

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

3 **INDICTMENT NO: 105/2019**



7 **THE QUEEN**

8 **V.**

9 **JEREMY RALPH PARCHMAN**

10 ~~**KEVIN STEPHAN PARCHMAN**~~

11 **SHIMAR JOSE JULIO KELLY**

12 **Appearances:**

**Mrs. Nicole Petit for the Prosecution**

13 **Mr. Ben Tonner instructed by Jonathon**  
14 **Hughes of Samson Law for Defendant**  
15 **Parchman**

16 **Mrs. Prathna Boddan of Samson Law for**  
17 **Defendant Kelly**

18  
19  
20  
21 **Before:**

**Justice Cheryll Richards Q.C.**

22 **Submissions on Sentencing:**

**3<sup>rd</sup> June 2021**

23 **Delivery of Judgment:**

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

24  
25  
26 **HEADNOTE**

27 ***Criminal Law – Manslaughter - Section 183 of the Penal Code – United***  
28 ***Kingdom Sentencing Guidelines, pre-existing condition of victim, level of culpability of***  
29 ***offenders.***  
30

- 1 1. The two defendants, Jeremy Parchman and Shimar Kelly are before the Court for  
2 sentencing following their convictions after trial for the offence of Manslaughter.  
3
- 4 2. The particulars of the Indictment are that they on the 30<sup>th</sup> of November 2019 at Bananas  
5 Restaurant and Lounge, 190 Eastern Avenue, George Town, Grand Cayman, Cayman  
6 Islands did by an unlawful act cause the death of Dinesh A. F. W. Waduge.  
7
- 8 3. By s.183 of the *Penal Code* (2019 Revision), the maximum sentence for this offence is  
9 life imprisonment.  
10
- 11 4. The facts are that on the said day at about 2a.m., the two defendants were patrons at the  
12 said location which also operates as a Nightclub. They were present together with Kevin  
13 Parchman, the brother of the defendant, Jeremy Parchman, and with a girlfriend of Kevin  
14 Parchman. CCTV footage showed that in the course of the evening the deceased, Dinesh  
15 Waduge who was also a patron at the establishment, either touched or made contact with  
16 the body of the girlfriend of Kevin Parchman.  
17
- 18 5. Kevin Parchman responded by punching Dinesh Waduge to his face. Dinesh Waduge  
19 fell to the ground inside the club and got back to his feet. Shortly thereafter he was  
20 assisted by a security guard with going out of the club. CCTV footage showed Dinesh  
21 Waduge exiting the front door of the club and walking to an area to the left of it.  
22 Moments thereafter, Jeremy Parchman and Shimar Kelly also exited the club and they  
23 also went in the same direction. This area is not covered by CCTV cameras.  
24



1 6. From eyewitnesses, one or both defendants (Jeremy Parchman and Shimar Kelly)  
2 punched Dinesh Waduge to his upper body, to his face, head and neck. He fell to the  
3 ground. These two defendants (Jeremy Parchman and Shimar Kelly) left the area and  
4 returned to the inside of the club. Persons outside called the ambulance which attended.  
5 EMT officers assisted Dinesh Waduge to the George Town hospital where he was  
6 pronounced dead.

7  
8 7. The medical evidence is that Dinesh Waduge had been suffering from a pre-existing  
9 condition which had led to the thinning of his arterial walls and made him more  
10 susceptible to injuries, such as from a punch. He had obtained surgical treatment in  
11 Florida in mid-2019 after which he was prescribed medication including blood thinners.  
12 A Pathologist gave his opinion that the ultimate cause of death was blunt force injury to  
13 the left side of the head, behind the ear, just below it. This resulted in rotation of the head  
14 and rupture or dissection of the vertebral arteries, resulting in a large subarachnoid  
15 hemorrhage in the brain.



16  
17 **VICTIM IMPACT REPORT**

18  
19 8. The deceased was a Sri Lankan national, who had been living here in the Cayman Islands  
20 while he worked as a chef at a local restaurant.

21  
22 9. His wife has provided a statement dated the 27<sup>th</sup> January 2021. She states that the couple  
23 has one child, a daughter, who was 2 years and 8 months old at the time of the death of  
24 the deceased. The deceased would work and send money back home to support her and  
25 the child. The wife is presently unemployed as she is unable to work because she is  
26 suffering from cancer. She says that her husband, the deceased, would provide for her  
27 financially to be able to have the chemotherapy treatments that she needs. These

1 treatments have ceased because she presently has no financial support and is unable to  
2 pay for them. The cost for the chemotherapy treatments is 200,000.00 Sri Lankan rupees,  
3 which is about US\$1,500.00 per month.

4  
5 10. In summary she has been deeply affected both financially and emotionally by his death.  
6 She says that she is still crying and their daughter keeps asking for her father. She  
7 describes the deceased as a good man and a good father, who would remain in contact  
8 with them while he was here. He would call them three or four times a day and would  
9 provide for them. Now they have no one.



10  
11 **ANTECEDENT HISTORIES**

12  
13 11. The defendant Jeremy Parchman has an antecedent record, CRO number 11200. This  
14 shows a history of seven (7) previous convictions, six (6) are for offences which are  
15 dissimilar to the present offence being for drug possession or consumption and one  
16 conviction for *Failing to Provide a Specimen of Urine*. He is listed as having one  
17 previous conviction for *Assault Causing Actual Bodily Harm* for which he was sentenced  
18 on the 3<sup>rd</sup> April 2019 to a Probation Order for 2 years and ordered to pay compensation  
19 of \$500.00 to the victim in that case. Also on the 3<sup>rd</sup> April 2019 he was sentenced for  
20 *Possession of Cocaine* and *Possession of Ecstasy* to terms of 6 months' imprisonment  
21 suspended for 2 years. For Consumption and Possession of Ganja he was sentenced to a  
22 Community Service Order (CSO) for 40 hours.

23  
24 12. The defendant Shimar Kelly has an antecedent record, CRO number 10743. He has four  
25 (4) previous convictions. Three are for offences which are dissimilar to the present  
26 offence, being for Consumption, and Possession of Ganja. He has one conviction for

1 *Assault Causing Actual Bodily Harm* for which he was sentenced on the 3<sup>rd</sup> April 2019  
2 to 90 days' imprisonment and ordered to pay compensation of \$500.00 to a victim of the  
3 same name as that on Jeremy Parchman's antecedent record. On the said 3<sup>rd</sup> April 2019,  
4 he was also sentenced for the offence of *Possession of Ganja* and he was placed on a  
5 Probation Order for 18 months. There is a note on the antecedent record which states in  
6 relation to that offence that he committed further offences whilst on probation and a CSO  
7 for 80 hours was then substituted.



8  
9 **SOCIAL INQUIRY REPORT – JEREMY PARCHMAN**

10  
11 13. The Department of Community Rehabilitation (DCR) has provided a Social Inquiry  
12 Report (SIR) on the defendant Jeremy Parchman which is dated the 1<sup>st</sup> March 2021.

13  
14 14. The defendant is 21 years old. He reported a relatively happy childhood and no family  
15 issues except for the separation of his parents. He spent most of his early years in  
16 Cayman Brac. He had some behavioural issues while in high school, which resulted in  
17 a number of suspensions but he had never been expelled from school. He said that the  
18 suspensions which he received were not related to violence.

19  
20 15. He was transferred from the high school in Cayman Brac when he was moved to Grand  
21 Cayman to be with his father. He was then enrolled in the John Gray High School in  
22 George Town. He did well in school academically, achieving 5 CXC passes on  
23 graduation – this, despite being suspended on three occasions for misbehavior. The last  
24 occasion was for an altercation during his last year at that school in 2016.

25  
26 16. He enrolled in but did not complete tertiary education at the University College of the  
27 Cayman Islands. This was due to his having to leave the college because of altercations.

1 17. With respect to health and substance misuse, he reports that between the ages of 15 years  
2 and 16 years he used ganja daily and between the ages of 17 and 18 he started consuming  
3 alcohol on a regular basis at a social level.

4  
5 18. The Probation Officer notes, under the heading Previous Offending Behaviours and  
6 Previous Response to Supervision, that he was subjected to a two-year suspended  
7 sentence and curfew order as well as 120 hours of community service and that these  
8 sentences remain in effect and have been breached due to the current offence. In relation  
9 to his response to supervision: He did complete the CSO, after the Summary Court gave  
10 him additional time to do so. However, his response to the Probation Order was  
11 sporadic, in that, he did not attend all of his appointments.

12  
13 19. The relatives of the defendant were contacted by the Probation Officer and his aunt, Mrs.  
14 Kerry Parchman gave a good account of him. To her he has always presented as being  
15 honest, loving and helpful. She indicated that he has been trying to reduce his level of  
16 drinking and he has been making every effort while he was on bail to remain active in  
17 order not to get into any trouble. His aunt expressed the view that his problems began  
18 when the marriage of his parents broke down.

19  
20 20. She recounts that he had been unwilling to relocate to Grand Cayman and that shortly  
21 after coming here, he was beaten up while outside the cinema, in Camana Bay and a  
22 video was posted of this beating on social media. She said that it was subsequent to this  
23 that he appeared to, *“take up with friends who supported him”*.





1       21.     The defendant's father describes him as a child who gave no trouble and who was an  
2           intelligent boy. He said that his suspensions from school related to his hairstyle and the  
3           school not allowing long hair. He reported that the problems began for the defendant  
4           when he came to reside in Grand Cayman and he was having a hard time because, having  
5           lived in Cayman Brac, he was seen as different.

6  
7       22.     A member of the community, Ms. Beryl Ramoon has provided a letter which is attached  
8           to SIR. The letter is addressed to the DCR and relates to Kevin Parchman and Jeremy  
9           Parchman. Ms. Ramoon states that, for the past 20 plus years, she has been the owner of  
10          the Sea Inn Bar, which is located at 216 Shedden Road, Central Plaza. She has known  
11          the two brothers for a number of years as they were customers at the Bar and, on more  
12          than one occasion, whenever they had too much to drink they would act in a very drunk  
13          and disorderly manner with other customers in the Bar. As a result of this, she would  
14          have to ask them to leave due to their behaviour and ban them from coming for a period  
15          of time. After those periods, they were allowed to return to the Bar. However, since the  
16          last incident she has told their father that they are banned from entering the premises.

17  
18       23.     The defendant's employment history indicates that he worked full-time in 2018 for a  
19          year – this, is after leaving school. In the summer of 2020 he was able to get a job on the  
20          road crew in Cayman Brac where he did landscaping for the Government and he  
21          continued this through to his being remanded in custody.

22  
23       24.     He was assessed using the LS/CMI Risk/Need Assessment tool. His overall risk of  
24          reoffending was assessed as high. Of the eight (8) criminogenic factors, three (3) were  
25          in the high category. These are leisure/recreation, companions who are said to be pro-  
26          criminal and a pro-criminal attitude and orientation.



1       25.     Under this latter factor the Officer states that he continues to use ganja – an indication  
2             that he is supportive of crime, as ganja is illegal. The Officer states further that his  
3             attitude is poor towards supervision. This offence was committed whilst he was subject  
4             to both a Probation Order and a suspended sentence.

5  
6       26.     Under his Specific Risk/Need Factors, the Officer states that there are clear problems.  
7             His continued use of illegal substances indicates that there will be a problem with  
8             compliance. The Defendant’s skills deficits in problem solving and self-management are  
9             indicated by suspensions as well as an expulsion and a ban involving altercations. Anger  
10            management deficit is also a problem identified. This is assessed by his attitude in  
11            school, the previous physical assault conviction and poor social skills.

12  
13       27.     The Officer concludes with the following analysis:

14                    *“Mr. Parchman is an educated man who had the ability to complete tertiary*  
15                    *education, however, from middle and high schools he has had behavioural*  
16                    *difficulties and the consequences of this has been his temporary removal from the*  
17                    *schools (environment).*

18  
19  
20                    *On the face of it these appear to have been misdemeanors but sufficient enough for*  
21                    *numerous suspensions. He had also been expelled from UCCI and banned from a*  
22                    *social establishment as such behavior has occurred throughout his childhood,*  
23                    *teenage and adult years. The behaviour can be considered anti-social and should*  
24                    *be professionally addressed by way of a psychological assessment.*

25  
26                    *Although he does have a supportive family who made the decision to remove him*  
27                    *from the problem when at school or he has been removed by others, a Principal and*  
28                    *a Proprietor for altercations. What is not indicated is Mr. Parchman being able to*  
29                    *take responsibility for his actions, learn from his mistakes and appropriate*  
30                    *restorative justice for any given situation if it was deemed necessary.”*



1 **SOCIAL INQUIRY REPORT – SHIMAR KELLY**

2  
3 28. The DCR has provided a SIR which is dated 23<sup>rd</sup> February 2021 in relation to the  
4 defendant Shimar Kelly. He is 23 years old.

5  
6 29. The Report identifies a limitation and states that he was very cordial in the interview  
7 sessions but the information which he provided did not mirror information provided in  
8 previous reports or information from collateral contacts. It states further that in the  
9 timeline he reported of his life, he appeared confused or to be misrepresenting the facts.  
10 He was also vague and elusive regarding his current living situation.

11  
12 30. He had a difficult childhood. There was a breakdown of the relationship between his  
13 parents who were unmarried. They had what is described as a tumultuous relationship  
14 until their separation in 2000. Following that breakdown, he initially lived with his  
15 mother in Grand Cayman. He and his four siblings were considered to have been  
16 abandoned, due to the frequent absence of their parents. The Department of Children  
17 and Family Services (DCFS) intervened and the children were removed from the  
18 mother’s care after investigations revealed that the children were being neglected and  
19 physically abused by their mother. The defendant and his siblings were relocated to  
20 Cayman Brac to live with his father and after a few months to live with his aunt who  
21 then raised him and was a constant in his life.

22  
23 31. The defendant described his early childhood years as difficult as he says that he was hurt  
24 and angry because his parents had abandoned him. He also noted that the environment  
25 around his parents was aggressive (to use his word), as his father was an alcoholic and  
26 his mother would administer corporal punishment which included multiple beatings  
27 which he described as “insane”, and which left him with scars and bruises.



1 32. He was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) during  
2 primary school. This disorder caused difficulties during his school years. He was placed  
3 on ADHD medication which assisted him to some extent.

4  
5 33. The records at the DCFS outline details of what the Probation Officer describes as a  
6 history of his violence and aggression throughout those school years. He himself says  
7 he was suspended approximately fifteen (15) times throughout his school years for,  
8 “fighting, cursing and being disruptive”.

9  
10 34. It is said in relation to his employment history that he has worked regularly with the  
11 National Community Enhancement Project in Cayman Brac but the Officer states that  
12 there are contradictory accounts as to the extent of the period of his employment and the  
13 timeline in relation to this.

14  
15 35. Under the topic Health Substance Misuse, the defendant reports that his ADHD made  
16 learning difficult, however, his feeling is that the medication affected his thinking and  
17 resulted in him being diagnosed with suffering from depression. In Year 8, he struggled  
18 with suicidal ideation which escalated into suicidal tendencies. In 2015, there was an  
19 incident in which he had to be rushed to the hospital having taken an over dose of over  
20 the counter liquid medication.

21  
22 36. He also reports that was seen by psychiatrist, Dr. McGill, throughout high school. He  
23 said that on leaving school, he discontinued taking the prescribed medication, stopped  
24 seeing psychiatrists and has been self-medicating with ganja. He has had a significant  
25 history of consumption of ganja and on two occasions using one other illicit substance.  
26 He asserts that smoking ganja helps him to sleep.

1 37. The Officer states that the defendant presents as having, “*cognitive impairment and*  
2 *lapses in memory*”, which could be as a result of his longstanding substance misuse and  
3 or any ongoing untreated mental health condition and recommended that he be further  
4 assessed mentally.

5  
6 38. The Defendant said that his alcohol use has increased in the past years but he does not  
7 see it as a problem. He says that he is usually calm when he drinks. The Officer states  
8 that in his previous assault offence, alcohol use was a precursor and that he might be  
9 under reporting the effects of alcohol on his behaviour. Additionally, the Officer also  
10 says that in relation to the assault offence for which he was sentenced on the 3<sup>rd</sup> April  
11 2019, this occurred under similar circumstances to the present offence.

12  
13 39. Under community contacts, his brother describes the defendant as a quiet and reserved  
14 individual who gave no trouble. His brother also noted that the family separation as  
15 brothers which occurred from a young age may have had an impact on his behaviour.

16  
17 40. His aunt described him as a child who was very kind, loving and says that his main  
18 problem is negative company. She observes that in recent years he does not seem to  
19 make sense and he often contradicts himself. She suggests that his ADHD or drug and  
20 alcohol abuse may have impaired his thinking. It is her belief that he would benefit  
21 greatly from in-patient treatment alongside drug and alcohol rehabilitation.

22  
23 41. Under Assessment/ Evaluation, The Probation Officer states:





1                    *“This is not Mr. Kelly’s first appearance before a court and it seems his offending*  
2                    *behaviour has escalated. Client has seemingly undergone some strenuous and*  
3                    *challenging situations throughout his upbringing and current situation. One might*  
4                    *construe that the impact of his experience during his developmental years might still*  
5                    *be impacting the decisions he makes and his level of functioning in the community.*

6  
7                    *Mr. Kelly has obvious difficulty managing his anger emotion which seems to be*  
8                    *exacerbated by his drug and alcohol use, his ADHD, his reports of depressive*  
9                    *symptoms and his associations.”*

10  
11                  42.        The defendant was assessed using the LS/CMI instrument. His overall risk of  
12                  reoffending was assessed as very high with four of the eight criminogenic factors in the  
13                  very high category and four in the high category.

14  
15                  43.        The four factors in the very high category include firstly his alcohol/drug problem. The  
16                  Officer states that his substance abuse has been directly related to all of his criminal  
17                  convictions and continues to place him at risk for further involvement in the system. It  
18                  also appears to be impacting his mental wellbeing and that he will likely require intensive  
19                  treatment to reduce his risk in this area.

20  
21                  44.        The second factor is his companions - the majority of whom it is said are involved in  
22                  anti-social behaviours. He is negatively influenced by them and they tend to get in  
23                  trouble together.

24  
25                  45.        Thirdly there is his, anti-social pattern. He has demonstrated early and diverse anti-social  
26                  behaviour which has manifested into various problem areas as an adult. Fourthly, his  
27                  pro-criminal attitude and orientation. This is in relation to his general attitude, thinking  
28                  and lifestyle which suggest that he is supportive of crime and unfavourable towards  
29                  convention.

1 46. Under specific risk/need factors which should be considered in sentencing, the Officer  
2 lists, clear problems of compliance, problem solving/self-management skills deficits,  
3 anger management deficits, poor social skills, physical assault, extra-familial, financial  
4 problems, past suicide attempt (2015), past victim of family violence (neglect, emotional  
5 and physical abuse), motivation as a barrier to development of social skills and mental  
6 disorder – diagnosed ADHD.



7  
8 47. Under Sentencing Options, the Officer states:

9  
10 *“Based upon the information gathered throughout the interviewing process and from*  
11 *the risk assessment instrument, it appears as though Mr. Kelly is in dire need of*  
12 *intervention services and he does seem motivated at this time to capitalize on the*  
13 *services being offered. It is hoped that if client actively engages in the intervention*  
14 *services his level of recidivism might be greatly reduced and he might become an*  
15 *industrious member of society.”*

16  
17 **PSYCHIATRIC REPORT**

18  
19 48. Given the indications in the SIR of Shimar Kelly, sentencing was delayed at the request  
20 of his Counsel who asked that a psychiatric report be ordered. This was done and a report  
21 has been provided by Dr. Arlene McGill of the Health Services Authority which is dated  
22 the 22<sup>nd</sup> April 2021.

23  
24 49. Under Mental Status Examination the report states:

25 *“...he was alert and oriented in time, person and place.*

26 *...*

27 *His memory and concentration were intact and his problem solving skills were in*  
28 *the normal range. During the interview he displayed no sign of delusions,*  
29 *hallucinations or seizure type episodes. There was no evidence of disassociation or*  
30 *perseveration.”*

1 50. Under the concluding paragraph, “Impression”, Dr. McGill states:

2  
3 *“Mr. Shimar Kelly is a young man who suffers from moderate Attention Deficit*  
4 *Hyperactivity Disorder, a cannabis dependent and moderate anxiety disorder,*  
5 *which may be connected to his unstable childhood and early physical abuse.*

6  
7 *He demonstrated a significant level of unrealistic thinking in his adolescence and a*  
8 *tendency to admire risk behavior and the party going social culture on Cayman*  
9 *Brac.*

10  
11 *He continues to have a simplistic view of life which makes him liable to behaviours*  
12 *that are not the result of good judgment.*

13  
14 *Apart from free floating suicidal ideation, he is not known to self-harm or have intent*  
15 *to self-harm. He is likely to reoffend if he does not have residential dual diagnosis*  
16 *intervention for an extended period. However, this is currently only available*  
17 *overseas.”*



18  
19 **CHARACTER REFERENCES**

20  
21 51. In relation to the defendant Jeremy Parchman, the Court has received eleven (11)  
22 character references from members of the community<sup>1</sup>. Some of these persons have  
23 known his parents for over 30 years and have known him from birth. They speak to his  
24 struggle with self-discovery following the breakdown of the family in his earlier years,  
25 describe him as respectful, hardworking and extremely knowledgeable in a large number  
26 of areas and say that he has the potential to become a productive member of society.  
27 While working in Cayman Brac recently on the road clean-up programme, he proved  
28 himself to be hard working and reliable and a good member of the work team. During

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<sup>1</sup> Lyndon Martin dated 2<sup>nd</sup> March 2021, Dennis Bodden dated 1<sup>st</sup> March 2021, Mexi-Ann Grant dated 1<sup>st</sup> March 2021, Ernie Scott JP dated 5<sup>th</sup> March 2021, Dorcus C. Scott dated 3<sup>rd</sup> March 2021, Garin Ritch dated 8<sup>th</sup> March 2021, B.L. Mark Tibbetts Jr. JP dated 25<sup>th</sup> March 2021, Frauleen Brown dated 26<sup>th</sup> March 2021, Moses Kirkconnell dated 25<sup>th</sup> March 2021, Delcy A. Santos dated 8<sup>th</sup> April 2021 and Elsa Scott dated 20<sup>th</sup> May 2021.

*Sentence Judgment: The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio). Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.*

1 his growth, and in later years, he was respectful to his elders and to those with whom he  
2 came in contact. He is also described as well-mannered, and a good citizen in the  
3 community. He is thoughtful, caring and kind to his co-workers and others. He has a  
4 pleasant and generous disposition. Persons say that he has witnessed trauma in his young  
5 life and was not afforded therapeutic interventions, that he has made efforts to try to turn  
6 his life around and that he is now more focused.

7  
8 52. In respect of the defendant Shimar Kelly, the Court is in receipt of three (3) letters from  
9 members of the community - from Mr. Moses Kirkconnell, dated the 25<sup>th</sup> March 2021,  
10 Mr. Mark Tibbetts dated the 25<sup>th</sup> March 2021, and from Mr. Keino Daley dated the 25<sup>th</sup>  
11 March 2021. Mr. Kelly is described as respectful and polite, caring, well-liked by his  
12 peers and as being known for his love of life and youthful zest. The impact of the hurts  
13 experienced during his youth and his sense of abandonment are described as issues  
14 which affected him deeply.

15 53. The Court has read and takes the contents of all of these letters into account.  
16  
17

#### 18 **THE UNITED KINGDOM SENTENCING COUNCIL GUIDELINES**

19  
20 54. The *Cayman Islands Sentencing Guidelines* provides general guidance with respect to  
21 the approach to sentencing and the applicable principles. In the absence of offence-  
22 specific guidelines for the offence of Manslaughter, reference is made to the *United*  
23 *Kingdom Sentencing Council Guidelines*. The maximum penalty for the offence is life  
24 imprisonment in both jurisdictions.



1 55. The first step under these **Guidelines** is determining culpability by reference to a number  
2 of factors. The **Guidelines** caution against applying the factors in a mechanistic way.  
3 Culpability is in four levels A to D, very high, high, medium and lower.

4  
5 56. The issue between the Prosecution and the Defence is whether this case falls into  
6 culpability B or C of these **Guidelines**.

7  
8 57. Culpability B lists four factors indicating high culpability – three of which are:

9 *“Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of GBH;*

10 *Death was caused in the course of an unlawful act which carried a high risk of death*  
11 *or GBH which was or ought to have been obvious to the offender; and*

12 *Death was caused in the course of committing or escaping from a serious offence in*  
13 *which the offender played more than a minor role.”*

14  
15  
16  
17  
18  
19 58. Culpability C lists two factors indicating medium culpability. It states:

20  
21 *“Cases falling between high and lower including but not limited to:*

22 *Where death was caused in the course of an unlawful act which involved an*  
23 *intention by the offender to cause harm (or recklessness as to whether harm*  
24 *would be caused) that falls between high and lower culpability.*

25  
26 *Where death was caused in the course of committing or escaping from a less*  
27 *serious offence but in which the offender played more than a minor role.”*

28  
29  
30 59. Under step 2 of the **Guidelines** the starting point for Culpability B is 12 years’ custody  
31 with a sentencing range of 8 to 16 years’ custody. For culpability C it is 6 years’ custody  
32 with a sentencing range of 3 to 9 years’ custody.



1       60.     The notes to the *Guidelines* state that these apply to a single offence of manslaughter  
2             resulting in a single fatality and that where a case does not fall squarely within a category,  
3             adjustments from the starting point may be required before adjustment for aggravating  
4             and mitigating features.

5  
6     **THE SUBMISSIONS – PROSECUTION**

7  
8       61.     The Prosecution submits that while there is no evidence upon which the Court could  
9             conclude that the defendants intended to cause the GBH of the victim, there was an  
10            intention by the defendants to cause harm falling just short of GBH.

11  
12      62.     Counsel submits that the blows struck were deliberate, aggressive and violent. They were  
13             delivered to the head and neck of the victim. The force of one blow was sufficient to  
14             rotate the head of the victim causing the fatal tear to his arteries. The motive for the  
15             assault upon the victim was retaliatory and senseless. Counsel submits further that the  
16             defendants assumed the risk that the conduct could result in significant and potentially  
17             fatal harm to the victim and that the principle that you take your victim as you find him  
18             applies. Reliance is placed upon the case of *R v. Taiwo*<sup>2</sup> .

19  
20      63.     The Prosecution submits that in the alternative, should the Court conclude that it is  
21             properly a category C case, then an upward shift in the starting point and range is  
22             necessary as the categorization of Harm falls much closer to high culpability. Reliance  
23             is also placed on the case of *R v. Lynch*<sup>3</sup> and what is said to be the distinctions between  
24             the factual circumstances of that case and the case at hand.



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<sup>2</sup> 2020 EWCA Crim 902

<sup>3</sup> 2015 EWCA Crim 1130

*Sentence Judgment: The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio). Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.*



1 **AGGRAVATING FACTORS**

2  
3 64. The Prosecution submits that there are seven aggravating factors in this case as follows:

- 4 i. Both offenders have criminal records for violent offences as represented in  
5 the antecedent records (a statutory aggravating factor). They have failed to  
6 respond to previous sentences imposed upon them for violence and violent  
7 offences are not out of character for them.
- 8 ii. The offence was unprovoked. There were no actions by the victim that  
9 required any response by the offenders and certainly no action that could  
10 justify any violent assault upon the victim by the offenders.
- 11 iii. Targeting the victim by pursuing him out of the bar.
- 12 iv. Commission of the offence while under the influence of alcohol.
- 13 v. The offenders acted together in the commission of the offence.
- 14 vi. The offenders rendered no aid or assistance to the victim, and did not alert  
15 anyone to his obvious need for medical assistance.
- 16 vii. Violence at drinking establishments in the Cayman Islands are prevalent  
17 offences.

18  
19 **THE SUBMISSIONS –DEFENDANT JEREMY PARCHMAN**

20  
21 65. Counsel on behalf of the defendant Parchman submitted that none of the factors for  
22 category B are established in this case. Counsel also submitted that it is not clear from  
23 the evidence whether the fatal injury was caused by the punches inflicted or from the  
24 deceased falling after the assault. It is said that category C is more appropriate because  
25 the defendants could not have anticipated the pre-existing medical condition of the

1           deceased and thus it could not have been obvious to them that their unlawful act carried  
2           a high risk of death or grievous bodily harm.

3  
4       66.     Counsel also submitted that it is accepted that there is one statutory aggravating factor,  
5           namely a previous conviction for *Assault Causing Actual Bodily Harm* in 2017  
6           (BC00012/2017) and for which the Defendant was sentenced on 3<sup>rd</sup> April 2019.

7       67.     Other aggravating factors are accepted as follows:

8  
9           a.     The offence was committed at a time when the defendant had consumed some  
10           alcohol. Counsel notes however that there is no evidence that the defendant was  
11           heavily intoxicated.

12  
13          b.     The defendants left the scene after the offence was committed.

14  
15                i.     However, Counsel notes that other persons were present at the scene and  
16                were able to render assistance and that there is no evidence that the  
17                defendant attempted to conceal evidence.

18  
19          c.     The defendant was subject to a probation order (for BC000112/2017 above) at the  
20           time the offence was committed.



21  
22   **MITIGATING FACTORS**

23  
24       68.     Under factors reducing seriousness, Counsel on behalf of the defendant Parchman  
25           submits that the offence was not a premeditated act but an opportunistic one. In support  
26           Counsel points to the evidence that the defendants went outside to smoke cigarettes  
27           almost one minute after the deceased had left the club. It is submitted that they could not

1 have known that he was still outside the club and near to the location which they had used  
2 to smoke earlier in the evening.

3  
4 69. In mitigation, Counsel referred to the young age of the defendant. He was 20 years old  
5 at the time of the offence and his behaviour has been exemplary since his arrest. He has  
6 maintained employment and kept out of trouble whilst on bail.

7  
8 70. Counsel submitted that:

9  
10 “34. *The aggravating factors slightly outweigh the mitigating factors*  
11 *thereby supporting a modest upward shift from the 6 year starting*  
12 *point to 6 ½ years approximately.”*

13  
14 71. Counsel said that the defendant is a young man, that he knows custody is inevitable but  
15 asks that the Court give him some hope for the future.



16  
17 **THE SUBMISSIONS – DEFENDANT SHIMAR KELLY**

18  
19 72. Counsel on behalf of the Defendant Shimar Kelly accepts that one aggravating factor is  
20 that of his previous conviction for *Assault Causing Actual Bodily Harm* committed in  
21 2017 for which he was sentenced in April 2019. It is also accepted that all parties were  
22 drinking alcohol but said that nothing on the CCTV footage showed any level of serious  
23 intoxication on the part of Mr. Kelly.

24  
25 73. Under factors reducing seriousness, it is submitted that the offence was not pre-  
26 meditated and that there is no evidence to support the Prosecution’s contention that he  
27 went outside the night club in pursuit of the deceased.

1 74. In mitigation the Court is asked to consider his age, he was 22 years old at the time of  
2 the offence. He has shown genuine remorse for the loss of life. There is a family history  
3 of mental health issues and he has had mental health issues and learning difficulties  
4 throughout his life. He has ADHD and was negatively impacted by abuse, neglect and  
5 then the death of his mother. Counsel said that it is of note that despite his unstable  
6 childhood and early physical abuse, persons in the community still describe him as well-  
7 mannered. This means it is said that there is still hope for his future.

8  
9 **ENGLISH CASE LAW**



10  
11 75. Both the Prosecution and the Defence relied on a number of cases determined by the  
12 English Court of Appeal. The Prosecution relied on the cases of *AG's Reference (R v*  
13 *Taiwo)*<sup>4</sup> and *R v Lynch*<sup>5</sup>. The Defence provided a bundle containing some thirteen cases.  
14 Counsel on behalf of the Defendant Parchman addressed these cases globally by stating  
15 that the general submission from the thirteen cases is that a sentence of approximately  
16 6½ years appears to be proportionate to offending of this nature.

17  
18 76. It is further submitted by the Defence that the two cases on which the Prosecution rely  
19 namely *AG's Reference (R v Taiwo)* and *R v Lynch* can be distinguished on the basis  
20 that in neither case was there a suggestion that the victim suffered from a pre-existing  
21 illness that made him more vulnerable.

22  
23 77. In the case of *R v. Taiwo* the defendant T, had been sentenced to a term of imprisonment  
24 of 4 years and 10 months following a guilty plea to the offence of manslaughter. While  
25 at a drinking establishment, there had been an altercation among a number of persons in

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<sup>4</sup> [2020] EWCA Crim 902, 2021 1 Cr. Appl R. S. 17,

<sup>5</sup> [2015] 2 Cr App R S 73

*Sentence Judgment: The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio). Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.*

1 which T had intervened and assaulted the victim. Thereafter, following a break and a  
2 change of location he had delivered a single punch to the back of the victim’s head. The  
3 victim collapsed almost immediately and died as a result of a subarachnoid haemorrhage  
4 or bleeding at the base of the brain and axonal injury. The injuries were consistent with  
5 severe trauma to the back of the head and also with violent twisting of the head and neck  
6 resulting from impact. The Doctor’s evidence in that case was that he had been struck  
7 towards the back of the head or neck. After this he was unsteady and collapsed within  
8 seconds, which sequence is consistent with the effects of traumatic subarachnoid  
9 haemorrhage.

10  
11 78. T was of good character. The sentencing judge concluded that the matter fell within  
12 category C of the *Guidelines*. The Attorney General submitted to the Appellate Court  
13 that the offence was properly a category B offence.

14  
15 79. The Appellate Court reviewed the circumstances and concluded that this was a “very  
16 bad case of manslaughter” involving a single punch and was properly one of category  
17 B. The Court stated that the aggravating factors were alcohol consumption and an  
18 attempt to evade detection. The Court stated further that, as noted in the case of *R. v.*  
19 *Bola*<sup>6</sup>, the context of the offending was highly material. The sentence was increased to  
20 one of seven years’ and two months’ imprisonment. The Court stated that the use of a  
21 weapon was not definitive of categorization and that whilst many single-punch  
22 manslaughter cases would properly be assessed as falling within Category C, it was by  
23 no means the case that all had to be so categorized. It was held that:



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<sup>6</sup> 2019 EWCA Crim 1507

Sentence Judgment: *The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio)*. Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.

1                   “(1)   ... The circumstances in which single punches could give rise to fatalities,  
2                   with no actual intent to kill or to cause grievous bodily harm, varied from  
3                   case to case. At all events, T’s case, most emphatically, was not the kind of  
4                   case, for example, where there was a relatively light punch to the face  
5                   causing a victim to stumble back and then to strike their head on the ground,  
6                   with fatal consequences. Here the fatal punch had been preceded by the  
7                   violent fracas in which T had played a full part. That was significant, even  
8                   if T had initially been trying to assist SS. It was also important, of course,  
9                   to bear in mind that, having been escorted away, T then deliberately  
10                  returned to the scene, clearly intent on violent retaliation. There were also  
11                  the other identified aggravating factors involved in drink and his trying to  
12                  conceal his involvement thereafter. It was not arguable that the sentence  
13                  was manifestly excessive and the application would be refused ([21] and  
14                  [22]).

15  
16                  (2)   Single-punch manslaughter cases could vary greatly as to their facts and  
17                  circumstances. Certainly, there was no principle that a single-punch  
18                  manslaughter could never come within the first two factors identified in the  
19                  sentencing guideline relating to high culpability (i.e. Category B). In the  
20                  guideline, the use of a weapon was a specified aggravating factor: which  
21                  connotes that the guideline was framed on the footing that it was capable,  
22                  in terms of culpability, of applying across the range of categorisations  
23                  where no weapon was used. It was, thus, correspondingly to be noted that  
24                  lack of use of a weapon was not identified in the guideline as a mitigating  
25                  factor reducing seriousness. Thus, whilst no doubt many single-punch  
26                  manslaughter cases would properly be assessed as falling within Category  
27                  C, it was by no means the case that all had to be so categorised; although,  
28                  certainly, it would always be relevant to consider whether or not a weapon  
29                  had been involved ([26]).”

30  
31                  80.   The Court referred<sup>7</sup> with approval to the case of *AG’s Reference (R v Coyle)*<sup>8</sup>. In that  
32                  case the defendant had received a sentence of 7 years and 6 months following a guilty  
33                  plea to the offence of manslaughter. He had approached the victim from behind and  
34                  punched him in the head. The victim fell to the ground and suffered a serious brain  
35                  injury. The defendant who was 23 years old had previous convictions for possession of  
36                  an offensive weapon and battery.



<sup>7</sup> Paragraph 27 of the judgment

<sup>8</sup> 2020 2 Cr App R (s) 36



1 81. The sentencing Judge placed the offence into Category B of the *Guidelines* but moved  
2 that sentence towards the bottom of the range and excluded as an aggravating factor that  
3 the defendant had left the scene without calling for help for the victim. The Solicitor  
4 General on a reference of the sentence to the Court as being unduly lenient submitted  
5 that this was an unprovoked attack from behind and that the force of the blow had been  
6 such as to render the victim almost immediately unconscious.

7  
8 82. The Appellate Court held that this was a classic one-punch manslaughter case which  
9 properly fell within Category B. The circumstances included the aggressive behaviour  
10 of C shortly before the punch and his previous convictions. The Court was of the view  
11 that the sentencing Court should have moved up the sentencing scale to reflect the  
12 aggravating factors. The Court said that the appropriate starting point was 12 years and  
13 increased the sentence to one of nine years' and nine months', after considering  
14 aggravating and mitigating factors.

15  
16 83. In the cited case of *R v Lynch*, the Appellate Court dismissed the appeal of the appellant  
17 against his sentence of 4 years' and 3 months' for the offence of manslaughter. The  
18 appellant had been engaged in an altercation with his brother at a drinking establishment.  
19 He punched at his brother and accidentally struck the victim. This caused a severe  
20 fracture to the victim's neck and led to his death.

21  
22 84. The Court held that this was a deliberate and aggressive blow. L was intoxicated and  
23 had been engaged in an argument and fight with his brother in the course of which  
24 property had been damaged. All the factors suggested that his culpability was at a high  
25 rather than low level despite this being a single punch. The Court said that the  
26 appropriate range of sentence for a single blow manslaughter case was 6 - 8 years after  
27 trial.

1 85. In *R v Abdul Qayum and Another*<sup>9</sup>, the appellants were sentenced after trial to 8 ½  
2 years' imprisonment for the offence of manslaughter. They were 18 at the time of the  
3 offence and 19 years old at the time of sentence. They had kicked the victim to the rib  
4 area of the body as he lay defenceless and drunk on the ground. The Appellate Court  
5 dismissed the appeal against sentence and stated that:

6  
7 “26. The grounds of appeal raise a number of points. Essentially, the argument  
8 is that the eight-and-a-half years was manifestly excessive for the offence of  
9 manslaughter. It is said on behalf of Mr Qayum, in the notes in the grounds  
10 of appeal that the meeting was coincidental, there was some provocation by  
11 the deceased, the assault was very quick, it was not concerted nor to an  
12 obviously vulnerable part of the body. The refusal of the deceased to accept  
13 hospital treatment meant that he forwent the possibility of life saving  
14 treatment there. The cases cited by the judge, in particular *Ahad*, were  
15 much more serious. The personal mitigation of Qayum included his age, his  
16 previous convictions as it was thought and his compliance with a  
17 supervision order.”

18  
19 ...

20  
21 “30. We emphasise that those who kick helpless people are responsible for what  
22 happens. The risk of significant harm is obvious. Those who kick people take  
23 the victim as they find him. If he has a liver more susceptible to injury, if he  
24 is intoxicated so he is less able to appreciate what is being done to him and  
25 the need to seek urgent medical treatment, the risk lies with the person who  
26 has committed the violence. It cannot be regarded as a feature which  
27 significantly affects the culpability.”

28  
29  
30 86. In *R v Jordan Folkes*<sup>10</sup>, the appellant who was 20 years old received a sentence of 3  
31 years' detention following his guilty plea to the manslaughter of his father. Following a  
32 quarrel with his brother, the father told him to leave the family home. The appellant  
33 struck his father to the face causing him to fall over backward and hit his head on the  
34 floor. He received injuries to the brain from which he later died.



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<sup>9</sup> 2013 EWCA Crim 1312

<sup>10</sup> 2011 2 Cr App R (S) 76

Sentence Judgment: *The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio)*. Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.



1 87. The Appellate Court held in response to the submission that too high a starting point had  
2 been taken for a one-punch manslaughter that the sentence was not too long to reflect  
3 the culpability of the appellant and the gravity of the offence. The Court concluded that  
4 the sentence was not manifestly excessive. It was held:

5  
6 *“In the Court’s judgment every case of “one punch manslaughter” was unique in*  
7 *its facts and the circumstances lying behind it. Each of the cases cited was different*  
8 *from the appellant’s case. The Court recognised that there could be a real and*  
9 *important distinction between the crime of manslaughter when committed in public*  
10 *and same offence committed in private. The sentencing judge noted that the*  
11 *appellant’s father had done nothing on the evening concerned which could justify*  
12 *the appellant’s action. A single blow was struck, but it was a deliberately heavy*  
13 *blow. This was far from being almost an accident.”*

14  
15 88. It was further stated that:

16  
17 *“...Nevertheless, there are features of this case which clearly make it different from*  
18 ***Furby and Harvey**. These were differences of which the judge, to whom **Appleby***  
19 *and **Harvey** were cited, was well aware. As he observed, this was not a case of a*  
20 *justifiable reaction to provocative or unreasonable behaviour on the part of the*  
21 *victim on the occasion when the fatal attack took place. The judge was conscious of*  
22 *the difficulties in the Folkes' household. No doubt the appellant harboured the*  
23 *resentments which he described to the probation officer. But, as the judge noted, the*  
24 *appellant's father had done nothing on that evening which could be seen as justifying*  
25 *what the appellant did to him. The violence came only from the appellant. A single*  
26 *blow was struck, but the punch was, on the appellant's admission, a deliberately*  
27 *heavy one —heavy enough to put his father on the floor apparently unconscious.*

28  
29 *Tragic as its result most certainly was, this was far from being almost an accident.*  
30 *Nor was it an instance of any pre-existing and unknown vulnerability in the victim*  
31 *which could merit its being described as a case of an “eggshell skull”.<sup>11</sup>*

32  
33  
34 89. In *R v Paul Harvey*<sup>12</sup> the appellant threw a television remote control at his wife. Because  
35 of her particular medical circumstances, she had an unusual weakness of the vertebral  
36 artery, she suffered traumatic subarachnoid haemorrhage. The medical evidence was that  
37 at any stage death could have resulted from a simple turn of her head.

38  

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<sup>11</sup> Paragraphs 20 and 21

<sup>12</sup> [2011] 1 Cr. App R.(S) 42

*Sentence Judgment: The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio). Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.*

1 90. The Appellate Court reduced the sentence of 3 years' to one of 21 months'. The appellant  
2 had 4 previous convictions. Two for Assault Occasioning Actual Bodily Harm. There  
3 was no evidence that drink or drugs played any part in the offence. The Court said that  
4 that was a genuinely singular set of circumstances. This was not a one-punch  
5 manslaughter but the throwing of a remote control.

6  
7 91. In the case of *Attorney General's Reference No. 60 (Appleby and Others)*<sup>13</sup> the  
8 Appellate Court was concerned with sentencing in cases of involuntary manslaughter,  
9 for which at the time no guideline was then available as it is presently. Guidance was  
10 being given to sentencing courts in circumstances where many of the decided cases pre-  
11 dated changes in the Law in particular the *Criminal Justice Act 2003* and thus pre-dated  
12 the approach to murder as identified in Schedule 21 thereof.

13  
14 92. The Appellate Court considered a number of authorities including three which have been  
15 cited by the Defence in the instant case, *R v. Furby*<sup>14</sup> , *R v. Coleman*<sup>15</sup> and *R v.*  
16 *Harrison*<sup>16</sup>. The Court stated:

17  
18 *"The decisions which we have examined are set out in an Annex to this judgment.*  
19 *For the future we doubt the value of reference to any sentencing decisions prior to*  
20 *Furby itself. Furby provides an illuminating example of facts which demonstrate*  
21 *that a sentence at the lower end of the scale may be appropriate. If it is necessary to*  
22 *examine any sentencing decisions prior to Furby, and indeed prior to this judgment,*  
23 *they should be examined with the clear understanding that none of the decisions we*  
24 *have seen, and each member of the Court has studied a good many more sentencing*  
25 *decisions than those cited to us, has proceeded on the basis which we have now*  
26 *addressed, that crimes which result in death should be treated more seriously, not*  
27 *so as to equate the sentencing in unlawful act manslaughter with the sentence levels*  
28 *suggested in Sch.21 of the 2003 Act, but so as to ensure that the increased focus on*  
29 *the fact that a victim has died in consequence of an unlawful act of violence, even*  
30 *where the conviction is for manslaughter, should, in accordance with the legislative*  
31 *intention, be given greater weight."*

---

<sup>13</sup> 2010 2 Cr. App. R. (S) 46,

<sup>14</sup> 2006 2 Cr. App. R. (S) 8

<sup>15</sup> (1992) 13 Cr. App. R. (S) 508

<sup>16</sup> 1996 2 Cr. App. R. (S) 250





1 93. In **R v. Furby**, the Court drew a distinction between cases in which the punch was the  
2 cause of the injury with no preexisting issues. The Court said:

3  
4 “11. The judge was right to say that cases such as this present a difficult  
5 sentencing exercise. A sentence must reflect the seriousness of the offence.  
6 The seriousness depends on the culpability of the offending conduct and on  
7 the harm that has resulted from it. Difficulty arises where there is a wide  
8 disparity between the culpability of the offender and the harm that he has  
9 caused. In the crime of manslaughter the harm caused is an element of the  
10 offence. No harm can be more serious than the death of a victim. Its impact  
11 usually extends, as it does in this case, to the relatives who have lost a loved  
12 one. They may, understandably, feel that no sentence can properly reflect  
13 the harm that has been caused. Because of the harm caused, the offence of  
14 manslaughter will usually, though not inevitably, attract a custodial  
15 sentence, regardless of the nature of the wrongdoing that has caused the  
16 death.

17  
18 12. It is right, however, that the length of the sentence must reflect the  
19 culpability of the offender. This can vary widely in the case of manslaughter  
20 from violent or reckless behaviour that foreseeably carries the risk of  
21 causing death, to a case where death results from an unlawful act as a  
22 consequence of a fortuity which the offender could not reasonably have  
23 foreseen. Death resulting from a single punch usually falls into this  
24 category.”

25  
26 94. In **R v. Harrision**, the Court said:

27  
28 “H, aged 34, appealed against a sentence of imprisonment of six years on a guilty  
29 plea to manslaughter. H's drinking partner was knocked out in a fight at a nightclub.  
30 In a rage, H made an unprovoked attack on the victim, striking him one blow on the  
31 head with his fist, on a finger of which he wore a large protruding ring. The victim's  
32 skull was fractured by the blow and he died later of a brain haemorrhage. H  
33 emphasised his remorse and claimed that the sentence was out of line with the  
34 authorities. Held, allowing the appeal in part, that a term of four years was  
35 substituted. Though H had several convictions, they were mainly for illegal fishing  
36 and he had only one minor conviction for violence, for which he had received a  
37 suspended six month sentence. A starting point of five or six years would have been  
38 appropriate, but H's guilty plea made it excessive.

39  
40 “As to that, it has to be said that cases of this sort which are superficially similar  
41 are often found on closer examination to differ in important details. A blow sufficient  
42 to fracture an egg shell skull is very much less culpable than one which fractures a  
43 normal skull. An unlucky punch in the course of a spontaneous fight is very different  
44 from a wholly unprovoked blow to an innocent bystander. Cases in which blows  
45 have been repeated or kicks delivered are obviously more serious by reason of those  
46 features.”



1 SENTENCE

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95. This Court has considered all of the submissions, the cases provided and the factual circumstances of the instant case. While each case must be decided on its own facts and previous cases can only be of limited assistance, this case is similar in some respects to the cases cited of a single-punch manslaughter. Additionally the facts bear some resemblance to those in the case of *R v. Taiwo*.

96. There is, however, in the instant case, the added factor of the pre-existing condition of the deceased. In this regard the submission of the Defence is accepted that it cannot be said that death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender.

97. From some of the cases cited, *Furby* and *Harrison* for example the level of culpability in respect of the factual circumstance of “thin or egg shell skull” has been referred to as being lower in the range of offending, closer to recklessness or accidental than deliberate.

98. In respect of the more recent *Sentencing Guidelines*, the presence of this circumstance may make it difficult to conclude with any positivity that death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling *just short* of GBH. This is as distinct from the basic intent of Common Assault or Assault ABH.

99. By reason of the pre-existing condition the offending in this matter is placed into category C. However the *Guidelines* provide that a mechanistic approach should not be

1 taken and that where a case does not fall squarely within a category adjustments may be  
2 made from the starting point.



3  
4 100. In **R. v. Lynch** the Court stated:

5  
6 *“Moreover, as this court has said in Attorney General’s Reference No.16 of 2014 ,*  
7 *the decision in Appleby signalled a significant change in the approach to be taken*  
8 *to cases of manslaughter arising from a single punch. That change of approach*  
9 *resulted from a greater focus on the fact that the consequence of the defendant’s*  
10 *actions was death. In Attorney General’s Reference No.16 of 2014, this court,*  
11 *having referred to a number of cases since Appleby, concluded that there was now*  
12 *a relatively consistent approach to the levels of sentencing in such cases. Those*  
13 *cases illustrated the level of sentencing of the order of six to eight years.*

14  
15 *The court also said that when assessing the culpability of the offender it is important*  
16 *to examine the nature of the blow which was struck. In this case it was a deliberate*  
17 *and aggressive blow, although one aimed at the appellant’s brother rather than at*  
18 *the deceased. The appellant was intoxicated and had an argument with his brother.*  
19 *These factors suggest that the appellant’s culpability was at a high rather than at a*  
20 *low level. It must also be borne in mind that although the victim died as a result of*  
21 *a single punch, that punch was thrown in the context of a fight between the appellant*  
22 *and his brother preceded by criminal damage.”*

23  
24  
25 101. In the case of **R v. Qayum**, the Court did not consider susceptibility as a significant  
26 feature affecting culpability.

27  
28 102. In the view of this Court, considering the nature and circumstances of the assault in the  
29 instant case, the culpability of the offending was closer to high rather than medium level  
30 and certainly above mid-level.

31  
32 103. The Court considers that it falls between category B and C and adopts an adjusted  
33 starting point of 7 years rather than 6 years.

34  
35 104. In respect of the Defendant Jeremy Parchman: From a starting point of 7 years custody,  
36 account is taken of four aggravating factors which are listed in the **Guidelines** and which  
37 are present in this case as follows:



- 1                   i. He has an antecedent history for the offence of Assault Causing Actual  
2                   Bodily Harm.
- 3  
4                   ii. This offence was committed while he was subject to Court orders. At the  
5                   time of this offending he was subject to both a suspended sentence and a  
6                   Probation Order. His response to the Probation Order was described as  
7                   sporadic.
- 8  
9                   iii. The offence was committed whilst under the influence of alcohol to some  
10                  extent.
- 11  
12                  iv. He rendered no aid to the deceased and walked away leaving him on the  
13                  ground.

14  
15       105.    In the Court's view the first two factors are of significant weight. Taking all factors and  
16              circumstances together, the sentence is thereby increased to one of 9 years'  
17              imprisonment.

18  
19       106.    Account is taken of everything that has been said about the Defendant in mitigation, the  
20              SIR and character references. He is of youthful age, only 21 years old at the time of the  
21              offending. The offence was not premeditated. He is remorseful as to the loss of life which  
22              has occurred. His childhood was impacted by the separation of his parents, and resulting  
23              behavioural issues. He has had personal trauma including the beating which he suffered  
24              in public while outside the cinema in Camana Bay and another incident where his brother  
25              was seriously injured in his presence. Members of the community describe him as having  
26              good personal qualities and it appears that whilst on bail for this offence he was gainfully  
27              employed, hardworking and made every effort to stay out of trouble. The Court also



1 takes into account that there has been some delay in this matter, the offence having been  
2 committed in 2019. This is no fault of the Defendant.

3  
4 107. When all these circumstances are taken into account, the sentence is reduced to one of 7  
5 ½ years' imprisonment.

6  
7 108. In respect of the *Defendant Shimar Kelly*: The Court has first considered whether his  
8 culpability is reduced because of his mental health issues and asked the relevant  
9 questions in accordance with the ***UK Sentencing Council Guidelines*** for Sentencing  
10 Offenders with mental disorders. While ADHD is listed in Annex A thereto there is no  
11 evidence of a sufficient connection between this disorder or to other disorders and the  
12 offending behaviour and no evidence that at the time of the offending, the disorders  
13 impaired his ability to make rational choices, understand the nature and consequence of  
14 his actions or cause him to behave in a disinhibited way. The conclusion is that his  
15 culpability is not reduced by reason of these disorders.

16  
17 109. From a starting point of 7 years, account is taken of the aggravating factors which are  
18 listed in the ***Guidelines*** and which are present in this case as follows:

19  
20 i. He has an antecedent history for the offence of Assault Causing Actual  
21 Bodily Harm.

22  
23 ii. This offence was committed while he was subject to court orders. At the  
24 time of this offending he was subject to both a suspended sentence and a  
25 Probation Order.

26  
27 iii. The offence was committed whilst under the influence of alcohol to a certain  
28 extent.



1                   iv. He rendered no aid to the deceased and walked away leaving him on the  
2                   ground.

3  
4       110. In the Court's view the first two factors are of significant weight. Taking all factors and  
5           circumstances together, the sentence is thereby increased to one of 9 years'  
6           imprisonment.

7       111. Account is taken of everything that has been said about the defendant in mitigation, the  
8           SIR and character references. He is of youthful age, only 22 years old at the time of the  
9           offending. The offence was not premeditated. He is remorseful as to the loss of life which  
10          has occurred. He had a very difficult childhood in which he was ill-treated by his mother  
11          who beat him severely and his father was an alcoholic. He was abandoned by his parents  
12          and had to be raised by his aunt. His mother died which also affected him. He suffers  
13          from ADHD and self-medicates with non-medical substances. Members of the  
14          community describe him as having some good personal qualities and it appears that he  
15          has made efforts to be gainfully employed. The Court also takes into account that there  
16          has been some delay in this matter, the offence having been committed in 2019. This is  
17          no fault of the defendant.

18  
19       112. When all these matters are taken into account, the sentence is reduced to one of 7 ½  
20          years' imprisonment.

21  
22       113. The Court has given consideration to whether this sentence is proportionate to the gravity  
23          of the offending. This is an offence of the most serious kind involving as it does harm  
24          which is irreparable. A life has been lost which cannot be replaced. A young daughter  
25          will grow up never to know a father. The resulting grief and negative impact on the  
26          family of the deceased as described by his wife cannot be overstated.

1 114. The culpability of the offenders arises as a result of an unprovoked, callous and  
2 deliberate attack by two men acting together against the single victim. It may have been  
3 opportunistic but was plainly retaliatory in nature. The victim was defenseless and had  
4 done nothing to deserve this assault. The sound of the blow, as forceful as it was, caught  
5 the attention of bystanders. This occurred in public, during the night. It was in the  
6 precincts of a liquor licensing establishment where all parties to this offence had been  
7 drinking. Both defendants have previous offending behaviours involving an assault.  
8 According to the Probation Officer, in respect of Mr. Kelly alcohol was also said to be  
9 a factor in that previous offence. Both defendants were on Court orders imposed just  
10 seven months before this incident. These were orders, the essence of which required  
11 them to be on good behavior so as not to re-offend. The orders were clearly ignored.  
12 Both defendants are said to be at high or very high risk of re-offending. The custody  
13 threshold is firmly passed.

14  
15 115. The primary aims of sentencing are set out in the *Cayman Islands Sentencing*  
16 *Guidelines*. In the circumstances of this case they must include, deterrence, punishment  
17 and rehabilitation. Standing back and considering the offending as a whole, this Court is  
18 of the view that the proposed sentence meets the justice of this case, in that it is  
19 proportionate to the gravity of the offence and to the degree of responsibility of the  
20 defendants. It is the least sentence which could be imposed balancing all factors.

21  
22 116. The Defendant Jeremy Parchman is sentenced to a term of imprisonment of 7 ½ years.  
23 From this any time served is to be deducted.



1 117. On the 17<sup>th</sup> December 2019 the Defendant was granted bail with an electronically-  
2 monitored curfew between the hours of 7pm and 6am. He remained on bail until the 7<sup>th</sup>  
3 January 2021, a total of 387 days.

4  
5 118. The curfew restriction which was mostly during the night hours would have amounted  
6 to a modest rather than substantial restriction on his daily activities. The Court is guided  
7 in this by the approach taken by the Grand Court (Dame Dobbs J.) in the case of *R .v.*  
8 *Nicholas Tibbets*<sup>17</sup>.

9  
10 119. Credit is given for one-quarter of the time spent on curfew or 97 days.

11  
12 120. While in custody as recommended by the Probation Officer, he should receive assistance  
13 to address the criminogenic need areas of concern. It is also recommended that a  
14 psychological assessment be undertaken.

15  
16 121. The *Defendant Shimar Kelly* is sentenced to a term of imprisonment of 7 ½ years. From  
17 this time served is to be deducted.

18  
19 122. On the 17<sup>th</sup> December 2019 the Defendant was also granted bail with an electronically-  
20 monitored curfew between the hours of 7pm and 6am. He remained on bail until the 7<sup>th</sup>  
21 January 2021, a total of 387 days. As for the Defendant Parchman, and for the same  
22 reason the Defendant Kelly is given credit for one quarter of the time spent on curfew or  
23 97 days.



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<sup>17</sup> Grand Court, Ind. 71/2015 unreported judgment dated 16th December 2016

Sentence Judgment: *The Queen v. Parchman (Jeremy Ralph), Kelly (Shimar Jose Julio)*. Ind. 105/2019. Coram: Richards J Q.C. Date: 3<sup>rd</sup> August 2021.

1        123. While in custody, as recommended by the Probation Officer, he should receive  
2                    assistance to address his issues such as a substance abuse assessment along with a  
3                    psychological assessment and intervention services.

4

5        **Dated this the 3<sup>rd</sup> August 2021**

A handwritten signature in blue ink, appearing to read 'Cheryll Richards', is positioned above the printed name.

6

7        **Honourable Justice Cheryll Richards Q.C.**  
8        **Judge of the Grand Court**

9