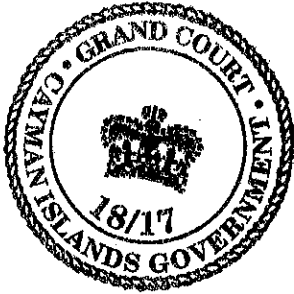


1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

INDICTMENT NO.: 32/2018



3
4
5
6 THE QUEEN

7
8 V.

9
10 LYLE SAMSON PEART

11
12
13
14
15 Appearances: Mr. Scott Wainwright for the Crown
16 Mr. Oliver Grimwood of Richard H. Barton, Attorney at Law
17

18 Before: Justice Marlene I. Carter (Actg.)

19
20 Heard: 7th February 2019
21
22

23 **SENTENCE JUDGMENT**
24
25

26 1. The Defendant was charged on an indictment containing two counts: Attempted Murder and
27 Wounding with Intent to Cause Grievous Bodily Harm. He pleaded guilty to the lesser count and
28 this plea was accepted by the Crown.
29

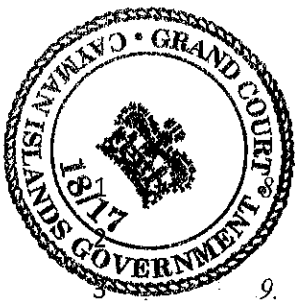
30 **The Facts**
31

32 2. The facts accepted by the Crown and the defence are as follows:
33

34 "5. *In the early hours of the 16th of June 2018, the Complainant Tyrell Smith, was*
35 *present at the Margaritaville Bar in central George Town.*
36

37 6. *The Complainant and the Defendant are known to each other.*
38

39 7. *An argument developed during the course of which the Defendant slapped the*
40 *Complainant's drink from his hand.*
41



The Complainant threw a punch at the Defendant.

3 9. During the course of the ensuing struggle, the Defendant stabbed the Complainant
4 several times.

5
6 10. It was clear to all present that the Complainant had sustained stab wounds to his
7 chest, abdomen and left arm. He was bleeding profusely.

8
9 11. The Complainant was rushed to George Town Hospital in a vehicle driven by an
10 unknown individual. During the course of the journey, the Complainant's
11 girlfriend, who had been present when the incident occurred, applied pressure to
12 his wounds with an item of his clothing.

13
14 12. At the George Town Hospital, the Complainant was found to have sustained the
15 following injuries: a 2cm laceration to the upper right chest wall, a 3cm laceration
16 to the right upper quadrant of the abdomen which was bleeding heavily, a 5cm
17 laceration to his left forearm.

18
19 13. As a consequence of these stab wounds he suffered a pneumothorax (collapsed
20 lung) and a punctured liver. An emergency chest drain was inserted and he was
21 taken to the operating theatre to stem the internal bleeding.

22
23 14. The Complainant was then admitted to the critical care unit where he remained
24 for some time. [The Complainant remained in hospital for 11 days].

25
26 15. In August of 2018 he was readmitted to George Town Hospital where he remained
27 for one week due to complications with the injury to his liver."¹

28
29 **Sentence Guidelines**

30
31 3. The *Cayman Islands Sentencing Guidelines* do not as yet provide guidelines for Offences
32 Against the Person such as Wounding with Intent to Cause Grievous Bodily Harm. However,

¹ Prosecution Note on Sentence dated 5th February 2019

Sentence Ruling in Ind. No. 32 of 2018, R. v. Lyle Samson Peart. Coram: Carter, M. (Actg.) Date: 11.03.19

1 they are instructive to the extent that they provide guidance on the approach to sentencing –
2 guidance which is similar in its approach to that of the *Sentencing Council for England and*
3 *Wales (UK Sentencing Guidelines)*.

4
5 4. Taking the *UK Sentencing Guidelines* into account, the offending behaviour is considered in
6 terms of which category it falls. These categories are:



- 7
- 8 • Category 1: Greater harm (serious injury must normally be present) and higher culpability;
 - 9 • Category 2: Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability;
 - 10 • Category 3: Lesser harm and lower culpability.

11
12
13 5. Both parties agree that on the facts as outlined in this case the offence falls into the Category 2 range
14 of the *UK Sentencing Guidelines*.

15
16
17 6. I accept that this the facts support a finding of Greater Harm and Lesser Culpability.

18
19 7. Defence counsel's submissions on this point were as follows:

20
21 *"In R v Grant Christopher Smith², the Court of Appeal in the judgment delivered*
22 *by Mr. Justice Green noted, at paragraph 14, that "it is axiomatic that all violence*
23 *in the context of a Section 18 offence is serious, but that some violence is more*
24 *serious than others. The purposes behind the words "which is serious in the context*
25 *of the offence" in the guidelines is to distinguish between that level of violence*
26 *which is inherent or par in a standard section 18 offence and that which will, by*
27 *definition, go beyond what may be viewed as par for the course. In our view, given*
28 *that there is such a marked disparity in the starting point between categories 1 and*
29 *2, the sorts of harm and violence which will justify placing a case within category*
30 *1 must be significantly above the level of harm which is normal for the purpose of*
31 *section 18."*

32

² [2015] EWCA Crim 1482

Sentence Ruling in Ind. No. 32 of 2018, R. v. Lyle Samson Peart. Coram: Carter, M. (Actg.) Date: 11.03.19



8 of the Offences Against the Person Act 1861, (referred to in the above quote) is analogous to
s.204 of the Penal Code (2013 Revision).

4 9. The injuries sustained by the Complainant, noted in the summary of the facts above, were significant
5 and were serious in the context of the offence.

6

7 10. I accept that the use of a weapon may be a factor that indicates greater culpability. However, in the
8 circumstances of this case, the fact that the attack on the Complainant was not premeditated appears
9 to be the more significant factor of note.

10

11 11. I therefore adopt a sentence range of 5-9 years custody with a starting point of 6 years.

12

13 **Aggravating Features**

14

15 12. The aggravating features present in this case were:

16

17 (i) The use of a weapon to inflict injury.

18 (ii) That the offence was committed in a public place.

19 (iii) That the offence was committed at night.

20

21 **Mitigating Features**

22

23 13. The mitigating factors are accepted as follows:

24

25 (i) The Defendant has no previous convictions.

26 (ii) The genuine remorse shown by the Defendant detailed in the Social Inquiry Report

27 (iii) This was an isolated incident between the parties.

28 (iv) The age of the Defendant at the time of the offence and his lack of maturity
29 reflected in the Social Inquiry Report.

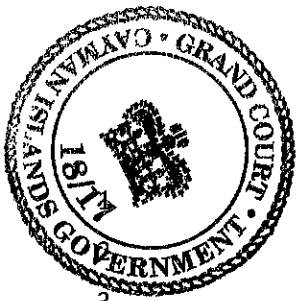
30

31 **Personal Mitigation**

32

33 14. I have considered the character references presented on behalf of the Defendant. Mr. Simon Miller,
34 Prevention Specialist at the National Drug Council stated that:

35



3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

"Lyle experienced tremendous growth over the past 5 years. In short, we met him as a troubled youth with a record of numerous suspensions and after 2 years he evolved to develop his emotional vocabulary, abandon negative influences, and secure employment.

To expound on his character, Lyle is extremely intelligent and resourceful. His greatest asset is his grandmother. She was always present and involved in his development and has been the silent voice that guides Lyle. In terms of resourcefulness, he is self-motivated and would often research topics to inform him of strategies to deal with his undesired behaviours. For affirmation, he would voluntarily visit our office to speak with myself and others in a somewhat debate of how to address his needs. I truly believe that Lyle has always identified his impulsiveness as a concern and worked to control this in positive ways."

15. Mr. Peart was employed by Uncle Clem's Distributors from November 2016 to June 2018, Mrs. Meagan Pearson, HR Assistant stated that:

"During the course of his employment, I found Mr. Peart to be honest an honest and hardworking individual. Mr. Peart was a diligent worker and a vibrant individual."

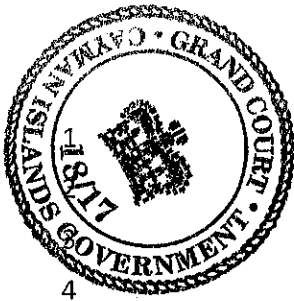
The Social Inquiry Report

16. The Defendant was raised by his grandmother from an early age. It is obvious that her influence on the Defendant was a good one and the Social Inquiry Report records that he is still very close to her.

His schooling was marked by absenteeism and suspensions; he was placed in the Bonaventure Boys Home largely due to truancy. The Defendant completed high school and he was employed at the time of the commission of the offence.

17. The probation officer who completed the Social Inquiry Report was of the following opinion:

"Mr. Peart is young enough to be rehabilitated for the offence and intelligent enough to appreciate how easy it can be to find oneself on the wrong side of the



4 law. Although immature by virtue of his age he is a sensible young person. This
5 Officer has not identified any particular issues that cannot be addressed once he
6 is willing. He has expressed remorse for his behaviour and it is hoped that this
7 experience has been sufficient for him to make the decision to do what is right in
8 terms of re-immersing himself in his work and home life."

9 **Victim Impact Report**

10 18. The Court did not have the benefit of a victim impact report. Crown Counsel informed the Court
11 that the Complainant had physically recovered from his injuries although he continues to feel a
12 tightness in the chest when stretching. It has been accepted however that he has significant,
13 outstanding medical expenses arising from the incident. The Defendant is not in a position to offer
14 compensation and the Crown did not make an application for a compensation order in the
15 circumstances of this case.

16 **Relevant Authorities**

17
18 19. The Court was referred to a number of local authorities. In *R v. Bowen*³ the Court of Appeal upheld
19 a sentence of 5 years and 3 months of an appellant found guilty after trial. Mr. Bowen in the course
20 of a fight with another man stabbed him 3 times in the head and neck. Both the appellant and the
21 victim had children with the same partner and there was animosity between the pair. The Court
22 noted that there were no previous convictions involving violence, there was no premeditation, and
23 the offence was out of character for the appellant

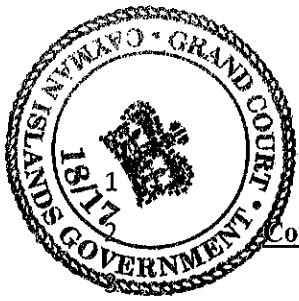
24
25 20. In *R v Rowe*⁴ the appellant was a nightclub bouncer, and after getting into an altercation with a
26 heavy intoxicated customer used a flick knife that he had earlier confiscated to stab the victim just
27 below the heart. The sentence of 6-years after a contested trial was upheld.

28
29 21. In *R v Hyre*⁵, the Court of Appeal affirmed a sentence of 6 years after trial in circumstances where
30 the victim was stabbed five times in the back and side and received serious injuries. The Court
31 accepted that the incident was unprovoked and that the Defendant had no previous convictions.

³ (unreported) Cayman Island Criminal Appeal 15/16 – Judgment handed down 15/3/17

⁴ (unreported) Cayman Island Criminal Appeal 09/15 – Judgment handed down 11/2/16

⁵ Criminal Appeal No.9 of 2009



Court's Conclusions

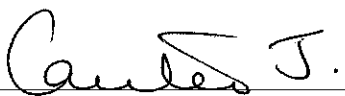
4 22. It is always difficult to arrive at a sentence for a young person who has committed a serious offence,
5 even more so when he has shown promise of being able to overcome a difficult upbringing only to
6 be drawn into acts which derail their own hopes and those of the persons who support them.

7
8 23. This offence merits a custodial sentence. I have considered the recommendations of the Social
9 Inquiry Report for a Suspended Sentence Supervision Order and also defence counsel's comments
10 in this regard, however such an order is not merited on the facts of this case.

11
12 24. After consideration of the various aggravating and mitigating factors in this case, I do not find that
13 there is anything that merits a departure from the starting point of six years. When the Defendant
14 first appeared on the 6th July 2018 before the Grand Court, he entered pleas of Not Guilty to both
15 offences on the Indictment. He did not enter a guilty plea to the present offence of Wounding with
16 Intent until the 26th October 2018. The Defendant has shown by his early guilty plea his acceptance
17 of his actions. I accept that he did not have the benefit of representation until sometime just previous
18 to this date. I therefore credit the Defendant with a 30% reduction to that sentence for his guilty
19 plea, resulting in a reduction to 4 years and 2 months.

20
21 25. The sentence is further discounted by 6 months to reflect the relative youth of the Defendant and
22 for personal mitigation. The sentence of this Court is that the Defendant shall serve a term of
23 imprisonment of 3 years and 8 months. The time that the Defendant has spent in custody since the
24 commission of the offence will be deducted from this sentence.

25
26
27
28 Dated this 11th day of March, 2019.

29
30
31
32
33
34 

35 **Madam Justice Marlene I. Carter**
36 **Judge of the Grand Court (Acting)**

