

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 60 of 2023**



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9
10 **V.**

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12 **BASIL NWOSU**
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15 **Appearances:** **Mr. Sam Clarke and Mr. Neil Kumar, Crown Counsel, Office of**
16 **the Director of Public Prosecutions for the Prosecution**

17
18 **Mrs. Lee Halliday-Davis of Brady Law for the Defence**
19

20
21 **Before:** **The Hon. Justice Cheryll Richards KC**
22

23 **Submissions Heard:** **2nd February 2024**
24

25 **Further Submissions:** **1st May 2024**
26

27 **Sentence Judgment:** **1st May 2024**
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32 ***Criminal Law - Sentencing Section 210 (b) of the Penal Code (2019 Revision), Guilty Plea,***
33 ***Reckless and Negligent Act, Compensation***
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JUDGMENT

1. The defendant is before the Court for sentencing following his guilty plea to the single count of Reckless and Negligent Act contrary to s.210 (b) of the *Penal Code* (2019 Revision).
2. The particulars are that, he on the 28th day of August 2022 at Seven Mile Beach, Grand Cayman being a public place navigated a green and white Seadoo GT Watercraft in a manner so rash and negligent as to endanger human life or safety.
3. The maximum penalty which is provided for by s.38 of the *Penal Code* is 4 years imprisonment and a fine.
4. The defendant first appeared before the Grand Court on the 23rd June 2023. He was arraigned and pleaded not guilty, and a trial date was set for the 14th November 2023.
5. Before the trial date the defendant provided a signed basis of plea dated 31st October 2023. He was re-arraigned and pleaded guilty.
6. On the 2nd February 2024, sentencing submissions were heard with judgment to be delivered on the 16th February 2024. On that date, the defendant made an offer to pay compensation and asked for further time until the 24th April 2024 to make arrangements to pay this. On the 24th April 2024 a further adjournment to the 1st May 2024 was sought and granted.

THE FACTS

7. The prosecution has provided a summary of facts which in brief is as follows: -

1 The victim and the defendant are co-workers. On Sunday 28th August 2023, their
2 employer had a fun day event at the public beach. Both were engaged in riding jet
3 skis throughout the day. There was a collision between the two jet skis ridden by
4 the defendant and the victim.



6 **THE BASIS OF PLEA**

- 7
- 8 8. The defendant accepts that he was reckless and was not able to avoid the collision because
9 of the speed which he was travelling. The agreed basis of plea is as follows: -

10

11 *"I am willing to plead guilty to a single count of Reckless and Negligent Act,*
12 *contrary to section 210(b) of the Penal Code (2019 Revision) on the following*
13 *basis.*

14

15 *On the 28th of August 2022, I attended an event that was held by Massive Equipment*
16 *and Rental Ltd, at the Seven Mile Public Beach.*

17

18 *I borrowed a jet-ski and life jacket from a co-worker at the beach.*

19

20 *I have previously been on a jet ski on one occasion.*

21

22 *I drove the jet ski out of the 5 – mile zone and was heading in the direction of the*
23 *Kimpton Seafire Resort. I was outside of the cordoned off area which is marked by*
24 *a buoy. The buoy indicates the area that swimmers are allowed to swim. Outside*
25 *of the buoy is considered open water.*

26

27 *As I was travelling, I saw another jet-ski being operated by Junior Whittaker a co-*
28 *worker.*

29

30 *I do not accept that I was doing donuts in the sea before the collision,*



1
2 *I do not agree that I was speeding within cordoned zone.*

3
4 *It was my intention to drive past him on the inside close to the beach. As I was*
5 *travelling past him, he turned his jet ski and stopped. I was not expecting him to*
6 *do this. He turned into the path of my jet-ski.*

7
8 *My jet-ski collided with his jet-ski. It clipped the back right side. We both ended*
9 *up in the water. Another jet-ski took Junior back to shore. I eventually was able to*
10 *get back on the jet ski I was driving and then attempted to drive back to shore, I*
11 *also attempted to take the other jet ski back with me as I did not want to leave it*
12 *drifting in the water. I met the owner of the other jet ski, and he took it from me.*

13
14 *I am sorry for the injuries that were caused. When he turned the jet-ski, I was too*
15 *close to avoid him. If I could have avoided him, I would have as I had no reason*
16 *to deliberately drive into his ski,*

17
18 *I accept that I was reckless because I was not able to avoid the collision with the*
19 *jet-ski being ridden by Junior Whittaker because of the speed that I was travelling.”*

20
21 **THE VICTIM IMPACT REPORT**

- 22
23 9. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact
24 Report dated 5th January 2024 (“VIR”). This indicates that the victim was admitted to the
25 Hospital for six days because of the incident. He suffered terrible pain from a broken
26 femur. The injury affected his mobility, and he continues to experience discomfort in his
27 leg. Additional surgery may be needed in the future and his doctor indicates that recovery
28 could take years.

1 10. His medical expenses were not entirely covered by insurance leaving him with a balance
2 of \$4,286.00. He was unable to work for some five months due to his injury resulting in
3 some \$9,600.00 to \$10,400.00 in lost wages.

4
5 11. The Probation Officer concluded that the incident had a devastating physical and
6 emotional impact on the victim.



7
8 **ANTECEDENT HISTORY**

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10 12. The defendant has no previous convictions in the Cayman Islands and in his home
11 country of Jamaica.

12
13 **SOCIAL INQUIRY REPORT**

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15 13. A Social Inquiry Report dated 27th December 2023 (“SIR”) has been provided by the
16 DCR. The Court takes into account everything said therein in favour of the defendant.
17 The defendant is now twenty-four years old. He is a Jamaican national who has been here
18 on a work permit since 2021. The defendant began working part time at the age of fifteen
19 years and full time at the age of eighteen years. From his earnings he supports his family
20 which consists of four brothers, the youngest are aged sixteen, twelve and ten years old.

21
22 14. The defendant is assessed as being at very low risk of re-offending. Community contacts
23 speak highly of him and of his good character.

24
25 15. The Probation Officer states that the incident which took place at a family fun day seems
26 to have happened by mistake and that no specific risks or needs were identified in
27 assessing the defendant that would require intervention by DCR. He appears to be a
28 hardworking and responsible individual who supports his family.

29
30 16. The Officer therefore recommends a conditional discharge and that no conviction be
31 recorded as it would negatively impact his employment.



1 **THE SUBMISSIONS**

2
3 17. There are no offence specific guidelines in the Cayman Islands. Counsel for the
4 prosecution submitted that under the general guidelines the victim suffered significant
5 physical harm noting his injuries as outlined in the VIR. It is said that the culpability
6 would be at the level of Category 2 on the basis that he was reckless as to whether harm
7 is caused.

8
9 18. The prosecution submitted that an analogous offence is that of Assault Occasioning
10 Actual Bodily Harm. (“ABH”) Counsel said that while this offence has a slightly higher
11 maximum of 5 years imprisonment rather than 4 years the *Cayman Islands Sentencing*
12 *Guidelines* for this offence would provide some assistance to the Court. Under those
13 *Guidelines* the harm would be at the High level of because the injury is serious in the
14 context of the offence. The culpability would be low because of the lack of pre-
15 meditation. If this was an offence of Assault ABH the starting point would be 12 months
16 custody with a range of sentence, of 6 to 8 months.

17
18 19. The defence submitted that the harm caused in this case could not have been foreseen
19 and to some extent was beyond the defendant’s’ control. Counsel said that the defendant
20 was in open waters beyond the reef and there is no evidence that it was crowded.

21
22 20. Counsel pointed to the favourable SIR, the good reports about the defendant from those
23 who know him, his very low risk of reoffending and the recommendations of the
24 Probation Officer. Counsel also noted that the defendant is willing to pay compensation.

25
26 **THE SENTENCE**

27
28 21. It is difficult to accept the submission of defence Counsel that the harm caused could not
29 have been foreseen. Foreseeability is at the very heart of recklessness. In this case riding
30 the jet ski at a speed where there is an inability to react in the event of a hazard is

1 dangerous. The risk would have been evident. The offending is of a serious nature which
2 has had a significant effect on and brought extensive loss to the victim.

3
4 22. If the Assault ABH *Guidelines* are followed as is suggested by Counsel for the
5 prosecution, the starting point of 12 months imprisonment would be adjusted to reflect
6 the lower maximum penalty to one of 10 months.

7
8 23. Taking account of all the mitigation as outlined in the Reports and by his Counsel
9 including his remorse, no previous convictions, good character and personal
10 circumstances, the sentence would be reduced by 3 months to 7 months or 28 weeks.
11 Credit for his guilty plea of twenty five percent (25%) of this, the plea having been
12 entered after a trial date was set would be 7 weeks for a total sentence of 21 weeks
13 imprisonment.

14
15 24. However, in this case, the personal circumstances of the defendant are significant. He is
16 at very low risk of re-offending. He has no risks or needs which require the intervention
17 of DCR. In the Court's view the primary aim of sentencing in this case must be
18 compensation of the victim.

19
20 25. It is therefore proposed to accept and follow the recommendations of the Probation
21 Officer and to impose a conditional discharge so that the defendant can continue to work
22 and make reparation to the victim.

23
24 26. The defendant earns \$1,600.00 per month from which he pays rent leaving him with a
25 small balance of about \$600.00 from which he needs to buy food and other supplies.
26 Taking into account his means as explained to the Court by his Counsel today, a
27 compensation order is made with the compensation figure set at \$3,800.00.

28
29 27. The defendant is to pay \$2,000.00 today to the victim which he has done. He is to pay
30 the balance of \$1,800.00 to the victim over a period of nine months at the rate of \$200.00
31 per month through the Courts Funds Office. He is to commence payment on the 28th day

1 of May 2024 and continue on the 28th day of each month thereafter through to completion
2 by the 31st January 2025. The alternative to the compensation order is 6 months
3 imprisonment.

4
5 28. The defendant is conditionally discharged. Pursuant to s. 41 of the *Penal Code* no
6 conviction is to be recorded against the defendant subject to him being of good behaviour
7 for a period of nine months from the date hereof to the 31st January 2025 and to him
8 completing payments as per the Compensation Order.

9
10 **Dated this the 1st May 2024**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

11
12 **The Hon. Justice Cheryll Richards KC**
13 **Judge of the Grand Court**