



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

4 **INDICTMENT NOs: 21 & 22 OF 2022**
5
6
7

8
9 **REX**

10
11 **V.**
12

13 **FABIAN GEORGE WALLACE**
14

15
16 **Appearances:** **Mr. Scott Wainwright of the Office of the Director of**
17 **Public Prosecutions for the Prosecution**
18

19 **Mr. Jonathon Hughes of Samson Law for the Defence**

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

21 **Submissions Heard:** **24th March 2023**
22

23 **Sentence Judgment:** **3rd April 2023**
24

25
26 **HEADNOTE**
27

28 ***Criminal Law-Unlawful Wounding,***
29 ***Principles on Sentencing, Cayman Islands Sentencing Guidelines,***
30 ***whether injury serious in the context of the offence.***
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1 Counsel said that the defendant's position is that he started acting in self defence but
2 accepts that his actions were excessive and went too far. Counsel stated that he does not
3 seek a Newton hearing on this issue.
4

- 5 7. The prosecution has provided a summary of facts which is not disputed. The victim is
6 the brother of the defendant. The brothers live in separate sides of a dwelling house. On
7 the day in question, Sunday 26th March 2022 at about 5:45pm there was an argument
8 between them. The defendant armed himself with a machete. He swung the machete at
9 the victim who fell to the ground. The defendant stood over the victim and chopped him
10 on the right side of his face, from his ear down to his cheek, close to his mouth. This was
11 witnessed by other people, who saw the victim lying on the ground. Police and the
12 ambulance service attended the scene and the victim was taken to hospital for treatment.
13 The victim sustained a wound five inches in length from his left ear to the left corner of
14 his mouth which was repaired by a number of sutures. From the medical evidence, there
15 is likely to be permanent scarring. The police apprehended and arrested the defendant
16 who was at that time armed with a machete and two knives.
17

18 **ANTECEDENT HISTORY**

19

- 20 8. The defendant has an antecedent history of eight previous convictions. These include
21 four convictions for offences of a similar nature. The victim in each case was his brother.
22 On the 21st December 2011, the defendant was convicted of Unlawful Wounding and
23 sentenced by the Grand Court to two years imprisonment, one year of which was
24 suspended with conditions. On the 14th June 2016, he was convicted of Wounding and
25 sentenced by the Grand Court to twelve months imprisonment. On the 13th June 2017, he
26 was convicted of two offences of Common Assault and Causing Fear or Provocation of
27 Violence and sentenced by the Summary Court to three months imprisonment suspended
28 for two years. Additionally in 2008 he was convicted of the offence of Carrying an
29 Offensive Weapon for which offence he was fined.
30
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1 **VICTIM IMPACT REPORT**
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3 9. The Department of Community Rehabilitation (DCR) has provided a VIR dated 7th
4 October 2022. The VIR provides some background as to the history between the two
5 brothers. They initially had a close relationship. The victim moved away from the home
6 for about four years and started his own family. When he returned to the family residence,
7 he found that the relationship between himself and the defendant was strained. The victim
8 recounts a history of assaults at the hand of the defendant which is corroborated by the
9 antecedent record of the defendant. The victim says that the defendant drinks excessively
10 and is frequently aggressive toward him and other occupants of the home.
11

12 10. In detailing the impact of the offence on him, the victim states that he was in severe pain
13 after receiving the injury. He could not bend down to put on his shoes until the blood
14 vessels to the left side of his face healed. He received stitches to the inside of his face in
15 order to prevent scarring but there is still a scar to his face and ear. He was on extended
16 sick leave for about four weeks because of dizziness and feelings of imbalance. He says
17 that this is the third time that the defendant has seriously injured him to the point where
18 he could have lost his life. He says that this is the third time that he is asking for justice.
19

20 11. The Probation Officer states that due to the repeated nature of these assaults the
21 psychological impact to the victim is significant. This is in addition to the physical impact
22 upon him.
23

24 12. The Officer recommends a protection order which excludes the defendant from the
25 premises and prohibits him from making contact with the victim.
26

27 13. Defence Counsel objected to the making of a protection order on the basis that given the
28 physical circumstances of the household, the legal requirements may not be satisfied.
29
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1 **PSYCHIATRIC AND PSYCHOLOGICAL REPORTS**

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3 14. The Court is in receipt of reports from the Health Services Authority. These are from Dr.
4 Arline McGill dated 7th November 2022 and Dr. Paulette Gayle dated 16th December
5 2022. The Court has read these reports in their entirety and takes into account everything
6 said therein in favour of the defendant.

7
8 15. Dr. McGill reports that the defendant has a background of alcohol and cannabis misuse
9 and multiple head injuries. He has mild symptoms of obsessive compulsive trait.
10 Following a mental status examination with no evidence of abnormalities, the conclusion
11 is that from the history provided and his examination, the defendant does not have a
12 major psychiatric disorder or bizarre or suicidal behaviour.

13
14 16. Dr. Gayle conducted a psychological assessment of the defendant. While his overall
15 scores indicated no evidence of neurocognitive impairment, they may indicate some
16 cognitive deficits. There is a discrepancy with his scores which suggests that more
17 detailed testing may be required. He is said to have difficulties with self-evaluation and
18 evaluating his role in challenging situations. Where there is prolonged distress, he has
19 difficulty with setting realistic limits and accountability. Given the results of the
20 examination, the diagnosis is an unspecified personality disorder with a narcissistic
21 personality type and histrionic and compulsive personality styles. Dr. Gayle has provided
22 eight recommendations for therapeutic treatment for the defendant. These include family
23 intervention and retesting in twelve months.

24
25 **SOCIAL INQUIRY REPORT**

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27 17. The DCR has provided a SIR dated 3rd March 2023. The Court has read this report in its
28 entirety and takes into account everything said therein in favour of the defendant.



- 1 18. The defendant is thirty-eight years old. He reports a normal childhood with no issues
2 except for what he says was bullying from the victim in this case which has continued
3 through to adulthood. He has had and continues to have good relations with his other
4 three siblings. The defendant did not complete high school because of his behaviour. He
5 attended college for two semesters and thereafter has been gainfully employed in the
6 construction industry.
7
- 8 19. Under the heading, Community/Institutional Functioning, the Probation Officer records
9 that the defendant is described by his father as a well-mannered and respectful individual.
10 People who know him speak highly of him and say that he is not a troublemaker. The
11 only problem which he is said to have is with his drinking. Whenever he drinks
12 excessively, he becomes aggressive. Alcohol is believed to be a key factor in each of the
13 incidents of his previous offending.
14
- 15 20. The defendant gave an account to the Officer that one of the persons visiting with his
16 brother that afternoon had threatened him with a knife. He chased this person from the
17 yard. He said that afterwards the victim made oral threats to him. He thought that the
18 victim may have been going to get a weapon from the inside of his truck. He said that he
19 chased the victim around the truck with two machetes. When the victim fell, he slapped
20 the victim with the machete. He said that he was defending himself.
21
- 22 21. The defendant was assessed using the LS/CMI Risk Assessment tool. His overall risk of
23 re-offending was assessed as Very High with seven of the eight criminogenic factors in
24 the High category.
25
- 26 22. Under the heading, Pro-Criminal Attitude and Orientation, the Officer records that the
27 defendant stated that he felt justified in his actions. The Officer's view is that this
28 indicates that he has not accepted responsibility for his actions. He did express that he is
29 remorseful for what happened. Under the heading, Anti-social Pattern, the Officer states
30 that the defendant has had early, and diverse anti-social behaviour problems as indicated



1 by the difficulties with his behaviour at school. Additionally, he has breached a
2 community order in the past and presents himself with a criminal attitude.

3
4 23. He is described by the Officer as in effect lacking true remorse for his actions. It is
5 recommended that he follows through with the treatment plan outlined by Dr. Gayle.
6

7 **CAYMAN ISLANDS SENTENCING GUIDELINES**
8

9 24. Both Counsel for the prosecution and Counsel for the defence accept that under the
10 relevant *Cayman Islands Sentencing Guidelines*, this is a Category 2 offence, being one
11 of Higher Culpability and Lesser Harm. It is an offence of Higher Culpability because of
12 the use of a weapon. Counsel for the prosecution submits that it is an offence of Lesser
13 Harm because it cannot be said that the wound caused to the victim is serious in the
14 context of the offence.
15

16 25. The Court accepts the submissions of both Counsel as to the categorisation of this offence
17 and applies a starting point of three (3) years custody with a range of sentence of two (2)
18 to four (4) years custody.
19

20 26. As to aggravating factors, Counsel for the prosecution submits that while this occurred
21 at the home of the victim, both parties are resident there.
22

23 27. In mitigation Counsel for the defence referred to the reports of the doctors, the
24 defendant's cognitive issues and the fact that he has had multiple head injuries in the
25 past.
26

27 28. Counsel said that that there is a strained relationship between the brothers and that the
28 defendant has experienced sustained bullying at the hands of the victim. The defendant's
29 difficulties with alcohol and ganja abuse were also highlighted by Counsel.
30
31



1 **THE SENTENCE**

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3 29. In the Court's view, taking note of the nature of the offending and of the impact upon the
4 victim, both psychological and physical, this offending is of a serious nature which firmly
5 passes the custody threshold.

6
7 30. From the starting point recommended by the *Guidelines* of three years (36 months), there
8 is the significant aggravating factor of his previous convictions for similar offences
9 against the very same victim. It is significant because of the repeated nature of the
10 offending. This is the fourth such offence.

11
12 31. These serve to increase the sentence by eighteen (18) months from the starting point for
13 a sentence of fifty-four (54) months.

14
15 32. In mitigation, the Court takes into account everything that has been said or written in
16 favour of the defendant. There is some remorse although as described by the Probation
17 Officer it appears to be limited. The defendant has a personality disorder and cognitive
18 deficits which may affect how he deals with personal situations. He reports a history of
19 bullying by the victim and there is a strained relationship between them. He is described
20 as having good personal qualities by persons who know him. All his personal
21 circumstances taken into account serve to reduce the sentence by six (6) months to one
22 of forty-eight (48) months. He is given the full discount of one third for his guilty plea
23 for a sentence of thirty-two (32) months or two (2) years and eight (8) months.

24
25 33. Standing back and looking at the sentence, the Court considers that this is proportionate
26 to the offending. The victim was chopped to his face while unarmed and on the ground.
27 He received a serious injury which has left a permanent scar. There is a level of
28 psychological harm. The defendant has a personal history which places him at very high
29 risk of re-offending. This Court has to consider that this is the fourth offence against the
30 same victim. The defendant seems to have learnt nothing from the previous sentences
31 imposed upon him and the efforts to rehabilitate him by way of a partially suspended

1 sentence. He is thirty-eight years old and must learn peaceful ways of responding to
2 difficult situations. He cannot continue to use weapons against his brother and must take
3 advantage of the rehabilitation and therapy which is offered to him. Dr. Gayle reports
4 that he is likely to do so under pressure of vocational or legal difficulties.

5
6 34. The sentence is thirty-two (32) months imprisonment or two years and eight months.
7 Time served is to be taken into account. While in custody he is to receive rehabilitative
8 treatment as recommended by Dr. Gayle.

9
10 **Dated this 3rd day of April 2023**

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**