Within these, I assess this offence to be in category 2, meaning the starting point is 6 years, within a range of 5-9 years.
- 6 It is an aggravating feature the offence was retaliation, and therefore involved planning, Fergus deliberately arming himself and going looking for Wilkins, and in addition that Fergus is so

¹ See UK sentencing guidelines, at para SG206, in Blackstones 2016 supplement at page p539.

much older and ought to have known better, while deliberately striking an aimed blow at the head with a weapon. This increases the sentence to 8 years. If the weapon had been obviously more dangerous, like a metal hatchet, designed when applied to split open the skull, then the sentence would have been at least another two years more.

7 In mitigation there is essentially good character and there is remorse, so that the sentence is reduced by a year to 7 years.

8 The plea attracts a discount of one-third, meaning 84 months is reduced by 28 months to 56 months, which is 4 years and 8 months.

9 I do not find him to be dangerous, being a first offence, and so the sentence will not be increased for public protection.

10 In addition, there should be some measure of compensation paid, as a contribution to medical expenses, in the sum of \$15000ec, payable within one year, or six months in default in addition to the sentence. The court expects him to sell his land and car.

11 *Lindon Fergus, please stand up.* For the offence of inflicting grievous bodily harm with intent, having pleaded, the sentence shall be 4 years and 8 months, with compensation payable of \$15000ec within one year or there shall be six months in default in addition.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

12 March 2018