

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 024/2018

IND. 027/2017

SC#1741/2017

BETWEEN:

CARLO MALIK WEBSTER

Appellant

- and -

Her Majesty the Queen

Respondent

BEFORE: The Rt Hon Sir John Goldring, President
 The Hon Sir Richard Field, Justice of Appeal
 The Rt Hon Sir Jack Beatson, Justice of Appeal

Date of Hearing: 2 September 2019

Appearances: Mr. Jonathon Hughes for the Appellant
 Mr. Kenneth Ferguson of DPP for the Respondent



JUDGMENT

Oral judgment delivered: 2 September 2019

Transcript Approved for Release: 14 October 2019

BEATSON, J.A.

1. On 14 July 2017, Carlo Malik Webster, born on 12 July 1995, and now aged 24, pleaded guilty to charges of wounding with intent to cause grievous bodily harm, contrary to section 203 of the Penal Code (count 2), and carrying a restricted weapon, contrary to section 81 (count 3).

2. On 18 December 2018, in the Grand Court, Justice Chapple sentenced him to 6 years' imprisonment on Count 2, and 12 months' imprisonment concurrently on Count 3. Ninety-nine days, spent in custody on remand, and 254 days, reflecting 50 percent of 508 days while on bail subject to a controlled curfew, were deducted. A count of robbery was left on file in the usual way.
3. On 18 December, Justice Chapple also activated the custodial element of suspended sentences, totaling four months, imposed on 12 November 2015 for a number of offences, including assaulting a police officer, assault occasioning actual bodily harm, possessing ganja, and resisting arrest. These sentences were to be served concurrently to the sentences for wounding with intent and carrying a restricted weapon.
4. The applicant applies for leave to appeal against the sentence of 6 years' imprisonment for wounding with intent. We grant him leave.
5. The facts can be summarized as follows. On the night of 17 March 2017 various groups were at the Jungle nightclub on West Bay Road, drinking and socialising with friends. The victim, Joseph Coe, was in one of those groups. The appellant and others, including his friend Ricky Manderson Jr., were also there.
6. At about 11:00 pm Mr Coe was wounded. The CCTV showed that he was involved in an altercation with Manderson and was hit with a bottle on the head by Manderson's brother. Very shortly afterwards the appellant approached Mr Coe, took a knife from his back pocket, stabbed Mr Coe in the stomach, and folded and returned the knife to his pocket.
7. Mr Coe was taken to hospital. Dr Vinton Douglas, the attending physician, said that he sustained a 5 x 2cm wound to his lower abdomen, causing his bowel to be visible, that his injuries were considered serious, and that Mr Coe was referred to the general surgery service. He underwent surgery to repair his small bowel and the tissue that attaches the bowel to the abdomen wall. He was in hospital for a week and then discharged. He later

developed severe abdominal pain, had to return to hospital for further surgery on 6 April, and was discharged and 10 April.

8. The appellant was arrested on 23 March 2017. When interviewed on 24 March he initially declined questions, but later that morning, in an interview accompanied by his lawyer, accepted his involvement in the incident, saying he was heavily intoxicated. On 26 March, while still in custody at the police station, and prior to charge, he drafted a letter to Mr Coe stating that he was deeply sorry for what he had done and seeking forgiveness. The letter was handed to his lawyer, Mr Hughes, but not sent, apparently because of a concern about contacting Mr Coe at that early stage.
9. The appellant also wrote to the court in March and on 11 September, stating in the September letter that "what I did was wrong".
10. On 26 April 2017, the appellant's first appearance before the Grand Court, a trial date was set and he indicated an intention to plead guilty to simple wounding. Mr Hughes stated to the court that this is because the appellant believed that wounding with intent meant it was an intent to kill. He did plead to simple wounding on 30 June, his first appearance before the Grand Court after full disclosure of the Crown's case, but that plea was not acceptable to the Crown. As stated, he pleaded guilty to wounding with intent and carrying a restricted weapon on 14 July 2017.
11. The appellant has 15 previous convictions. In 2012, he was sentenced to 5 days' imprisonment for threats to kill. There are two convictions of arson in 2013, arising out of incidents involving his custody at George Town Police Station, two for burglary in 2014, and convictions for assault causing actual bodily harm, handling stolen property, damaging property, and possession of ganja in 2015, for two of which a suspended sentence supervision order for 2 years, to which we have referred, was imposed.
12. When sentencing the appellant, the judge had before him a Social Inquiry Report, a psychological report by Dr Von Kirchenheim, and a psychiatric report by Dr McGill and, Mr Coe's Victim Impact Report.

13. The Social Inquiry Report refers to the appellant's family background and circumstances. His father had been shot dead, and his mother's difficulties led to him being taken into care at the age of 14 and sent to Bonaventure Boys' Home, where he was subject to negative influences. The Report also stated that several written and verbal warnings had been issued to him for noncompliance with the conditions of the suspended sentence order, but a formal breach report was not entered.
14. Finally, it records that the appellant stated, of what he had done to Mr Coe, that "it wasn't a stab or anything like that, it was just a little poke".
15. Dr McGill's report states that the appellant's reasoning skills are limited, but the report does not state that there were current concerns about his psychiatric state.
16. Mr Coe's victim impact report contains a description by him of his injuries and, inter alia, states that he was told by the surgeon that he was lucky to be alive. It states that he continues to experience serious pain, will require periodic visits to his doctor for the next year or two, and that he has incurred significant costs in medical expenses.
17. Towards the beginning of his sentencing remarks, the judge referred to these passages from the Victim Impact Report. He stated that the injury was described as "life threatening". The judge also referred to the various reports and the letters written by the appellant. He stated that he made such allowances as he could for what he described as the appellant's "sad and difficult history" and bore in mind that the appellant was aged only 21 at the time of these incidents.
18. It was common ground that since the offence involved the use of a weapon it was one of higher culpability. The judge, however, rejected the prosecution's submission that it was also one of greater harm. He did so because, serious though Mr Coe's injuries were, he could not conclude that they were serious in the context of section 203; that is, wounding and causing grievous bodily harm with intent to do grievous bodily harm. The starting point for Category 2 suggested by the Sentencing Council is 6 years' imprisonment, with a range between 5 and 9 years.

19. The judge then referred to a number of circumstances of the attack and the appellant's position, including that it was unprovoked, in full view of the public in a busy bar, and took place while the appellant was subject to two suspended sentences. He stated these were aggravating features and that they propelled him to a higher starting point than that suggested by the Sentencing Council for England and Wales, to which he had regard because the Cayman Islands Guidelines do not specifically deal with violent offences.
20. Towards the end of his sentencing remarks, the judge referred to the fact that it was clear from the CCTV footage that the appellant removed the knife with which he inflicted the injuries from his pocket and returned it to his pocket thereafter. He had obviously gone out that evening armed with a knife, which he was prepared to use.
21. The judge stated that the guilty pleas were not tendered at the pleas were changed a month before the date fixed for trial. He referred to the Cayman Islands Sentencing Guidelines which state that the reduction is to be gauged according to a sliding scale, which, for a plea such as this after a trial date has been set, is 20 percent.
22. The judge referred to the 17 months which had elapsed between the date of the pleas and the sentencing. He referred to the delay as "unacceptable", but said that some of it may have been caused by the appellant's failure to keep appointments.
23. Bearing all of those features in mind, he concluded that the correct starting point on wounding with intent count was a sentence of 7½ years' imprisonment, which he reduced by 20 percent to reflect the guilty plea, resulting in the sentence of 6 years' imprisonment.
24. Mr Hughes, on behalf of the appellant, submitted that the judge fell into three errors with the result that the sentence was too high and manifestly excessive:

First, the judge mischaracterised the injury suffered by Mr Coe as life threatening and didn't properly undertake an inquiry into the seriousness of Mr Coe's injury, or compared it in other similar cases, and did not

consider the medical evidence which used the word "serious" but not "life threatening".

Secondly, the judge did not properly balance the aggravating features of the case with all the significant mitigating features and unreasonably increased the starting point. Mr Hughes submitted that the judge gave inadequate consideration to the appellant's young age at the time of the offence; his difficult and traumatic upbringing; the fact that after he left care he had no support; the significant delay of 17 months between the plea and the sentencing — a time when he kept out of trouble; and the significant remorse as demonstrated in the pre-charge letters.

Thirdly, Mr Hughes submitted the judge should have given the appellant the full one third credit for his guilty plea rather than the 20 percent which he did give. In support of that, he also relied on the letters showing that the appellant had accepted responsibility for his actions from an early stage.

25. In considering all the circumstances of the case, as indicated in the Cayman Islands Sentencing Guidelines, he submitted that account should have been taken of this appellant's limited reasoning abilities, as well as the indication that he gave from the outset.
26. We reject Mr Hughes' submissions about the extent of the injuries. Dr Vinton Douglas described them as "serious". There is no dispute that Mr Coe's bowel was exposed to view; that he required surgery; the nature of that surgery; the length of time he was in hospital, and the fact that he needed a second surgery. The judge was entitled to refer to Mr Coe's statement in his victim impact report. In any event the injury was serious and so described by the attending physician.
27. We also derive little assistance from the cases relied on by Mr Hughes. They are decisions of this court, which depend on their own facts. There had been a trial in Hyre 2009 CIR Note 25, Rowe CICA 09/2015, and Bowen 15/2016. In Hyre and Rowe the appellants had no previous convictions. In Bowen there were no aggravating factors and the appellant

had no convictions for violence. Despite his youth and difficult circumstances, this appellant has 15 previous convictions including convictions for violence.

28. We turn to the credit given for the appellant's guilty plea. Mr Ferguson conceded, in his helpful oral submissions, that the timing of the plea had been affected by the discussions between the prosecution and the defence as to a possible charge of robbery which did not proceed. In the light of that, and looking at all the circumstances in this case, we consider that the appellant should have been given the full discount of one third. Mr Hughes correctly submitted that this would make a difference of one year to the sentence.
29. Accordingly, we set aside the sentence of 6 years' imprisonment on Count 2 and we substitute for it a sentence of 5 years' imprisonment. From that sentence we deduct the periods Justice Chapple deducted from the sentence; that is 99 days spent in custody on remand, and 254 days, 50 percent of the time on bail subject to a curfew. To that extent, this appeal is allowed.

