

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

Criminal No. BVIHCR 2017/0009

BETWEEN:

THE QUEEN

Applicant

-AND-

AJELAN LEWIS

Defendant

Appearances: Mr. Herbert Potter, Crown Counsel for the Crown
Mr. David Penn and Ms. Cheryl Rosan, Counsel for the Defendant

2018: May 28th
June 11th, 18th, 28th
July 24th

JUDGMENT ON SENTENCING

HEADNOTES: Sentencing – Guilty Plea – Goodyear Indication – Wounding – Defendant psychotic at the time of the commission of the crime.

[1] **Smith J:** The defendant, Ajelan Lewis was charged with inflicting grievous bodily harm contrary to section 164 of the Criminal Code 1997, of the Laws of the Virgin Islands on 2nd January 2015.

BACKGROUND

[2] The defendant, Ajelan Lewis was indicted for the offence of Inflicting grievous bodily harm contrary section 164 of the Criminal Code 1997, of the Laws of the Virgin Islands. Inflicting

grievous bodily harm with a weapon is contrary to section 164 of the Criminal Code 1997 which states:

“Any person who unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.”

- [3] The defendant was arrested on 1st January and charged on 2nd January 2015 thereafter he was held in custody by the police and subsequently remanded to Her Majesty's Prison on 20th January 2015. The defendant underwent psychiatric evaluation and reports disclosed that he suffered from Substance Induced Psychosis however he was deemed fit to plead. The defendant via his attorney asked the Court for a Goodyear Indication on 7th April 2017. The Goodyear Indication was given by Byer J on 20th July 2017. These remarks in writing record the Goodyear Indication and therefore the construction of the sentence, which will be formally passed today.

AGREED FACTS

- [4] On 1st January 2015 at approximately 4:30pm the complainant Ms. Ayoka Pond was attending a family gathering in West End having arrived in the Territory on 4th December 2014 to visit with her boyfriend and his family. It was a family gathering and she was offered a meal which she accepted.
- [5] It was while she was eating that she felt a stab to the left side of her neck and came to the horrific realization that the defendant, Ajelan Lewis was cutting at her neck. She grabbed the knife receiving a cut to her left index finger. She was rushed to the Peebles Hospital where she received medical attention.
- [6] The attack was entirely unprovoked and unwarranted. The defendant was arrested and subsequently charged. He gave the police a caution interview where he admitted to cutting the complainant's neck but stated that he was hearing voices, he didn't like how the complainant was looking at his family and that he had smoked marijuana earlier that day. His urine drug test was positive for cannabis. The kitchen knife used was handed over to the police labeled and processed.

[7] In a medical report dated 19th January 2015 during a medical examination carried out by Dr. June Samuels, Consultant Psychiatrist, it was revealed that the defendant at the time of the incident had a substance induced psychosis. In a follow up report by the same doctor dated 19th March 2015 the previous diagnosis was confirmed with the doctor assessing possible emerging Paranoid Schizophrenia. The report further noted that continued substance abuse would place the defendant at high risk for relapse as he is genetically predisposed to the mental disorder.

Goodyear Guidelines¹

[8] The procedure set down for sentence indications in **R v Goodyear [2005] EWCA Crim 888** provides a suitable model for discussions - namely that any advance indication of sentence should normally be confined to the maximum sentence if a plea of guilty were tendered at the stage at which the indication was sought. In addition to the Eastern Caribbean Supreme Court Practice Direction No. 2 of 2015 sets out the procedure to be followed in these courts.

[9] The Court may give an indication of sentence if the defendant charged with a criminal offence makes an application for such an indication. Such indication was made by Byer J on 20th July 2017 being within a range of 6 to 18 months in prison.

[10] Unfortunately September 2017 witnessed the passing of hurricanes Irma and Maria causing the matter to be adjourned on several occasions. The indication given by Byer J was binding on all subsequent judges. Paragraph 61 of Goodyear states:

"Once an indication has been given, it is binding and remains binding on the judge who has given it, and it also binds any other judge who becomes responsible for the case. In principle, the judge who has given an indication should, where possible, deal with the case immediately, and if that is not possible, any subsequent hearings should be listed before him. This cannot always apply. We recognise that a new judge has his own sentencing responsibilities, but judicial comity as well as the expectation aroused in a defendant that he will not receive a sentence in excess of whatever the first judge indicated, requires that a later sentencing judge should not exceed the earlier indication".

[11] The scenario as posited in paragraph 61 is what occurred in the instant case resulting in the defendant being formally arraigned on 11th June 2018 with submissions being made by Counsel for the Crown and Counsel for the defendant.

¹ <https://www.eccourts.org/wp-content/uploads/2012/09/Sentence-Indications-re-issue-PD-No.-2-of-2015.pdf>

Victim's Impact Statement

- [12] In the Victim's Impact Statement relating to Ms. Ayoka Pond, emailed to Crown Counsel on 7th December 2017 she indicated how difficult it was living with the scar to her neck and having people ask her questions about it. She also indicated that she had residue issues of fear and apprehension especially when people tried to hug her or come up behind her as she felt that they were trying to hurt her. Finally, she indicated that she had forgiven her attacker, the defendant, but wanted to know why he did this to her so "when my children ask me I could explain to them why".

Compensation

- [13] The Court is empowered to order compensation in matters of this nature and it may be imposed in addition to any other punishment as per **Section 27 of the Criminal Code**. Documents submitted in the Crown's bundle disclose medical expenses incurred by the complainant in the sum of \$3,135.42 with an additional \$761.34 being paid for further medical treatment. The medical reports also disclose that the complainant suffered multiple lacerations on the right and left sides of her neck measuring 4cm and superficial lacerations measuring 1cm to 3cm, and one laceration on her left index finger. The Court is therefore of the view that this case is one which is appropriate for a compensation order being made.
- [14] In cases of this nature, the Court always looks at the starting point in determining the sentence. Byer J had already indicated that her range would be between 6 to 18 months.
- [15] The Court will afford the defendant his full discount due to his guilty plea which was taken late but through no fault of his own. In England a plea of guilty normally attracts a one third reduction of the sentence² and I am so guided.

² R vs Paul Edward Buffrey (1995) 14 Crim App. R 8

[16] Submissions made on behalf of the Crown:-

Aggravating and Mitigation Factors of the Offence:

The Crown has set out the aggravating factors as being:

- A weapon was used
- The attack was unprovoked and that
- The attack was induced by drug use

The mitigating factors were highlighted as:

- His guilty plea
- Remorse
- First time offender

[17] **Mitigating factors for the Defence were set out as being:-**

- Remorse
- First time offender
- His guilty plea

[18] The defendant expressed his remorse by penning a letter to Ms. Ayoka Pond setting out his regret and seeking her forgiveness. As Counsel has indicated it is not immediately clear whether the letter was ever received by the complainant. Counsel indicated on behalf of the defendant that he had enrolled in Project Lion Heart Mentorship Program and had made progress in trying to turn his life around and improve himself. A report from the Honourable Melvin Turnbull was submitted for the perusal of the Court.

Court's Findings

[19] The Court having read and listened to the submissions from the Counsel on both sides makes the following findings on the aggravating and mitigating factors.

The Aggravating Factors of the Offence:

- (1) A weapon was used to inflict the injuries
- (2) Unprovoked attack
- (3) Injuries were to the neck causing permanent scarring

- (4) The Defendant had used cannabis prior to the attack

The Mitigating Factors of the Offence

- (1) Remorse as indicated by his letter to Ms. Ayoka Pond

Mitigating Factors relating to the Defendant

- (1) Guilty plea
- (2) No previous convictions
- (3) Age of the defendant at the time of the commission of the offence
- (4) First time offender
- (5) Suffers from a mental disorder

Aggravating Factors relating to the Defendant

- (1) The defendant used marijuana prior to the attack

[20] The well-established principles of sentencing are: deterrence, society's retribution, reformation and protection. These principles were first enunciated in a court in England and later adopted and widely applied by our Court of Appeal. Lawton LJ in *R v Sargeant*³ identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. The Eastern Caribbean Court of Appeal has also set down principles and guidelines for sentencing in the well-known case of *Desmond Baptiste v The Queen*⁴.

[21] The Court has given careful consideration to the very able submissions of the Crown and of the defendant's Counsel and to the relevant leading principles that must guide the Court in sentencing.

[22] The Court should determine whether the appropriate sentence should be custodial to deter the defendant and others, retribution to reflect society's intolerance for the offence; prevention to protect the community from the defendant and or rehabilitation as well as the special circumstances of the particular defendant.

³ [1974] 60 Crim App. R 74

⁴ Criminal Appeal No. 8 of 2003

- [23] A defendant can be rehabilitated away from the community and custody can allow the defendant to be rehabilitated by the different programs at the prison for life skills, anger management etc. The Court is of the view that the aggravating factors are outweighed by the mitigating factors and as such a sentence at the lower end of the scale is entirely appropriate.

Section 4 of the 2005 Criminal Justice (Alternative Sentencing) Act of The British Virgin Islands states that "the Court in determining sentence shall consider the following relevant matters such as the offence circumstances or facts; other offences; any course of conduct with similar offence; personal circumstances of victim; injury, loss or damage; remorse shown; reparation or restitution, guilty plea; co-operation with investigations; need to protect community; deterrence, adequate punishment; the character, antecedents, age, means and physical or mental condition of the defendant etc."

It must be noted that the defendant has already spent ten months on remand being in custody from 20th January 2015 to 4th September 2015 before he was granted bail by the High Court.

SENTENCE

- [24] Based on the Goodyear Indication given by Byer J of a range of 6 to 18 months, to which I am bound to follow, the starting point in this case would be ten (10) months being the notional sentence.
- [25] I will give the defendant his full one third discount for the guilty plea bearing in mind that it was no fault of his why the plea was not taken at an earlier date. He has no previous convictions and based upon Counsel's submissions he has expressed remorse even though he showed belligerence in the precincts of the Court during his court appearances.
- [26] He has spent ten (10) months in custody from the time he was arrested to the date he was granted bail. He has been given credit also for the fact that he is a first time offender. The mitigating factors as found by the Court do outweigh the aggravating factors and this has been factored into the sentence.

- [27] Having said all of the above, the defendant, Ajelan Lewis is sentenced to imprisonment of six (6) months.
- [28] The defendant is to submit to medical treatment by Dr. June Samuels or anyone else whom Dr. Samuels may recommend.
- [29] The defendant's letter of apology to the complainant Ms. Ayoka Pond is to be forwarded to her by The Crown, so that she may achieve some semblance of closure.
- [30] The defendant is to pay compensation to Ms. Pond in the sum of four thousand five hundred dollars (US\$4,500.00). The Court has taken into consideration the plane ticket and residue scarring on the complainant's neck. The compensation to be paid in monthly installments of two hundred dollars (US\$200.00), to the Court on or before the last working day of every month until the full sum has been paid. Failure to pay any installment will result in a default imprisonment of six (6) months being imposed to run consecutively.
- [31] Compensation payments are to commence upon the defendant's release from prison.

**Ann-Marie Smith
High Court Judge**

By the Court

Benjamin
Dr Registrar