

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

4 **INDICTMENT NO: 17 & 24 of 2022**
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8 **R**
9

10 **V.**
11

12 **HOWARD LEE EBANKS**
13

14 **Appearances:** **Ms. Angelique McLoughlin, Crown Counsel, Office of the**
15 **Director of Public Prosecutions for the Prosecution**

16 **Mrs. Lee Halliday-Davis for the Defence**
17

18 **Before:** **The Hon. Justice Cheryll Richards KC**

19 **Submissions Heard:** **21st September 2023**
20

21 **Further Submissions:** **12th December 2023**
22

23 **Sentence Judgment:** **12th December 2023**
24

25
26 **HEADNOTE**

27
28 ***Criminal Law - Inflicting Grievous Bodily Harm and Wounding contrary to s.204 of the***
29 ***Penal Code (2019 Revision) - Sentencing following guilty plea –Cayman Islands Sentencing***
30 ***Guidelines, Principles on Sentencing.***
31



SENTENCE JUDGMENT

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2
3 1. The defendant is before the Court for sentencing following his guilty pleas to offences
4 charged on two Indictments.
5
- 6 2. **Indictment 17 of 2022** charges him with the offence of Causing Grievous Bodily Harm
7 with Intent contrary to s.203 of the *Penal Code* (2019 Revision). The defendant first
8 appeared in the Grand Court on this Indictment on the 18th March 2022. There were two
9 mention dates for legal aid arrangements to be put in place for his representation.
10
- 11 3. On the 27th May 2022 defence Counsel advised that a psychological report was expected
12 by the second half of June 2022. There were delays in obtaining this report.
13
- 14 4. On the 28th October 2022, the defendant pleaded guilty to the lesser offence of Inflicting
15 Grievous Bodily Harm contrary to s.204 of the *Penal Code*. This plea is acceptable to
16 the prosecution. The particulars are that he on or around the 18th day of November 2021
17 in the vicinity of Hell Gas Station in West Bay, Grand Cayman, Cayman Islands,
18 unlawfully and maliciously caused grievous bodily harm to Nicholas Derrick
19 McLaughlin.
20
- 21 5. The maximum penalty for this offence is 7 years imprisonment.
22
- 23 6. In respect of **Indictment 24 of 2022**, the defendant first appeared in the Grand Court on
24 the 29th April 2022. He was arraigned on the 28th October 2022 and pleaded guilty to the
25 single count of Wounding contrary to s.204 of the *Penal Code* (2021 Revision). The
26 particulars are that he on or around the 14th day of November 2021 in the vicinity of
27 Kelly's Rainbow Bar, Birch Tree Hill, West Bay, Grand Cayman, Cayman Islands,
28 unlawfully and maliciously wounded Devin Anthony Ebanks.
29
- 30 7. The maximum penalty for this offence is 7 years imprisonment.
31



1 **THE FACTS – INDICTMENT 24/22- VICTIM DEVIN ANTHONY EBANKS**

2
3 8. The prosecution has provided summaries of the facts for both offences. The offence
4 charged in Indictment 24/22 was the first in time.

5
6 9. On Sunday the 14th November 2021 the police received a report of an assault at Kelly’s
7 Bar in West Bay. Upon arrival they observed the victim who had a number of what
8 appeared to be serious facial injuries. An ambulance was called, and he was transported
9 to the George Town Hospital.

10
11 10. The evidence as to how he received these injuries comes primarily from Closed Circuit
12 Television (“CCTV”) footage recorded at the Bar. The footage was tendered in evidence
13 as an Exhibit for the purpose of this sentence hearing.

14
15 11. It showed the victim at the material time, sitting on a chair on the outside of the Bar. He
16 was drinking and appeared to be intoxicated. At about 12:00 midnight as the Bar was
17 about to be closed, the defendant is seen approaching the victim. He asked the victim
18 what he had said about his brother. The victim told him that he did not know what he was
19 talking about. The defendant then broke a Heineken beer bottle and stepped towards the
20 victim as though he was going to cut him. He had his right hand up in the air (shoulder
21 height) and was gesticulating.

22
23 12. The defendant then advanced upon the victim and punched him in the face several times,
24 (at 12:21:38 in the footage). He then grabbed the victim by the shirt/throat and threw him
25 head first into the wall of the Bar. The victim’s body became very limp, and he appeared
26 to have passed out (12:22:00). Several people were standing around and appeared to be
27 shouting at the defendant to stop but he ignored them and at times, approached them in a
28 threatening manner. He then walked across the street, rushed back to the victim who
29 appeared to be unconscious on the ground and kicked him in the head/chest several times
30 and then stomped on his head (12:22:20). The victim was not moving and appeared to
31 be lifeless. The defendant then went back across the street and again in an aggressive and



1
2
3 hasty manner, returned to the victim, picked up a metal stool and struck him in his head
4 whilst he was lying there.

5
6 13. The victim was taken to the George Town Hospital. Two medical reports were obtained
7 as to the nature of the injuries which he sustained. In a statement dated 23rd November
8 2021, Dr Nickicia Campbell states that she examined the victim on the 14th November
9 2021 at 1:07am at the Hospital. The doctor found that the victim's neurology system had
10 reduced responsiveness, and he was agitated. The victim had abrasions and contusions to
11 his head and all over his face. His lower lip was swollen and contused. His left eye was
12 swollen closed and there was periorbital ecchymosis. His condition was said to be
13 serious, consistent with infliction by blunt trauma but not likely to be permanent. He was
14 referred to the Ear, Nose and Throat ("ENT") Specialist.

15
16 14. In a statement dated 31st May 2022, Dr Gyanendra Jha, ENT Specialist states that he
17 examined the victim on the 16th November 202[1] at 10:33am at the George Town
18 Hospital. The doctor found that the victim had painful contusions (bruises) all over his
19 face, marked tenderness of his nasal bones, minimal contusion of the right tympanic
20 membrane (ear drum), small perforation of the left tympanic membrane and tenderness
21 of the pinna (visible portion of outer ear). The victim was advised to have minor surgery
22 to fix the hole in his left ear drum, but he did not attend for further management. Dr Jha
23 also describes the condition as serious, consistent with infliction by blunt trauma but not
24 likely to be permanent.

25
26 15. The defendant was arrested on the 18th November 2021 and when cautioned, he replied
27 ***"yes I beat Devin last Saturday night. Sir he killed my brother enuh sir and it hurts"***.

1
2 16. The defendant was interviewed under caution on the 1st December 2021, in the presence
3 of his attorney. He produced two prepared statements. In the first he stated: -
4

5 *“On the 29th December 2002 there was a home invasion at my brother’s (Todd*
6 *Powery) house in West Bay. The men came in with a firearm and knives. I was*
7 *staying at my brother’s house that night. There was a struggle over the weapons. It*
8 *resulted in Christopher dying from a knife wound that he brought into the house.*
9 *Yoandy Swaby was injured.*

10
11 *My brother and I went to trial, we were acquitted under self defence.*

12
13 *9th March 2005, my brother Todd Powery was killed. He was shot outside his*
14 *mother’s house. No one was arrested but it was always known in the community*
15 *that it was a revenge attack.*

16
17 *Devon is the cousin of Christopher Jefferson. I was standing at the side of the Kellys*
18 *Bar and he came over to me he was taunting me and kept saying I am a dead man,*
19 *he also mentioned my brother. I told him to go away and he kept saying it.*
20 *Eventually he walked away.*

21
22 *The whole incident came back to me. The killing of my brother and the home*
23 *invasion. I lost it. I accept that is me on the CCTV.*

24
25 *Watching it now, I have difficulty believing that it is me.*

26
27 *I am truly sorry.”*





1 17. In the second statement he stated:-

2
3 *“I just want to say that I am really sorry. I cannot express it any better. It was like*
4 *I was reliving the whole incident with my brother. I really thought that he was telling*
5 *me that I am next and he was talking about my brother.”*
6

7 **THE FACTS – INDICTMENT 17/2022 – VICTIM NICHOLAS McLAUGHLIN**
8

9 18. On Thursday 18th November 2021, sometime in the early afternoon, the victim Derrick
10 McLaughlin went to Pop-A-Top liquor store located on Powell Smith Road, West Bay
11 to purchase beers. The defendant was working there as the cashier. The victim paid cash
12 for the beers and requested his receipt. The defendant informed him that the cash register
13 was taking too long to produce the receipt and since he had paid the exact amount, he did
14 not need a receipt.
15

16 19. The victim insisted that he wanted a receipt for his purchase and an argument developed
17 between the men. Threats were made by both parties to each other, and the defendant
18 armed himself with a metal bat and hit the victim on his left forearm.
19

20 20. A short while later another male intervened and held onto the victim and escorted him
21 from the building. The victim eventually left the location and walked to Hell Gas Station
22 on Hell Road where he sat drinking the remaining bottles of beers. The defendant who
23 was driving past, turned his vehicle around, and drove into the Hell Gas Station
24 compound. He stopped, alighted from his vehicle with a machete and began chopping
25 the victim repeatedly in his head. The victim struggled with the defendant and was able
26 to disarm him. The machete fell, and a third party picked it up and secured it. It was later
27 handed over to the police. The defendant got back into his vehicle and left the location.
28

1 21. An ambulance was called, and the victim was transported to the George Town Hospital
2 where he was treated for his injuries. Photographs of his injuries have been produced for
3 the purpose of this sentence hearing.

4
5 22. The medical notes and a medical report from Dr. Brandon Bernard were also provided.
6 Dr. Bernard stated that he examined the victim on the 11th November 2021. The victim
7 was suffering from the following injuries: -

8
9 i) Two incised (chop) wounds to the scalp. These were parallel in sagittal
10 orientation (left and right side), measuring 8cm and 6cm. The 8cm
11 laceration is the deepest and extends to the pericranium¹ but there is no
12 palpable defect in the bone, there is an active arterial bleed in the laceration.
13 The 6 cm laceration is superficial - approximately 2 to 3mm deep.

14
15 ii) 5cm incised (sharp) wound present to the volar aspect (radius and ulna) of
16 the right wrist. There were no exposed bones or tendons.

17
18 iii) 3cm incised wound present to the distal phalanx² of the thumb.

19
20 iv) 3cm incised wound to the left web space of the thumb.

21
22 v) 1.5cm incised wound to the right proximal interphalangeal joint³.

23
24 23. The motor and sensory function of the radial, ulna and median nerves were intact in both
25 hands. He was referred to a Neurosurgeon, but it is unclear whether he attended this
26 referral. Dr. Bernard gave his opinion that the injuries are not serious, were consistent
27 with sharp force trauma and were not likely to be permanent.

¹ The fibrous membrane covering the external surface of the skull.

² Third of the three bones in each finger.

³ The articulation between the proximal and middle phalanx in the hand.



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24. The defendant was arrested on the 19th November 2021 and cautioned during which he admitted to chopping the victim. The defendant was later interviewed and made full admissions to the offence.



VICTIM IMPACT REPORTS

25. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report (“VIR”) in respect of victim Devin Ebanks which is dated 23rd February 2023.

26. Mr. Ebanks advised that he continues to experience debilitating pain from the punctured ear drum and that because of this he is no longer able to work. Emotionally he said that the incident “bothers him” from time to time. He was reluctant to engage in full discussion with the Probation Officer because he did not want the defendant to perceive any suggestion in respect of sentence as coming from him.

27. The Probation Officer’s assessment/evaluation is that the offence has significantly impacted the victim and that his reluctance to speak indicates his fear of the defendant and of possible reprisal.

28. The victim McLaughlin declined to participate in the preparation of a VIR.

ANTECEDENT HISTORY

29. The defendant has nineteen previous convictions. Almost all are for drug offences. On the 20th March 2020 he was sentenced to 6 months imprisonment suspended for two years on charge 0017/2019, Assault Causing Actual Bodily Harm. The Probation Officer states that his compliance with this Order was poor but that no breach report was filed.

1 30. The Court notes that the instant offences were committed during the period of the
2 suspended sentence imposed.



3
4 **PREVIOUS CASE INFORMATION**

5
6 31. The Court file with respect to the 2020 case was accessed. The offending relates to an
7 incident on 1st September 2018 on the public beach. The defendant had an argument with
8 the victim which was said to be over money. CCTV footage showed them in
9 conversation. The victim walked away. The defendant approached with an iron pipe
10 which he used to hit the victim. The victim went under a parked vehicle. The defendant
11 walked away and returned with a machete which he raised toward the victim. The
12 defendant was taken away from the area by other persons.

13
14 32. The CCTV footage was obtained and made available for viewing. Both Counsel were
15 given an opportunity to make further submissions on the effects upon sentencing of this
16 earlier offending.

17
18 **SOCIAL INQUIRY REPORT**

19
20 33. The DCR has provided a Social Inquiry Report (“SIR”) dated 27th February 2023 in
21 respect of the defendant. The Court has read this report in its entirety and takes into
22 account everything said therein in favour of the defendant.

23
24 34. The defendant is 38 years old. He has the care of one child aged 9 years who is the son
25 of his partner.

26
27 35. The defendant was raised in a single parent household and grew up without a father,
28 which he says was difficult for him. At an early age he began using drugs and alcohol
29 and getting into trouble with the law. In order for him to have greater discipline and



1 monitoring he went to live with various friends and family members. Due to his
2 behaviour, he was expelled from school before completing high school.

3
4 36. Upon leaving school he worked at various jobs, some of which were seasonal, until 2008
5 when he was sentenced to 8 years imprisonment for Importation of Cocaine. Following
6 his release from Prison, he is said to have engaged well with the DCR during his parole
7 period.

8
9 37. Between 2015 and 2020 he was gainfully employed at two jobs. Since then, he has been
10 employed at his brother's store and supplements his income by doing gardening work.

11
12 38. The Officer describes him as having a long history of alcohol and drug use. This started
13 in his school years and reached excessive levels in early adulthood. The defendant reports
14 that his excessive drinking continued until about 12 months before the date of the SIR.
15 He attributes the reduction to his gardening work which has limited the time that he has
16 available to drink.

17
18 39. In 2002 he was involved in a violent incident in the home of his brother where a man was
19 killed. In 2005 his brother was shot and killed outside their mother's house. The
20 defendant raised the impact of the violent incidents upon him, with the Probation Officer.

21
22 40. Under the heading Attitude Towards Offending the defendant is recorded as reporting
23 that he has long held a belief that the victim was involved in the murder of his brother.
24 He told the Officer that the victim said to him on the night "*I gonna lay you down beside*
25 *him*" and that this angered him. He said that he had been intoxicated at the time and
26 would not have behaved in the way he did, had he been sober.

27
28 41. The Officer notes that while the defendant expressed regret at what he had done, this was
29 not due to any concern for the victim but is as to the situation that the defendant finds
30 himself in. The defendant stated that the victim brought this on himself. The Officer's

1 view is that the defendant demonstrated a lack of victim awareness or empathy. The
2 Officer states: -

3
4 *“In acting as he did, Mr. Ebanks displayed the propensity to act with violence when*
5 *faced with what he perceived to be provocation. As discussed, he has justified his*
6 *actions by stating that he felt the victim was speaking ill of his (deceased) brother*
7 *and also that he felt threatened. He has attempted to blame the victim for what*
8 *occurred and also demonstrated a complete lack of consequential thinking*
9 *regarding how his actions would impact himself or the victim.”*

10
11 42. With respect to the second incident four days later, the Probation Officer records that the
12 defendant said that after the victim left the store, he went outside to smoke a cigarette to
13 calm down after the altercation. It was then that he felt blood on his face, which “triggered
14 him” and he got into his car to go in search of the victim. The Probation Officer states: -

15
16 *“As with the other matter, Mr. Ebanks cited his PTSD as being a contributing factor*
17 *to his behaviour as he said that he was still impacted by what occurred four days*
18 *prior. What is clear is that this was a targeted attack perpetrated against an*
19 *unarmed individual with no consideration given to the possible consequences. The*
20 *fact that the initial altercation (in the store) concluded with the victim leaving the*
21 *area should have meant that the incident had ended. The client however, having*
22 *allegedly gone outside “to calm down”, then made the decision to get in his vehicle*
23 *to essentially hunt the victim down before indiscriminately attacking him with a*
24 *machete. Consideration needs to be given not only to the fear that this may have*
25 *caused the victim to suffer, but also to members of the public who may have*
26 *witnessed the incident unfold.*

27
28 ...



1 *Mr. Ebanks expressed some understanding of the seriousness of the offence but does*
2 *not believe that the victim would have suffered any long term psychological harm*
3 *as a result of the incident. This lack of victim awareness is concerning and believing*
4 *that no serious harm was done may mean that the client will not be deterred from*
5 *acting in a similar manner in future.”*

6
7 43. The defendant was assessed using the LS/CMI/Risk/Need Assessment Tool. His overall
8 risk of re-offending was assessed as high with three of the eight criminogenic factors in
9 the Very High category.

10
11 44. The Officer concludes that he has not demonstrated a full understanding of the
12 seriousness of these offences and has not shown a significant awareness of the impact of
13 his actions on the victims.



14
15 **FORENSIC PSYCHOLOGICAL EVALUATION REPORT**

16
17 45. Dr. Liezel Auguelova has provided a Forensic Psychological Evaluation Report dated
18 22nd September 2022 in respect of the defendant. It was found that the defendant’s
19 psychometric profile indicates a strong presence of depressive and anxiety-based
20 psychopathology and suggests significant elevations in the areas of Post Traumatic Stress
21 Disorder (“PTSD”), Alcohol Use Disorder, and Adjustment Disorder with Anxiety.
22 Some of his responses are said to indicate thought dysfunction, specifically, persecutory
23 ideation such as believing that others seek to harm him, and he presents with paranoia.
24 He does use certain defence mechanisms, such as social withdrawal tendencies but is still
25 likely to experience dissonance and anxiety as this coping strategy will only be partially
26 effective.

27
28 46. The doctor further states that the defendant’s psychometric profile highlights that he
29 appears to have experienced a traumatic event that may have involved a threatening
30 situation or serious injury during which he suffered intense fear or pain. Although he is



1 not characteristically fearful or anxious, the memory of his experience appears to return
2 in intensive and distressing recollections. When these cannot be avoided, as in recurring
3 nightmares or flashbacks, he may become terrified once again and exhibit a variety of
4 signs of intense anxiety. Anticipating these recurrences may result in persistent anxious
5 symptoms, such as difficulty sleeping, an exaggerated startle response, or a protectively
6 numb and detached disposition.

7
8 47. The doctor notes that recurrent periods of alcohol abuse appear to be a major problem for
9 him and that his excessive drinking is an extension of his stimulus-seeking lifestyle. He
10 may use this to maintain his social relationships which he otherwise attempts to avoid,
11 due to trust related issues. His psychometric profile suggests that he may be experiencing
12 a generalised anxiety disorder. In the doctors' opinion his results pertaining to criminal
13 orientation indicate that he presents with a low risk of pro-criminal attitude or
14 irresponsibility. On the psychopathy scales, he presents with impulsivity and angry
15 detachment. Having considered collateral information under the heading Integration of
16 Findings, the doctor states that the low risk of pro-criminal attitude is confirmed and that
17 he is noted to have a high level of ability to procure resources when he is in distress.
18 According to the doctor this implies that he does not have personality traits inherent in
19 criminal personality profiles. He acts impulsively and will use aggression when he
20 becomes defensive.

21
22 48. The defendant was assessed on the PTSD scale for DSM-5 Criteria A to G. He scored
23 highly in each criterion⁴. The doctor considered whether the symptoms could be better
24 explained by substances or another condition or other medical diagnosis and concluded
25 that they could not. The conclusion is that the defendant meets the criteria of a PTSD
26 diagnosis with all criteria A-G being met. He also meets the criteria for the diagnosis of

⁴ Criterion A – DMS-5 PTSD Stressor Criterion, Criterion B -Intrusion Symptoms, Criterion D - Negative Alterations in Cognitions and Mood Associated with Traumatic Events(s), Criterion E - Marked Alterations in Arousal and Reactivity Associated with the Traumatic Events(s), Criterion F- Symptom Duration of at Least 1 month, Criterion G - PTSD Symptoms Must Cause Clinically Significant Distress or Impairment



1 Adjustment Disorder, with anxiety and Alcohol Use Disorder, to a moderate level. He
2 does not meet the criteria for dissociative subtype neither does he present with a “delayed
3 onset” profile.

4
5 49. It is said that the defendant has witnessed and personally experienced an array of
6 traumatic events since childhood. However, the trauma caused during the two incidents,
7 namely the house intrusion accompanied by physical assault and the shooting and death
8 of his brother have caused the most psychological distress for him.

9
10 50. Doctor describes what constitutes a trigger: -

11
12 *“A trigger is something that reminds an individual of a traumatic experience.*
13 *PTSD triggers can be internal (feelings or emotions and somatic activation) and*
14 *external (situations, people, places, or objects). Trigger cues may also be simple*
15 *brief sensations that formed part of an individual’s traumatic event, such as a tone*
16 *of voice, a certain smell, or a touch, a proxemics and particular movements. When*
17 *such triggers are present, people may be reminded of the event or even feel as if*
18 *they are re-experiencing the trauma all over again. Mr. Ebanks is triggered by*
19 *situations and people where he feels physically threatened and his life is at risk. He*
20 *believes death is imminent.*

21
22 *Experiencing a trigger is not just about becoming frustrated or agitated. In*
23 *individuals with a history of trauma, being around anything that reminds them of a*
24 *traumatic experience can make them feel like they’re experiencing the trauma all*
25 *over again. Mr. Ebanks experiences triggers when he is confronted by individuals*
26 *who threaten his life or when the death of his brother is brought to mind.”*

27
28 51. The concluding opinion is that based on the results of this evaluation, with a reasonable
29 degree of psychological certainty, the defendant started suffering from PTSD after he
30 was physically assaulted in December 2002. The death of his brother was a trigger, and

1 this has caused more psychological distress which may have culminated in Complex
2 PTSD. This thus indicates that there is a correlation between the impact of mental illness
3 on the defendant and the offending behaviour.
4

5 52. Doctor recommends that he has psychotherapeutic intervention to include initial short
6 term behaviour management or group therapy programmes targeted to alcohol and
7 substance abuse.



8
9 **THE SUBMISSIONS**

10
11 53. Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for the
12 offence of Wounding.

13
14 54. There is disagreement as to the categorisation of the offences in respect of both
15 Indictments.

16
17 55. With respect to Indictment 24 of 2022, the prosecution submitted that the harm caused is
18 serious in the context of the offence given the nature of the injuries sustained. Counsel
19 referred the Court to the cases of *R. v. Smith, (Grant Christopher)*⁵, *R. v. Christopher*
20 *John Duff*⁶ and *R. v. Xue*⁷.

21
22 56. The culpability is said to be at the Higher level because of the use of a weapon and the
23 prolonged or repeated nature of the assault. An offence of Greater Harm and Higher
24 Culpability is a Category 1 offence with a starting point of 5 years custody and a range
25 of sentence of 3 to 6 years custody.

26
27 57. The prosecution submitted that the aggravating factors include the defendant's
28 antecedent record, the attack occurred in a public place in view of members of the public,

⁵ [2015] EWCA Crim 1482

⁶ [2016] EWCA Crim 1404

⁷ [2020] EWCA Crim 587



1 the victim was a vulnerable individual as he faces mental health challenges and that this
2 was a revenge attack.

3
4 58. Defence Counsel submitted that the victim Ebanks is the cousin of the man who entered
5 the home of the defendant's brother in 2002. The allegation is that the family of the victim
6 was responsible for the killing of the defendant's brother in 2002. Counsel submitted that
7 the defendant's account of the incident should be viewed in conjunction with the
8 psychological report.

9
10 59. Counsel notes that the victim was admitted to the hospital and released by the 16th
11 November 2022 and submits that the injuries sustained are not serious in the context of
12 the offence.

13
14 60. It is accepted by the defence that this is an offence of Higher Culpability because of the
15 use of a weapon (the stool) and the prolonged or repeated nature of the offence. It is not
16 accepted that this was a revenge attack given the length of time 19 and 1/2 years which
17 has elapsed since the earlier incident and the contents of the psychological report.

18
19 61. An offence of Lesser Harm and Higher Culpability is a Category 2 offence with a starting
20 point of 3 years custody and a range of sentence of 2 to 4 years custody.

21
22 62. With respect to Indictment 17 of 2022, the prosecution submitted that the Harm is at the
23 level of Greater Harm because of the two chops to the head of the victim, one of which
24 extended to the pericranium. The culpability is said to be High because of the use of a
25 weapon, namely the machete and the prolonged or repeated nature of the assault.

26
27 63. In addition to previous convictions, the aggravating factors are said to be the location of
28 the offence, being a public place in view of members of the public and the timing of the
29 offences. This was the middle of the afternoon when the gas station was busy with
30 customers.



1
2 64. Defence Counsel submitted that it is not accepted that the victim McLaughlin was hit
3 with a baseball bat. There was no defect to the brain. The injuries were superficial
4 injuries, there was no intracranial swelling. The wound on the inside of the wrist was not
5 permanent. The submission is that the injuries are not serious in the context of the
6 offence.

7
8 **SUBMISSIONS IN MITIGATION**

9
10 65. In mitigation Defence Counsel submitted that the offending dates back to 2021. There is
11 the fact of delay over a period where the defendant has not reoffended which should give
12 some indication of who he is. No further offences have been committed whilst he has
13 been on bail. Counsel said that the two offences are out of character for the defendant.
14 Counsel submitted that the defendant is remorseful. He is in stable employment working
15 for his brother. Counsel said that there had been a change of plea due to the psychological
16 report.

17
18 66. Counsel referred extensively to this report and asked the Court to take it into
19 consideration not only in relation to the two offences before the Court but also the
20 previous offending dating back to 2018 for which he was sentenced in 2020.

21
22 67. Defence Counsel accepts that the custody threshold has been passed but submits that
23 treatment in the community as part of a suspended sentence should be considered.
24 Counsel asks that the Court on an exceptional basis consider concurrent sentences.
25 Counsel referred to the judgments of the Grand Court in the cases of ***R. v. Fabian***
26 ***Wallace***⁸, ***R. v. Kurt Watler***⁹ and ***R. v. Derrin Kennedy Ebanks***¹⁰. The Court notes the
27 dissimilarities in circumstances between those cases and the instant case.

28

⁸ Grand Court Judgment Unreported Ind. 21 and 22 /2022 dated 3rd April 2023

⁹ Grand Court Judgment Unreported Ind 22/2021 dated 23rd September 2021

¹⁰ Grand Court Judgment Unreported Ind. 85/2021 dated 5th April 2022

1 68. Counsel replayed the CCTV footage in relation to the first incident and drew the Court's
2 attention to that aspect where the defendant could be heard shouting, "*he killed my*
3 *brother*".



4
5 **THE SENTENCE**

6
7 69. The attack upon Devin Ebanks was a vicious and brutal attack which was persistent and
8 prolonged. The offending is serious, and the custody threshold is firmly passed.

9
10 70. The issue is the categorisation of the offending. Under the *Cayman Islands Sentencing*
11 *Guidelines*, harm which is serious in the context of the offence is described as follows: -

12
13 *“4. This phrase is used in the guidelines that relate to a number of non-fatal*
14 *offences. Even within the level of harm necessary for each offence, there will be*
15 *gradations. When determining whether the harm caused was serious in the context*
16 *of these offences, the court will assess whether the harm caused was what would be*
17 *normal for this type of offence or has gone beyond the level that would be regarded*
18 *as normal. Since the sentence levels will be higher (for some offences, very much*
19 *higher) as a result, the type of harm or violence that will justify placing an offence*
20 *in the higher category will be harm that is significantly above the level of harm*
21 *which is the norm for these offences.*

22
23 71. In this case, while the injuries were serious the victim recovered quickly and there is
24 nothing described as life threatening. The conclusion is that the harm caused is not
25 outside the norm and is not serious in the context of the offence. The culpability is high
26 because of the use of a weapon (the shod foot) and the prolonged or repeated nature of
27 the assault. This is a Category 2 offence with a starting point of 3 years custody.

28
29 72. The location of the offence being in a public place and the presence of others who may
30 well have been alarmed at what was being seen aggravate the offence by 3 months. A

1 significant aggravating factor is the previous offending, an offence of a similar nature of
2 Assault Occasioning Actual Bodily Harm for which he received a suspended sentence
3 imposed in 2020. This aggravates the offending and the sentence is increased by a further
4 6 months. All the aggravating factors taken together serve to increase the sentence by 9
5 months to 45 months imprisonment.
6

7 73. In mitigation, the Court takes into account everything written and said in the defendant's
8 favour. These include his remorse, co-operation with the police by way of early
9 admissions on arrest, stable employment, the delay, in that the offence was committed
10 almost 2 years ago. While the delay was in part at his election in seeking to obtain the
11 Psychological Report, defence Counsel has advised that legal aid funding issues impacted
12 the availability of the Report. The sentence is thereby reduced by reason of all the factors
13 by 6 months to 39 months imprisonment.
14

15 74. A significant factor in mitigation is his psychological issues as detailed above. These
16 serve to further reduce his sentence by 12 months to 27 months imprisonment.
17

18 75. He is given the full one third credit for his guilty plea thus reducing his sentence to one
19 of 18 months imprisonment.
20

21 76. With respect to Indictment 17/22, the Court accepts the submission of the defence that
22 the harm caused is not serious in the context of the offence. The culpability is high
23 because of the use of a weapon (the machete) and the prolonged or repeated nature of the
24 assault. This is also a Category 2 offence with a starting point of 3 years custody. A
25 similar assessment is made as above. After taking into account aggravating and
26 mitigating factors and the one third discount for the guilty plea, the sentence is one of 18
27 months imprisonment.
28
29



1 77. Paragraph 6 of the *Cayman Islands Sentencing Guidelines* with respect to concurrent and
2 consecutive sentences provides as follows: -

3
4 **“6.1 Concurrent Sentences**

5 *It is wrong in principle to impose sentences to run consecutively where those*
6 *offences, though distinct in law, arose out of a single act so that the overall*
7 *criminality for the offender can be represented by concurrent sentences.*

8 *Concurrent sentences will ordinarily be appropriate where:*

9 *Offences arise out of a related incident or facts.*

10 *There is a series of offences of the same or similar kind especially when*
11 *committed against the same victim.*

12 *Where concurrent sentence are passed, the sentence should reflect the*
13 *overall criminality involved. The sentence should be appropriately*
14 *aggravated by the presence of the associated offences and thus the court*
15 *may increase sentence for the principal offence to reflect the gravity of*
16 *conduct:*

17
18 **6.2 Consecutive Sentences**

19 *Consecutive sentences will ordinarily be appropriate where:*

20 *Offences arise out of unrelated facts or incidents.*

21 *Offences are of the same or similar kind but where the overall criminality*
22 *will not sufficiently be reflected by concurrent sentences for example:*

23 *Where offences are committed against different victims.*

24 *Where sexual offences or domestic violence are committed against*
25 *the same individual.*

26 *Where the offender commits the same or similar offence after*
27 *being arrested for the original offence.”*

28
29 78. In this case there were two different victims on different days at different locations. It is
30 appropriate for there to be consecutive sentences in this case. Given the principles of
31 totality and proportionality, one half of the sentence on Indictment 17/22 is to run
32 consecutively to the sentence on Indictment 24/22.





1
2 79. Consideration has been given to whether the personal circumstances of the defendant are
3 such that a sentence of immediate custody is avoidable. They are not. The defendant is
4 at high risk of re-offending. He clearly requires treatment. By the commission of these
5 offences, he is in breach of a suspended sentence imposed for an offence of some
6 similarity. The conclusion is not an unreasonable one that he does have anger control
7 issues which are exacerbated by alcohol use and that until he receives the appropriate
8 treatment for his psychological condition, he may well pose a danger to members of the
9 public. It cannot be appropriate in these circumstances to impose another suspended
10 sentence.

11
12 80. The Court is mindful of the *Alternative Sentencing Act* (2008 Revision). Section 4 states
13 that: -

14
15 “ A court shall, in imposing a punishment under this Law, take into account the
16 following principles —

17 (a) that the fundamental purpose of punishment is to contribute, along with crime
18 prevention initiatives, to respect for the law and the maintenance of a just, peaceful
19 and safe society by imposing just sanctions that have one or more of the following
20 objectives —

21 (i) to denounce unlawful conduct;

22 (ii) to deter the convicted person and other persons from committing offences;

23 (iii) to separate convicted persons from society, where necessary;

24 (iv) to assist in rehabilitating convicted persons;

25 (v) to provide reparations for harm done to victims or to the community; and

26 (vi) to promote a sense of responsibility in convicted persons, and acknowledgment
27 of the harm done to victims and to the community;”

28
29 81. The aims of sentencing in this case must be punishment, deterrence, the protection of the
30 public and rehabilitative treatment.

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82. The sentence is therefore 18 months imprisonment on Indictment 24/22 and 18 months imprisonment on Indictment 17/22 with 9 months of this to run consecutively for a total sentence of 27 months immediate imprisonment.

83. Any time served is to be taken into account.

84. While the defendant is in custody, he is to receive the treatment recommended by Dr. Auguelova to wit, psychotherapeutic intervention to include initial short term behaviour management or group therapy programmes targeted to alcohol and substance abuse.

Dated this the 11th day of December 2023



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