IN THE GRAND COURT OF THE CAYMAN ISLANDS

CRIMINAL SIDE

INDICTMENT NO: 101 of 2019

THE QUEEN

V.

WAYNE JEFFREY DILBERT

Appearances:	**Mrs. Nicole Petit for the Crown**
	Mr. Crister Brady for the Defendant
Before:	**Justice Cheryll Richards Q.C.**
Sentence Hearing:	**27th May 2020**
Date of Decision:	**3rd July 2020**

HEADNOTE

Criminal Law – Principles on Sentencing - Inflicting Grievous Bodily Harm – Possession of Offensive Weapons *– Serious injury – Exceptional Circumstances.*

SENTENCE JUDGMENT

1. The Defendant is before the Court for sentencing in respect of Indictment 101/19. This Indictment contains three counts.

2. Count one charges him with the offence of Causing Grievous Bodily Harm with Intent contrary to s.203 of the ***Penal Code***. The particulars are that he on the 21st day of November 2019 at 76 School Road in George Town, Grand Cayman unlawfully and maliciously caused grievous bodily harm to Deon Garrick with intent to do grievous bodily harm to the said Deon Garrick. To this charge he pleaded not guilty but guilty to the lesser offence of Inflicting Grievous Bodily Harm simpliciter. This plea was acceptable to the Crown.

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3. Counts 2 and 3 charge him with the offences of Possession of Offensive Weapons on the same date and in the same place, to wit, a machete and a hammer, contrary to s.80 of the ***Penal Code***. He entered pleas of guilty to both offences.

4. Pleas to the three offences were entered on the 17th day of December 2019 on the day of his first appearance in the Grand Court on these charges.

5. The facts as outlined by the Crown are not disputed by the Defence. They are as follows.

6. The victim named in Count 0ne, Deon Garrick is known to the Defendant for some time. Mr. Garrick would lend the Defendant money from time to time.

7. On the morning of the 21st of November 2019, Mr. Garrick was at home when the Defendant came to his home address. An argument developed between them in relation to money. The Defendant produced a hammer and a machete. He struck the complainant once over the head with one of the weapons, it is not clear which one. The victim's

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partner was awakened by a commotion. She looked outside and saw the Defendant armed with a machete and a hammer. He was making demands for money. She did not see any blow delivered. However, she observed the victim to be covered in blood.

8. The victim was taken to the George Town Hospital. He was found to have sustained multiple fractures of the skull. He was then transferred to the Health City Hospital in East End where a metal plate was inserted into his skull.

9. The Defendant was arrested. In response to caution he made certain remarks concerning an argument about money. In interview under caution, the Defendant again accepted that an argument had taken place about money. However, when questions were put to him relating to the specifics of the incident he exercised his legal right to remain silent.

ANTECEDENT HISTORY

10. The Defendant has an antecedent history of 14 previous convictions. These include 2 for the offences of Wounding/Inflicting Grievous Bodily harm.

11. On the 18th June 2015, he was sentenced on Indictment 40 of 2013 to a suspended sentence for 2 counts of Unlawful Wounding and Common Assault. This was activated in February 2016 after he committed further offences.

12. His most recent conviction was in 2016 for an offence of Assault Occasioning Actual Bodily Harm in respect of which he was sentenced to a term of imprisonment. He was released from custody in March 2019 and the instant offences were committed in November 2019.

SOCIAL INQUIRY REPORT

13. The Department of Community Rehabilitation (DCR) has provided a detailed Social Inquiry Report (SIR) in respect of the Defendant.

14. He is 54 years old with a date of birth of the 5th August 1962. As at the date of the SIR, 20th May 2020, he was unemployed.

15. The Report details a long history of his misuse of illicit drugs and alcohol, beginning from an early age.

16. His early childhood involved the relocation of his family to the United States from the Cayman Islands and the subsequent divorce of his parents. He began experimenting with alcohol and ganja during his adolescence in order, he says, to "fit in." As he became an adult, his substance misuse issues became more problematic and he began consuming cocaine in the latter part of his 20s. As his substance abuse issues - which included both alcohol and drugs - became worse, he was in and out of the Penal system in the United States for property-related crimes such as theft and shop lifting. The Defendant told the Probation Officer that while there, he was charged for Aggravated Battery and was placed on 5 years' probation. He was deported from the United States in 2006.

17. On his return to the Cayman Islands he had been gainfully employed during periods of sobriety sometimes for as long as 2-3 years before relapsing at various points in his life. He reported dealing with disappointment and loss by using drugs and consuming alcohol.

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18. He has two adult children, a son and a daughter, who are both resident in the United States.

19. Following his release from Prison in March 2019 after serving a term of imprisonment for violating a suspended sentence and other charges, he was thereafter remanded for breaching the Shelter in Place curfew restrictions on three occasions.

20. He has sought to pursue accounting studies at the University College of the Cayman Islands and is also certified in drafting, electrical installation and maintenance. While on remand he has been taking online courses in accounting, has participated in a life-skills programme and attended woodwork classes at the Prison.

21. He was diagnosed with Bipolar disorder in 2005 for which he has been prescribed medication. In February 2019, he was diagnosed with liver cancer.

22. He was being supervised by the DCR from September 2013, having attended as a voluntary client. He successfully completed the anger management programme and started the men's non-violence programme. Despite continuing to struggle with substance abuse issues and attempts to become sober, he completed 23 of 25 sessions up to February 2015 when he became immobile following knee surgery.

23. Under Assessment /Evaluation in the SIR, the Probation Officer notes that several of his offending behaviours correlate with his substance misuse problems. Despite engaging in intervention services he continued to have difficulties with problem-solving and healthy conflict resolution skills.

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24. He was assessed using the level of service /case management inventory (LS/CMI) Risk Assessment tool. His overall risk of re-offending within one year was assessed as High. Of the eight criminogenic factors in the inventory tool, he scored very high in the categories of companions, as he has friends and associates who are criminals and/or use illegal drugs and, who appear to have a strong influence on his behavior. He also scored very high with respect to pro-criminal attitudes and orientation. The Officer describes his pattern of offending as suggestive that he is supportive of crime and unfavorable towards convention. While he has a positive attitude towards treatment, he minimized his role and responsibility by deflecting some blame on to the victim. The only area in which he scored very low was education/employment.

25. Under Special Considerations in the SIR, the Officer records that it appears that the Defendant's motivation is a barrier, that he does not really want to change his lifestyle and, given his health condition and the possibility that he might die in the near future, especially if he goes untreated, it appears that he has developed the perspective that he should do what he wants, when he wants because he does not have much time left to live.

26. Under sentencing options, the Officer recommends that a community-based order would not be considered appropriate, given his high-level risk to re-offend, his attitude towards the offence, his history of breaching Court Orders when placed on bail and on supervision orders, and, his continued pattern of violent behaviour.

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SENTENCING GUIDELINES

27. In the absence of offence-specific guidelines in the Cayman Islands, regard would be had to the ***United Kingdom Sentencing Council Guidelines***.

28. The Crown submits that under these Guidelines the offence would fall into Category One on the basis that 'greater harm' is present, due to the nature of the injury, and 'higher culpability', due to the use of a weapon.

29. The Defence do not disagree that the culpability is high in these circumstances and submit that the presence of two weapons would tend to raise that threshold. Counsel submitted on behalf of the Defendant that he had not planned on using the weapons but had taken them with him to the home of the victim only to impress the victim that he wanted his money back.

30. As to the harm caused, Defence Counsel submitted that it does not appear that there are any long term effects on the victim given his attitude now towards the Defendant. Counsel asks that the Court view the harm as medium, as-it resulted from a single blow that the Defendant effected - notwithstanding the need for a metal plate in the victim's skull.

31. The Guidelines list under factors indicating greater harm:

a. Injury which is serious in the context of the offence; and

b. Sustained or repeated assault on the same victim.

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32. Factors indicating higher culpability include the use of a weapon or weapon equivalent.

33. The Court accepts the submissions of the Crown. The Complainant sustained multiple skull fractures requiring the insertion of a metal plate. While his prognosis is said, by the Crown, to be presently unknown, the nature of the injury sustained is, in the Court's view, serious in the context of the offence. The use of a weapon does place this offence in the range of higher culpability.

34. The starting point for a Category One offence is 3 years' imprisonment with a range of 30 months' to 48 months' custody.

35. Both Counsel agree that these figures should be adjusted to reflect the fact that there is a higher maximum of seven (7) years in the Cayman Islands than in the United Kingdom[1], where the maximum sentence is five (5) years.

SUBMISSIONS

36. Defence Counsel submitted in mitigation that the Defendant is now remorseful and ashamed of his conduct. He and the victim were known to each other and had not previously had significant difficulties. In fact they had been friends and since the incident, the victim has reached out to the Defendant. The conflict was in relation to money allegedly owed to the Defendant. The nature of the transaction is unclear. The Defendant asserts that he had gone to the complainant in anger with a view to scaring

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[1] See ***R v Seth O'Neil Watler*** - CICA 34/2017, judgment dated 25th April 2018,

him to return the outstanding monies by means of threatening behaviour only and, it was in the course of the visit, that events took a violent turn.

37. Counsel submitted further that while the Defendant is no stranger to the criminal justice system, he now has certain particular medical difficulties. He had previously been diagnosed with bipolar disorder and now, with cancer of the liver with an aggressive growth phase. The Defendant was made aware of his diagnosis by accident by a medical staffer rather than his physician and this discovery says Counsel, has affected him significantly. Twice since being arrested the Defendant has been scheduled to travel to Trinidad and Tobago for treatment. On both occasions, intervening events prevented his travel, the latter occasion being concerns about Covid-19. He is still hoping that he will be able to access treatment before it becomes too late. Surgery or a transplant is necessary.

38. In respect of his earlier diagnosis he had been prescribed medication of mood stabilizers which had to be discontinued as there were concerns as to its effect on the medication that would subsequently be prescribed to assist with the cancer for which he was to have gone for treatment. Counsel submitted that it is not clear whether the Defendant's discontinued use of mood stabilizers may have affected his judgement and temperament on the day in question.

39. Whilst on bail and during Shelter in Place curfew restrictions, he breached the newly imposed curfew more than once. He pleaded guilty at arraignment and his bail was then denied. He had previously been on bail without incident.

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40. Defence Counsel also referred in mitigation to the SIR which details his long history of substance abuse.

ANALYSIS AND CONCLUSIONS

41. The Cayman Islands Sentencing Guidelines provides general guidance as to the aims of sentencing, assessing the seriousness of an offence, the custody threshold and the principle of proportionality. The Court reminds itself of this guidance including that in sentencing an offender, the Court has to balance a number of competing interests and objectives and to tailor the punishment to the individual circumstances of the offender while ensuring that it is in line with the seriousness of the offence. The Court should consider which of the aims which govern the sentencing process will be best served by the sentence to be passed. The aims which are set out in the ***Alternative Sentencing Law*** (2008 Revision) include deterrence, punishment, rehabilitation and restitution. The Guidelines also provide that a custodial sentence should not be passed unless the offence is so serious that no other sentence can be justified for the offence. Custody should be reserved for the most serious offences. Even where the custody threshold is passed, custody can still be avoided in light of personal mitigation or if there is suitable community intervention which would meet the aims of punishment and rehabilitation.

42. In considering whether the custody threshold has been passed for this offence, consideration has been given to the personal circumstances of the Defendant and to whether there is suitable community intervention which would provide sufficient restriction by way of punishment, while addressing rehabilitation issues. The serious nature of the offence in this case is an important factor. This is an offence involving the

use of a weapon. The injury sustained was serious and required hospitalization and surgery. In the Court's view, given the nature of the offending and all the circumstances, the custody threshold is passed in this case.

43. The applicable sentence range, based on the United Kingdom Guidelines, is 30 to 48 months' custody, with a starting point of 36 months' custody. This may be adjusted upwards given the higher maximum sentence in the Cayman Islands. Such adjustment was approved by the Court of Appeal in the case of ***R v Seth O'Neil Watler***.[2]

44. It is proposed that an adjusted starting point of 48 months' be adopted in this case.

45. Under the Guidelines, the sentence may be increased from the starting point if there are factors present which increase seriousness. In this case, the Defendant has a long history involving offences of a similar nature. The sentence would be increased to 54 months' custody.

46. A number of factors have been urged in mitigation. The Defendant is remorseful. His personal circumstances include a struggle with bipolar disorder and medication issues, which may have affected him. He has worked on completing treatment programmes in the past. I will consider the issue of his cancer diagnosis separately. When all the matters urged are taken into account, his sentence would be reduced by 4 months to 50 months' imprisonment.

[2] CICA 34/2017, judgment dated 25th April 2018

47. This is a bad case in which the victim sustained serious and apparently life-threatening injuries to his skull. The Defendant has a bad record with previous convictions of a similar nature. Just 8 months after being released from prison, he armed himself with, not one, but two, weapons and went to the home of the victim as a result of a dispute about money. This was clearly unwarranted and is behaviour which is deserving of condemnation in the strongest possible terms.

48. He has a high risk of re-offending within a year. The aims of deterrence of punishment, were there no other circumstances in this case, could only be satisfied by an immediate and long term of imprisonment.

49. There are, however, what may be considered to be exceptional circumstances in this case. The Court has been told that this Defendant has been diagnosed with an aggressive form of liver cancer. Further, it is likely the case that he will die without a liver transplant or surgical operation both of which can only be obtained overseas. The likely place is Trinidad and Tobago where he had been scheduled to travel before the travel restrictions in response to the pandemic. It is said that without this surgery, he will not have very long to live. As evidence of this, the Court has been provided with documents from the Health Services Authority (HSA).

50. The Court will treat the fact of his end-stage liver cancer as a mitigating factor of exceptional nature and will reduce the possible sentence from 50 months' to one of 34 months'. Effectively this means that mercy is being extended to him as a primary factor above other considerations.

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51. He is entitled to a full one-third discount for his guilty plea so that the final sentence would be one of 23 months' imprisonment.

52. Again in light of the exceptional circumstances in this case. This sentence will be suspended for a period of two years together with a Suspended Sentence Supervision order.

53. This will allow him to be able to travel for medical treatment and will also serve to meet, in a lesser way, the aims of punishment deterrence and rehabilitation.

54. As recommended by the Probation Officer, the conditions are that he:

- Completes an anger management programme;
- Engages with the Department of Counselling Services to identify appropriate substance abuse treatment to attain sobriety;
- Refrains from alcohol and illegal drug use;
- Does not enter or attend any liquor incense premises;
- Attends Alcohol anonymous meetings twice per week;
- Submits to random drug/alcohol testing;
- Observes a curfew between the hours of 8pm and 6 am;
- Be fitted with an electronic monitor for a period of six months except where within that period he is required to be off Island for the purpose of medical treatment.

55. With respect to the offences of Possession of Offensive Weapons, the maximum term of imprisonment under the ***Penal Code***, s.80 is 4 years' imprisonment. The sentence now imposed in respect of each of Counts 2 and 3 is one of 9 months' imprisonment suspended for 2 years with Suspended Sentence Supervision Order (SSSO) for each. These terms are to run concurrently to each other and also concurrently to the sentence for Inflicting Grievous Bodily Harm.

Dated this 3rd July 2020

Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court