

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **IND NO: 0095/2022**

5
6
7 **REGINA**



8
9 **v.**

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11 **LUISTO EUSEBIO HERNANDEZ**
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15 **Appearances:**

**Mr. Neil Kumar holding for the delivery of
the judgment for Mrs. Nicole Petit for the
Crown**

**Ms. Lene Doherty holding for the delivery
of the judgment for Mr. Jonathon Hughes
of Samson Law for the Defendant**

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23 **Before:**

Justice Roger Chapple (Actg.)

24 **Heard:**

23rd June 2023
25
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27 **HEADNOTE**

28 *Criminal Law – Attempted Murder contrary to s194 of the Penal Code (2022*
29 *Revision) - Possession of an unlicensed firearm contrary to s15(1) and (5) of the*
30 *Firearms Act (2008 Revision) – Sentence after trial.*
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35 **SENTENCE JUDGMENT**
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1 **INTRODUCTION**

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3 1. On 8th June, 2023, the defendant was convicted, following a jury trial, of two
4 offences:

5 i. attempted murder, contrary to s194 of the *Penal Code* (2022 Revision),
6 and
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8 ii. possession of an unlicensed firearm contrary to s15(1) and (5) of the
9 *Firearms Act* (2008 Revision)
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11 2. It is now my task to decide upon the appropriate sentences for these offences. I have
12 the advantage of written sentencing submissions from both Counsel Mrs Pettit, on
13 behalf of the Prosecution, and Counsel Mr Hughes, on behalf of the Defence. I heard
14 oral submissions as to sentence on 23rd June and have taken time to reflect and
15 deliberate upon sentencing in what is, on any showing, a serious and troubling case.
16

17 **THE FACTS**

18 3. Mr Nigel Campbell, the victim in this case, lives at 26, Oakland Close, Windsor
19 Park, George Town, together with his wife, her children and grandchildren. In April
20 2022 the defendant, also lived there with his partner and baby mother, Jenicia (one
21 of Mr Campbell’s wife’s daughters) and their 2 children. 26 Oakland Close is
22 situated in a tenement yard.
23

24 4. On 20 April 2022, an argument developed between the defendant, then 26 years of
25 age, and Mr Campbell, then 41 years of age, as to how a mango, which the defendant
26 intended to feed to his baby son, should be prepared. According to Mr Campbell,
27 when he offered his views, the defendant told him to “F... off”, adding that “if I were
28 to say anything further, he (the defendant) would corn my skin,” which, Mr Campbell
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1 explained, meant that the defendant would shoot him. This prompted Mr Campbell
2 to throw a bottle at the defendant. The bottle shattered. The defendant, it seems,
3 thought that a shard of glass had caused injury to his daughter; her mother later took
4 her to hospital. There is no evidence as to whether the daughter did in fact sustain
5 injury, and if so, the extent of it, since Miss Jenicia, along with many other potential
6 witnesses, refused to co-operate with the police and refused her permission for the
7 police to have access to the relevant medical records.

8
9 5. The defendant drove off in his car, but returned some 6 to 10 minutes later, armed
10 with a handgun. He made his way towards Mr Campbell, who was now in a shop in
11 a corner of the yard. The defendant fired two shots, intending, as the jury found, to
12 kill Mr Campbell. Thereafter, the defendant fled and went into hiding. His
13 whereabouts were eventually discovered by the police. He was arrested in Bodden
14 Town on 14th November 2022. As was his right, the defendant answered “no
15 comment” to all questions asked of him when interviewed by the police. He
16 maintained his silence at trial, electing not to give evidence. Consequently, nothing
17 is known of the defendant’s account of events.

18
19 6. One of the two bullets fired found its target, entering the upper left side of Mr
20 Campbell’s chest, travelling transversely down and through his body, causing
21 extensive damage to several internal organs. The bullet finally lodged in his pelvic
22 bone. He underwent emergency surgery and spent time in critical care before being
23 discharged from hospital on 3 May 2022. Further details of his injury, treatment and
24 prognosis appear from the statement and report of Dr Jehangir dated respectively 4th
25 May and 16th June 2022. I will return to those details later in this judgement.





1 **THE SENTENCING GUIDELINES – VIOLENT OFFENCES**

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3 7. My starting point in determining the appropriate sentence in this case is the *Cayman*
4 *Islands Sentencing Guidelines for Violent Offences*, published in June 2021. Mrs
5 Pettit, in the course of her helpful written submissions has referred me to two Grand
6 Court sentencing judgments: *R v George Washington Vaughan*¹ and *R v Robert*
7 *Aaron Crawford*². I have read both cases with interest, but, I agree with Mr Hughes
8 that pre-guideline cases are now of limited value and, in any event, neither case
9 sought to lay down any general principle, but were confined to their own facts. I am
10 told this is the first attempted murder case to be sentenced since the guidelines were
11 published.

12
13 8. As with all sentencing exercises, I am required to assess both Culpability and Harm.
14 Dealing firstly with Culpability: The prosecution submit that this case falls within
15 Category one of the guidelines – “most serious offences.” Mr Hughes submits that
16 I should place this case in Category two, as, he contends, there is one feature in each
17 of the three Culpability categories present in this case. The Category three feature –
18 “other spontaneous attempts to kill” – he argues, is present here and is “*a greater*
19 *degree of provocation than normally expected.*” Guidance as to how to determine
20 whether this feature is present is to be found at paragraph 5 of the guidelines, which,
21 in so far as it is relevant to this case, provides as follows:

22 *“In many offences, it is possible that the issue of provocation will arise.*
23 *The law generally expects a person to be able to resist provocation, but*
24 *accepts that there will be circumstances where the level of provocation*
25 *justifies a reduction in sentence. In assessing the degree of provocation*
26 *where the guideline provides for a greater degree of provocation than*
27 *normally expected to be a mitigating factor, account should be taken of*
28 *the following factors:*

- 29 a.
30 b. *whether the victim presented a threat not only to the*
31 *offender, but also to children in his or her care;”*

¹ Ind. 85/2014 dated 15 December 2016

² Ind. 58/2015 dated 21 January 2020

1 9. I readily accept that the defendant was concerned, as any father would be, for the
2 safety of his daughter. The potential for serious injury, when a glass bottle shatters
3 in close proximity, is obvious. Mr Hughes tells me that the defendant is especially
4 protective of his daughter. However, it seems that this part of the incident was further
5 fuel to the defendant’s fire which had already ignited, a fire which arose from an
6 entirely trivial disagreement over a mango.

7
8 10. The defendant’s threat to kill Mr Campbell preceded the smashing of the bottle. For
9 what it is worth, the guidelines speak of a threat presented both to the defendant and
10 to children in his care. I do not believe that the defendant felt under any serious threat
11 from Mr Campbell. The guideline does not, I am sure, mean provocation in the
12 strictly legal (that is to say, a defence to murder) sense, but in a more general sense.
13 Nevertheless, I cannot conclude in all the circumstances of this case that there was
14 “a greater degree of provocation than normally expected” or a level of provocation
15 that justifies any significant reduction in sentence. I bear in mind, particularly, that
16 a period of 6 to 10 minutes elapsed between the contended provocative act and the
17 shooting. There was ample time for the effect of such provocation - such as there
18 may have been – to subside. The defendant’s behaviour cannot properly be described
19 as a “spontaneous attempt to kill” – the sub-heading, as it were, of Category 3.

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21 11. For the same reason I conclude, as Mr Hughes concedes, that there was a “significant
22 degree of premeditation or planning” – a Category 2 feature. The defendant drove
23 off, obtained a loaded firearm, or a firearm and ammunition, and returned to the
24 scene with murderous intent.



1 12. I am satisfied that this case sits firmly within Category one Culpability, since this
2 was, in the words of Category one, the “*use of lethal weapon brought to the scene*
3 *for the purpose of causing fatal injury.*” The fact that the degree of pre-meditation
4 or planning was significant, rather than substantial, does not alter the categorisation.

5
6 13. There can be no question as to the seriousness with which the legislature views the
7 possession and use of firearms, given the mandatory minimum sentence regime
8 imposed by the **Firearms Act** (2008 Revision). As is well known, conviction for an
9 offence of unlawful possession of an unlicensed firearm, following trial, attracts a
10 minimum sentence of 10 years’ imprisonment, unless there are exceptional
11 circumstances. In the event of a guilty plea, the mandatory minimum sentence is 7
12 years’ imprisonment.

13
14 14. I then move to assess the Harm caused, and whether that is best described as:
15
16 a. serious and long-term physical or psychological harm.
17 b. some physical or psychological harm.
18 c. little or no physical or psychological harm.



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20 15. In addition to Dr Jehangir’s statement and report, I have the advantage of a recent
21 witness statement from Mr Campbell, in which he explains his current state of health
22 and the impact of this attack upon him. He continues to suffer from sharp pain in his
23 chest, particularly at night. Prior to this attack upon him, he worked as a construction
24 worker. He is unable to return to this work as a result of his injuries and is now
25 unemployed. He has incurred hospital bills in the region of CI\$54,000, with no ready
26 means to discharge that debt. He is understandably concerned for the future. He
27 describes the almost inevitable, but nevertheless very real, effect offences such as
28 these have on other family members.



1 16. Undoubtedly, Mr Campbell suffered serious harm. As the bullet travelled through
2 Mr Campbell's body, it caused, as I have already noted, extensive damage to several
3 internal organs, including the diaphragm, spleen, kidney, colon, intestine and
4 bladder. The bullet remains in Mr Campbell's body, "*lodged in a place which may*
5 *cause nerve, bladder or bowel dysfunction. However, it is in a position where*
6 *removal of the bullet could cause more damage to nerves.*" The prognosis is
7 uncertain. Dr Jehangir explains, "*the long-term sequelae of these injuries depend on*
8 *the complications which may or may not occur in the future.*" The primary areas of
9 future concern are the diaphragm, bowel, intestines and bladder.

10
11 17. Dreadful though these injuries clearly were, I am not satisfied that their effect upon
12 Mr Campbell can properly be described as "*serious and long-term physical or*
13 *psychological harm.*" One does not, sadly, have to look very far to find cases in
14 which catastrophic injury has been caused. That said, "*some physical or*
15 *psychological harm*" hardly seems an apt description of Mr Campbell's injuries and
16 their effect upon him. As Mrs Petit put it, this case "*sits on the cusp*" of the first and
17 second categories of harm. I place it in the second category - but increase the starting
18 point sentence to reflect the high degree of harm within that second category.

19
20 18. Of the aggravating features listed in the guidelines, three seem to me to be relevant.
21 Firstly the "*location of offence (especially in public area or where children*
22 *present).*" As was adduced in evidence at trial, the yard where this offence took
23 place was often "a busy place". History does not relate if children, whether the
24 defendant's own children or others, were present, although this was not unlikely.
25 Secondly, "*firearm used which was unlicensed or otherwise illegally possessed*", as
26 it was here, although, as I observed in the course of submissions, that is generally
27 the way of things in almost all shootings. Thirdly, I take note of the defendant's
28 previous convictions. He first appeared before the courts in 2014. He has 4



1 convictions for offences of violence (assaults occasioning actual bodily harm). His
2 last court appearance prior to these offences was in 2020, when a 2-year suspended
3 sentence was imposed. This expired a little over 3 months before the commission of
4 these offences, which represent a very considerable escalation of violent offending.

5
6 19. There is, in my judgment, one further significant aggravating feature in this case: the
7 firearm used to shoot Mr Campbell was not recovered and thus remained in
8 circulation, for use in future crime. Examination of the two spent cartridges
9 recovered at the scene establishes that this firearm has been used in the course of
10 three other reported offences, as follows:

- 11
12 i. the robbery of a barber's shop during which a shot was fired, on 23rd
13 June 2021;
14 ii. a shooting in West Bay on 25th June 2021; and
15 iii. the fatal shooting of a retired prison officer in George Town on 26th June
16 2022.

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18 20. I hasten to add that there is no suggestion that the defendant was involved in any of
19 those offences. It can be safely assumed that the defendant returned the firearm into
20 the criminal hands from whence it had come, since the fatal shooting to which I have
21 just referred took place a little over two months after these offences.

22
23 21. The starting point suggested for a Category 1, "*some physical or psychological*
24 *harm*" case, is a sentence of 20 years' imprisonment, with a suggested category range
25 of 17 to 25 years' imprisonment. As discussed above, the extent of the injuries
26 sustained, together with the risk of future complications, along with the four
27 aggravating features I have referred to, require an increase to the starting point, from
28 20 to 24 years' imprisonment.

1 **MITIGATION**

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22. At the conclusion of the trial, Mr Hughes readily agreed that in all the circumstances of this case, and particularly the inevitability of a substantial custodial sentence, a Social Inquiry Report (SIR) would not assist. Mr Hughes felt that such factors about the defendant’s background and circumstances as were relevant could as well be placed before me by Mr Hughes as by the Department of Community Rehabilitation. Unusually perhaps, I am satisfied that the interests of justice do not require what in this jurisdiction would be a lengthy delay, to obtain such a report.

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23. I have summarised Mr Hughes’ submissions on behalf of the defendant, as to the guidelines, in my discussions above.

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24. The defendant is now 28 years of age. I was told that after a “rocky teenage period”, he had settled down and taken steps to address his anger problems which were the root cause of his earlier offending. He has a 5-year-old daughter and a 2-year-old son. Mr Hughes told me that the defendant was, at the time of these offences, in gainful employment, having two jobs, one in the construction industry, the other in logistics. He had been out of trouble for some years prior to these offences, for which, Mr Hughes urged, he deserved credit.

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25. As against that, it is a feature of this case that I view with concern, that the defendant was able, within a period of minutes, to lay his hands on a firearm and ammunition, which I regard as a reliable indicator of his lifestyle and connections at the time of these offences.

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CONCLUSIONS

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26. There are, in my view, relatively few mitigating features in this case. I bear in mind the defendant’s relative youth, his troubled past and that his record of offending at



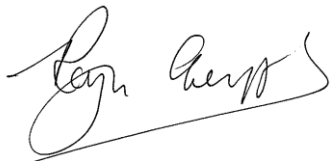
1 the time of these offences was not, relatively speaking, extensive. Whilst not
2 amounting to any significant provocation, I also bear in mind that Mr Campbell
3 added fuel to the fire by throwing a bottle and that the defendant was concerned for
4 the safety of his daughter. Those factors persuade me to reduce the sentence to one
5 of 21 years' imprisonment. That is the sentence I pass on count 1 of the indictment
6 (attempted murder).

7
8 27. I am obliged to pass a sentence of at least 10 years' imprisonment upon count 3
9 (unlawful possession of an unlawful firearm), since there are no exceptional
10 circumstances which would justify a departure from the mandatory sentencing
11 regime. Self-evidently, the firearms offence was part and parcel of the more serious
12 offence of attempted murder. A concurrent sentence is plainly appropriate, on
13 general principles. The sentence upon count 3 is one of 12 years' imprisonment, to
14 run concurrently with the sentence passed upon count one. Thus, the total sentence
15 to be served is one of 21 years' imprisonment.

16
17 28. I make no order for compensation as there is no evidence before me that the
18 defendant has the means to satisfy any such order.

19
20 29. The time that the defendant has already spent in custody shall count towards the
21 serving of his sentence.

22
23 **Dated this the 11th day of July 2023**

24 

25 **Justice Roger Chapple**
26 **Acting Judge of the Grand Court**