

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

3  
4 **INDICTMENT NO: 52/2020**  
5

6  
7 **THE QUEEN**



8  
9 **v.**  
10

11 **RENALDO KEANU TAYLOR**

12  
13 **Appearances:**

**Mr. Greg Walcolm for the Crown**

14 **Mr. Jonathon Hughes of Samson Law for the Defendant**

15 **Before:**

**Justice Cheryll Richards Q.C.**

16 **Submissions on Sentencing:**

**2<sup>nd</sup> July 2021**

17  
18 **Sentence Judgment:**

**3<sup>rd</sup> August 2021**  
19  
20

21 **HEADNOTE**

22 ***Criminal Law – Wounding with Intent – Section 203 of the Penal Code***  
23 ***- United Kingdom Sentencing Guidelines on the Sentencing of offenders with Mental Disorders -***  
24 ***Provocation***  
25  
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28 **SENTENCE JUDGMENT**  
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1 1. The Defendant is before the Court for sentencing following his conviction after trial for the offence  
2 of Wounding with Intent.

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4 2. The particulars are that he, on the 26<sup>th</sup> day of June 2020 at Stepping Stone Drive in North Side  
5 Grand Cayman, Cayman Islands, unlawfully and maliciously wounded Damian Ricardo  
6 Wellington with intent to cause him grievous bodily harm.

7  
8 3. The maximum sentence under s.203 of the *Penal Code* is life imprisonment.

9  
10 4. The Complainant is the stepfather of the Defendant. The relationship between them was difficult  
11 and abusive. The Complainant had been convicted for Common Assault of the Defendant in 2016.  
12 Nevertheless they continued to reside in the family home together with the mother of the  
13 Defendant, his sister and nine year old stepbrother. On the day in question, there was an altercation  
14 between the Complainant and the Defendant at the said home, during which the Defendant, who  
15 was eighteen years old at the time, used a knife to stab the Complainant several times to his upper  
16 arm, left chest, left abdomen and left lumbar region. The Prosecution's Summary of Facts for this  
17 hearing is set out below:



18  
19 **SUMMARY OF FACTS**

20 5. The Defendant is an amputee. He lost one leg as a result of a motor bike accident when he was  
21 about 15 years old.

22  
23 6. While for some years prior to the 26<sup>th</sup> day of June 2020 there had been no incidents of violence  
24 from the Complainant to the Defendant, the relationship between them was strained. The  
25 Defendant resented the Complainant and would not speak directly to him regardless of the  
26 attempts made by the Complainant to communicate with him. Instead of speaking to the  
27 Complainant the Defendant would communicate with his mother and request that his mother speak  
28 to the Complainant.

1 7. A few weeks prior to the said incident the Complainant removed the inner door to the Defendant's  
2 bedroom because the Defendant refused to comply with his request to stop smoking in the house.

3  
4 8. The Defendant thereafter placed a curtain/flag covering the entrance to the bedroom.

5  
6 9. On the day of the incident at about 6:00 pm the Complainant arrived home from work and spoke  
7 to the Defendant about removing the curtain/flag from the bedroom entrance. The Defendant did  
8 not respond to the Complainant's request. The Complainant then left the home.

9  
10 10. The Complainant returned at about 9:00pm and found that the curtain/flag was not removed as he  
11 had requested and so he tore it down and went into the kitchen. At that point the Defendant shouted  
12 at him saying, "*You love watch man.*" The Complainant then returned to the Defendant's room  
13 and told him that he wanted him out of his house. The Defendant was sitting on his bed when the  
14 Complainant spoke to him.

15  
16 11. After speaking with the Defendant, the Complainant then turned to leave the room when the  
17 Defendant then shouted at him, "*Come here*" and jumped from his bed and attacked the  
18 Complainant with a knife that he had in his room.

19  
20 12. The Defendant attacked the Complainant from his right side and used his left hand to place the  
21 Complainant in a head lock position and forced him to turn slightly at a left angle. They were partly  
22 facing each other when the Defendant stabbed the Complainant multiple times with the knife.  
23 Both parties struggled with each other moving from the Defendant's bedroom into the living room  
24 area as they did so. In the course of this the Complainant held onto the knife to prevent the  
25 Defendant from inflicting further stab injuries.



1 13. The Complainant's wife, who had been in her bedroom at the start of the incident, came into the  
2 living area and saw that the Complainant was bleeding as he was in a physical struggle with the  
3 Defendant who was armed with the knife. Whilst the Complainant and his wife were struggling  
4 with the Defendant and trying to get the knife from him, the Defendant shouted to the Complainant  
5 saying, "I am going to kill you first and spend the rest of my life in prison." Both the Complainant  
6 and his wife used force to compel the Defendant to desist. The Complainant was able to free  
7 himself from the Defendant's grip after the Defendant slipped in the Complainant's blood which  
8 was by that time all over the floor.

9  
10 14. The Complainant then ran from the house and sought assistance from his neighbour who called  
11 911 whilst assisting the Complainant with his injuries. The Complainant's wife and his younger  
12 son who had been in the premises also left the house and his wife also assisted with his wounds  
13 until the ambulance and police arrived.

14  
15 15. Whilst the Complainant was outside with his wife and neighbour the Defendant left the premises  
16 and appeared to be heading towards the Complainant until the neighbour intervened and told the  
17 Defendant not to come to that area. The Defendant appeared to be angry at that time.

18  
19 16. Police and ambulance personnel arrived and the Complainant was treated and transported to the  
20 George Town Hospital for further treatment. The Police apprehended the Defendant, arrested him  
21 on suspicion of wounding and placed him in custody.

22  
23 17. During his evidence in chief before this Court the Complainant showed the jury nine (9) scars from  
24 the injuries which he said that he received during the incident. The Doctor who treated him at the  
25 George Town Hospital on the day recorded only six injuries, described as either puncture/stab  
26 wounds or lacerations, of sizes as follows:



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- i. 3cm x 3cm to the left upper arm;
- ii. 2.5 cm to the left chest;
- iii. 2.5 cm to the left chest;
- iv. 2.5 cm to the left upper quadrant of the abdominal wall;
- v. 2.5 cm to the left upper quadrant of the abdominal wall; and
- vi. 2.5 cm to the left lumbar region.



- 18. The doctor gave his opinion that the injuries he observed were not serious, not likely to be permanent and were consistent with being inflicted by a sharp object.
- 19. Two days after the incident, on the 28<sup>th</sup> June 2020, the police interviewed the Defendant under caution, during which he raised the issue of self defence and said that he was attacked by the Complainant.
- 20. The Defendant did not give evidence at trial.

**PSYCHIATRIC REPORT**

- 21. Before trial the Defendant was referred by the Court for a psychiatric evaluation. Dr. Arline McGill of the Health Services Authority (HSA) has provided a Psychiatry Report dated 3<sup>rd</sup> November 2020. In it the Doctor details the background history of the Defendant to include the following:
  - i. Complaints of aggressive responses from the Defendant usually on provocation while at school starting from his kindergarten years;

- 1                   ii. A family history of untreated bipolar disorder on the part of his biological father and  
2                   in the mother's family;
- 3  
4                   iii. During his early childhood, exposure to abuse while at home with his mother in  
5                   another country;
- 6  
7                   iv. He was removed from this home at age 4 years and sent to live with his maternal  
8                   grandmother in the United Kingdom. While there he was exposed to further abuse at  
9                   the hands of his grandmother and her husband who was abusive. The severity of the  
10                  conflicts between the adults often resulted in the grandmother leaving home and the  
11                  Defendant being on the streets;
- 12  
13                  v. The Defendant was relocated to the Cayman Islands at age ten years old;
- 14  
15                  vi. Initially, he was enrolled in a small private school where he did well and received  
16                  several awards over the year and ½ that he was there. Thereafter because of financial  
17                  issues he was transferred to a local high school and his behaviour rapidly deteriorated.  
18                  By age 13 years he had received repeated suspensions for behavioural issues including  
19                  smoking cannabis;
- 20  
21                  vii. At about age 15 years, at around the same time as the motor bike accident, he was  
22                  also the victim of a stabbing incident;
- 23  
24                  viii. At around 16 years of age he was admitted for a time to the mental health unit of the  
25                  George Town Hospital after expressing suicidal intentions and behaving in a bizarre  
26                  manner;
- 27  
28                  ix. There was one incident in which he cut his wrist and had to be taken to the emergency  
29                  room.
- 30



1 x. Mother has indicated that there was no sign of mental illness in him until the loss of  
2 his leg in 2017 and, that since 2019, he has reported hearing voices in his head,  
3 sometimes telling him to kill himself and give up.

4  
5 22. In terms of his history of medical treatments and interventions, Dr. McGill reports the following:

6 a. At age 13 years, the Defendant was assessed by an educational psychologist. He was found to  
7 be of low average intelligence with poor cognitive flexibility consistent with a mood disorder.  
8 He was diagnosed as having Attention Deficit Disorder, combined type, emotional  
9 dysregulation disorder and challenges in academic and interpersonal functioning. It was  
10 reported that his problems caused an inability to inhibit behavioural response and to access  
11 behavioural choices;

12  
13 b. Between October 2017 and March 2018, he was seen intermittently for psychiatry services;

14  
15 c. In September 2019, he was admitted to the Mental Health Unit as stated above. This was for  
16 a period of 24 days following a history of strange behaviour. The diagnosis was a cannabis-  
17 related psychosis.

18  
19 23. On the interview the Doctor records that he was noted on screening to:

20 *“To tend to uncontrollable anger, impulsiveness and he endorsed having difficulty*  
21 *controlling his behaviour and abusive speech when he was angry. He scored*  
22 *significantly for mania and anxiety over the previous two weeks, but only for*  
23 *dysphoria and intermittent suicidal ideation over the period with no intent to self-*  
24 *harm. These are in keeping with Bipolar Disorder with mixed features.*  
25 *Screening suggested severe Attention Deficit Hyperactivity Disorder and significant*  
26 *obsessive thinking.”*



1 24. On mental status examination he was found to be oriented in time, person and place. He was fit to  
2 plead. Dr. McGill concluded as follows:

3  
4 *“Mr. Renaldo Taylor is a young man who has a background of severe abuse and*  
5 *instability in his home and upbringing. He gives a history suggestive of a bipolar type*  
6 *mood disorder with mixed features and attention deficit hyperactivity disorder. He*  
7 *also has an anxiety disorder. His background of severe physical and emotional abuse*  
8 *along with ADHD makes a cluster B personality disorder inevitable. Bipolar disorder*  
9 *is associated with a higher risk of suicidal acting out especially if combined with*  
10 *antisocial or traumatic symptomatology, but he is not currently suicidal. His bizarre*  
11 *behavior in the past is attributable to his substance use, mood disorder and attention*  
12 *deficit disorder. He is fit to plead.*

13  
14 *Although he seemed, from his history, to try to avoid conflict, without medication,*  
15 *intervention through psychotherapy and change in his living circumstances he is*  
16 *likely to re-offend with provocation.”*

17  
18 **ANTECEDENT HISTORY**



19  
20 25. In 2018, the Defendant was sentenced as a Young Offender for the offences of Possession and  
21 Consumption of Ganja and some driving offences. He received a probation order for 18 months.

22  
23 26. In 2019 he was sentenced to a probation order for two years as an adult for the offence of  
24 possession of a prohibited weapon. He was also sentenced to a Community Service Order. This  
25 Order was breached on commission of the instant offence.

26  
27 27. At the time of the commission of this offence the Defendant was subject to the orders previously  
28 made and he was also on bail from the Summary Court, awaiting trial for the offence of Wounding  
29 which was allegedly committed on the 7<sup>th</sup> March 2019. The Prosecution has advised that the allegation  
30 was that the Defendant had used a knife to stab the Complainant in that matter.

1 28. The Defendant was also on bail from the Summary Court for ganja charges [Charge No.  
2 00783/2020] awaiting trial in that Court.



3  
4 **SOCIAL INQUIRY REPORT**

5  
6 29. The Department of Community Rehabilitation (DCR) has provided a detailed Social Inquiry  
7 Report (SIR) on the Defendant which is dated the 2<sup>nd</sup> June 2021.

8  
9 30. By way of background history it records the close connection between the Defendant and his  
10 grandmother, who died in late 2020.

11  
12 31. The Defendant reports physical and emotional abuse from the Complainant starting almost  
13 immediately from his arrival on Island at age ten years and continuing through the years. As a  
14 result, he would frequently leave the home and find other places to stay in the community where  
15 he felt safe.

16  
17 32. The Defendant also reports feeling unwanted in the family home and says that his mother has told  
18 him that she loves his stepfather more than him. During the investigation of the abuse matter in  
19 2017, he was convinced by his mother to say that it was she who had abused him rather than his  
20 stepfather. He was also encouraged by her not to report instances of abuse and told that if he did  
21 so he would be placed in foster care. His mother reported continuing behavioural problems while  
22 he was at high school and thereafter.

23  
24 33. The Defendant was assessed, using the LS/CMI Risk/Need Assessment Tool. His overall risk of  
25 re-offending was assessed as “very high”. Of the eight criminogenic factors, five were in the very  
26 high category and three in the High Category. His pro-criminal attitude is assessed as very high  
27 as it includes that he readily justifies engaging in behaviours that are not within the law and his  
28 apparent belief that if he does not get caught for something then it is permissible.

1 34. Under Antisocial pattern, where he said to be also at very high risk, the officer states that he has  
2 a history of engaging in problem behaviour beginning in primary school and has not engaged in  
3 any organized pro-social activities to date. He has admitted to cannabis consumption beginning  
4 at the age of thirteen. He was also recorded as drinking alcohol after the commission of this offence  
5 which may indicate problems with alcohol consumption despite his denial.

6  
7 35. The Officer recommends that he be exposed to Changes Intervention as well as anger management  
8 counselling. He also needs to receive ongoing mental health treatment in relation to the incident  
9 during which he lost his leg.

10  
11 36. Under Sentencing Options, the Officer states:

12 *“Mitigating factors to consider include a documented history of trauma and abuse*  
13 *experienced throughout his life as well as over the course of several years from the*  
14 *victim. He is physically disabled and was not in use of his prosthetic leg at the time*  
15 *of the offence. He has a history of mental illness and is diagnosed with Bipolar mixed*  
16 *type, and anxiety disorder. Mr. Taylor is also a young adult at only nineteen (19)*  
17 *years of age.*

18  
19 *Given the severity of the offence and his inability to refrain from offending during*  
20 *bail as well as under Community Supervision, a community based sentence may not*  
21 *be suitable. However, Mr. Taylor has spent [a] significant amount of time on remand*  
22 *as well as on an electronic monitor. Although he may not have the appropriate coping*  
23 *skills to function in the community, support for him to develop said skills while in the*  
24 *community are available to him.”*

25  
26 37. Should the Court consider a non-custodial sentence to be appropriate, the Officer recommends  
27 various conditions for a Suspended Sentence Supervision Order (SSSO).





1 SENTENCING GUIDELINES

2 38. The *Cayman Islands Sentencing Guidelines* provides general guidance with respect to the  
3 approach to sentencing and the applicable principles. In the absence of offence-specific guidelines  
4 for the offence of Wounding with Intent as at the date of submissions, both Counsel referred to  
5 the *United Kingdom Sentencing Council Definitive Guidelines* for guidance. In the United  
6 Kingdom the equivalent offence also attracts a maximum term of life imprisonment

7 39. The relevant *Guideline* states:

8  
9 *“The court should determine the offender’s culpability and the harm caused, or*  
10 *intended, by reference only to the factors below (as demonstrated by the presence of*  
11 *one or more). These factors comprise the principal factual elements of the offence*  
12 *and should determine the category.”*  
13

14 40. The factors indicating greater Harm are:

- 15 i. Injury which is serious in the context of the offence which should normally be present;  
16 ii. Victim is particularly vulnerable because of personal circumstances;  
17 iii. Sustained or repeated assault on the same victim;

18  
19 Under the heading “factors indicating lesser Harm” is injury which is less serious in the context  
20 of the offence.

21  
22 41. The factors indicating higher Culpability include, in addition to statutory aggravating factors,  
23 other factors such as:

- 24 i. The use of a weapon or weapon equivalent;  
25  
26 ii. Intention to commit more serious harm than actually resulted from the offence;  
27  
28 iii. Deliberately causes more harm than is necessary for the commission of the offence.  
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1 Under factors indicating lower Culpability are:

- 2
- 3 i. A greater degree of provocation than normally expected;
- 4
- 5 ii. Lack of premeditation;
- 6
- 7 iii. Mental disorder or disability where linked to the commission of the offence;
- 8 iv. Excessive self defence.

9

10 42. There is disagreement between the Prosecution and the Defence as to the Guideline category. The

11 Prosecution argues that this is a category 2 case, being one of lesser Harm and higher Culpability

12 with a starting point of 6 years' custody and a range of 5 to 9 years. The Defence argues that this

13 is a category 3 case with a starting point of 4 years' custody and a range of sentencing of 3-5 years.

14

15 **THE SUBMISSIONS**



16

17 **LEVEL OF HARM**

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19 43. There is agreement between the Prosecution and the Defence that the injuries sustained by the

20 Complainant are less serious in the context of this offence and that this matter properly falls into

21 a category 2 level of Harm. Both refer to the opinion of the Doctor. The Prosecution refers to the

22 fact that no extensive medical treatment was required and that the doctor was of the opinion that

23 the injuries were not serious or likely to be permanent. Prosecuting Counsel submits that the

24 evidence would suggest that the injuries would not have a permanent impact on the victim,

25 although there was visible scarring.

26

27 44. Defence Counsel refers to the medical notes which state as follows:

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1                    *“First, with regard to the injury, the question is whether the injury was serious “in*  
2 *the context of the offence”. It is axiomatic that all violence within the context of a*  
3 *section 18 offence is serious, but some violence is more serious than others. The*  
4 *purpose behind the words “which is serious in the context of the offence” in the*  
5 *guidelines is to distinguish between that level of violence which is inherent or par in*  
6 *a standard section 18 offence and that which will, by definition, go beyond what may*  
7 *be viewed as par for the course. In our view, given that there is such a marked*  
8 *disparity in the starting point between categories 1 and 2, the sorts of harm and*  
9 *violence which will justify placing a case within category 1 must be significantly*  
10 *above the serious level of harm which is normal for the purpose of section 18 .”<sup>2</sup>*  
11

12            48.        In considering the matter, the Court noted that while the blow to the back of the head was inflicted  
13 when the victim was prone and defenceless and necessitated three stitches, the victim was able,  
14 following the blow, to rise from the bed and pursue the Appellant out of the house. The Court  
15 concluded that given the great disparity in the sentence of six years between Categories 2 and 1,  
16 although it was a bad injury, standing alone, it was not a Category 1 offence.

17  
18        **LEVEL OF CULPABILITY**

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20            49.        The submission of the Prosecution is that the Culpability is high by reference to two factors:

- 21  
22                    i.    The use of a weapon, a knife; and  
23  
24                    ii.   An intention to cause more serious harm than actually resulted from the offence.

25  
26            50.        In respect of the latter, Counsel submitted that the utterance of the Defendant, *“I am going to kill*  
27 *you first and spend the rest of my life in prison”*, coupled with the amount of force used by both  
28 the Complainant and his wife to prevent the Defendant from inflicting further injuries to the  
29 Complainant, are indications that the Defendant intended to cause more serious harm than actually  
30 resulted from the offence.



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<sup>2</sup> Paragraph 14

1 51. It is further submitted by the Prosecution that there is one factor which indicates lesser Culpability,  
2 which is a lack of premeditation. However, counsel also submits that the Defendant's mental  
3 health issues could be identified as a second factor. It is further submitted that even if these two  
4 factors in relation to lesser Culpability are proposed, their aggregate effect still places the  
5 Defendant's Culpability in the higher category.

6  
7 52. The Defence submit that the case is one of lower Culpability because there are three factors present  
8 in the lower range:

- 9 i. a lack of premeditation;
- 10 ii. a greater degree of provocation than normally expected; and
- 11 iii. the Defendant suffers from a mental disorder/learning difficulty which is linked to the  
12 commission of the offence.

13  
14 53. It is submitted that these three factors taken together outweigh the use of a knife.

15  
16 **PROVOCATION**

17  
18 54. With respect to the level of provocation, Counsel submitted that whereas the occurrences on the  
19 evening may or may not represent a greater degree of provocation than normally expected in their  
20 own right, when they are viewed against the background/in the context of the violent history of  
21 physical abuse of the Defendant by the Complainant, the Court would be entitled to so find.  
22 Counsel urged that provocation should be considered in the broader sense. The history included  
23 previous incidents in which the Complainant had punched and strangled the Defendant whilst he  
24 showered and struck him with objects including a curtain rod, a laptop charging cable and a  
25 wheelbarrow handle. The Complainant had been prosecuted and convicted for assaulting the  
26 Defendant.



1 55. The factual circumstances referred to by Counsel included the following:

2  
3 i. The Complainant confronted the Defendant about his defiance, he having hung a flag  
4 in his bedroom doorway. On his wife's account, the Complainant was cursing and his  
5 body language suggested he was upset, whilst the Defendant was initially described  
6 as calm.

7  
8 ii. The Complainant was forcefully suggesting that the Defendant must leave the family  
9 home. His wife intervened, telling the Complainant "*Stop, this is not necessary.*"

10  
11 iii. On the account of his wife, the Complainant had a knife in his hand and he was peeling  
12 mangoes. He then returned to the Defendant's bedroom where he threw objects from  
13 the shelf on to the floor. The resultant banging caused his wife to run from her  
14 bedroom.

15  
16 iv. The medical evidence showed that the Defendant received injuries described as  
17 "*lacerated wounds in the region of his chest and to the back of his upper arms.*"

18  
19 56. Counsel submitted that, as with a campaign of domestic violence, this was a campaign of  
20 provocation over a longer period as opposed to immediate provocation.

21  
22 57. The Court notes that the evidence from the Complainant at trial was that physical contact with the  
23 Defendant had ceased for some time before the incident. He said that he had received counselling  
24 and that it had been forcibly brought home to him as a result of the court case that he should not  
25 physically chastise the Defendant. He said that he understood that if he did so, serious  
26 consequences would follow. Thus there had, on the evidence, been a significant interval between  
27 incidents.



1 58. The Court considers that the response of the Defendant was grossly disproportionate to any  
2 provocation and that it cannot be said that there was a greater degree of provocation than normally  
3 expected.

4  
5 59. In respect of his mental issues, Defence counsel submitted that he has been under the observation  
6 of psychiatrists since the age of 13 and has been an in-patient at the Mental Health Unit a number  
7 of times - most recently, for 5 weeks in 2019. The conclusions of Dr. McGill are highlighted, & as  
8 well as the fact that the Defendant reports hearing voices in his head which he identifies as the  
9 voices of his friends.



10 **AGGRAVATING FACTORS**

11  
12 60. The Prosecution submitted that there are six aggravating factors present in relation to this offence:

- 13  
14 i. The Defendant has a previous conviction for possession of a prohibited weapon  
15 [Charge No. 00863/2019] for which a 2-year probation order was imposed on the 17<sup>th</sup>  
16 July 2019. It is said that this is a relevant previous conviction given that this offence  
17 involved the use of the weapon.
- 18  
19 ii. The Defendant was subject to a probation order at the time of the commission of this  
20 offence.
- 21  
22 iii. The Defendant was on bail for an offence of wounding - allegedly committed on 7<sup>th</sup>  
23 March 2019 at the time of the commission of this offence.
- 24  
25 iv. The Defendant was also on bail for drug offences at the time of the commission of  
26 this offence.
- 27  
28 v. The location of the offence, being within the home of the parties.

- 1 vi. The presence of others including relatives, especially children or partner of the victim.  
2 In this case, the Defendant’s mother and younger sibling were both present at the time  
3 of the commission of the offence.

4  
5 **FACTORS REDUCING SERIOUSNESS/MITIGATION**

6  
7 61. Counsel for the Defendant submitted that there are significant mitigating features in this case  
8 which offset and outweigh the aggravating features, and state that these include the following:

- 9  
10  
11 i. The age of the Defendant - he was 18 years old at the time of the incident.  
12  
13 ii. His disability (the amputation of leg leading to suicidal ideation).  
14 iii. History of physical and emotional abuse.  
15  
16 iv. Mental illness  
17  
18 v. Although he pleaded not guilty, the Defendant has never denied causing the injury to  
19 his stepfather and he made early admissions. He has thus not evaded all forms of  
20 responsibility.



21  
22 62. Counsel also points to the conclusions of the Probation Officer that:

23  
24 *“Mr. Taylor has spent significant amount of time on remand as well as on an*  
25 *electronic monitor. Although he may not have the appropriate coping skills to*  
26 *function in the community, support for him to develop said skills while in the*  
27 *community are available to him. Therefore the following sentencing*  
28 *recommendations are being submitted:*

29 *A period of custody suspended for two years with supervision and the*  
30 *following conditions added to the sentence:”*

1 63. Counsel urged the Court to consider a suspended sentence which, while it would be outside the  
2 **Guideline** range, would it is said represent a reasonable and balanced approach to what is a  
3 difficult and unfortunate case.

4  
5 64. Counsel reminds the Court “*of the well-worn adage that guidelines are not tramlines and that for*  
6 *all the reasons set out above and within the SIR this is an appropriate case for the Court to*  
7 *consider a departure from the guidelines.*”



8  
9 **CASES ON SENTENCING**

10  
11 65. Counsel for the Prosecution and the Defence brought to the attention of the Court a number of  
12 cases where sentences had been imposed for the offence of Wounding with Intent.

13  
14 66. In the case of **R v Corey Bowen**<sup>3</sup>, the Cayman Islands Court of Appeal (CICA) dismissed the  
15 appellant’s appeal against his sentence of five years’ and three months’ imprisonment. This was  
16 imposed after trial for the stated offence and a finding by the trial judge that it fell within category  
17 2 of the **Guidelines**. The Appellant had stabbed another man to the neck with a knife in  
18 circumstances where the other man was believed to be in a relationship with the mother of the  
19 Appellant’s child. The Court concluded that there was no basis to say that the sentence was  
20 manifestly excessive or wrong in principle. It was squarely within the **Guidelines**.

21  
22 67. The CICA had referred with approval to the cases of **Hyre (Ricardo) v R**<sup>4</sup> and **Rowe (Kenroy) v**  
23 **R**<sup>5</sup>.

24  
25 68. In the case of **Hyre** after trial the appellant had been sentenced to a term of 7 years’ imprisonment.  
26 He had stabbed the victim with a knife five times in the course of an altercation in a nightclub.  
27 The injuries were life threatening and possibly fatal but for medical intervention.

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<sup>3</sup> CICA Criminal Appeal 15/16- Judgment dated 15th March 2017

<sup>4</sup> CICA Criminal Appeal No 9 of 2009

<sup>5</sup> CICA 9/2015 Unreported judgment of the 11<sup>th</sup> February 2016

1 69. In *Rowe (Kenroy) v R* the appellant was sentenced to six years' imprisonment for a category 2  
2 case after trial and conviction. That sentence was upheld on appeal.

3  
4 70. In *R v Lyle Samson Peart*<sup>6</sup>, the Grand Court sentenced that Defendant to a term of 3 years' and 8  
5 months' imprisonment following his guilty plea to the offence of Wounding with Intent. This  
6 sentence was imposed after adopting a starting point of 6 years for a category 2 offence and  
7 reductions for guilty pleas and mitigation.

8  
9 71. In *R v Commins (Lily-May)*<sup>7</sup> the English Court of Appeal reduced a sentence of four years and  
10 three months imposed following a plea of guilty to the said offence to one of three years and nine  
11 months. This reduction was on the basis that insufficient weight had been given by the sentencing  
12 judge to the factor of greater degree of provocation than normally expected – this where there had  
13 been an altercation in a nightclub during which the behaviour of the victim had been very  
14 unpleasant and a homophobic term had been used to refer to the Appellant.

15  
16 72. The Court stated:

17  
18 *“However, one factor indicating lower culpability may not have been given, in our*  
19 *judgment, the weight that it should have been in reaching the provisional sentence*  
20 *prior to aggravating and mitigating features, that is the feature of a greater degree*  
21 *of provocation than normally expected. Where violence breaks out in public places*  
22 *there is frequently some matter which may be pointed to as having provoked it. But*  
23 *in this case there was provocation that went beyond that baseline level. Whilst this*  
24 *was a Category 2 case, proper allowance had to be made for the unpleasant*  
25 *provocation which included a homophobic term to which the Applicant was*  
26 *particularly sensitive.*

27  
28 *We are persuaded therefore that the Recorder failed to take sufficient account of the*  
29 *unpleasant behaviour of Mr Fox. His company was not wanted amongst that group*  
30 *of women and although they were not subjected, in our judgment, to any physical or*  
31 *verbal threat, and there were a number of people nearby who could have been asked*  
32 *to intervene if intervention were required, his behaviour did mean that this applicant's*  
33 *conduct has to be seen within the context of a significant feature which indicates lower*  
34 *culpability.”*



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<sup>6</sup> Ind. 32/2018 – Sentence imposed on the 11<sup>th</sup> March 2019

<sup>7</sup> [2018] EWCA 1973 (Crim)



73. On the aspect of provocation, Counsel referred the Court to the case of *R v. Bettney*<sup>8</sup>. The appellant had been sentenced to a term of 15 months' imprisonment following his guilty plea to the offence of unlawful wounding. He appealed against his sentence on the basis that the sentence was manifestly excessive, given his good character and guilty plea. It was accepted that the attack had been on the spur of the moment. While at a drinking establishment the victim had tapped him on the chest which he perceived to be an act of aggression. He responded by striking her a single blow to the face with his hand in which he was holding a glass. Counsel submitted on his behalf that there had been a greater degree of provocation than would normally be expected and that the offence was at the bottom of the range. This was not a submission which was accepted by the appellate Court which held that while there may have been some provocation, the response of the appellant was unacceptable and was grossly disproportionate to that provocation.

#### SENTENCE

74. The Court has given consideration to the *United Kingdom Sentencing Council Guidelines for Sentencing Offenders with Mental Disorders*. 'Section one' sets out the general approach to sentencing in such cases and lists eight matters for consideration. 'Section two' provides guidance on assessing culpability. It states at paragraphs 9 to 12.

- “9. Culpability may be reduced if an offender was at the time of the offence suffering from an impairment or disorder (or combination of impairments or disorders) such as those listed in **Annex A**.
10. The sentencer should make an initial assessment of culpability in accordance with any relevant offence-specific guideline, and should then consider whether culpability was reduced by reason of the impairment or disorder.
11. Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour.
12. In some cases, the impairment or disorder may mean that culpability is significantly reduced. In other cases, the impairment or disorder may have no relevance to culpability. A careful analysis of all the circumstances of the case and all relevant materials is therefore required.”

---

<sup>8</sup> 2012 EWCA Crim 3065

1 75. The *Guidelines* recommend that the court ask(s) itself the following questions when considering  
2 whether there was a sufficient connection between the impairment and the offending behaviour:

- 3  
4 i. *At the time of the offence did the offender's impairment or disorder impair their*  
5 *ability:*  
6 a. *to exercise appropriate judgement,*  
7  
8 b. *to make rational choices,*  
9  
10 c. *to understand the nature and consequences of their actions?*  
11  
12 ii. *At the time of the offence, did the offender's impairment or disorder cause them to*  
13 *behave in a disinhibited way?*  
14  
15 iii. *Are there other factors related to the offender's impairment or disorder which reduce*  
16 *culpability?*  
17

18  
19 76. There is also guidance on medication, self-medication and assessing the insight of an offender.  
20

21 77. In response to Question (i) above:

- 22  
23 • In this case the Defendant suffers from possible bipolar-type mood disorder, substance  
24 use disorders, a personality disorder and ADHD - which are all listed in Annex A. The  
25 Court has given consideration to all the evidence and concludes that there is no evidence  
26 that his ability to exercise appropriate judgement was impaired at the time. There is no  
27 evidence that his ability to make rational choices or understand the nature and  
28 consequences of his actions was impaired.



29  
30 78. In response to Question (ii) above:

- 31 • This question does not generate the same conclusion.

32  
33 Dr. McGill's conclusion is that without medication, intervention through psychotherapy  
34 and a change in his living circumstances, he is likely to reoffend with provocation.

35  
36 The reasonable inference to be drawn from this is that his conditions require to be treated

1 with medication and that without this he will react with less control than a person without  
2 these conditions.

3  
4 It is concluded that his mental disorders are linked to the commission of the offence.

5  
6 79. There are thus two factors indicting higher Culpability and two indicating lower Culpability.

7  
8 80. Weight is given to his mental condition and it is concluded that balancing all factors this offence  
9 is one of lower Culpability.

10  
11 81. Thus it is one of lesser Harm and lower Culpability and is thus a category 3 offence.

12  
13 82. From a starting point of 4 years' custody, account is taken of the following four aggravating  
14 factors:

15 i. The Defendant has a relevant previous conviction given that this offence involved  
16 the use of the weapon;

17  
18 ii. The Defendant was on bail for an offence of wounding allegedly committed in  
19 March 2019 at the time of the commission of this offence;

20  
21 iii. The presence of others including a child;

22  
23 iv. Failure to comply with current court orders: The Defendant was subject to a  
24 probation order at the time of the commission of this offence.

25  
26 83. These, taken together, serve to increase the sentence by one year to 5 years' imprisonment.

27  
28 84. In mitigation account is taken of all that has been said about the Defendant:



- 1 i. His young age: He was only 18 years old at the time of the commission of the offence;
- 2
- 3 ii. He has had a difficult childhood in which he has been repeatedly abused both
- 4 physically and emotionally. In particular it is of note that he has been physically and
- 5 emotionally abused by this Complainant over an extended period of time;
- 6
- 7 iii. He lost one leg which according to his mother appeared to trigger mental health issues
- 8 such as, he became suicidal;
- 9
- 10 iv. He suffers from multiple conditions which require long term treatment;
- 11
- 12 v. He did not deny stabbing the Complainant and as his Counsel says, he immediately
- 13 took some measure of responsibility;
- 14
- 15 vi. Albeit not rising to a serious level, there was some element of provocation:
- 16
- 17 1. The removal of the door to the defendant's bedroom, and, thereafter, the
- 18 curtain – both of which would have afforded him some measure of privacy;
- 19
- 20 2. The shouts of the Complainant that the Defendant was to leave the family
- 21 home; and
- 22
- 23 3. The tossing of items in the Defendant's room to the floor.
- 24
- 25 vii. The Defendant also received injuries during the struggle with the Complainant;
- 26
- 27 viii. Additionally there has been some delay in this matter which is no fault of the
- 28 Defendant
- 29
- 30

85. All these matters taken together in the Court's view constitute such significant mitigation that they serve to reduce the sentence by two years to one of 3 years' or 36 months' imprisonment.



1 86. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims of  
2 sentencing, assessing the seriousness of an offence, the custody threshold and the principle of  
3 proportionality. The Court reminds itself of this guidance, including that in sentencing an  
4 offender, the Court has to balance a number of competing interests and objectives and to tailor the  
5 punishment to the individual circumstances of the offender while ensuring that it is in line with  
6 the seriousness of the offence.

7  
8  
9 87. The Court should consider which of the aims which govern the sentencing process will be best  
10 served by the sentence to be passed. The aims which are set out in the *Alternative Sentencing Act*  
11 *2008* include deterrence, punishment, rehabilitation and restitution.

12  
13 88. The Guidelines also provide that a custodial sentence should not be passed unless the offence is  
14 so serious that no other sentence can be justified for the offence. Custody should be reserved for  
15 the most serious offences. Even where the custody threshold is passed, custody can still be avoided  
16 in light of personal mitigation, or if there is suitable community intervention which would meet  
17 the aims of punishment and rehabilitation.

18  
19 89. This is a deeply tragic case where dysfunction in the family home has remained unabated despite  
20 the intervention of courts and the authorities when the Complainant was charged with assaulting  
21 the Defendant.

22  
23 90. Undoubtedly the strain in the relationship between the two was not assisted by the Defendant's  
24 continued smoking in the house and what the stepfather must have seen as defiance in respect of  
25 his orders and directions.



1 91. Tragic as this was, and tragic as some aspects of the personal circumstances of the Defendant are,  
2 this was also a serious assault which involved the use of a weapon, a knife, an expressed intention  
3 to kill, and a degree of persistence all of which led to multiple injuries to the Complainant. The  
4 custody threshold is firmly passed.

5  
6 92. The Court has given consideration to whether there is suitable community intervention.

7  
8 93. It is noted that the Defendant was on probation at the time of the offending and is at high risk of  
9 re-offending. He was also on bail for a similar charge of wounding. Previous attempts have been  
10 made for community interventions. The Probation Officer states:

11 *“Given the severity of the offence and his inability to refrain from offending during bail as*  
12 *well as under Community Supervision, a community based sentence may not be suitable.”*

13  
14  
15 94. In all the circumstances, given the nature of the offending and his past history, a community option  
16 is not considered suitable. The aim of this sentence is deterrence, punishment and rehabilitation.

17  
18 95. The sentence is therefore three years’ imprisonment. In the Courts view this is the least sentence  
19 which could be imposed. It is proportionate to the gravity of the offending and to the level of  
20 responsibility of the Defendant. Time served is to be deducted.



21  
22 **ELECTRONICALLY-MONITORED CURFEW**

23  
24 96. The Defendant was granted bail on the 23<sup>rd</sup> December 2020 on condition that he be electronically  
25 monitored in respect of a curfew between the hours of 9pm and 7am. He remained on this bail  
26 through to the 30<sup>th</sup> March 2021, a total of 97 days.

27  
28 97. He was then further bailed from the 6<sup>th</sup> May 2021 through to the present, a total of 89 days - for a  
29 combined total of 186 days.

1 98. Applying the principles set out in the case of *R. v. Nicholas Tibbetts*<sup>9</sup>, and considering that most  
2 of this period was during the night hours, which does not constitute a significant restriction on his  
3 liberty, he is to receive credit of a one quarter of this period or 46.5 days.

4  
5 99. Therefore Time Spent in Custody as well as 46.5 days will be deducted from the sentence of three  
6 (3) years' imprisonment.

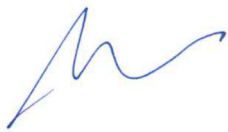
7  
8 100. During his time in custody, he is to receive:

9  
10 i. Individual trauma counselling

11  
12 ii. Engage with the mental health unit under the care of a Psychiatrist as recommended  
13 by the Probation Officer.

14  
15

16 **Dated this 3<sup>rd</sup> August 2021**



17  
18 **Honourable Justice Cheryll Richards Q.C.**  
19 **Judge of the Grand Court**  
20

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<sup>9</sup> Grand Court, Ind. 71/2015 unreported judgment dated 16th December 2016