



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL DIVISION**

**Neutral Citation Number: [2025] CIGC (Crim) 23**

**Case No: IND0136/2024**

**REX**

**V**

**DEVINN SCOTT MCMILLAN**

**Appearances: Mr. Ben Brown, Counsel for the Prosecution  
Ms. Lene Doherty, Counsel for the Defence**

**Before: Hon. Justice Emma Peters**

**Sentence passed on: 20<sup>th</sup> June 2025**

**SENTENCE RULING**

**Introduction**

1. The Defendant is a 29-year-old man originally from South Africa who is in Grand Cayman on a work permit working with Red Sail Sports. He has pleaded guilty to an offence of Causing Grievous Bodily Harm (GBH) contrary to section 204 of the Penal Code.

2. He entered that guilty plea after a Goodyear Indication was given by me indicating (following agreement between the parties as to categorisation) that the sentence would be one of no more than 8 months imprisonment (after the credit to which he is entitled) and that the sentence would not be one of immediate custody.



### **The Facts that give rise to the offence**

3. The complainant, David Eaton, and the defendant were unknown to each other when a dispute broke out between them in the early hours of the 7<sup>th</sup> of April 2024 in the area of the external part of Seven Mile Lounge. There is limited evidence as to what exactly passed between them as it would appear that both men were to some extent intoxicated.
4. It is accepted by the Prosecution that, although the defendant threw two punches at the complainant and then kicked him once, the first punch was in lawful self defence. The second punch was in excess of what was required, as too was the kick. The parties agree that whilst this was an extremely unattractive offence by the defendant that it was an incident caused or significantly contributed to by the complainant and that whilst the defendant is accepted to have been initially acting in lawful self defence, his actions then went beyond that which was lawful and necessary.
5. The defendant was interviewed under caution having been identified by the complainant. He made no comment in answer to all questions but did provide a prepared statement suggesting that he had acted in lawful self-defence.

### **The Basis of Plea**

6. The parties have agreed a basis of plea and therefore the defendant is to be sentenced on the following basis:



- (i) On 7<sup>th</sup> April 2024, the Defendant was assaulted by the Complainant in Seven Mile Lounge, West Bay Road.
- (ii) As the Defendant was leaving the premises, the Complainant got into an argument with another male which the Defendant tried to de-escalate.
- (iii) After doing so, the Complainant went to attack the Defendant and attempted to punch him. A struggle ensued and the Defendant punched him to the face. The Defendant then backed away and the Complainant went to punch the Defendant again.
- (iv) In fear of further imminent attack, the Defendant punched the Complainant to the face a second time.
- (v) It is accepted those punches caused the nasal bone fractures and the loss of one front tooth.
- (vi) It is accepted that the Defendant acted in excessive self-defence on the basis that the level of force used in the punch was not reasonable in the circumstances.
- (vii) It is further accepted that when the Complainant fell to the ground the Defendant threw a kick towards the Complainant's body. The kick did not cause the injury.

### **The injuries**

7. Mr. Eaton suffered bruising to his face (both to his nose and his eye) and is said to have had a CT scan that showed fractured bones in his nose. Most notably from his perspective, he lost a front tooth and his recovery and treatment for that part of his injuries is ongoing and is very expensive.



## **Victim Impact Report**

8. Mr. Eaton outlined that he has little memory of the incident but has been significantly affected by the loss of his tooth not only from the embarrassment of the cosmetic impact upon him but also the financial cost of replacing it properly. He seeks compensation from the defendant to assist with those costs.

## **Social Inquiry Report**

9. The SIR is thorough and extremely helpful. The defendant was born and brought up in South Africa and has had very limited involvement with and support from his father. He has, in effect, been without any father figure in his life. He has encountered other challenges with his family. Of note the report indicates, and a letter from Dr. Greef confirms, that the defendant suffered significant trauma over several months when he was about 9 years of age. I shall not outline that trauma in any detail but suffice to say that it had and continues to have an impact on him. He has sought counselling and assistance by way of therapy over the years to try and help.
10. He is spoken of well by his employer and his colleague and it is said that Red Sails Sports hope to retain him in their employ. He appears to live slightly beyond his means, but I note that some of his expenses are on entertainment and health coaching (which could be the subject of cuts to save costs) and are perhaps not a necessity and, furthermore, the defendant notes that he accepts that he may have to “suffer” in order properly to compensate the victim.
11. A number of references are provided that show that whilst he has had some issues with alcohol in the past, the last year has shown him to have grown up and knuckled down to be a good employee, so much so that he is now qualified as a Ship’s Captain.



## Sentencing Guidelines

12. Both the Prosecution and the Defence agree this is a Category 3 offence and thus has a start point of 12 months custody with a range of a Community Order to 2 years custody. I have already given a Goodyear indication in which I excluded immediate custody and said the sentence would be no more than 8 months imprisonment. I agreed at the time of giving that indication that my mind would be open upon hearing mitigation to sentencing options that fell short of custody.
13. It is clear that whilst it may have been necessary for the defendant to defend himself initially, the level of force used thereafter was not reasonable. The second punch, and the kick to Mr. Eaton's body whilst he lay on the ground, were not self-defence and were wholly unwarranted. Furthermore, the offence was committed in a public place, at night, and in the presence of others (the victim's partner).
14. Whilst the parties agree that the offence is lower culpability based on this being excessive force in self defence, I am also clear that the use of a shod foot is the use of a weapon equivalent which would otherwise amount to a higher culpability factor.
15. Both men were intoxicated. But that is no excuse – and violence such as this in the early hours of the morning has no place on the streets of Grand Cayman. However, I also note that this defendant has no previous convictions and therefore this is properly described as an isolated incident of which he was not the original author, and it is clear from the SIR that it is one for which he has expressed genuine remorse. The defendant, of hitherto previous good character, is a working man who deeply regrets what he has done and shows every sign of having a realistic prospect of rehabilitation.

16. The accepted basis of plea, upon which I must sentence, makes clear that the defendant was not the cause or the genesis of this exchange. That fact is important since if I pass a sentence that results in a conviction today his hard-earned promotion to be a Captain of one of the most well-established sailing companies on this island will be in jeopardy since that will impact on whether his work permit is renewed.
17. The Department of Community Rehabilitation recommend in the SIR that I pass a Probation Order without conviction.
18. That recommendation together with the mitigation advanced, most notably his guilty plea, his previous good character, acknowledged remorse and the fact that he was not the catalyst for this incident of violence in the first place, lead me to conclude that I am properly able to pass a sentence which punishes and rehabilitates whilst at the same time giving the defendant hope for the future.



### **The Sentence of the Court**

19. I have been addressed on my powers to pass a sentence in accordance with the DCR recommendation, that is to say a Probation Order without conviction under section 35 of the Alternative Sentencing Act. I have been persuaded by the parties (both Prosecution and Defence) that I have such a power.
20. I see the rehabilitative logic in such an order given the facts of this case and the circumstances of the Defendant. I also accept that it best places the Defendant to pay the compensation that the complainant seeks.
21. That being so, I accept the recommendation, and I pass a Probation Order alongside a Community Service Order and a Compensation Order having regard to the circumstances, including the nature of the offence and the character and circumstances of the defendant.



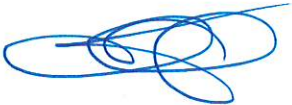
22. I make an order under sections 35(1)(b) and 36 of the Alternative Sentencing Act (2008 Revision) making a Probation Order (but without a conviction) that will be in place for two years from today.
23. Mr. McMillan should be under no illusion that if he fails in any way to comply with this or any part of this sentence or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence. He has through his attorney expresses his willingness to comply with the order.
24. During the next two years, I order:
  - (a) The Defendant submits to the supervision of a probation officer.
  - (b) The Defendant complies with all directions of the Probation Officer including attending any rehabilitative programme that is identified as suitable.
  - (c) The Defendant must engage with the Counselling Centre as instructed.
25. This part of the sentence is in order to ensure his continued good conduct and to prevent any repetition of offending.
26. Furthermore, I also impose a Community Sentence Order under s.42 of the Penal Code that he be required to complete 140 hours of unpaid work.

### **Compensation**

27. The victim has suffered financially given the costs associated with the necessary dental work to restore his dentition to its condition prior to this attack. I do not consider that I can order that the defendant pay all of those costs given his limited income, but I am going to order that he pay C\$3000.

28. He has already saved CI\$2000 which is much to his credit given the extent of his disposable income. He should pay that amount by way of compensation immediately, that is to say by no later than 30 June 2025. Thereafter he must pay a further CI\$1000 dollars to Mr. Eaton by no later than 28 February 2026.

**Dated this the 20<sup>th</sup> June 2025**



**Hon. Justice Emma Peters**  
**Judge of the Grand Court**