



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 0018 of 2022

IND# 21/21

SC#0358/21

BETWEEN:

GIOSER ACOSTA GONZALES

Appellant

- and -

His Majesty the King

Respondent

BEFORE:

**The Rt. Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal**

Appearances:

**Appellant in Person
Mr. Scott Wainwright of the Office of the DPP for the Respondent**

JUDGMENT

**Transcript of oral judgment dated 3 November 2023 and Approved for
Release 4 March 2024**

MOSES, JA.

1. This is an application for permission to appeal against a sentence, the total sentence of seven years, passed by acting Justice Chapple. There has been no written application setting out any grounds of appeal. We have had the benefit of the respondent's submissions against what, in technical terms, is no application at all since there has been no written application and no grounds has been set out.

2. But Mr. Gonzales has appeared before us today and the court has allowed him to make oral submissions as to why he suggests that we should reduce the total sentence. He has explained to us the basis why he feels that in future he will not commit further offences and is doing well in prison, and he asks that we consider the application and so we have done so.
3. Since it is an application, we need not deal with this as fully as we would if this was an appeal. It suffices to say that for an offence of wounding with intent committed on the 24th of October 2020, following a trial which he pleaded not guilty, the applicant was sentenced to a term of six years in prison.
4. The wounding with intent was a serious offence, when after an altercation the applicant produced a hatchet and struck the victim twice across the back of his head. It did not cause lasting physical injury, but in the victim impact statement, the victim described the gravity of the effect on him of this undoubtedly unpleasant wounding.
5. The circumstances were aggravated by the fact that on the 19th of January 2021, in other words, but a few months after, the applicant committed a further offence of violence, this time assault occasioning actual bodily harm. The applicant provoked an altercation between him and the victim outside a licensed premises in George Town. When the victim approached him, the applicant threw liquid into his face. The victim then picked up a chair, but then the applicant punched him several times about the head and face and continued to strike him as he lay motionless on the ground. He suffered a fractured nose and bloodshot eye and possibly mild concussion. The sentence for that offence was 12 months, consecutive.

6. The applicant had a criminal record which as -- his defence counsel said at the time -- was not particularly serious, there was a previous offence of violence sometime before in 2015. The maximum sentence for which was 30-days imprisonment suspended for two-years and community service order. There were other antisocial offences and, also convictions for the consumption of Ganja and cocaine.
7. The features that counted relevantly in his favour were the fact that after an unfortunate childhood, this applicant, undoubtedly suffered, as a subsequent psychiatric report revealed, dated August the 8th, 2022, from schizoaffective features, which manifest themselves as depression, suicidal ideation and the onset of psychosis. The judge commented that it was not clear what effect that had on his behaviour during these two occasions of violence, but was prepared to assume, in our view, rightly, that they must have played their part. There was an inconsequential Social Enquiry Report.
8. It is also worth noting that there was a very considerable lapse of time between the trial for wounding with intent and the sentence which was passed in December 2022.
9. It's plain that the judge took the view that both offences fell within category two of their respective guidelines, where, in relation to wounding with intent, the bracket is between five to nine years with a starting point of six and for the actual bodily harm, twelve months' custody with a bracket of six- to eighteen-months. The judge struck the balance right in the middle of those guideline periods.
10. As we have indicated, Mr. Gonzales today, has been speaking of the progress he has made in prison, of the diplomas he has earned and how after a period he has spent in prison, he sees the importance of taking advantage of the courses which he has

undergone. And he has shown us the certificates that he has received as a result. All of that counts greatly in his favour and the court is pleased to see that some advantage is being taken of this sentence.

11. But we have to say, there is absolutely no argument that we can identify that would establish that this sentence was manifestly excessive. It was a -- particularly in relation to the actual bodily harm -- arguably a merciful sentence bearing in mind the victim had a broken nose. In those circumstances, we refuse this application.