

IN THE EASTERN CARIBBEAN SUPRMEM COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA

CASE ANUHCR 2018/0038

REGINA

V

VENDIZ CHARLES

APPEARANCES

Ms Rilys Adams and Mr Curtis Cornelius for the Crown.

Mr John Fuller for the defendant.

2019: APRIL 11

SENTENCE

For a teacher inflicting grievous bodily harm on a student by throwing a stone

- 1 Morley J: Vendiz Charles, aged 28 (dob 26.09.90), falls to sentenced on a plea for inflicting grievous bodily harm on 24.01.17 at Clarehall school on AS, then aged 14, by throwing a stone when AS¹ was cycling in the school corridor, striking his left forehead, causing a depressed skull fracture and subdural haemorrhage.
- 2 Charles teaches physics and science at the school. He had begun six months earlier. In support of his abilities, there is a petition dated 29.01.19 from all the teachers and staff, plus others,

¹ School children in this case, being persons under 18, will not be identified as they are minors, nor any parent as it will identify a minor.

running to 101 signatures, describing him as a deeply intelligent and talented young physics teacher, requesting leniency. Probation officer Carolyn Hector, reports him to have been distraught and sobbing continuously during interview for his pre-sentence report, filed on 08.04.19, showing obvious remorse. He is said to be very quiet, plays chess, makes fruit wine, was Head Boy at the Seventh Day Adventist School, is religious, studied mathematics in Cuba, and has done further study at Cave Hill, UWI on Barbados (until an accident when a vehicle struck his foot), is fully supported by the president of the Antigua & Barbuda Union of Teachers, and one member of the community thought him very focussed and disciplined and wished he was her son. Plainly, the incident was completely out of character.

- 3 What happened was, after recess, after 4pm, AS and friends DG and KS gathered to film AS do stunts cycling in the school corridor, doing jumps from a high spot to a lower spot. Cycling in the corridor is not allowed. KS threw stones to attract the attention of Ms K to the spectacle. Charles was in the physics lab and told KS to stop throwing stones. He told the boys to stop cycling in the corridor, but they did not. Charles called out stop. He picked up a stone and threw it, as he said in his police statement later, to go **'passed'** AS, where he was at a distance of 35ft. Tragically the stone in fact hit AS on the forehead, causing immediate bleeding, Charles went to his aid, **AS passed out, Charles rang AS'** mother, and at the hospital confessed to her he had thrown the stone, later in the day pointing out to police officers where by the corridor he had been when he threw it. Charles was later suspended. AS spent a week in hospital, a month out of school, remains on medication, suffers daily headaches, blurry vision, and occasional cramps in his left hand, while his mother reports he sometimes blacks out.
- 4 At the sentencing hearing, AS, now 16, asked to give evidence he did not want Charles returning to teach at Clarehall as it would make him uncomfortable. He also denied knowing it was wrong **to cycle in the corridor, and that Charles had told him to stop (contradicted by his friends' statements)**.
- 5 On the one hand, this is an extraordinary action by a teacher, to throw a stone to press for discipline; on the other hand, the court accepts he did not intend to hit AS, and certainly not his head, expecting to alarm him instead, foreseeing the risk of perhaps some harm, but not the consequence that arose. As such, he accepts the *mens rea* of the offence, though the extent of

injury was inadvertent. It must be made very clear however, this was not an 'accident': teachers should not throw stones to command discipline around students, and to do so, with injury arising, is a crime.

Constructing the sentence

- 6 The maximum sentence is 5 years. For any injury with a weapon, like a stone, the starting point is 3 years.
- 7 Turning to factors pertaining to the offence, it is aggravated by the scale of the injury, the fact this was an adult assaulting a child, and more by the fact it was a teacher *in loco parentis*, so that the sentence is increased to the maximum, to 5 years.
- 8 The offence is mitigated however by the delinquent behaviour of the students, who did not stop when told, and by how Charles did not intend to hit AS, nor anything approaching the extent of injury, plus his immediate assistance after, at the school and the hospital, and later cooperation with the police at the scene, so that the sentence is reduced by 2 years, back to 3 years (or 36 months).
- 9 Turning to factors pertaining to the offender, his evident remorse, good character, and sterling references, reduce the sentence by 9 months, to 27 months.
- 10 Turning to his plea, he will get full credit, being one-third, reducing the sentence to 18 months.
- 11 I turn now to whether there should be immediate imprisonment. I have the power to suspend the sentence, and I note the sentence is less than 2 years. The test is:
 - a. Can appropriate punishment only be achieved by immediate custody?
 - b. Does the offender present a risk or danger to the public or to the victim?
 - c. Has there been a history of poor compliance with court orders?
 - d. Is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation (which may be particularly relevant when sentencing a person under 21)?
 - e. Is there a realistic prospect of rehabilitation?

- f. Is there strong personal mitigation?
- 12 I assess Charles is not a present danger to AS or the public; there has been no history of poor compliance with court orders; there is a realistic prospect of rehabilitation evident from his remorse; there is strong personal mitigation in that he is supported by his community and all his colleagues; incarceration will likely turn him to criminality whereas at liberty he can do good in the community if allowed to continue teaching; and in all these circumstances, I am of the view appropriate punishment does not require immediate custody. I will therefore suspend the sentence for 18 months.
- 13 It must be remembered the sentence passed is a formal sentence of imprisonment. It is not a **conditional discharge. Let no one think Charles 'has got away with it'**.
- 14 Moreover, compensation should **be paid, as contemplated by AS' mother OJ** in the presentence report at p10. The medical bills were covered by insurance, amounting to out of pocket expense of only \$50. However, AS deserves compensation for the pain and suffering of his injury and continuing symptoms, and I note in giving evidence he did say he wanted Charles 'sued' for damages. I order Charles shall pay \$20000ec over the coming 12 months, or face a default period in jail of 6 months, aside from the suspended sentence.
- 15 *Vendiz Charles, please stand up.* For inflicting grievous bodily harm as a teacher at Clarehall on AS, aged 14, who was a student, by throwing a stone while he was mischievously riding a bike in the school corridor, fracturing his skull, the scale of injury being wholly unanticipated, on your plea of guilty attracting maximum credit, will be 18 months imprisonment, suspended for 18 months, with an order that you shall pay compensation to AS of \$20000 within 12 months, or face 6 months imprisonment in default.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

11 April 2019