



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

4
5 **INDICTMENT NO. 23 OF 2022**
6

7
8 **R**
9

10 **V.**
11

12 **SEKOU LEMUMBA LITCHMORE**
13
14
15

16 **Appearances:** **Mr. Gavin Dixon, Crown Counsel for the Prosecution**
17 **Mr. Crister Brady of Brady Attorneys at Law for the**
18 **Defendant**
19

20 **Before:** **Hon. Justice Cheryll Richards K.C.**

21 **Submissions:** **3rd February 2023**

22 **Further Written Submissions:** **6th February 2023**

23 **Sentence Judgment:** **17th February 2023**
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25
26

27 ***HEADNOTE***

28 *Criminal Law, Cayman Islands Sentencing Guidelines, Wounding, Principles on sentencing.*
29
30



SENTENCE JUDGMENT

1. The defendant is before the Court for sentencing following his conviction after a judge alone trial for the offence of wounding contrary to section 204 of the *Penal Code* (2019 Revision). The maximum penalty is seven years imprisonment.
2. The facts are set out in detail in the verdict judgment of 23rd September 2022. In summary, on the night of the 2nd January 2022, the defendant was working as a Disc Jockey at the Everglo Bar in George Town. The victim Omar Plummer was a patron at the Bar. The victim is a part time Disc Jockey and made repeated requests of the defendant to be allowed to play some music. When the defendant ignored his requests, the victim tried to enter the music room. The defendant asked him to leave, took up a knife and stabbed him four times to the front of his body. The victim was hospitalised for surgical care for one month. He suffered the following injuries:-
 - i. *A wound approximately 1.5cm in length in the region of the sternum;*
 - ii. *A wound approximately 1.5cm in length in the left upper quadrant of the abdomen;*
 - iii. *Two (2) wounds each 1cm in length to the umbilical area on the left side.*
3. The agreed evidence of the doctor is that these injuries were serious but are not likely to be permanent. They were consistent with infliction by sharp force trauma.

VICTIM IMPACT REPORT

4. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report (“VIR”) dated 17th January 2023. Attached to the report is the victim impact statement of Mr. Plummer dated 9th January 2023. He says that the physical injuries which he suffered caused him immense pain and discomfort. Presently he is struggling with feelings of insecurity, helplessness and a loss of control. Sometimes he does not wish to go outside and spends time locked in the house. He is afraid to go outside for fear of the defendant.



1 5. He lost his job after being in hospital for one month and on unpaid sick leave for two months as
2 a result of the assault. There is a letter from his employer as to his earnings. Calculations arising
3 from this are that the victim lost wages of \$4,160.00. He has a hospital bill at the Health Services
4 Authority (“HSA”) of \$21,322.46.

5
6 6. The probation officer’s assessment is that the victim has been emotionally, physically and
7 financially impacted by the incident. The officer notes that he continues to be in ongoing pain
8 and is only able to work for a limited number of hours. This has affected his ability to provide
9 for his family which includes two young children.

10 **SOCIAL INQUIRY REPORT**

11 7. The DCR has also provided a Social Inquiry Report (“SIR”) in respect of the defendant which is
12 dated 5th January 2023.

13
14 8. The Court has read this report in its entirety and takes into account everything said therein in
15 favour of the defendant. He is 31 years old. He is married and the father of a 12-year-old daughter
16 who resides in Jamaica. Since the completion of the SIR, there is information that he is an
17 expectant father of a second child.

18
19 9. During his early years, his mother emigrated to the Cayman Islands, and he was left in Jamaica
20 in the care of older siblings. This impacted him negatively and he describes what he says were
21 abusive circumstances. He relocated to the Cayman Islands in 2019 on a work permit. He worked
22 at various jobs and supplemented his income by also working as a part time Disc Jockey. His
23 present employer describes him as an exemplary employee.

24
25 10. The defendant gave details as to his total monthly income. After his expenses are paid, he has a
26 balance of \$705.00 per month.

27
28 11. The defendant has three previous convictions. On the 30th June 2020 he was fined \$500.00 in
29 total for offences of Common Assault, Possession of Ganja, and Consumption of Ganja.



- 1 12. Members of the community describe him as respectful and humble. He is not known to be a
2 troublemaker or to be violent. He is said to be committed to supporting his daughter. His
3 employer also describes him as hardworking and quiet. There is positive feedback from the
4 employer's customers about him. This offending behaviour is said to be out of character for him.
5
- 6 13. Under attitude towards the offence, the defendant expressed remorse to the probation officer and
7 said that the victim did not deserve what happened to him. The defendant said that he is willing
8 to pay compensation and to comply with any community-based sentence.
9
- 10 14. Under assessment/evaluation the officer states that notwithstanding the defendant's
11 disappointment at the guilty verdict, he has verbalised victim empathy and sought to understand
12 his own violent response. The officer also states that due to childhood traumatic events, there
13 may well be psychological issues which an assessment and intervention may identify. Such an
14 assessment is said to be imperative for his successful rehabilitation and to prevent him from
15 committing another serious offence. It is also noted that he may be using ganja to cope with
16 symptoms which use increases his propensity to re-offend.
17
- 18 15. The defendant was assessed using the LS/CMI Risk/Need Assessment tool. His overall risk of
19 re-offending was assessed as at medium level. There is one factor in the high category. This is
20 anti-social pattern which is based on his previous convictions and need for assessment.

21 THE SUBMISSIONS

- 22 16. The prosecution submitted that under the *Cayman Islands Sentencing Guidelines* for the offence
23 of wounding, the offence is a category 2 offence. The submission is that the level of culpability
24 is high based upon the use of a weapon. The harm is said to be lesser harm because of the absence
25 of pre-meditation. The prosecution also submits that the injuries are serious but not permanent
26 and there is ongoing psychological impact. The Court has been referred to the cases of *R v Smith*
27 (*Grant Christopher*)¹, *R v Xue* ² and *R. v. Christopher John Duff*³.

¹ 2015 EWCA Crim 1482

² [2020] EWCA Crim. 587

³ [2020] EWCA Crim. 587



1 17. Defence Counsel argues that the culpability is not high despite the use of a weapon. It is said that
2 this is not the usual case of a weapon, because the weapon was not taken to the Bar for an unlawful
3 purpose. It was taken for the purpose of work. The work in the music room meant that the
4 defendant would have been isolated from the general public and patrons. There would have been
5 no exposure to drunken patrons or engagement in common areas. It is thus said that the
6 **Guidelines** are not specifically applicable to this case.

7
8 18. Counsel also submits that there was some degree of provocation to which the defendant
9 responded, albeit to a lesser extent. As to the level of harm it is submitted that the defendant could
10 not have intended or anticipated the result. He went back immediately to playing music. This
11 says Counsel speaks to an absence of intent to cause the level of injury sustained by the victim.

12
13 19. The defendant's expression of remorse and empathy to the victim is said to be demonstrative of
14 the absence of any malice or forethought.

15
16 20. Counsel has drawn the Court's attention to three local cases in which sentences ranging from one
17 to two years were imposed. All of these sentences pre-date the **Guidelines**⁴.

18 AGGRAVATING FACTORS

19 21. Counsel for the prosecution submits that there are five aggravating factors as follows:-

- 20
21 i. Location of the offence being inside liquor licensed premises.
22 ii. Timing of the offence.
23 iii. Presence of family members.
24 iv. Repeated nature of the assault.
25 v. Previous conviction in 2020 for Common Assault.

26

⁴ CICA 13 of 2016- Alexander Brown v R; CICA 25 of 2011- Morris Brown v. R; CICA 24 of 2010 – Gail Ross v R



1 22. Defence Counsel submits in response that the location of the offending is not typical, in that the
2 defendant was there for work purposes and in a booth which was not designed for patrons. The
3 timing should not be considered an aggravating factor as it was part and parcel of the
4 circumstances of the employment. Counsel said that the timing is incidental to the fact that work
5 in that profession is required at that time of night. Counsel also said that the presence of relatives
6 at the scene was purely coincidental and more importantly that the incident only came to the
7 attention of the relatives after the victim left the booth. As to the repeated nature of the offending
8 it is submitted by Counsel that this may well have been during the tussle and exchange between
9 the parties and is not a reflection of the defendant's intention to cause multiple injuries.

10 **MITIGATION**

11 23. In mitigation defence Counsel points to the good reports of the defendant's work ethic. Counsel
12 said that the defendant now seems to be on the upward path of stability. He is the father of one
13 child and is soon to be the father of a second. He has expressed remorse. He is said not to be
14 beyond redemption and seeks the mercy of the Court with respect to a non-custodial sentence.

16 **COMPENSATION**

17
18 24. Counsel submitted that although it is accepted that no amount of money can remedy what
19 occurred the defendant is willing to provide compensation but has limited means. His total
20 earnings will vary depending on the level of his part time work. Following receipt of details of
21 the victim's medical costs and lost wages, in further written submissions Counsel submitted the
22 following proposal. The defendant proposes to make monthly payments of \$500.00 through the
23 Courts Funds Office or as directed for the first year. He proposes to increase monthly payments
24 to \$700.00 per month for the second year and to \$925.00 per month for the third year. This would
25 amount to \$25,500.00,⁵ and would account for the loss presently before the Court. This would be
26 without regard to whether they are direct or indirect payments to the victim and how they are
27 paid.
28

⁵ (6,000 + 8,400+11,100)



1 25. The second proposal is that the amount due to the HSA could be paid via a separate arrangement
2 directly by the defendant to the HSA, with the defendant signing a ‘declaration of indemnity’ in
3 favour of the victim for the payment of the fees due to HSA. The declaration would be provided
4 to the HSA to support the proposed direct payment arrangement by the defendant. This would
5 ensure that the HSA is paid the outstanding bill but would also protect the victim from being
6 pursued for payment by the HSA. The amount for lost wages could be paid through the Court
7 Funds Office or to a designated account provided by the victim.

8
9 26. In furtherance of these proposals the defendant has provided a signed indemnity declaration
10 which is received as Exhibit 1 for the purpose of this sentence hearing. It states:-

11 *“I Sekou Litchmore hereby undertake to indemnify Omar Plummer against all*
12 *costs payable to Health Services Authority (HSA) as a result of injuries sustained*
13 *on the 2nd January 2021 (sic) and to engage with the said HSA within one (1) month*
14 *of the date below with a view to paying in full the present invoice accrued of*
15 *KYD\$21,782.46 representing medical expenses in the terms and conditions that*
16 *may be required by the HSA to complete full satisfaction of the said invoice.”*

17 27. The Court has also been provided with a copy of a promissory note by which the defendant has
18 agreed to guarantee the payment of the victim’s medical bill and the payment of \$500.00 per
19 month to the HSA starting on the 16th March 2023 and continuing until the bill is paid in full.
20 The copy of the note is received as Exhibit 2 for the purpose of this hearing.

21 ANALYSIS

22 28. Notwithstanding the concession of the prosecution that the injuries in this case are not serious in
23 the context of the offence, I have considered the circumstances with some care. The injuries are
24 serious requiring as they did hospitalisation for one month and leading to inability to work for
25 some time. However, there are no details as to the extent of the effect upon vital organs and there
26 is no permanent effect reported by the doctor. There is some psychological harm. However, as
27 the victim describes it, much of this is due to his belief that the continued presence of the
28 defendant on the Island means that he may be further attacked in the future. I conclude allowing
29 for the benefit of the doubt, that this is a case of lesser harm.



1 29. Under the heading of culpability there are two factors. The first is that a weapon was used. On
2 the defendant's account he was being punched. The fact that the purpose for having the knife was
3 for work does not excuse the use of it. There were other options open to the defendant. He could
4 have used his fists in response. Secondly, the multiplicity of the injuries to different parts of the
5 body of the victim evidences the repeated nature of the assault. I conclude that this is a case of
6 higher culpability.

7
8 30. The starting point under the *Guidelines* for an offence of higher culpability and lesser harm is
9 three (3) years custody or thirty-six (36) months.

10
11 31. In my view there are two aggravating factors. Of the five urged by the prosecution, the factor of
12 the repeated nature of the assault is already taken into account in relation to the level of
13 culpability. Double counting should be avoided.

14
15 32. I accept the submission of the defence in relation to the presence of family members and the
16 timing of the offence. I consider that the location of the offence, being liquor licensed premises
17 where alcohol is likely to be a catalyst for disorder is an aggravating factor. The nature of the
18 premises makes it all the more reason for the defendant to have avoided the use of such a weapon.
19 Security guards were apparently on the premises and could have been called to deal with patrons.
20 Indeed, on the evidence at trial, the resulting aftermath was disorder and the early closure of the
21 Bar.

22
23 33. The previous conviction of the defendant for Common Assault is a second aggravating factor. It
24 is a recent offence which is similar in nature. Prosecuting Counsel has provided the summary of
25 facts for this offence. Defence Counsel was afforded the opportunity to say whether or not these
26 facts are accepted. It was a family incident and arose from an argument with his brother who he
27 slapped in the head. I am told that he did so in retaliation for what had been done to his mother.

28
29 34. The two aggravating factors serve to increase the sentence by three (3) months to thirty nine (39)
30 months imprisonment.

31



1 35. In mitigation account is taken of everything that has been said or written in the defendant's
2 favour. This includes the following:-

- 3
4 i. His remorse and willingness to apologise and pay compensation. The fact that
5 he has already made arrangements to pay the hospital bills of the victim is a
6 significant factor in mitigation, (6 months).
7
8 ii. There was some level of provocation, (4 months).
9
10 iii. His good work ethic and other personal qualities, (3 months).
11
12 iv. His personal circumstances including that he is the father of one child for
13 whom he provides and the expectant father of a second child for whom he will
14 have to provide, (2 months).
15
16 v. His background and exposure to other traumatic events in life which the
17 probation officer identifies as possibly primary contributory factors to his
18 disproportionate response, (2 months).
19
20

21 36. When all the factors are taken into account, the sentence is reduced to one of twenty-two (22)
22 months imprisonment.
23

24 37. In my view this offence is a serious one. It is one of violence in which the victim was repeatedly
25 assaulted. The victim has suffered physically, financially, and emotionally and continues to
26 suffer. The conduct of the defendant on the evidence which was accepted was entirely
27 disproportionate to the requests and actions of the victim. The defendant clearly failed to exercise
28 self-control and to respond appropriately to what was to him, the presence of an irritating patron.
29 The custody threshold has been firmly passed.
30

31 38. Consideration has been given to the personal circumstances of the defendant and to whether this
32 is a sentence which can properly be suspended.
33
34



1 39. The defendant is at medium risk of re-offending. He has a previous conviction for assault. This
2 is an escalation in offending behaviour and is cause for concern. However it is the report of the
3 probation officer and the factor of compensation which gives me pause. The officer recounts
4 what may be primary contributory factors for the response of the defendant and describes him as
5 contrite and trying to understand the root cause of his offending behaviour. In summary, from the
6 SIR, there is a process of rehabilitation which can be undertaken to prevent a reoccurrence of his
7 offending. The defendant is willing to undertake this. His personal circumstances include gainful
8 employment at which his employer says that he is doing well. Overall, there appears to be a
9 concerted effort on his part to continue to be of good behaviour.

10
11 40. I consider more importantly that compensation is a significant factor in this case. It will provide
12 some practical measure of assistance to the victim. For the defendant, it will in effect be the long-
13 term imposition of a financial requirement which will no doubt be ever present in his mind. It
14 will reduce his level of disposable income for a significant period of time to come.

15
16 41. Section 4 of the *Alternative Sentencing Act* (2008 Revision) provides that: -

17 *“A court shall, in imposing a punishment under this Law, take into account the following*
18 *principles —*

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

23 (i) *to denounce unlawful conduct;*

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

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

26 (iv) *to assist in rehabilitating convicted persons;*


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

1 through to completion. The default term for this portion of the compensation is 6
2 months' imprisonment.

3
4 ii) The balance of compensation of \$21,322.46 is to be paid on behalf of the victim
5 directly to the Health Services Authority pursuant to the indemnity agreement and
6 promissory note, which the defendant has provided to the Court (Exhibits 1 and 2).
7 The defendant is to pay \$500.00 per month starting on the 16th day of March 2023
8 and continuing through to completion. The default term of imprisonment for this
9 portion is four (4) years and six (6) months imprisonment.

10
11 50. The Grand Court Clerk is to provide a copy of the Minute of Order arising from this judgment to
12 the Health Services Authority and the Authority is asked to notify the Court if there is non-payment
13 of any monthly sum.

14 **Dated this the 17th day of February 2023**

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16 

17
18 **The Honourable Justice Cheryll Richards K.C.**
19 **Judge of the Grand Court**