



SENTENCE JUDGMENT

1. The defendant is before the Court for sentencing following his guilty plea to one count of Assault Occasioning Actual Bodily Harm (Assault A.B.H.) contrary to s.216 of the Penal Code (2022 Revision). The particulars are that he on the 20th day of February 2022 in the vicinity of the Power Supply Bar, George Town, Grand Cayman, Cayman Islands assaulted Adrian David Ebanks thereby occasioning him actual bodily harm.
2. The defendant was arraigned on his first appearance before the Grand Court on the 27th May 2022. He entered the plea of guilty.
3. The maximum sentence for this offence is 5 years imprisonment.
4. The prosecution has provided a summary of the facts which is agreed. On the 20th February 2022 at about 10pm, the victim Adrian Ebanks was at the Power Supply Bar having drinks. He went outside to smoke. He was approached by some males who kicked and punched him. He managed to get away and walked part of the way to his home before he was given a ride. On arrival at his home, his wife reported the matter to the Police. Emergency Services attended and transported him to the hospital where he was admitted. He suffered swelling and bruising to his left eye and bruising to his right rib and loin area. Four teeth were dislodged from his jaw. Three of the missing teeth were later found by the Police on the ground at the victim's home.
5. Closed Circuit Television (CCTV) footage from the Power Supply Bar showed that the defendant initiated an unprovoked attack against the victim in which other persons joined. The defendant left the scene thereafter. He was subsequently arrested and interviewed under caution and admitted to assaulting the victim. He said that the victim had been taunting him.



1 **VICTIM IMPACT REPORT**

2 6. The Department of Community Rehabilitation (DCR) has provided a Victim Impact Report
3 (VIR) dated 22nd September 2022. The victim is 37 years old. He lost four front teeth, two from
4 the upper right jaw and one each from the right and left sides of his bottom jaw. Another tooth
5 from the left bottom jaw was broken.

6
7 7. The victim said that he could not smile, his mouth was hurting when he ate and he had
8 headaches and pain all over his body. He had to have extensive dental work and dentures fitted
9 to replace his bottom teeth. It took some four months of adjustment for the dentures to fit
10 comfortably. He continues to have discomfort while eating. His left index finger hurt for
11 months and there is difficulty with its flexibility. As a result of the injuries he was unable to
12 work for about three and a half weeks. Loss of earnings of \$3,150.00 is confirmed by his
13 employer. His medical bills amount to a total of \$2,927.97. The total compensation sought is
14 \$6,077.97.

15
16 8. The victim has experienced psychological impact from the offence. In particular during the
17 period while he was waiting for his dentures to be fitted. He felt embarrassed to talk to people.
18 The VIR records his statements to the Probation Officer:-

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20 *“I am the victim and the identity of the persons who attacked me could not be*
21 *shared with me because of fear of retaliation. So they are out there walking free*
22 *and I am out there unaware of who they are so they can attack me again. They are*
23 *being protected from retaliation but I am left open to further attacks.” Mr. Ebanks*
24 *continued, “I have a broken heart. I was humiliated. Can you imagine being*
25 *kicked in the face? I did not go out to pick trouble but to have a good time. I have*
26 *not gotten an apology from either party.”*

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28 9. Under Assessment/Evaluation, the Probation Officer describes the victim as being significantly
29 impacted at all levels by the defendant’s actions.

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1 **SOCIAL INQUIRY REPORT**

2 10. The DCR has provided a Social Inquiry Report (SIR) dated 27th October 2022 in respect of the
3 defendant. The Court has read the report in its entirety and takes into account everything which
4 is said therein in the defendant’s favour.

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6 11. The Report states that as a child, the separation and rejection by his father and his father’s
7 family lead to the manifestation and continuation of behavioural problems throughout his
8 youth. He is now 22 years old. He was diagnosed with Attention Deficit Hyperactivity
9 Disorder (ADHD), Oppositional Defiant Disorder and also a learning disorder. His cognitive
10 abilities are said to be in the low average range.

11
12 12. He has been employed since 2019 in family businesses. He has had multiple rehabilitation
13 interventions by the Court and probation system, including overseas placements. He was also
14 placed in the local boy’s home where he did well but relapsed on his return to the community.

15
16 13. In 2021 he was sentenced to a Probation Order for the offences of theft, damage to property,
17 common assault, burglary (2 offences), criminal trespass and consumption of ganja. After
18 initial non-compliance, he engaged in the probation programme and completed eight hours of
19 community service before re-offending.

20
21 14. The Probation Officer expresses the view that his untreated ADHD is likely to have contributed
22 to his offending behaviors, given that the diagnosis is associated with “thrill seeking behaviors”
23 and “impaired behavioral regulations”. The defendant’s intellectual functioning is said to limit
24 the coping options available to him.

25
26 15. He was assessed as at very high risk of re-offending with six of the eight criminogenic factors
27 in the ‘High’ or ‘Very High’ categories. His pro-criminal attitude is high. He spent four months
28 after February 2022 avoiding contact with the Police until a warrant was executed on him. He
29 is described by the Probation Officer as exhibiting a pattern of generalised trouble and as
30 continuing to struggle with a low tolerance for frustration. He views violence as a viable
31 problem solving tool.
32

1 16. The Officer also states that he has a history of non-compliance with community based
2 supervision orders. This is in addition to continued offending while under such orders. This
3 means that he is not a suitable candidate for community supervision. However, over the past
4 two years, there has been a significant reduction in the frequency of his offending. The present
5 offending is the first since 2019. The Officer gives her view that when his movements are
6 restricted, he is not a significant risk to the community. It is also felt that there is evidence of
7 genuine remorse and that his recent incarceration while on remand has taught him a valuable
8 lesson.



9
10 **SENTENCE – CATEGORISATION OF OFFENCE**
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12 17. Both Counsel refer the Court to the *Cayman Islands Sentencing Guidelines* for the offence of
13 Assault A.B.H.¹. The prosecution submits that the offending falls somewhere between
14 Category 1 and Category 2 of the *Guidelines*. It is submitted by prosecuting Counsel that it is
15 an offence of ‘Greater Harm’ although this submission is based on reasons which refer to
16 culpability rather than harm. It is further submitted that there is one higher culpability factor
17 present, namely that it was a prolonged assault.

18
19 18. As to the level of harm the *Guidelines* state that:-

20 *“When determining whether the harm caused was serious in the context of these*
21 *offences, the court will assess whether the harm caused was what would be normal*
22 *for this type of offence or has gone beyond the level that would be regarded as*
23 *normal. Since the levels will be higher (for some offences, very much higher) as a*
24 *result, the type of harm or violence that will justify placing an offence in the higher*
25 *category will be harm that is significantly above the level of harm which is the*
26 *norm for these offences.”*
27

28 19. Defence Counsel submits that this offence is not one of Greater Harm because the level of harm
29 caused is not significantly above the level of harm which is the norm for these offences.
30 Counsel notes that the starting point for offences of Greater Harm is three years, which is three
31 times that for offences of Lesser Harm. Counsel submits that the injuries caused are not so

¹ Issued by the Hon. Chief Justice on 16th June 2021

1 serious or far above the normal such as to justify moving from a starting point of twelve months.
2 Counsel also submits that the ongoing effects of the injuries on the victim may be properly
3 reflected by way of an aggravating factor.
4

- 5 20. Defence Counsel refers to the case of ***R. v. Grant Christopher Smith***² and the statement of the
6 English Appellate Court in its judgment that:-

7
8 *“First, with regard to the injury, the question is whether the injury was serious “in*
9 *the context of the offence”. It is axiomatic that all violence within the context of a*
10 *section 18 offence is serious, but some violence is more serious than others. The*
11 *purpose behind the words “which is serious in the context of the offence” in the*
12 *guidelines is to distinguish between that level of violence which is inherent or par*
13 *in a standard section 18 offence and that which will, by definition, go beyond what*
14 *may be viewed as par for the course. In our view, given that there is such a marked*
15 *disparity in the starting point between categories 1 and 2, the sorts of harm and*
16 *violence which will justify placing a case within category 1 must be significantly*
17 *above the serious level of harm which is normal for the purpose of section 18.”*
18

- 19 21. This Court notes that the offence charged herein is one of Assault A.B.H. This is not a charge
20 of Causing or Inflicting Grievous Bodily Harm under s.203 or s.204 of ***the Penal Code***. This
21 offence of Assault A.B.H. will involve a wide range of injuries from the very minor such as
22 bruising to parts of the body and some hematomas, through to more serious injuries such as
23 broken bones. To consider the permanence of the injury in this case, as no more than a factor
24 in aggravation as Defence Counsel suggests, would be failing to consider the very nature of it.
25 In this case the nature of one injury is the removal of parts of the body of the victim. The victim
26 was hospitalised. In this Court’s view the injuries are at the top of the spectrum for offences
27 within the range of offending. In this Court’s view in the context of the offence of Assault A.
28 B. H, the permanent dislodgment of four of the victim’s teeth is serious in the context of this
29 offence. The conclusion is that it is an offence of Greater Harm.

- 30
31 22. Under the heading of Culpability, Defence Counsel accepts that this is an offence of Higher
32 Culpability. Counsel submits that it is accepted that this was a prolonged assault. Counsel said

² 2015 EWCA Crim. 1482



1 that it can be seen from the CCTV footage recorded of the incident that while it lasted under a
2 minute, there were several blows to the victim. The victim then slid backwards but the blows
3 to him continued.

4
5 23. Both Counsel submit that there was a lack of premeditation. Defence Counsel submits that the
6 victim had been drunk and had made remarks about the defendant's family. The defendant after
7 hearing such remarks which were repeated by the victim, became angry and struck the victim.
8 Defence Counsel submits that given that there is also one factor of lower culpability, which is
9 the lack of premeditation, the offending should be considered to fall somewhere between the
10 two levels.

11
12 24. The Court concludes that this is an offence of Greater Harm and Higher Culpability with a
13 starting point of three years custody and accepts that a flexible approach should be adopted
14 given the factors identified.

15
16 **AGGRAVATING FACTORS**

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18 25. The prosecution submits that there are four aggravating factors. These are the previous
19 convictions of the defendant including for a similar offence, namely an assault in 2021 for
20 which he was sentenced to a Probation Order, the prevalence of the offence, the prolonged and
21 repeated nature of the assault and the timing of the offence.

22
23 26. As to the previous convictions of the defendant, defence Counsel submits that although it was
24 for multiple offences, these were all committed on one occasion.

25
26 27. The Court accepts the submissions of the defence that it would be double counting to consider
27 the prolonged and repeated nature of the assault as an aggravating factor when it is a factor
28 previously referenced in determining the level of culpability.

29
30 28. Defence Counsel also submits that there is no empirical evidence as to the prevalence of these
31 offences. This submission is accepted.

32
33 29. As to timing of the offence, defence Counsel argues that neither the timing nor the location,
34 being liquor licensed premises plays any significant feature in the offending. It is submitted



1 that although these were liquor licensed premises, the CCTV footage shows that there were not
2 a large number of people outside the premises.

3
4 30. The Court notes that this was after ten at night, in the precincts of liquor licensed premises. The
5 potential for disorder is evident as is the reduced likelihood of timely assistance to the victim.
6 The Court accepts the submissions of the prosecution in this respect that the timing of the
7 offending is an aggravating factor but considers that it is of significantly less weight than the
8 first mentioned factor which is the previous conviction of the defendant for a similar offence.

9
10 31. From the starting point of three years or thirty six months, the sentence is increased to one of
11 forty two months by reason of the aggravating factors.

12
13 **MITIGATING FACTORS**

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15 32. In mitigation, defence Counsel submits that this was an isolated incident between the parties
16 for which the defendant is remorseful. He is willing to pay compensation to the victim in the
17 full amount claimed and to do so as soon as an order is made.

18
19 33. Counsel raises as a significant factor in mitigation and as possibly reducing the defendant's
20 culpability, his cognitive and behavioral difficulties from a young age. Counsel submits that
21 this offence occurred when the defendant was 21 years old. He has had a difficult upbringing
22 with few role models. The period of three months which he spent while on a twenty four hour
23 curfew has shown that he requires structure around him in order for him to remain out of
24 trouble. Counsel commended to the Court the recommendation of the Probation Officer that a
25 suspended sentence with strong conditions be imposed to include the continuation of curfew
26 and therapeutic interventions. Counsel said that such a sentence would allow the defendant to
27 work in order to pay off any loans obtained in respect of the amount of compensation.

28
29 34. In mitigation, the Court takes into account everything which has been said or written in the
30 defendant's favour. This includes his age, his genuine remorse as described by the Probation
31 Officer, his difficult upbringing as well as the detailed psychological issues such as his
32 untreated ADHD which may have played a role in this offending. When all these factors are

1 taken into account, the sentence of forty two months is reduced by twelve months to thirty
2 months imprisonment.



3
4 **CREDIT FOR GUILTY PLEA**

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6 35. The defendant is given full credit for his guilty plea, thereby reducing the sentence by one third
7 to one of twenty months imprisonment.

8
9 **CONCLUSION**

10 36. The *Cayman Islands Sentencing Guidelines* provides general guidance that a custodial
11 sentence should not be passed unless the offence is so serious that no other sentence can be
12 justified for the offence. Custody should be reserved for the most serious offences. Even where
13 the custody threshold is passed, custody can still be avoided in light of personal mitigation or
14 if there is suitable community intervention which would meet the aims of punishment and
15 rehabilitation.

16
17 37. The offending in this case took place outside liquor licensed premises at night. This was a
18 vicious, brutal and prolonged attack on the victim. He was kicked in the face and punched and
19 kicked over his body. He was hospitalised. The impact upon him has been both psychological
20 and physical and is long term in nature. He is 37 years old. While the bruises over his body
21 have healed, he has had more than four months of trying to adjust to dentures and difficulty
22 eating because of the loss of his teeth. He has been afraid to smile and talk to people because
23 of his missing teeth. He describes himself as having a broken heart and feeling humiliated. All
24 the circumstances taken together lead to the conclusion that the offending is serious and that
25 the custody threshold is firmly passed.

26
27 38. Consideration has been given to whether an immediate custodial sentence is avoidable in this
28 case. By this offending the defendant is in breach of a Probation Order imposed by the
29 Summary Court in part for an offence of Assault. The Probation Officer states that his history
30 of non-compliance to community based supervision orders means that he is not a suitable
31 candidate for a community supervision recommendation. He is assessed as at high risk of re-
32 offending.



1 39. Despite all of this, the Probation Officer notes that since 2019, there has been a drastic reduction
2 in the frequency of his offending and that over this period there have been no property crimes
3 which were a significant part of his offending history. In respect of this offence he is said to
4 have abided by restrictive orders of the Court and to have benefited from his brief experience
5 on remand. This is said to have had a deterrent effect upon him.

6
7 40. The Court reminds itself of the guidance set out in the *Guidelines*. In particular that the Court
8 has to balance a number of competing interests and objectives and to tailor the punishment to
9 the individual circumstances of the offender while ensuring that it is in line with the seriousness
10 of the offence. The Court should consider which of the aims which govern the sentencing
11 process, deterrence, punishment, rehabilitation and restitution will be best served by the
12 sentence to be passed.

13
14 41. In this case there is a clear and timely need for compensation to be paid to the victim. This
15 cannot be met if the defendant receives an immediate custodial term. The defendant's personal
16 circumstances include psychological and cognitive difficulties. He is in need of therapeutic
17 interventions in order to ensure that there is no re-occurrence of such offending. It is said that
18 there has already been a deterrent effect upon him by way of the period of his remand and the
19 restrictive bail conditions imposed. In all the circumstances the Court considers that an
20 immediate custodial sentence is avoidable. A suspended sentence will meet the aim of
21 restitution to the victim, rehabilitation of the defendant as well as deterrence and punishment.

22
23 42. The sentence of twenty months imprisonment is therefore suspended for a period of two years.
24 In addition:-

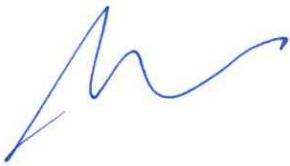
25
26 i) Pursuant to s.21 of the *Alternative Sentencing Act (2008 Revision)*, a
27 supervision order is made for a period of two years. As a condition of the
28 supervision the defendant is to comply with the directions of the Probation
29 Officer in general including any directions in relation to therapeutic
30 treatments.

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32 ii) Pursuant to s.5 of the *Alternative Sentencing Act (2008 Revision)*, the
33 defendant is to observe a curfew and to remain at his home between 7pm
34 and 5am to be monitored electronically for a period of six months.

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iii) Pursuant to s.33 of the *Penal Code*, a compensation order is made. The defendant is to pay to the victim, compensation of \$6,077.97 or six months imprisonment in default. Time to pay compensation is given until Thursday 13th October 2022.

Dated this 10th day of October 2022



**Honourable Justice Cheryll Richards K.C.
Judge of the Grand Court**