

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

**CRIMINAL APPEAL 13/16**

IND 31/2015

C01155/2016

BETWEEN:

**HER MAJESTY THE QUEEN**

Respondent

- and

Alexander Chesley Brown

**Appellant**

**Before:**

**The Hon Sir George Newman, Justice of Appeal  
The Hon Sir Richard Field, Justice of Appeal  
The Hon (Cecil) Dennis Morrison, Justice of Appeal**

**Appearances:** Tricia Hutchinson for DPP/ Crister Brady (Brady Law) for the appellant

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**JUDGMENT**

Revised from transcript of oral judgment given on 18 August 2016 and Approved  
Released 16 January, 2017

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Field JA

1. On the 28th of April of this year, in the Grand Court, Justice Swift sentenced this appellant, on a plea of guilty to inflicting grievous bodily harm, to 18 months imprisonment.
2. The offence occurred on the 26th of April 2015. A basis of plea was finally accepted on the 26th of February 2016, a few days before the trial was due to begin. Briefly, the circumstances of the offence were these. The appellant was traveling in his car with a Mr. Rivers who was driving the vehicle. There was an accident. The car hit a wall and was badly damaged. Both occupants in the car got out of the vehicle. The appellant, who was highly intoxicated, was very angry. His perception was that Mr Rivers was seeking to leave the scene prior to the arrival of the police. He proceeded to throw a bottle at Mr Rivers which struck him on the back of the head, causing lacerations. The appellant then picked up a

rock or a brick and more than once hit Mr Rivers in the face with it, causing multiple serious facial fractures to the upper dural, nasal bone and eye socket. He also cut Mr Rivers with a machete. The injuries to the complainant's face required 27 stitches.

3. When passing sentence, the learned judge referred to the Chief Justice's Statement on Tariffs and Sentencing Guidelines of the 16th of January 2002. Under those Guidelines, the maximum sentence for this offence was five years. The learned judge, entirely properly, then went on to consider the United Kingdom Sentencing Guidelines. He was prepared to proceed on the basis that this was a case of lesser harm, although he observed that this was a close call. His conclusion was that the case was one of higher culpability in Category 2. The starting point for that category is 18 months and the sentencing range is between one and a three years.
4. The judge identified a number of aggravating factors, including the effect of this attack on the victim, the intoxication of the appellant and the fact that at the time the offence was committed appellant was on bail for two offences of carrying an offensive weapon, offences for which he was convicted prior to being sentenced for the index offence.
5. The judge took the view that, before making any reduction for the guilty plea, the appropriate sentence was one of two years. Since the basis of plea was only agreed shortly before the date set for trial, the discount allowed by the judge was 25 percent rather than one third, which would have been appropriate if the plea of guilty had been made at the earliest opportunity.
6. Two grounds of appeal have been advanced on behalf of the appellant by Mr. Brady. Firstly, Mr. Brady says that the judge took no account of the provocative effect on the appellant of the accident and the damage to the appellant's car. The car was being driven by the complainant who was responsible for the accident and the resulting damage to the appellant's car. This put the appellant into a fit of anger which Mr. Brady contended ought to have been taken into account by the learned judge who should accordingly have passed a lesser sentence.

7. Mr. Brady also submits that insufficient account was taken by the judge of the personal circumstances of this appellant. It seems that his family, and in particular his mother, depends very much on him being at liberty because before this offence he was in work and had a good work record.
8. In his oral submissions, Mr. Brady did not go so far as he does in his short written submissions to suggest that the judge should have passed a suspended sentence rather than one of immediate custody.
9. In our judgment, there is no merit at all in the first ground advanced by Mr. Brady. No doubt the accident and the damage to the car caused the fit of temper that led to this attack, but that can in no way be advanced by way mitigation of this very serious offence, so serious that one can take the view that this appellant was very fortunate to be facing at the time of sentence a charge only of causing grievous bodily harm and not causing grievous bodily harm with intent.
10. As to the second ground of appeal, the judge was well aware of the personal circumstances of the defendant. He had before him a social inquiry report. There is not the slightest doubt that the judge took those matters into account. Notwithstanding those matters, the judge passed the sentence he did and, in our view, he was justified in doing so. This sentence was an entirely appropriate one for this vicious attack on Mr Rivers which caused serious injury, the consequences of which are not yet fully resolved.
11. For these reasons, this appeal is dismissed.