

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 0031/2015**

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6
7 **THE QUEEN**

8
9 **V**

10
11 **ALEXANDER CHESLEY BROWN**



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14 **Appearances:**

Ms. Tricia Hutchinson for the Crown

15
16 **Mr. John Furniss for the Defendant**

17
18 **Before:**

Hon. Justice Malcolm Swift Q.C. (Actg.)

19 **Submissions heard:**

28th April 2016

20
21 **SENTENCE RULING**
22

- 23 1. The Defendant has pleaded guilty to Count 2 – the offence of Inflicting Grievous
24 Bodily Harm on Sunday 26th April 2015 on Robert Anthony Rivers. Count 1 has been
25 left on the file after the plea to Count 2 was entered on arraignment on the 26th
26 February 2016 – a few days before the trial was due to start.

27 ***HISTORY OF THE PROGRESS OF CASE THROUGH THE GRAND COURT***

- 28
29 2. The first appearance was on 15th May 2015. On 29th May 2015, the second
30 appearance, a basis of plea to Count 2 was offered. At the fourth appearance the basis
31 of plea was rejected by the Crown. At the fifth appearance the case was set for trial. A
32 new basis of plea was offered and accepted on the 26th February 2016.

1 3. A trial has been avoided and, although I cannot accept that he should be given a full
2 one-third discount on sentence, I am prepared to give a twenty-five percent discount –
3 bearing in mind he always appears to have intended to plead guilty, subject to a basis
4 being agreed. I say that despite the fact that the case is extremely strong.

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6 *HISTORY OF THE DEFENDANT'S PREVIOUS CONVICTIONS*

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8 4. The official record shows mainly the possession of drugs (ganja and cocaine) during
9 the 1990s – eight (8) offences in all – and since that time the Defendant has not been
10 convicted of any further offences.

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12 5. However the Social Inquiry Report (SIR) records that the Defendant has a total of ten
13 (10) previous court appearances culminating in a conviction in August 2015 (i.e. after
14 the commission of the present offence) for 2 offences of possession of an offensive
15 weapon committed around Christmas 2014, for which he was put on Probation. Those
16 offences were separate offences of possession of a machete and, on another occasion,
17 of a knife.

18
19 6. Therefore, this is not the Defendant's first conviction connected with carrying a
20 weapon and Mr. Furniss concedes that that this offence (of inflicting GBH) must have
21 been committed whilst the Defendant was on bail for the offensive weapon charges.



BASIS OF PLEA WAS ACCEPTED BY THE CROWN

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3 7. Although the basis of plea omits reference to the use of the machete, I am told that his
4 admission to the Probation Officer of using the machete to injure the victim should
5 also be incorporated into the basis of plea. Added to the admission to the Probation
6 Officer, the basis of plea consists of a complete admission of using a bottle, a rock and
7 a machete to injure the victim, Mr. Rivers.

8
9 8. Mr. Rivers, was struck on the back of the head by a bottle thrown at him by the
10 Defendant and was struck in the face and head by a rock wielded by the Defendant. It
11 is obvious from the injuries that the rock must have struck Mr Rivers in the face and
12 head more than once. Mr. Rivers was also cut with the machete and had to ward off
13 that blow to avoid further, more serious, injury.

14
15 9. I addressed the Defendant as follows:

- 16
17 i. You were intoxicated and angry about some perceived wrong and without warning
18 you attacked your victim with weapons when he had done nothing to deserve it. It
19 is no excuse that your judgment was clouded by alcohol and you, for some strange
20 reason, blamed him for the fact that you crashed your car whilst under the
21 influence.



1 ii. You caused serious injuries. This was an attack with the rock using a great deal of
2 force. In addition to the lacerations to the back of the head caused by the bottle,
3 your victim suffered multiple serious facial fractures including fractures to the
4 upper jaw, the nasal bones and the eye socket. The photographs of the injuries are
5 self-explanatory. The victim still suffers from his injuries. His facial bones have
6 not healed and he has residual nerve damage and numbness to the face. He has
7 headaches which are persistent. He had 27 stitches. There is a depression under
8 his right eye. He has been unable to pay his hospital bill of over \$3,250.

9
10 iii. These were very nasty injuries and have had a profound effect on Mr. Rivers' life.
11 I accept that he may have lost his job due to his consumption of alcohol rather than
12 as a result of the attack, but he would probably have returned to work if this had
13 not occurred.

14 iv. Matters raised by defence counsel include your work record and I have read the
15 reference from your employer. You support your family. Your daughter is here
16 and she is to be commended for showing steadfast support for you. I am told that
17 you are full of remorse and have told your victim how sorry you are. I accept that.
18 You are offering to pay his hospital bill by installments. I am urged to consider
19 suspending the inevitable prison sentence.
20

21 v. The SIR suggests a suspended sentence supervision order to try to keep you away
22 from alcohol and solve your anger issues.
23



1 vi. The Victim Impact Report (VIR) says that victim has forgiven you, effectively, but
2 I note the serious effect on his life of these injuries.

3
4 vii. I take into account the *The Chief Justice's Statement on Tariffs and Guidelines*
5 *for Sentencing of Certain Offences* dated 16th January 2002¹ which suggests a
6 maximum sentence of 5 years for this offence. That is in line with the maximum
7 sentence for this offence in the UK.

8
9 viii. Whilst this offence was in some respects an attack which could properly be
10 categorized as indicating greater harm because it arguably involved sustained or
11 repeated assaults on the same victim, I am prepared to accept that I should not so
12 categorise repeated blows struck in the course of a brief single incident. I therefore
13 accept that this is a case of injury less serious, in the context of the offence, and
14 thus an example of lesser harm. That decision has been a close run thing.

15
16 ix. I take into account the circumstances in which you used the rock as a weapon and I
17 regard it as a statutory aggravating factor indicating higher culpability.

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19 x. This is not a case of provocation by the victim, nor is it a case where the victim
20 used any violence towards you.

21
22 xi. This is (according to the UK Guidelines) a lesser harm and higher culpability
23 offence falling within Category 2.

24
25 xii. The starting point therefore, according to the guidelines, is 18 months'
26 imprisonment with a range of between 1-3 years' in custody.

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¹ The Chief Justice's Sentencing Guidelines



1 xiii. I have considered the UK cases referred to me namely, and in particular, *Regina v*
2 *Eastwood*², *R v Robertson*³, *R v Stewart*⁴ and *Regina v Broatch*⁵. They give only
3 general guidance and are specific to their own facts. They indicate no more than a
4 range of sentence of between 15 months and 2½ years' imprisonment for offences
5 broadly similar to the present. This range is no more or less than is indicated by the
6 sentencing guidelines.

7
8 xiv. The additional aggravating factors are:

- 9
10 (i) The continuing effect on your victim;
- 11 (ii) Your intoxication at the time of the offence;
- 12 (iii) You do not recognize or accept a drink problem but you are clearly at risk
13 of using violence when drunk.
- 14 (iv) You were on bail for 2 offences of possession of offensive weapons.

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16 xv. The mitigating factors are:

- 17 (i) This is an isolated incident;
- 18 (ii) You have shown genuine remorse.



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² 2013 EWCA Crim 2460

³ 1998 1 Cr App R 21

⁴ 2004 EWCA Crim 226

⁵ 2010 EWCA Crim 462

SENTENCE

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10. Two (2) years' imprisonment is the result, which is reduced by 25% or 6 months for the late guilty plea. Therefore a sentence of 18 months' imprisonment is imposed.

11. I can find no grounds to suspend the sentence.

12. It would not, in the circumstances, be realistic or fair to order compensation and so the victim will, if he wishes, take civil action to recover the sum of \$3,166.96.

13 **Dated this the 28th day of April 2016**



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16 **Honourable Mr. Justice Malcolm Swift Q.C. (Actg.)**
17 **Acting Judge of the Grand Court**

