





## SENTENCE JUDGMENT

1. The defendant is before the Court for sentencing following his guilty pleas to two offences pursuant to s.203 of the *Penal Code* (2022 Revision).
2. Count 1 charges him with the offence of Wounding with Intent. The particulars are that he on the 23<sup>rd</sup> June 2022 at the Seven Mile Shops Plaza, West Bay Road, Grand Cayman, Cayman Islands unlawfully and maliciously wounded Christopher Michael Alberga, with intent to do the said Christopher Michael Alberga grievous bodily harm, namely by stabbing him in the abdomen with a knife.
3. Count 2 charges him with the offence of Causing Grievous Bodily Harm with Intent. The particulars are that he on the same date and at the same location unlawfully and maliciously caused grievous bodily harm to Kyle Donovan McCoy with intent to do the said Kyle Donovan McCoy grievous bodily harm, namely by stabbing him in the left eye with a knife.
4. The maximum penalty is life imprisonment for each offence.
5. The defendant first appeared before the Grand Court on the 9<sup>th</sup> December 2022. On that date he was arraigned and entered pleas of guilty. It is accepted that his pleas were entered at the first reasonable opportunity and that he is entitled to the full reduction for his pleas.
6. The prosecution has provided a summary of facts which is not disputed.
7. At about midnight on the 23<sup>rd</sup> of June 2022, the victims Christopher Michael Alberga and Kyle Donovan McCoy had been out with others socializing at “The Bird” Bar and Lounge in the Seven Mile Shops Plaza, West Bay Road.
8. At the relevant time, Mr. McCoy was outside and Mr. Alberga inside the establishment. An argument developed between Mr. McCoy and the defendant. As Mr. McCoy walked away, the defendant punched him on the back of his head. The two then exchanged blows. A third male, who has not been identified, intervened and held Mr. McCoy from behind.



1 9. Mr. Alberga observed what was taking place and went to assist his friend. When he did so, the  
2 defendant stabbed him in the abdomen with a knife which he produced from somewhere on his  
3 person.

4  
5 10. The defendant then looked Mr. McCoy in his face as he was still being restrained from behind  
6 by the unidentified male. Having looked at him for a few seconds he then stabbed him in the  
7 left eye. He then pulled out the knife and fled.

8  
9 11. The police and ambulance were called. Both victims were conveyed to the George Town  
10 Hospital for treatment.

11  
12 12. Mr. Alberga received a laceration to his abdomen. The injury was said to be serious but not  
13 likely to be permanent. The injury was consistent with infliction by a sharp object. He was  
14 admitted to the medical unit.

15  
16 13. Mr. McCoy sustained a penetrating injury to his left eye. The upper left eye lid was completely  
17 cut and destroyed. There was significant tissue loss to the eye with the eye globe completely  
18 out. He underwent surgery and was admitted to the surgical unit. He subsequently lost his left  
19 eye. His condition was described as serious and permanent.

20  
21 14. The defendant was subsequently positively identified at formal identification procedures by  
22 Mr. McCoy and two other persons who were present at the time.

23  
24 15. The defendant was interviewed under caution in the presence of an Attorney on the 24<sup>th</sup> June  
25 2022. He exercised his legal rights and answered “no comment” to most of the questions put  
26 to him.

27  
28 **VICTIM IMPACT REPORTS**

29  
30 16. The Department of Community Rehabilitation (DCR) has provided a Victim Impact Report  
31 (“VIR”) in respect of Mr. McCoy which is dated 14<sup>th</sup> March 2023.

32  
33 17. The victim is 20 years old. The defendant is unknown to him. The victim states that he lost two  
34 liters of blood that night and was in and out of consciousness. On arrival at the hospital, he  
35 was taken to the operating room. He was hospitalized for eight days and has an outstanding



1 hospital bill of \$15,008.93. In the immediate aftermath of his discharge from hospital, he  
2 suffered pain to his eye and swelling to his joints. The biggest impact has been the loss of his  
3 eye. He needs to have two further surgeries but has been unable to have them because of issues  
4 with his insurance coverage. He was unable to work for about a month and a half because of  
5 the injury to his eye. He returned to work in September 2022 but lost his job in November 2022.  
6 He remained out of work until January 2023 when he resorted to fishing to earn a living.  
7

8 18. Under the heading Assessment/Evaluation, the Probation Officer states that the victim was  
9 significantly impacted at all levels by the actions of the defendant. The injuries sustained were  
10 serious, permanent and life altering. He is still dealing with the medical implications of his  
11 injuries.  
12

13 19. The VIR with respect to the victim Christopher Alberga is dated 20<sup>th</sup> March 2023. Attached to  
14 this is a victim impact statement dated 19<sup>th</sup> March 2023. The victim states that when he went  
15 outside the Bar to check on his friend, the first victim, he was suddenly stabbed to his lower  
16 abdomen. He says that he was taken by ambulance to the emergency room and underwent  
17 surgery. He remained in the intensive care unit for two nights. The fear was that his colon may  
18 have been pierced. The doctors were not sure at the time. Once he was released, he was in  
19 immense pain. He had nightmares, emotional breakdowns and feelings of fear of danger. He is  
20 now afraid to go to bars or social events alone or even to move about alone. He was unable to  
21 work for some three months at his usual employment in the water sports industry. He says that  
22 he has recently left the Island in the hope that being away from the Cayman Islands will assist  
23 him in rebuilding trust in people.  
24

25 20. The Probations Officer's assessment is that the offending has had a significant impact upon the  
26 victim. The Officer notes that even in the absence of a formal psychological evaluation the  
27 emotional harm caused to the victim appears to be severe as he continues to experience panic  
28 and other symptoms of psychological harm.  
29

### 30 ANTECEDENT HISTORY

31  
32 21. The defendant has three previous convictions and a number of convictions for traffic offences.  
33 There is one for an offence of a similar nature. On the 3<sup>rd</sup> August 2012, he was sentenced to a  
34 probation order of one year for an offence of Assault Causing Actual Bodily Harm.  
35



1 **THE SOCIAL INQUIRY REPORT**

2  
3 22. The DCR has provided a Social Inquiry Report (“SIR”) dated 28<sup>th</sup> February 2023. The Court  
4 has read this report in its entirety and takes into account everything said therein in favour of  
5 the defendant. The defendant is 32 years old. He is the father of two children, a teenager and a  
6 toddler, who is four years old. His early childhood and home environment was one with  
7 difficulties including the separation of his parents which impacted him negatively. During his  
8 school years he was diagnosed with an illness and placed on medication which he has  
9 discontinued taking because of the side effects.

10  
11 23. While in his teens he became involved in the criminal justice system when he was placed on a  
12 probation order for the offence of Burglary. He has been gainfully employed at various jobs  
13 between 2018 and 2023. He received serious injuries in a motor vehicle accident in 2017 which  
14 required him to have four surgeries to his leg. He continues to have pain in his leg.

15  
16 24. There is some ganja use which he reports as being for sleep and calm. He has admitted to the  
17 Probation Officer that leading up the night of the offence he had commenced engaging in  
18 alcohol use and the “party scene”. He also reported that on the night of the offence, he  
19 consumed numerous alcoholic beverages. He said that he has reduced his level of alcohol  
20 consumption because he is unable to think rationally when under the influence of alcohol.

21  
22 25. The Officer states that over the years, the defendant has failed on all occasions to comply with  
23 the terms of his probation orders and to address the needs identified including anger  
24 management counselling. He failed to attend appointments and to complete the anger  
25 management programme which was a condition of his last two Court orders. He was brought  
26 back to Court and for the breach he was placed on a curfew order. On the 4<sup>th</sup> July 2018 he was  
27 sentenced to a community service order as a result of traffic offences. He did not complete the  
28 conditions of this order and was subsequently sentenced to two months imprisonment for this  
29 breach.

30  
31 26. Under the heading Community/Institutional Function, the defendant is described as a generally  
32 quiet person, a loner, hardworking, a good father and to have made positive changes since this  
33 incident.



1 27. Under the heading Attitude toward the Offence, the Officer records that the defendant said that  
2 he had consumed about five to six mixed drinks within a two-hour period at the bar. He  
3 admitted that anger had gotten the best of him so that he did not ignore the initial comments  
4 made by one person in the group of people present there. He admitted to being in a rage, which  
5 he presumed was fueled by the consumption of alcohol. He said that he was not aiming at Mr.  
6 McCoy, he just wanted to catch him. He said that he was not able to think rationally about  
7 handling the situation.

8  
9 28. He expressed remorse at the injuries suffered by the victims and said that he felt bad that he  
10 could have killed them and they are “someone’s child”. He showed no hostility towards the  
11 justice system.

12  
13 29. The defendant’s overall risk of reoffending was assessed as high, with five of the eight  
14 criminogenic factors in the high category. The Officer recommends that as part of any sentence  
15 plan if a custodial sentence is imposed, the defendant completes anger management, alcohol  
16 prevention treatment and individual counselling.

17  
18 **CAYMAN ISLANDS SENTENCING GUIDELINES**

19  
20 30. Both the prosecution and the defence are agreed that the offending in respect of the victim  
21 McCoy falls into Category 1 of the *Cayman Islands Sentencing Guidelines* for the offence of  
22 Wounding with Intent. This is on the basis that the level of culpability is high because of the  
23 use of a weapon and there is greater harm due to the injury to the victim’s eye which is serious  
24 in the context of the offence.

25  
26 31. The prosecution has drawn the Court’s attention to three cases:-

27  
28 (1) *R. v. Smith, (Grant Christopher)*<sup>1</sup>

29 (2) *R. v. Christopher John Duff*<sup>2</sup>

30 (3) *R. v. Xue*<sup>3</sup>

31  

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<sup>1</sup> [2015] EWCA Crim 1482

<sup>2</sup> [2016] EWCA Crim 1404

<sup>3</sup> [2020] EWCA Crim 587

1       32.     In **R. v. Smith**, the English Court of Appeal considered an appeal against sentence for an  
2       offence of Wounding with Intent. In the course of an altercation, the victim received a final  
3       blow to the back of the head which required three stitches. In his Sentencing remarks the  
4       learned Judge concluded that this fell into the category of greater harm and greater culpability.  
5       This was on the basis that the injury which was caused required hospital treatment, stitching  
6       and had considerable lasting effect on him. The Appellate Court considered what is meant by  
7       the term “*serious in the context of the offence*” and stated:-

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

19  
20       33.     The Court noted that while the blow to the back of the head was inflicted when the victim was  
21       prone and defenceless and necessitated three stitches, the victim was able, following the blow,  
22       to rise from the bed and pursue the Appellant out of the house. The Court concluded that given  
23       the great disparity in the sentence of six years between Categories 2 and 1, although it was a  
24       bad injury, standing alone, it was not a Category 1 offence.

25  
26       34.     The dicta in the case of **Smith** was applied in the case of **R. v. Xue**. The appellant appealed  
27       against a sentence of 12 years imposed following his convictions for wounding with intent and  
28       assault occasioning actual bodily harm. The basis of the appeal, was in part the categorisation  
29       of the trial judge that the harm caused was serious in the context of the offence. The appellant  
30       had taken a knife to the home of the two victims following an earlier telephone conversation  
31       which he found insulting. He forced his way into the property and slashed victim 1 in the face  
32       with a knife or razor. Victim 1 suffered lacerations to his face and hip which required sutures.

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<sup>4</sup> Paragraph 14



1 One of the lacerations to his face was described as a deep triangle type laceration to the left  
2 side of his face above the jaw line. He had scars to his face which he said were obvious knife  
3 scars which would cause people to look at him in a different way.

4  
5 35. The Appellate Court noted the fact specific nature of the type of assessment required to  
6 determine whether injury is serious in the context of the offence. The Court referred to the case  
7 of *R. v. Duff* in which the finding of a trial judge that the victim had lost an ear and suffered  
8 permanent, visible, significant cosmetic disability, which was serious in the context of the  
9 offence, was reversed on appeal.

10  
11 36. The Court concluded that while the injuries suffered by the victim in the case under appeal  
12 were serious, they were considerably less grave than the injuries suffered by victims in many  
13 such cases before the Court and were thus not significantly above the level of harm which is  
14 the norm for the offence.

15  
16 37. Against the background of the guidance provided in these cases, in respect of the instant case,  
17 the Court's conclusion is that this is a Category 1 offence. It is one of higher culpability given  
18 the use of a knife. The victim has lost an eye. The loss is permanent. He has had one surgery  
19 and requires two more. The harm caused to him is serious in the context of the offence.

20  
21 38. The starting point is 12 years custody with a range of sentence of 9 to 16 years.

22  
23 39. Defence Counsel submits that while this is a Category 1 offence, it is offending at the lower  
24 end of the scale. Counsel asks the Court to note that many of the factors listed under higher  
25 culpability which would make the offence a more serious one are absent from this case. There  
26 was no premeditation, and the altercation appears to have been instigated by the victim. This  
27 is a case in which each victim received a single blow in an isolated incident in which the  
28 defendant has shown sincere remorse. Counsel submits that the Court should consider a  
29 sentence at the bottom of the range given the circumstances. The Court notes however that any  
30 one factor would serve to place the offending within the category.

31  
32 40. Defence Counsel refers to the judgment in the case of *Garfield Silburn*<sup>5</sup> in which the Grand  
33 Court imposed a sentence of 10 years for two assaults upon police officers following guilty  
34 pleas. One of the officers was permanently blinded in one eye. The charge in respect of this

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<sup>5</sup> CICA Criminal Appeal 29/2017 Unreported Judgment dated 31<sup>st</sup> October 2018  
230403 R v Nicholas Romano Forbes – Ind. 97 of 2022. Coram: Richards, J KC – Sentence Judgment



1 was Causing Grievous Bodily Harm with Intent. The sentence imposed was upheld on appeal.  
2 The appellant had some 12 previous convictions including threats to kill and attempted rape.  
3 He had been released from prison shortly before the offending.

4  
5 41. Defence Counsel submits that the case of *Silburn* can be distinguished from the present case  
6 in three ways. The Appellant *Silburn* had a serious criminal history and had only just been  
7 released from prison when he committed the offences, the victims were serving police officers  
8 which was a serious aggravating factor and the attack on the officers was a sustained one which  
9 involved kicking and stomping on the head of the officer. Given the distinguishing features it  
10 is submitted by Counsel that a sentence much below 10 years should be imposed in the instant  
11 case.

12  
13 42. With respect to Count 1, the wounding of Mr. Alberga, the prosecution submits that the  
14 offending falls into Category 2. In written submissions, defence Counsel submits that it is  
15 arguably a case of lower culpability or at least between lower and higher culpability. Counsel  
16 submits that although a weapon was used, the victim involved himself in an ongoing fight in a  
17 way that the defendant perceived as threatening. The defendant reacted instinctively,  
18 defensively in a way that lacked premeditation. Counsel submits that on balance the offending  
19 falls between Category 2 and 3 with an appropriate starting point being 5 years custody.

20  
21 43. The Court concludes that this offending is Category 2. The culpability is high given the use of  
22 a weapon. However given the medical evidence and as agreed by the prosecution the harm  
23 caused is not serious in the context of the offence. The starting point is 6 years custody with a  
24 range of sentence of 5 to 9 years.

25  
26 **AGGRAVATING FACTORS**

27  
28 44. The prosecution submits that there are two aggravating factors, the location of the offending,  
29 being immediately outside liquor licensed premises and the timing being in the early hours of  
30 the morning.

31  
32 45. Defence Counsel submits that the timing and location would constitute aggravating factors if  
33 they caused difficulty for the victims in seeking help. Counsel said that the licensed premises  
34 appear to have been relatively quiet that night and that the victim was able to secure help very  
35 quickly.



1 **THE SENTENCE**

2  
3 46. The offending in this case is serious. Following an exchange of words, a fight ensued. The  
4 defendant produced a knife. He stabbed one victim to his stomach when he tried to come to the  
5 assistance of his friend. While the second victim was being held by another he stabbed that  
6 victim to his eye. Both victims suffered serious physical and psychological harm. In the case  
7 of Mr. McCoy, the harm which resulted is permanent and life altering. The custody threshold  
8 is firmly passed.

9  
10 47. Count 2 is the more serious offence. From a starting point of 12 years (one hundred and forty  
11 four months), there are two aggravating factors. The location of the offence being liquor  
12 licensed premises with the possibility for greater disorder because of alcohol consumption, is  
13 an aggravating factor.

14  
15 48. The timing of the offence being after midnight is also an aggravating factor though less so. An  
16 additional three months is imposed for these factors.

17  
18 49. The defendant has one previous conviction which is for an offence of some similarity albeit on  
19 a much lower scale, Assault Occasioning Actual Bodily Harm for which he received a sentence  
20 of probation, however this was some eleven years ago. This is not treated as an aggravating  
21 factor.

22  
23 50. In mitigation the Court takes into account all that has been said and written in the defendant's  
24 favour. Defence Counsel made detailed submissions in mitigation, all of which the Court has  
25 considered. The defendant has previous convictions which are spent and over ten years old.  
26 The Court treats him as a person of effective good character. This offending is said to be out  
27 of character for him. He is genuinely remorseful. He is described by defence Counsel as being  
28 wracked with guilt, as taking very seriously the result of his actions and in great strain as he  
29 awaits his sentence. He handed himself into the police and was open with the Probation Officer  
30 and showed insight as to the nature and causative factors to his offending. He recognizes that  
31 he has an underlying issue with alcohol. He had a difficult childhood in the circumstances as  
32 detailed in the SIR. He is of quiet disposition and has good personal qualities as outlined in the  
33 SIR and by his Counsel. He is the father of two children and by all accounts is a good father  
34 to them. He has been hardworking and in stable employment prior to this offending and has



1  
2 been a good citizen. To the Probation Officer he presented as a quiet and respectful man and  
3 he showed no hostility towards the criminal justice system.  
4

5 51. The mitigating factors serve to reduce the sentence by twelve months to one hundred and thirty-  
6 five months.

7  
8 52. He is given full credit for his guilty plea of one third which would reduce his sentence to ninety  
9 (90) months or seven and a half (7 ½) years' imprisonment.

10  
11 53. For Count 1, from a starting point of seventy-two (72) months, the sentence is increased by  
12 reason of the aggravating factors to seventy-five (75) months. The same percentage is applied  
13 for all the mitigating factors reducing the sentence to sixty-nine (69) months. He is given the  
14 full one third credit for his guilty plea of twenty-three (23) months thus reducing his sentence  
15 to forty-six (46) months or three years and eight months.  
16

17 54. The offences arose out of a related incident or facts. Applying the *Guidelines*, it is appropriate  
18 that the sentences run concurrently.

19  
20 55. Standing back and looking at the proposed sentence as a whole, this Court considers that the  
21 proposed sentence is proportionate to the offending. What was reprehensible and deserving of  
22 full condemnation is that the defendant produced a knife. Both victims were unarmed. Having  
23 voluntarily consumed alcohol in large quantities, the defendant reacted angrily to words spoken  
24 to him. While it may have been unplanned and impulsive, the reaction was clearly out of  
25 proportion to the situation at hand. The effects of his actions will be faced by one victim for  
26 the rest of his life and continues to be felt psychologically by the second victim to this day. The  
27 defendant appreciates the impact of what he has done. It is his genuine remorse which stands  
28 out to the Court. He is in visible distress as he sits in the dock, but this Court must balance the  
29 seriousness of what he has done with the factors in mitigation. The aims of sentencing in this  
30 case are punishment, deterrence and rehabilitation.  
31  
32  
33  
34  
35

1 **CURFEW**

2

3 56. The defendant has been on an electronic monitor with a curfew from 7:30pm to 5:00am from  
4 the 27<sup>th</sup> June 2022 through to today, a total of two hundred and eighty (280) days. The Court is  
5 guided by the *Cayman Islands Sentencing Guidelines* with respect to credit for curfew. It is  
6 noted that much of this was during the night hours. Therefore, as requested by his Counsel the  
7 Court proposes to give him credit of twenty-five percent (25%) for a total of seventy (70) days.

8

9 57. The sentence is as follows:-

10

(1) On Count 2 – 7 and ½ years.

11

(2) On Count 1 – 3 years and 8 months.

12

13

14 58. The sentences are to run concurrently.

15

16 59. Any time served is to be deducted.

17

18 60. He is to receive credit of seventy (70) days for the time spent on electronic monitor with curfew.

19

20 61. While in custody as recommended by the Probation Officer, the defendant is to complete anger  
21 management program, alcohol prevention treatment and individual counselling.

21

22

23 **Dated this the 3<sup>rd</sup> day of April 2023**

24



25 **Honourable Justice Cheryll Richards KC**  
26 **Judge of the Grand Court**