

*Libson*

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 30 OF 2008  
IND No. 30/08  
C# 00648/08

*2/9/09*

BETWEEN:

ALVIN WINSTER BROWN

Appellant

and

HER MAJESTY THE QUEEN

Respondent



BEFORE: THE RT. HON. SIR JOHN CHADWICK P.  
THE HON. MR. JUSTICE MOTTLEY J.A.  
THE HON. MR. JUSTICE VOS J.A.



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Reasons for Judgment delivered orally on 2 September 2009

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APPEARANCES:

Mr. N. Dixey

for the Appellant

Mr. T. Ward

for the Respondent



## Ruling -- Mottley J.A.

1 eye precipitated a consequent retinal  
2 detachment which was likely to result in  
3 permanent reduction of the right eye. The  
4 doctor was of the opinion that the condition  
5 was serious and likely to be permanent, in that  
6 the complainant may lose vision in the eye  
7 completely.

8 (5) It is clear that the attack which led  
9 to the injury was unprovoked and uncalled for  
10 and was, indeed, in the circumstances, a very  
11 silly thing to have done. In the appellant's  
12 favour, however, it is accepted that the attack  
13 was not premeditated. Also in his favour, the  
14 attack was not a sustained attack.

15 (6) The appellant showed early remorse  
16 for his conduct and this was evident in the  
17 interview which he gave to the police.

18 (7) At the trial he pleaded guilty and  
19 was sentenced to five years' imprisonment. He  
20 now appeals against that sentence.

21 (8) The appellant complains that the  
22 sentence of five years which was imposed on him  
23 was manifestly excessive having regard to all  
24 the circumstances of the case.

25 (9) Before the judge the Crown relied on

## Ruling -- Mottley J.A.

1 the case of *R. v. Dorlan Ebanks*. In that case,  
2 the victim also suffered a detached retina.  
3 The sentence imposed was one of three and a  
4 half years. In that case, a weapon, namely a  
5 bottle, was used to inflict the injury. This  
6 is to be contrasted with this case where the  
7 appellant did not use any weapon, but struck  
8 the complainant with his fist. In *Ebanks'*  
9 case, the fact that a weapon was used was an  
10 aggravating circumstance, however, he had a  
11 clean record. While the appellant used his  
12 fist to inflict the injury, he did not have a  
13 clean record, having previous convictions, one  
14 at least for inflicting grievous bodily harm  
15 with intent. This would be an aggravating  
16 circumstance.

17 (10) When these aggravating factors are  
18 balanced out against each other, it is  
19 difficult to see why the learned trial judge,  
20 as he stated in his sentencing remarks, felt  
21 that he was bound, his hands were tied by the  
22 authority of *Ebanks* and considered it was  
23 necessary for him to impose a sentence of five  
24 years.

25 (11) The maximum sentence under section

## Ruling -- Mottley J.A.

1       204 of the Code under which he was charged is  
2       seven years' imprisonment. Having pleaded  
3       guilty, the appellant was in fact entitled to a  
4       one-third discount and this would have brought  
5       his sentence to something below the region of  
6       five years' imprisonment.

7               (12) It is accepted that if the appellant  
8       had pleaded not guilty and had gone to trial  
9       the sentence which would have been imposed  
10      after trial would have been in the vicinity of  
11      four to five years' imprisonment.

12              (13) The learned trial judge started with  
13      the maximum of seven years and then discounted  
14      a one-third allowance for the plea of guilty.  
15      As a result, the judge came to the conclusion  
16      that the sentence imposed would have been in  
17      the vicinity of four years eight months and  
18      perhaps rounded it off at five years. But that  
19      would be adequate if the circumstances were  
20      such that the injury inflicted would have been  
21      considered to be the worst case scenario. In  
22      this case, it certainly could not be considered  
23      to be the worst case scenario, and the learned  
24      trial judge ought not to have started with a  
25      maximum sentence and then allow a discount.

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1 If, as I said earlier, that after trial the  
2 sentence imposed would have been between five  
3 to six years, then, starting at that point, the  
4 discount allowed for a guilty plea would be  
5 from that figure of five to six years. In such  
6 circumstances, this would have brought the  
7 sentence down to about three and a half years.

8 (14) In these circumstances, we consider  
9 that the sentence imposed by the learned trial  
10 judge was excessive. The sentence is quashed  
11 and we substitute a sentence of three and a  
12 half years. Time spent before sentence to be  
13 taken into account.

## REPORTER'S CERTIFICATE

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16  
17 Certified correct to the best of my skill and  
18 ability, dated the 4th day of September 2009.

19  
20   
21 CAROL ROUSE

