



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

4 **INDICTMENT NO: 29 OF 2023**
5
6

7
8 **R**
9

10 **V.**
11

12 **ANTONIO ALEJANDRO STEWART**
13

14 **Appearances:** **Mr. Neil Kumar of the Office of the Director of Public**
15 **Prosecutions for the Prosecution**

16 **Mr. John Furniss and Mr. Crister Brady for the**
17 **Defendant**
18

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

20 **Submissions Heard:** **16th June 2023**
21

22 **Sentence Judgment:** **18th August 2023**
23
24

25 **HEADNOTE**

26 *Criminal Law- Causing Grievous Bodily Harm with Intent contrary to s.203 of the Penal*
27 *Code (2022 Revision) - Sentencing following guilty plea – Principles on Sentencing.*
28
29



SENTENCE JUDGMENT

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3
4
5 1. The defendant Antonio Alejandro Stewart is before the Court for sentencing following
6 his guilty plea to a single offence of Causing Grievous Bodily Harm with Intent contrary
7 to s.203 of the *Penal Code* (2022 Revision).
8
- 9 2. The particulars are that he on the 4th day of February 2023 in the vicinity of Sol y Luna
10 Bar, Shedden Road, George Town, Grand Cayman, Cayman Islands unlawfully and
11 maliciously caused grievous bodily harm to Chester Lee Frederick, with intent to do him
12 grievous bodily harm. The maximum penalty is life imprisonment.
13
- 14 3. The defendant was first before the Grand Court on the 17th March 2023. He was arraigned
15 on that day and entered the plea of guilty. It is accepted that he pleaded guilty at the
16 earliest opportunity and is entitled to the full discount on sentencing.
17

18 **THE FACTS**

- 19
20 4. The prosecution has provided a summary of facts which is not disputed. The victim and
21 the defendant were unknown to each other. During the night of Saturday the 4th of
22 February 2023 both men were patrons at the Sol y Luna Bar, on Shedden Road, George
23 Town. The victim went to the bar with his friends.
24
- 25 5. At about 2:00 am there was an incident between the two men which was recorded on
26 Closed-Circuit Television (CCTV) cameras at the location. Police officers positively
27 identified the defendant from the CCTV footage. The incident appears to have been
28 approximately two to three minutes in duration. The footage was received in evidence as
29 Exhibit 1 for this sentence hearing.



1 6. The two men were seen together. The defendant was heard to say “*you don’t know who*
2 *I is? I Tone, Tone, Antonio Ebanks*”. The victim responded, “*we nah trying to do all*
3 *that*” and tried to de-escalate the situation by calming down the defendant.

4
5 7. The defendant moved to stand directly in front of the victim. He folded his right fist and
6 punched the victim in the face. The victim fell backwards and hit his head on the
7 pavement. He did not move. The defendant then kicked the victim to his head once. The
8 victim was still on the ground, unconscious and not moving.

9
10 8. The victim has no memory of being assaulted. He remembers being at the Bar and then
11 waking up in the hospital.

12
13 **MEDICAL EVIDENCE**

14
15 9. The victim was transported to the George Town Hospital and examined by neurosurgeon
16 Dr Dwayne Cook. The victim sustained the following injuries: -

- 17
18 a) Left parietal subarachnoid haemorrhage
19 b) Blunt head trauma
20 c) Mild head injury
21 d) Left acute subdural haematoma
22 e) Left temporal lobe contusion
23 f) Features of concussion

24
25 10. The Doctor gives his opinion that the injuries are consistent with infliction by a blunt
26 object. He says that the victim was admitted to the Critical Care Unit of the George Town
27 Hospital and that the injury is serious but not likely to be permanent. Prosecuting Counsel
28 advised that an updated medical report was sought since the last hearing on 16th June
29 2023 and was awaited for some time. It has not been forthcoming.



1 **RECORD OF INTERVIEW**

2
3 11. The defendant was interviewed by the police on the 10th of March 2023. He and his
4 attorney were shown two video clips of footage taken of the parking lot at the Bar. The
5 defendant said that he was walking down the stairs when he got too close to another
6 person. He said that drinks were spilled on the two of them. He then went to speak with
7 the person who began to get aggressive. He said that he was not sure what next happened
8 but someone pushed him or put a beer bottle in his chest or something. He said that this
9 resulted in him punching the person. He said that he did not remember kicking the person.
10 He said that he hit the person first in self-defence because he thought that he was going
11 to ‘do him’ something. He said he kicked the victim because he felt that the victim was
12 going to get back up and attack him.

13
14 12. The defendant also admitted to a confrontation with the man in the black clothing as seen
15 on camera in the parking lot. He admitted to punching the man causing him to fall
16 backwards on his back and to kicking the man whilst the man was lying down on the
17 ground. He said that he was drinking, but denied being drunk.

18
19 **VICTIM IMPACT REPORT**

20
21 13. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact
22 Report (VIR) dated 12th May 2023. A victim impact statement from the victim is
23 attached.

24
25 14. In that statement the victim states that he has no memory of the attack. The defendant
26 was not known to him. He details the trauma suffered. Initially he had severe headaches,
27 nausea, vomiting, sensitivity to light and blurry vision. He continues to experience
28 intense headaches, sensitivity to light together with low energy levels. He has lost his
29 sense of taste and with it the desire to eat and has had significant weight loss. He has



1 severe pain in his spine and right hip from the fall. His memory has been affected and he
2 has experienced a decline in his ability to express ideas. As he has been engaged in sales
3 and management, this has affected his ability to do his job effectively.
4

5 15. Due to his head injury, he had been advised by his doctor to avoid any activity that would
6 cause head trauma or shaking and impact shocks. This means that physical activities
7 which he previously enjoyed are no longer possible. He is no longer allowed to be by
8 himself. A family member from overseas had to travel to the Cayman Islands to come to
9 stay with him. He has been advised to rest and not to expose himself to high stress
10 environments for six months. He says that the ongoing emotional impact on him has
11 made him realise that he requires therapy.
12

13 16. He seeks reimbursement for future medical expenses, loss of wages for six months at
14 \$5,000.00 per month and for other expenses.
15

16 17. The Probation Officer's assessment or evaluation is that the victim was significantly
17 impacted at the physical level given the medical evidence and that he was also
18 significantly impacted at the emotional level.
19

20 18. The Officer states:-
21

22 *“Based on the Victim Impact Statement, perusal of the Police Summary of Facts,*
23 *as well as phone discussions with Mr. Frederick, it is evident that he was*
24 *significantly impacted at the physical level. He was found by the police, lying on*
25 *the ground unconscious. He suffered cerebral haemorrhage which caused some*
26 *of his brain cells to die and in turn affected some of his motor activities such as*
27 *speech and being able to walk.*
28

29 *The assault also led to Mr. Frederick having to be closely monitored and*
30 *supported after his release from hospital. As a result, a family member had to come*



1 *from Columbia to assist with his care and support. Additionally the incident has*
2 *been life altering for him, such as having issues with recall, travel restrictions and*
3 *not being able to participate in activities that gave him pleasure.*

4
5 *While Mr. Frederick does not delve too deep into the emotional impact, he did*
6 *speak to the trauma that he experienced, both mentally and emotionally, which he*
7 *will need therapy to help him process and come to terms with.”*

8
9 **ANTECEDENT HISTORY**

10
11 19. The defendant has a record of four previous convictions since 2020. Two are for
12 possession and consumption of drugs. He was initially in the Drug Rehabilitation Court
13 until the Order of that Court was revoked on the 10th September 2020. He was thereafter
14 sentenced on 15th September 2020 to a 2-month suspended sentence for 2 years and a
15 fine.

16
17 20. The third conviction is for Failing to Surrender. The fourth is for Assaulting Police for
18 which he was sentenced on the 11th October 2022 to a Probation Order for one year. This
19 expires on the 11th October 2023. The Probation Officer notes that he has missed most
20 of his scheduled appointments and that his compliance with the Order has been sporadic.
21 His father gives the explanation that the appointments were during the defendant’s work
22 hours. The defendant has committed further offences while on the Order. At the time of
23 the Probation’s Officers Report, the defendant was on police bail for drug-related matters.

24
25 **SOCIAL INQUIRY REPORT**

26
27 21. The DCR has provided a Social Inquiry Report dated 1st June 2023 (“SIR”). The Court
28 has read this Report in its entirety and takes into account everything said therein in favour
29 of the defendant. He is twenty-two years old. There were no major childhood issues.



1 While there were verbal disputes in the home and the separation of his parents, he
2 reported having a good upbringing. He graduated high school and tertiary studies with a
3 technical certification. After leaving school he was gainfully employed up to February
4 2022 when he left his job of three years to start his own company business. He stopped
5 this business in October 2022 because commerce was slow and there were difficulties
6 with equipment.

7
8 22. He started a new job in December 2022. He earns \$2,000 per month with total expenses
9 of \$1,000. He does not have any savings. He resides in his family home with an older
10 brother, his mother, and his partner. He is expecting his first child in September 2023.

11
12 23. He reported to the Probation Officer that he was intoxicated at the time of this offence.
13 The defendant was assessed using the LS/CMI/Risk Need/Assessment tool. His overall
14 risk of re-offending was assessed as medium. He had one factor in the very high category,
15 alcohol /drug problem and one in the high category, leisure/recreation. The Officer noted
16 that all the reports, including his self reports indicates that alcohol and drug use is an
17 ongoing problem for him. He expressed remorse and is willing to reimburse the victim
18 for medical expenses. He also apologised to the Bar establishment for his behaviour.

19
20 **THE SUBMISSIONS**

21
22 24. Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for
23 violent offences. The submission of the prosecution is that this is an offence of Greater
24 Harm and Lower Culpability. An offence of Greater Harm is indicated where there is
25 injury which is serious in the context of the offence.

26
27 25. Lower Culpability is indicated by factors including lack of premeditation and excessive
28 force in self defence.



1 26. Defence Counsel submitted that this offence may well be a Category 2 towards the lower
2 end reflecting Greater Harm with Lower Culpability. The ongoing effect upon the victim
3 is accepted. In response to the Court's inquiry Counsel indicated that the category of
4 Greater Harm and Lower Culpability is accepted.

5
6 27. No aggravating factors have been identified by either Counsel.

7
8 28. Defence Counsel referenced three cases as follows:-

- 9
10 a. ***R v Wayne Dilbert (Ind 101 of 2019)***¹ – Counsel said that this was an unprovoked
11 attack on the complainant over \$9.00. The complainant was struck in the head
12 resulting in a fractured skull and the need for an inserted metal plate. The defendant
13 pleaded guilty to Causing Grievous Bodily Harm with Intent, and two counts of
14 Possession of Offensive Weapons, one of which included a hammer which was
15 used to cause the injury. The defendant had previous convictions of violent
16 offending. The sentence was 23 months imprisonment concurrent with 9 months
17 (x 2), suspended for 2 years with the defendant ordered to attend anger
18 management, to not enter liquor license premises and to submit to random testing.

19
20 The Court notes that in that case there were exceptional circumstances, namely the
21 medical diagnosis of the defendant.

- 22
23 b. ***Alexander Brown (CICA 13 of 2016)***² – The Appellant who was intoxicated
24 inflicted multiple injuries on the victim. The Appellant pleaded guilty, and his
25 sentence of 18 months was upheld by the Court of Appeal.

26
27 The nature of the offence to which the defendant pleaded in that case is noted. The
28 Grand Court applied the ***United Kingdom Sentencing Guidelines*** having

¹ Grand Court Unreported Judgment dated 3rd July 2020

² CICA Appeal 13/16 Ind. 31/2015, Unreported Judgment dated 16th January 2017



1 concluded that it was an offence of Lesser Harm and Higher Culpability. The
2 starting point for that category is 18 months. The charge in the instant case is
3 Causing Grievous Bodily Harm with Intent.
4

5 c. ***Maurice Jackson (Ind. 46 of 2016)***³ - The defendant who was intoxicated attacked
6 an unarmed victim resulting in life threatening injuries. Having entered a guilty
7 plea to the charge of Inflicting Grievous Bodily Harm contrary to s.204 of the Penal
8 Code (2013 Revision), a sentence of 3 years and 8 months was imposed by the
9 Grand Court.

10
11 29. In this case defence Counsel submitted that the defendant punched the victim because he
12 wrongly believed that the victim intended to harm him with an object, which is now
13 recognised to be a cellphone. The victim fell to the asphalted surface hitting his head and
14 became unconscious. The defendant did not appreciate at the time, and in the darkness,
15 that the victim had become unconscious and proceeded to kick him while he was on the
16 ground. Counsel submitted that in the defendant's less than sober state the defendant
17 thought that this would delay the victim from getting up to exact revenge. In his less
18 than sober thinking the defendant believed that this act would allow him time to effect
19 his escape.

20
21 30. Counsel submitted that the defendant is embarrassed, remorseful and horrified at what
22 his actions have caused. He has had sleepless nights about it wishing that he could undo
23 what occurred. He wishes to apologise to the victim. He took responsibility at an early
24 stage in circumstances where identification might have been an issue. The result which
25 was occasioned was not intended. It was a single punch.
26

³ Grand Court unreported Judgment dated 26th July 2016



1 31. In mitigation, Counsel submitted that the defendant is just twenty-two years old. He has
2 only one relevant previous criminal conviction. Notwithstanding that he has not
3 responded well to previous supervised community based sentences and is at medium risk
4 of re-offending, the Court is invited to exercise mercy. He is said to now be taking an
5 entirely different look on the use of alcohol and recreational drugs. He is hoping to be
6 available for his child to be born in September. His partner is unemployed and is
7 dependent on him for support. The Court is urged to pass a sentence which will impress
8 upon him the seriousness but would allow him to remain in the community and support
9 his family. While he is of modest means he is willing to pay compensation from his small
10 salary.

11
12 **THE SENTENCE**

13
14 32. The Court has given consideration to the level of harm caused in this case. It was
15 undoubtedly serious, so serious that it has had life-changing consequences for the victim.

16
17 33. Applying the guidance in the cited cases of *R. v. Smith, (Grant Christopher)*⁴, *R. v.*
18 *Christopher John Duff*⁵ and *R. v. Xue*⁶, the conclusion is that the harm caused is serious
19 in the context of this offence and is at the level of Greater Harm. The victim was rendered
20 unconscious, required surgical intervention and a lengthy recovery period. The Court
21 accepts that the two lower culpability factors identified are present. This is thus an
22 offence of Greater Harm and Lower Culpability. The starting point under the *Cayman*
23 *Islands Sentencing Guidelines* is 6 years custody or 72 months.

24
25 34. No aggravating factors have been raised by either Counsel.
26

⁴ [2015] EWCA Crim 1482

⁵ [2016] EWCA Crim 1404

⁶ [2020] EWCA Crim 587



1 35. In mitigation the Court takes into account everything said or written in the defendant's
2 favour by his Counsel and the reports. These include his young age, his genuine remorse,
3 his personal circumstances which include his financial responsibility for his partner, his
4 pending fatherhood, the nature of the offending, this was a single punch, and that the
5 defendant is at medium risk of re-offending. The sentence is thereby reduced by 24
6 months to 48 months. The defendant is given the full credit of one third for his guilty
7 plea for a sentence of 32 months or 2 years and 6 months.

8
9 36. The defendant has asked for a community sentence but he has a history of non-
10 compliance with community orders. He has one previous conviction for assault which is
11 an offence of some similarity to the instant offence. He was placed on a Probation Order
12 which was ongoing at the time of the commission of this offence. He is in breach of that
13 Order. This Court does not consider that a community service order would be appropriate
14 in these circumstances.

15
16 37. Alcohol has clearly been a problem for him. On his own admission it played a central
17 role in this incident. The reports are that he gets angry when he drinks. This incident was
18 entirely unnecessary. He was the cause of it. In the space of a few minutes the victim's
19 physical health and life to which he was accustomed has been changed. This is a serious
20 offence which passes the custody threshold. Given his past history of non-compliance
21 with community orders, the Court's view is that there is nothing in his personal
22 circumstances which makes a custodial sentence unavoidable.

23
24 38. The Court has considered whether the proposed sentence is proportionate to the
25 offending. Noting the serious nature of the injuries sustained by the victim, the Court
26 considers that it is.



1 **COMPENSATION**

2
3 39. The victim is seeking compensation in the form of loss of wages, CI \$30,000 (6 months
4 at \$5,000 a month) and re-imburement for travel and accommodation for carers for a
5 total US\$1,536.18 (\$577.05, \$372.34, \$212.82, and \$373.97).

6
7 40. In the case of *R v York*⁷ the general principles as to the appropriateness of making a
8 compensation order are set out. The Court must consider the means of the offender and
9 whether making a compensation order is realistic. The Court must be satisfied that the
10 offender has or will have the means to pay that order. While a repayment period of two
11 or three years in an exceptional case would be appropriate, in general, excessively long
12 repayment periods should be avoided. A court should not make a compensation order
13 against an offender who does not have the means to pay.

14
15 41. In this case there is evidence of very limited means. The defendant would not be able to
16 work while serving a custodial sentence. He has no savings. A compensation order is
17 not appropriate in these circumstances.

18
19 **CURFEW**

20
21 42. While on bail, for the period from 17th March 2023 to date, the defendant was subject to
22 a curfew. The curfew hours were between 8:00pm and 5:00am. He was not electronically
23 monitored. The number of days to today is 154 days. Much of this curfew was during the
24 night hours. The defendant is given credit for time spent on curfew of 25% or 38 1/2
25 days.

26
27
28

⁷ [2019] 1 Cr App R (S) 41 (2018)

1 43. Any time served is to be taken into account.

2

3 **Dated this the 18th day of August 2023**

4

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

5 **The Hon. Justice Cheryll Richards KC**

6 **Judge of the Grand Court**