

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT VINCENT AND THE GRENADINES

SVGMCRAP2024/0010

BETWEEN:

OKKERT ARTHUR

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry
The Hon. Mde. P. Nicola Byer

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Ms. Shackell Bobb for the Appellant
Mrs. Maria Jackson-Richards for the Respondent

2026: May 5;
July 30.

Criminal Appeal – Sentencing – Whether the learned magistrate erred by failing to give the appellant an opportunity to make any submissions in mitigation before sentence was passed, thereby rendering the sentence manifestly unfair so that it should be set aside – Compendium Sentencing Guidelines of the Eastern Caribbean Supreme Court - Violence Offences – Whether it would be appropriate for this Court to undertake the sentencing exercise afresh – Whether the learned magistrate’s failure to take into account the mitigating factors of the offence and the appellant’s good character rendered his sentence untenable - Whether the learned magistrate’s sentence was excessive – Whether the appellant was entitled to a reduction in sentence for time spent on remand – Whether the learned magistrate was mandated to consider the imposition of a suspended sentence - Section 30(1) and (3) of the Criminal Code Cap. 171 of the Revised Laws of Saint Vincent and the Grenadines 2009 - Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 Practice Direction 8C No. 2 of 2025 (Reissue)

Okkert Arthur (“the appellant”) was in the vicinity of a shop in Georgetown, Saint Vincent, when an incident occurred between him and the virtual complainant (“the VC”). Subsequently, the appellant was charged with unlawful and malicious wounding. At trial,

the appellant was unrepresented and not afforded an opportunity to make a plea in mitigation before the learned magistrate imposed the sentence. The learned magistrate in his reasons for decision stated that he accepted the version of events advanced by the VC and found that the appellant's defence of self-defence inapplicable. Consequently, the learned magistrate convicted the appellant and sentenced him to six months imprisonment.

Being dissatisfied with his conviction and sentence, the appellant appealed against them. Although his notice of appeal initially challenged both conviction and sentence, in his subsequently filed skeleton arguments, as well as before this Court on appeal, the appellant only pursued the appeal against sentence. The appellant contended that the entire sentencing exercise was improper due to the learned magistrate's failure to put the allocutus to him and, consequently, the sentence imposed was void. The appellant also contended that having regard to the Compendium Sentencing Guidelines of the Eastern Caribbean Supreme Court – Violence Offences, the appropriate sentence that this Court should consider was time served, which was the 1 month and 29 days the appellant spent incarcerated before he was released on bail pending appeal. The appellant argued, in the alternative, that given the procedurally flawed sentencing exercise under appeal, if this Court was minded to consider a custodial sentence, this Court was obligated to consider whether a suspended sentence was warranted under section 30(1) and (3) of the **Criminal Code** of Saint Vincent and the Grenadines, as the sentence fell within the statutory range of no more than three years. The appellant added that the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 Practice Direction 8C No. 2 of 2025 (Reissue) mandates that a suspended sentence be considered where applicable under the laws of the jurisdiction. The appellant claimed that some of its relevant factors, such as strong personal mitigation and risk to the public applied to him.

The respondent opposed the appeal. The respondent contended that while it is both proper and a procedural requirement that the learned magistrate should have invited the appellant to make a plea in mitigation on his sentence, the omission to do so in the instant case should not be considered such a significant impropriety as to warrant the setting aside of the sentence imposed on the appellant. The respondent further argued that the learned magistrate applied the Sentencing Guidelines of the Eastern Caribbean Supreme Court and was, accordingly, entitled to find that six months' imprisonment was appropriate as it was, in its view, proportionate to the gravity of the offence and fell within the statutory maximum of seven years for the offence.

The main issue for this Court to determine was therefore whether the learned magistrate erred in failing to give the appellant an opportunity to make submissions in mitigation before sentence was passed, thereby rendering the sentence manifestly unfair so that it should be set aside.

Held: Allowing the appeal in part, setting aside the sentence of six months' imprisonment and substituting a sentence of 2 years 4 months and 29 days imprisonment and ordering that the sentence be suspended for a period of 18 months and ordering that if, during the operational period of 18 months, the appellant commits an offence, the court would determine whether, and how, the substituted sentence should take effect, that:

1. The principal aims of sentencing should be retribution, deterrence, prevention and rehabilitation. Each case being assessed in relation to the mitigating and aggravating factors, sentencing range, calculation of an applicable starting point, and whether credit should be given for the time spent on remand or for a guilty plea, as well as the cumulative effect of those considerations on the sentence ultimately imposed. It was the learned magistrate's duty as the sentencing judge to bear in mind all the circumstances that were at play in crafting the sentence that he sought to impose on the appellant and, in so doing, to ensure that the process was transparent and decipherable. It is clear that the learned magistrate failed in his duty to the appellant on two fronts. Firstly, he failed to identify clearly what his process was in coming to the sentence imposed. Secondly, and this being the gravamen of the appeal, he having failed to identify his process on sentencing failed to clearly and unequivocally consider the circumstances of mitigation in favour of the appellant.

Desmond Baptiste v The Queen Saint Vincent and the Grenadines Criminal Appeal No 8 of 2003 (delivered 6th December 2004, unreported) followed.

2. In undertaking a sentencing exercise, the sentencing judge must not only take into account the circumstances surrounding the commission of the offence, but also and equally the character and record of the convicted person. Where the liberty of the subject is at stake, procedural fairness is of cardinal importance. It was clear that the learned magistrate had not properly considered the appellant's good character, which constituted a fundamental error on the part of the magistrate. It is therefore the duty of the appellate judge to consider the sentencing exercise afresh.

DPP V Shaunlee Facie HCRAP 2008/003) (delivered 11th January 2010, unreported) followed; **Curt John v the King and Kendal Cato** SVGHCRAP2020/0007 with SVGHCRAP2020/0008 (delivered 12th March 2025, unreported) followed.

3. A suspended sentence remains a sentence of imprisonment, notwithstanding that its execution is suspended. As the sentence fell within the statutory period of no more than three years, the appellate judge was obligated to consider whether a suspended sentence was appropriate, which was answered in the affirmative. Although a sentence exceeding two years should rarely be suspended, the Court considered that a suspended sentence was appropriate for several reasons. Given the nature of the offence and the injury inflicted, the sentence itself would constitute adequate recognition by the court regarding the displeasure of the incident occurring, while keeping the appellant accountable to the public for his disobedience of the law. Further, there is no evidence that the appellant would present a danger to the public. In fact, the appellant had a perfect record of compliance with court orders, as well as positive prospects for rehabilitation as he was of good character and a first-time offender. His offending was also spontaneous, resulted in lesser harm and he claimed that he acted out of fear. As such, it was found that a suspended sentence for a period of 18 months reflects the seriousness of the offence while encouraging the appellant's rehabilitation and serving as a sufficient deterrent against further offending.

Section 30(1) and (3) of the Criminal Code of Saint Vincent and the Grenadines Cap. 171 of the Revised Laws of Saint Vincent and the Grenadines 2009 applied; Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 Practice Direction 8C No. 2 of 2025 (Reissue) applied.

JUDGMENT

[1] **BYER JA:** This is an appeal against the appellant's conviction and sentence following a trial before the learned magistrate on an information dated 11th January 2024 charging the appellant with unlawful and malicious wounding. At the hearing of the appeal, the appellant pursued the grounds of appeal in relation to sentence only.

[2] The appellant was unrepresented at his trial which was conducted on 29th February 2024, during which three witnesses testified: the virtual complainant ("VC") Mr. Nolwyn John; the police officer who effected the arrest Jerron May PC 404, and the appellant. At the close of evidence, the learned magistrate found the appellant guilty and sentenced him to 6 months imprisonment.

Background to the Charge

[3] From the reasons for decision provided by the learned magistrate, the facts surrounding the incident are as follows. The VC was in the vicinity of a shop in Georgetown, Saint Vincent, when he was attacked by the appellant, who struck him on the head with a bottle. The appellant's account was that, while on his way to the shop, the VC pulled a knife and leapt backwards, and that he (the appellant) was struck on the head and chest with two bottles by persons who were among a group. He maintained that he then threw an empty beer bottle into the crowd and ran away. The learned magistrate rejected the appellant's account. He found that the defence of self-defence relied upon was inapplicable and preferred the evidence of the VC. The learned magistrate also referred to evidence of a prior dispute between the parties which had left the appellant dissatisfied with its outcome. On that basis, the learned magistrate found that

the appellant had unlawfully and maliciously inflicted injuries sustained by the VC and convicted him of the offence charged.

The Appeal

- [4] By reasons for decision dated 29th February 2024,¹ the learned magistrate, having indicated the evidential basis for his findings, made the following statement with regard to his sentencing exercise:

“After consideration was given to the Sentencing Guidelines of the ECSC, it was found that six months was appropriate in all the circumstances. The Defendant was accordingly sentenced to six months imprisonment.”

- [5] Being dissatisfied with his conviction and sentence of the learned magistrate, the appellant filed his notice of appeal² containing four grounds:

- (1) The evidence of the VC was not supported by independent material evidence.
- (2) The learned magistrate upon sentencing of the appellant denied the appellant due process of law by failing to asked (sic) the appellant whether or not if he wishes to mitigate before sentencing.
- (3) Conviction was not supported by the evidence.
- (4) The appellant is asking that the decision by the learned magistrate and the guilty (sic) [verdict] by the learned magistrate and the sentence of 6 months be set aside in all of the circumstances.

- [6] In his notice of abandonment and skeleton arguments both filed on 20th March 2026, the appellant however sought to advance only two grounds of appeal namely, ground 2 and the portion of ground 4 dealing with the sentence in that it should be set aside. In my mind these grounds in fact amount to one main issue, that is, whether the learned magistrate failed to give the appellant an

¹ Pages 10 -11 of the Record of Appeal filed on 26/6/2025.

² Filed on 27/3/2024.

opportunity to make any submissions in mitigation before sentence was passed, thereby rendering the sentence manifestly unfair so that it should be set aside.

- [7] Before I proceed to consider this issue, I wish to note that counsel for the respondent conceded in her written and oral submissions that it was clear from the record that there is no indication made by the learned magistrate that he had provided the appellant an opportunity to mitigate before sentence was passed.³ Counsel further conceded that the opportunity to make representations and introduce matters relevant to the sentence is part and parcel of the Sentencing Guidelines and have to be considered during a sentencing exercise.⁴ In my mind these concessions by the respondent were well made and thus the issue on this appeal becomes even more focused as there can be no dispute as to the factual matrix surrounding the sentencing exercise. Rather, the real question is what impact does this failure have on the sentence that was finally imposed.

Appellant's Submissions

- [8] The appellant submitted that the failure of the learned magistrate to put the allocutus to the appellant rendered the entire sentencing exercise void. Reliance was placed on the decision in **R v Porter**,⁵ in which the Federal Supreme Court held that the failure of putting the allocutus to the prisoner prior to sentence had the effect of invalidating the sentence passed. Relying further on this Court's recent decision in **Kurtly Garvey Cadette v The King**,⁶ the appellant submitted that, where the sentencing exercise was flawed, the appellate court was required to consider afresh the sentence to be imposed.
- [9] Having said so, the appellant then submitted to this Court that in considering the sentencing exercise afresh and taking into account the parameters under the applicable guidelines being **A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court – Violence Offences** published on 6th January 2025, the appropriate sentence that the court should consider is time

³ Paragraph 8 of respondent's submissions filed on 24/4/2026.

⁴ Paragraphs 10 and 11 of respondent's submissions filed on 24/4/2026.

⁵ [1961] 3 W.I.R 551.

⁶ SLUHCRA2023/0001 (delivered 9th April 2025, unreported).

already served prior to the appeal. That is the 1 month and 29 days the appellant spent incarcerated before he was released on bail pending appeal.

[10] During the oral submissions before the Court, the appellant raised for the first time the alternate argument, that the learned magistrate, should have in any event, if he was of the belief that a custodial sentence was warranted (which the appellant maintained was not), was mandated to consider the imposition of a suspended sentence.

[11] Given the fact that this had not been foreshadowed in the notice of appeal or the written submissions filed in support, the Court ordered both parties to provide further written submissions on the question of the suitability of the imposition of a suspended sentence in place of the custodial sentence imposed by the learned magistrate.

[12] Following those directions from this Court the appellant submitted that, given the fundamentally procedurally flawed sentencing exercise under appeal, a suspended sentence would have been a better option in all the circumstances. Under section 30, and in particular subsections (1) and (3), of the **Criminal Code**⁷, the appellant drew the Court's attention to the provision that entitles the sentencer to impose a suspended sentence. The section provides as follows:

“(1) A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order, not being less than one year nor more than three years from the date of the order, (hereinafter referred to as the “operational” period), the offender commits in Saint Vincent and the Grenadines another offence punishable with imprisonment for a period exceeding six months (hereinafter in this section and section 31 referred to as a “subsequent offence”) and thereafter a court having power to so do orders under section 31 that the original sentence shall take effect.”

Subsection (3) goes on to say:

“A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the

⁷ Cap. 171 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

absence of any power to suspend such a sentence by an order under subsection (1).”

- [13] The appellant therefore submitted that, having determined that a term of imprisonment was necessary and fell within the statutory range as set out in the legislation, the learned magistrate was mandated to consider whether the sentence should be suspended.
- [14] The appellant also drew the panel’s attention to the wording of the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 Practice Direction 8C No. 2 of 2025 (Reissue)**, which provides guidance in relation to “When to impose a suspended sentence”. This practice direction mandates that where a suspended sentence can be considered under the laws of the jurisdiction, it must always be considered, taking into account a myriad of factors in the exercise of that discretion.
- [15] These factors include the history of compliance with court orders, risk to the public, rehabilitation prospects, strong personal mitigation and whether immediate imprisonment is necessary as the appropriate punishment. The appellant submitted that, given the factors that apply to him, particularly his good character, that the injury was not a life threatening one or one that had lasting consequences for the VC, that there was no evidence of the appellant being a threat to the public and that he was an excellent candidate for rehabilitation, an immediate custodial sentence was excessive in all the circumstances. The appellant therefore submitted that the appeal against sentence should be allowed, the custodial sentence set aside, and a suspended sentence imposed for such a period and on such conditions as this Court thinks fit.

Respondent’s Submissions

- [16] The respondent’s position, as reflected in its originally filed submissions, was that while it was ‘best practice’ that an accused should be afforded an opportunity to mitigate his sentence and it is clear that the record did not reflect that that was in fact done, the absence of the mitigation should not be

considered such a significant impropriety to warrant the setting aside of the sentence as imposed by the learned magistrate.

[17] Thus, the fact that the learned magistrate had indicated in the record that the sentencing guidelines were taken into account in determining the sentence of the appellant, the Court should accept that this was, in fact, what transpired and that the leniency of the sentence ultimately imposed demonstrated that questions of mitigation had been considered.

[18] However, when the respondent filed supplementary submissions on 24th April 2026, its position had slightly changed in so far as it had categorically made the concession that the appellant should have been afforded a formal opportunity to mitigate before sentence was passed. The respondent nevertheless retained the position that this did not necessarily mean that the sentence should be invalidated.

[19] It was therefore contended by the respondent that, upon the proper application of the sentencing guidelines to the offence of which he was found guilty, the appropriate sentence was 3 years, 1 month and 29 days. The respondent therefore submitted that the learned magistrate's imposition of 6 months incarceration clearly demonstrated that he had taken into account mitigation on behalf of the appellant. However, in oral submissions before this Court, counsel for the respondent noted that given the silence of the record it was unclear as to what those factors were in fact.

[20] In response to the question of the applicability of a suspended sentence as posed by the Court, the respondent conceded, and rightfully so, relying on the statutory framework identified by the appellant, that the learned magistrate should have contemplated whether the imposition of a custodial sentence was warranted in all the circumstances of the case.

[21] After considering the factors which must be assessed as to whether a suspended sentence could be appropriately imposed, the respondent submitted: i) that from the lenient sentence that was imposed by the learned

magistrate, the need for an immediate custodial sentence was clearly not in the contemplation of the learned magistrate and that the punitive aspect of the sentence could have been met with a suspended sentence; ii) there was no evidence to suggest that the appellant posed any risk to the public which required incarceration; iii) there was no evidence to suggest that there had been a history of poor compliance with court orders when in fact it was clear that he was a first time offender and iv) in considering whether he had a realistic prospect of rehabilitation there was no indication that the learned magistrate had even considered the principles of sentencing that taking into account his relative youth and the fact that he was a first time offender were clear indications that he would be a good prospect for rehabilitation.

- [22] Therefore, considering the sentence imposed and the clear fact that the mandatory consideration of a suspended sentence was not in the contemplation of the learned magistrate, the respondent submitted that this court should affirm the sentence of 6 months and suspend the same for a period of 1 year.

Discussion

- [23] As identified, the sole issue for consideration is whether the sentencing exercise undertaken by the learned magistrate was so procedurally flawed as to warrant the setting aside of the sentence imposed on the appellant.

- [24] In that regard it is essential to be reminded as to the role of the appellate court in reviewing the sentence of a lower court. In the case of **DPP v Shaunlee**

Fahie⁸ George-Creque JA (as she then was) stated it thusly:

“the imposition of a sentence unless specifically fixed by legislation involves the exercise of discretion by the sentencer. Accordingly, it is well settled that an appellate court will only interfere with a sentence passed by the sentencing court if:

- (1) it is not justified in law;
- (2) it is passed on the wrong factual basis;
- (3) some matter has been improperly taken into account; and

⁸ HCRAP 2008/003 (delivered 11th January 2010, unreported) at paragraph 2.

- (4) where the sentence was wrong in principle or manifestly excessive.

In essence these are the same principles which govern the court in the review of the exercise of any discretion by any trial court or tribunal.”

[25] Indeed, although it must be accepted that the foregoing proposition of law was stated before the coming into force of the sentencing guidelines now utilised by all sentencing judges, the advent of those guidelines has not altered the principles governing the approach of an appellate court. In fact, in 2025 this Court made it clear in the consolidated appeal of **Curt John v The King and Kendol Cato v The King**⁹ my sister Henry JA noted at paragraph 23 thereof that:

“it is a well-established principle of law that an appellate court will not lightly interfere with a sentence by a trial judge even if it would have imposed a different sentence – **R v Ball**. It would do so seldomly and only if satisfied that the sentencing judge committed an error of law or principle or misapplied a principle of law and thereby arrived at an erroneous decision.”

Then at paragraph 24:

“as stated by this court in a number of cases including **Gurrie v The Queen**, in approaching this revision exercise the Court remains mindful that an appeal against a sentence is not a re- hearing but merely an evaluation of the sentence passed and the steps taken to craft it, to inquire whether the sentencing judge failed to consider or apply any settled principles of law. This court is cognizant that a range of appropriate sentences is always available to a sentencing judge in coming up with an appropriate and just sentence and there is no magic, mathematical or other scientific formula which can be applied.”

[26] With those principles firmly in mind as I approach this review, I must also bear in mind the seminal case of **Desmond Baptiste v The Queen**,¹⁰ in which the court noted that the principal aims of sentencing should be retribution, deterrence, prevention and rehabilitation. Each case being assessed in relation to the mitigating and aggravating factors, sentencing range, calculation of an applicable starting point, and whether credit should be given for time spent on

⁹ SVGHCRA2020/0007 with SVGHCRA2020/0008 (delivered 12th March 2025, unreported).

¹⁰ Saint Vincent and the Grenadines Criminal Appeal No 8 of 2003 (delivered 6th December 2004, unreported).

remand or for a guilty plea, as well as the cumulative effect of those considerations on the sentence ultimately imposed.

[27] By and large, save for the general aims of sentencing, the factors to be taken into account are contained in the published sentencing guidelines. Those guidelines were introduced to ensure that there was consistency in sentencing, but not to dispense with the sentencing judge's discretion in determining each case on its particular facts.

[28] Thus, in the case at bar, it was the learned magistrate's duty as the sentencing judge to bear in mind all the circumstances that were at play in crafting the sentence that he sought to impose on the appellant and, in so doing, to ensure that the process was transparent and decipherable.

[29] This is clearly not the case in this appeal. In the record produced by the court and in the reasons for decision the learned magistrate stated:

“After consideration was given to the Sentencing Guidelines of the ECSC it was found that six months was appropriate in all the circumstances. The defendant was accordingly sentenced to six months imprisonment.”

[30] When this statement is considered, it is clear that the learned magistrate failed in his duty to the appellant on two fronts. Firstly, he failed to identify clearly what his process was in coming to the sentence imposed. Secondly, and this being the gravamen of the appeal, he having failed to identify his process failed to clearly and unequivocally consider the circumstances of mitigation in favour of the appellant.

[31] In undertaking a sentencing exercise, the sentencing judge must not only take into account the circumstances surrounding the commission of the offence, but also and equally (or more so depending on the appropriate circumstances) the character and record of the convicted person.¹¹ In the appellant's case, it was clear that the learned magistrate had not properly considered the appellant's

¹¹ Meryn Moise v The Queen Saint Lucia Crim Appeal No 8 of 2003 (delivered 15th July 2005, unreported).

good character. Both parties submitted, and I agree, that this constituted a fundamental error on the part of the learned magistrate.

[32] In those circumstances, “where the liberty of the subject is at stake, procedural fairness is of cardinal importance.”¹² Thus, in my mind, the learned magistrate erred in the exercise of his discretion by failing to take the appellant’s personal circumstances clearly into account and by failing to hear him at all on those circumstances. It is therefore my duty to consider the sentencing exercise afresh.

[33] The sentencing exercise must therefore begin with a consideration of A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court – Violence Offences.

[34] Step 1 is to consider the starting point. Both parties, and I agree, accept that the nature of the injury inflicted on the VC¹³ by the appellant fell to be considered in Category 3 that is, lesser harm with no long-term effect.

[35] The second step is to assess the seriousness of the offence by assessing the culpability of the offender. Again, both parties agree that the seriousness was at Level A – that is “high” on the sole basis that there was a use of a weapon albeit a bottle. I can see no reason to depart from this indication.

[36] Having therefore determined the consequence and level of seriousness, the final stage in arriving at the appropriate starting point is to apply the preceding two steps by consulting the sentencing grid. Doing so places the offence at a starting point of 45% of the statutory maximum with a sentencing range of 30% to 60%. In real terms, with a maximum term of 7 years for the offence, the starting point mathematically is 3 years 2 months. The range is therefore 2 years 1 month to 4 years 2 months.

¹² Luke Mckay v The All England Lawn Tennis Club and another [2020] EWCA Civ 695 at paragraph 58.

¹³ Laceration to the head 5 ½ cm to the left parietal region with minimal bleeding – medical report at page 12 of the Record of Appeal.

[37] That being said, the next stage is to consider the aggravating and mitigating factors of the offence. At this stage the appellant and the respondent diverge as they identify vastly different considerations under these heads. For the appellant, the sole aggravating factor of the offence was that it was committed in the presence of others. The mitigating factors were lack of premeditation and the fact that it was a single act in that it was an isolated incident and the VC suffered one blow with the bottle. The respondent, on the other hand, proffered that not only was the offence committed in the presence of others, but that it was motivated by revenge¹⁴ and that crimes of this nature were prevalent in society. They also did not consider that there were any mitigating factors of the offence. On that basis they submitted that an additional 4 months be added to the starting point to bring it to 3 years 6 months.

[38] When I consider the circumstances of the case as set out in the record and the notes of evidence of the trial before the learned magistrate, it was clear that the appellant and the VC had had a prior incident some three weeks before the trial¹⁵ but there was no evidence led that substantiated the finding of the learned magistrate that the prior dispute had left the appellant dissatisfied to have acted in revenge. I therefore do not accept that as an aggravating factor of the offence as suggested by the respondent. Additionally, even though it is understood¹⁶ that the prevalence of certain offences may be considered as a factor which may affect sentence, the mere statement of the respondent that it is applicable to the case at bar without any objective data or evidence, in my mind cannot be applied in the present circumstances. Certainly, in the case at bar, it cannot without more amount to an aggravating factor as contended by the respondent. I therefore do not accept that as an additional factor to affect the upward movement of any notional sentence. On balance, I therefore accept that the offence was committed in the presence of others and that, on the other side of the scale, there was a clear lack of premeditation, it being apparent from the

¹⁴ The finding of the learned magistrate that there was evidence to show that there had been a prior dispute between the parties which left the appellant dissatisfied with the outcome – Record of appeal page 11.

¹⁵ Page 6 of the record of appeal – Evidence of the Virtual complainant and page 7 of the record of appeal evidence of the appellant.

¹⁶ Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 Practice Direction 8 A No1 of 2025 (Reissue).

evidence before the learned magistrate that the parties encountered each other and that the incident occurred in the same location at substantially the same time. There was no evidence that the appellant had planned or prepared to assault the VC beforehand. Rather, the offence arose spontaneously during that encounter. In my judgment, the absence of premeditation is a significant mitigating feature of the offence which outweighs the sole aggravating feature that the offence was committed in the presence of others. I therefore consider it appropriate to reduce the starting point by three months, bringing the notional sentence to 2 years and 11 months' imprisonment.

[39] In relation to the next stage, which considers the aggravating and mitigating factors of the offender himself, both parties agreed that there were no aggravating factors. They also agreed that the appellant was of good character and that he was remorseful, notwithstanding that he had proceeded to a full trial, with the respondent nevertheless prepared to give him the benefit of that. Where the parties diverged was on the issue of youthfulness, the appellant being 27 years old at the time of the offence. I must accept that the age of the offender, in my mind, did not operate in his favour. Although this was his first offence, he was of an age at which reason ought to have prevailed. I therefore determine that he should not be given any discount for his age, but rather just for his good character and his remorse as expressed by counsel on his behalf. In those circumstances, he is again entitled to a further discount and between those two I am prepared to adopt a full deduction of 6 months. That would therefore be a considered sentence of 2 years 5 months.

[40] The appellant was, further entitled to credit for the one day spent in police custody prior to trial. While the practical effect of that credit is minimal, on a strict calculation it reduces the notional sentence to 2 years, 10 months and 29 days.

[41] In the round, therefore, the learned magistrate's sentence of six months was substantially more favourable to the appellant than the notional sentence of 2 years, 4 months and 29 days. Although the learned magistrate failed properly to address the relevant factors, or at least to explain his approach, the sentence

imposed was plainly not excessive when measured against the sentence calculated by this Court.

[42] However, unlike the learned magistrate who fell into error for failing to consider the imposition of a suspended sentence, this Court having calculated the sentence which falls within the statutory parameters¹⁷ for the possible imposition of a suspended sentence must now consider whether it is open to this Court to apply the option to the circumstances of this case.

[43] By section 30 of the **Criminal Code** the utilisation of a suspended sentence is within the discretion of a court that sentences an offender to a term of not more than 3 years. This statutory provision is further bolstered by **Practice Direction 8C**¹⁸ which gives guidance as to when a suspended sentence may be imposed.

[44] Under the consideration of this Practice Direction there are three main pillars that are to be borne in mind as to the nature of a suspended sentence. Firstly, that it still remains a prison sentence. Secondly, it should rarely if ever be used to suspend a sentence that is longer than 2 years (even with statutory permission). Thirdly, if a sentence is capable of being suspended it should be stated clearly whether suspension is to be engaged.

[45] Once the sentencing judge is satisfied that the suspended sentence regime should be triggered, the judge and now in this instance this Court should consider a list of factors whether its discretion should employ this tool.

[46] Paragraph 5 of the Practice Direction poses the following questions for a sentencing judge to answer on the case before it: (i) can appropriate punishment only be achieved by immediate custody, (ii) does the offender present a risk or danger to the public or to the victim, (iii) has there been a history of poor compliance with court orders, (iv) is there a realistic prospect of rehabilitation, (v) only applies to persons under the age of 21, (vi) is there strong personal

¹⁷ Section 30 of the Criminal Code of Saint Vincent and the Grenadines.

¹⁸ No 2. of 2025.

mitigation, and (vii) what will be the impact of an immediate custodial sentence on dependent relatives, employees and the community.

[47] In the case under appeal, both the appellant and the respondent are *ad idem* as to the answers to the requisite questions. Firstly, the appropriate punishment does not have to be achieved by immediate custody given both the nature of the offence and the injury inflicted. The sentence itself would act as the adequate recognition by the court as to the displeasure of the incident occurring while still keeping the appellant accountable to the public for his disobedience of the law. Secondly, there is no evidence that the appellant would be a danger to the public. Thirdly, there has been no history of non-compliance with court orders. In fact, the appellant has been on bail pending appeal and has, on every occasion required, attended court for his hearings. Fourthly, the appellant, being a person of good character and a first-time offender, plainly should have been considered a good prospect for rehabilitation and this ought to have played a larger role in the sentencing exercise that was undertaken. Fifthly and finally, there were strong grounds of personal mitigation. The appellant was a first-time offender of previous good character who claimed to have acted out of fear. His offending was spontaneous and resulted in injuries falling within Category 3. Taken together, those factors weighed heavily in favour of the imposition of a non-custodial sentence.

[48] In the circumstances of this case, being well aware that one size does not fit all, I am satisfied that this appellant ought to have had a suspended sentence imposed upon him. Being cognisant that sentencing must fit both the nature of the offence and the offender, I consider that the sentence of 2 years, 4 months and 29 days imprisonment, be substituted, suspended for a period of 18 months. In my judgment, that operational period appropriately reflects the seriousness of the offence while encouraging the appellant's rehabilitation and serving as a sufficient deterrent against further offending. The sentence shall have effect from the date on which the appellant was originally sentenced.

Disposition

- [49] The appeal is allowed in part. The sentence of six months' imprisonment imposed by the learned magistrate is set aside and a sentence of 2 years 4 months and 29 days imprisonment, be substituted, suspended for a period of 18 months.
- [50] If, during the operational period of 18 months, the appellant commits an offence punishable by imprisonment for a term exceeding six months, the court dealing with that subsequent offence shall determine whether, and, if so, how the substituted sentence of 2 years, 4 months and 29 days' imprisonment is to take effect.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar