

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

3 **INDICTMENT NO: 22 OF 2020**

4  
5  
6 **THE QUEEN**



7  
8 **V.**

9  
10 **OLGA ELIZABETH SMITH**

11  
12 **Appearances:**

**Mrs. Nicole Petit for the Prosecution**

13 **Mr. Charles Miskin Q.C. instructed by Mr.**  
14 **Oliver Grimwood**

15  
16 **Before:**

**Justice Cheryll Richards Q.C.**

17 **Submissions on Sentencing:**

**6<sup>th</sup> May 2021,**

18 **Further written submissions:**

**1<sup>st</sup> June 2021**

19 **Further Submissions**  
20 **and Delivery of Judgment:**

**3<sup>rd</sup> June 2021**

21  
22  
23 **HEADNOTE**

24 ***Criminal Law – Manslaughter – Section 183 and s.186 of the Penal Code –***  
25 ***Manslaughter by reason of provocation, Sentencing.***  
26

27  
28  
29 **SENTENCE JUDGMENT**

- 1           1.       The Defendant is before the Court for sentencing following a guilty plea to the offence  
2                   of Manslaughter. On the 30<sup>th</sup> March 2020, the Defendant first appeared in the Grand  
3                   Court on this Indictment which charged her with the murder of Marvin Conolly  
4                   Almendarez committed on the 15<sup>th</sup> day of March 2020 in North Side, Grand Cayman.  
5                   The Defendant, with her former counsel in attendance, was arraigned on the 2<sup>nd</sup> April  
6                   2020 and pleaded not guilty. She was granted bail on that day in light of the exceptional  
7                   circumstances of the onset of the Covid-19 pandemic and her pregnancy. A condition of  
8                   her bail was a 24-hour curfew.
- 9
- 10           2.       In November 2020 she gave birth to a child and has reported that the Deceased is the  
11                   father of the child.
- 12
- 13           3.       Following the arraignment, there were various case management hearings in preparation  
14                   for a trial. The Defendant was assigned leading Counsel in June 2020.
- 15
- 16           4.       On the 30<sup>th</sup> October 2020 the Defendant was re-arraigned and pleaded guilty to the  
17                   offence of Manslaughter, by reason of provocation. A Social Inquiry Report (SIR) was  
18                   ordered. While the SIR was awaited, the Defendant attended the Department of  
19                   Community Rehabilitation (DCR) on the 24<sup>th</sup> February 2021 for an interview with the  
20                   Probation Officer. She advised the Officer that she would be attending Court on the 26<sup>th</sup>  
21                   February 2021 “to change her plea”. The interview was aborted and preparation of the  
22                   SIR ceased.
- 23
- 24           5.       On the 26<sup>th</sup> February 2021, her attorneys then on record applied for and were granted  
25                   leave to come off record.
- 26



1 6. New Junior Counsel was assigned by the Legal Aid Office and appeared in Court on the  
2 record on the 5<sup>th</sup> March 2021. A new lead Counsel was assigned in mid-March 2021. On  
3 the 1<sup>st</sup> April 2021, Counsel confirmed that there would be no application to vacate the  
4 plea. DCR then re-commenced preparation of the SIR.



5  
6 **SUMMARY OF FACTS**

7  
8 7. The summary facts are these. The Defendant was the girlfriend of the Deceased. They  
9 resided together at her home in North Side. She was 36 years old at the material time  
10 and he was 27 years old. On the 15<sup>th</sup> March 2020, the Emergency Services responded to  
11 a 911 call which was received from a neighbour of the couple. They traveled to the home  
12 where the Deceased was found lying on the floor of the master bathroom and was  
13 unresponsive. He was pronounced dead when taken to hospital. A subsequent post  
14 mortem examination conducted by Dr. Jyoti of the Cayman Islands Hospital, found the  
15 cause of death to be hemorrhagic shock from a punctured left subclavian injury. Dr. Jyoti  
16 stated that the wound was not self-inflicted and described it as a stab injury to his neck  
17 which was elliptical in shape and was located above the clavicle. The track of the wound  
18 was right to left, directed downwards, slightly perpendicular to the stab injury on the  
19 skin and measured 13cms in length. There was also a stab injury to the right chest which  
20 was inflicted by a sharp-edged weapon. There are no eye witnesses to what occurred.

21  
22 **THE LAW**

23  
24 8. The **Penal Code** 2019 Revision provides in s.183 that a person who commits the offence  
25 of Manslaughter is liable to imprisonment for life.  
26  
27



1 9. Provocation is defined in s.186 as follows:

2  
3 *“Where on a charge of murder there is evidence on which the jury can find that the*  
4 *person charged was provoked (whether by things done or things said or by both*  
5 *together) to lose his self-control, the question whether the provocation was enough*  
6 *to make a reasonable man do as he did shall be left to be determined by the jury;*  
7 *and in determining that question the jury shall take into account everything both*  
8 *done and said according to the effect which in their opinion it would have on a*  
9 *reasonable man.”*  
10

11 **AGREED SUMMARY OF FACTS AND BASIS OF PLEA**

12  
13 10. There is a signed and agreed basis of plea and summary of facts between the Prosecution  
14 and the Defence which is set out below:

15  
16 ***“Agreed Summary of Facts***

17 **a.** *On Sunday, 15<sup>th</sup> March 2020, at 2:49 a.m. Cathy-Ann Seymour, of*  
18 *#156 Splendid View Boulevard, North Side reported to 911 that a*  
19 *female, known to her as Julia (the Defendant, Olga Smith), came to*  
20 *her home covered in blood and said that someone was stabbed. Ms.*  
21 *Seymour stated she was going to the location at #236 Splendid View*  
22 *Boulevard, North Side with the person.*

23 **b.** *Police Officers were dispatched to the location at #236 Splendid View*  
24 *Boulevard, North Side where they cordoned off the scene. EMS*  
25 *officers were also dispatched to the location and attempted to*  
26 *resuscitate the victim, Marvin Xavier Connolly, who had been*  
27 *stabbed in the area of his shoulder close to his neck and appeared*  
28 *unresponsive.*

29 **c.** *Mr. Connolly was transported to the George Town Hospital, where*  
30 *he was pronounced dead by Dr. Nicole Knight at 4:15 a.m.*

31 ***The Defendant, Ms. Smith, gave the following account to DC Shane Ennis***  
32 ***and PC Walshe while at the scene:***  
33



- 1                    *i. She and the deceased, her boyfriend, had an argument on Saturday,*  
2                    *14<sup>th</sup> March 2020 at which time both of their phones were damaged.*
- 3                    *ii. Sometime later that night, they went to a bar called “The Barn”*  
4                    *located on Frank Sound Road, North Side.*
- 5                    *iii. While they were back at home, she was sitting outside, and the*  
6                    *Deceased punched her in the face, and said to her, “You think you*  
7                    *bad”. She also stated the Deceased said he was going to die today*  
8                    *from the corona virus and then said he was joking. The Deceased*  
9                    *subsequently went into the bathroom, and she went into the kitchen.*
- 10                  *iv. While she was in the kitchen, she saw the bedroom door closed and*  
11                  *her dog started to bark.*
- 12                  *v. She went into the bathroom and saw the Deceased laying on the floor*  
13                  *in the bathroom and she started to give chest compressions, during*  
14                  *which time she saw blood coming from his nose, and saw his chest*  
15                  *rise and fall, and noticed when air left his body.*
- 16                  *vi. She decided to call 911, but then remembered that her phone was*  
17                  *damaged.*
- 18                  *vii. She proceeded on foot to her neighbour’s residence. There, she*  
19                  *sought assistance from Kathy-Ann Seymour and her daughter*  
20                  *Jasmine Ebanks.*

21                  ***The statements of the two officers were admitted as Exhibits 1 (DC Ennis)***  
22                  ***and 2 (DC Walshe).***

23                  ***The statement of EMT Officer Hal Ebanks was admitted as Exhibit 3.***

24                  ***ABE Account given by Jasmine Ebanks (admitted as Exhibit 4):***

- 25                  *i. Jasmine Ebanks stated that she and her mother were awoken by*  
26                  *knocks on the front door. After checking they opened the door and the*  
27                  *suspect said something about some “stabbed” and “knife”. Jasmine*  
28                  *Ebanks then accompanied the Defendant on foot to the residence.*
- 29                  *ii. Upon their arrival at the residence, the Deceased’s body was*  
30                  *partially in the bathroom closet with a white handled knife on the*  
31                  *floor by the bathroom vanity. Ms. Jasmine stated she took the knife*



1                    *and used it to cut open the victim’s shirt to identify the wound, which*  
2                    *she was able to identify in the area of his shoulder. She then placed*  
3                    *the knife on the vanity.*

4                    **iii.** *The Deceased’s mouth was blue and his body was pale. She*  
5                    *performed chest compressions and while doing so, no blood came*  
6                    *from the wound.*

7                    **iv.** *She stated she heard the Defendant say, “I tried, I tried, I tried*  
8                    *Jasmine, but he’s not breathing”, “He’s not breathing, he’s not*  
9                    *breathing, I need help” and while she was conducting chest*  
10                    *compressions the defendant further stated, “I tried that Jasmine, I*  
11                    *tried that”.*

12                    ***ABE Account given by Cathy-Ann Seymour (Jasmine Ebanks’ mother***  
13                    ***(Admitted as Exhibit 5):***

14                    **i.** *Cathy-Ann Seymour stated she and her daughter were awoken by*  
15                    *knocks on the front door, which was the Defendant, who had blood*  
16                    *on her face, arms and the rest of her body. She heard the defendant*  
17                    *say “he stabbed, he stabbed”.*

18                    **ii.** *She stated she left after her daughter and the Defendant as she called*  
19                    *911 and then decided to drive to the location.*

20                    **iii.** *When she arrived at the location, she observed her daughter*  
21                    *performing chest compressions as she remained on the telephone with*  
22                    *the 911 operator.*

23                    **iv.** *While at the location, she heard the defendant say, “He mashed my*  
24                    *phone and I couldn’t call”, “He stabbed, he stabbed’, “We were*  
25                    *fighting and my phone is mashed up”, “I did that, I did that Jasmine,”*  
26                    *with regards to Jasmine conducting chest compressions on the victim.*

27                    **v.** *She stated she observed a first aid kit open on the ground outside the*  
28                    *bathroom.*

29                    **vi.** *She said she could assist with the time the Defendant came to their*  
30                    *home and her manner because it was captured on her CCTV.*

31



1                    ***The Post Mortem Report of Dr. Jhoti (Exhibit 6).***

2                    ...

3                    ***Defendant's Interviews following her arrest:***

- 4                    i. *The Defendant was interviewed on three occasions following her*  
5                    *arrest.*
- 6                    ii. *In the course of each of the interviews, she answered "no comment"*  
7                    *to the questions put to her, including refusing to say her name or give*  
8                    *her date of birth.*
- 9                    iii. *The investigators put to her the medical opinion that the wound was*  
10                    *not self-inflicted*
- 11                    iv. *They also put to her:*
- 12                    a. *the history of police reports;*
- 13                    b. *evidence that someone had been part way through preparing*  
14                    *food in the kitchen; and*
- 15                    c. *evidence of broken furniture at the scene.*
- 16                    v. *They suggested to the Defendant that there had been a fight during*  
17                    *the course of which she had, in frustration, stabbed the Deceased.*
- 18                    vi. *The defendant answered no comment.*
- 19                    vii. *She did not repeat or clarify any of her earlier indications that the*  
20                    *victim was found dead, which suggested suicide.*

21                    ***(Basis of) Defendant's guilty plea to Manslaughter:***

- 22                    i. *The Defendant's plea which is acceptable to the Crown is on the*  
23                    *following basis. The Defendant accepts that, whilst her memory of*  
24                    *what happened on the night is hazy, the following took place:*
- 25                    a. *The couple argued earlier in the day.*
- 26                    b. *The couple went to the Barn where they drank alcohol and*  
27                    *argued.*
- 28                    c. *They travelled home separately.*
- 29                    d. *At home, the Defendant was preparing food.*
- 30                    e. *There was a verbal then physical fight.*





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

*“Marvin was not just a son and a brother. He was our everything. Is our everything. We wake up and we know that something is off in our lives. Without thinking about it much and what has happened, we just feel that emptiness and sadness. I see my mother who has lost a significant amount of weight and no longer sleeps my sister who resorts to alcohol abuse and risky behaviour, his friends and acquaintances who want answers where there is none. And then I reflect on myself who throughout all of this have tried to be the strong one – the pillar everyone can rely on, the one to prepare all the arrangements, to take care of everything and bear all financial expenses so that everyone else does not need to burden themselves with these things and can instead grieve in their own way. But in fact, inside I am broken and defeated. I have seen the inside of hospital rooms more in the last year than I care to count. This trauma has exasperated existing chronic illnesses and developed new ones. I have thrown myself into my work with little regard to my health and mental wellbeing. And I know that this is not sustainable and surely there is a way to grieve in a healthier way, but it’s not easy to go about your life as if everything is normal and ok. In fact, in a perfect world no one would ever feel this way.*

*Every aspect of our lives have changed. My mom does not go out in public very often because she is often approached and asked “exactly what happened on that night?”, “what are the police saying?” “has she apologised or given any reasons why?”, “so what happened to that women, is she in jail?”. How can one no re-live the pain and anger each time someone asks a wholly insensitive question? ... We relive the trauma and pain every day no matter how much we try to heal from it. ...Surely a harsh sentence in this case and others like this can serve as an example that these are not trivial crimes with no impact, but that there is a great impact – and impact to the deceased, to their family, friends, co-workers, and the community.”*



1 **SOCIAL INQUIRY REPORT**

2  
3 13. The DCR has provided a Social Inquiry Report (“SIR”) dated 16<sup>th</sup> April 2021. This  
4 provides details as to the personal circumstances of the Defendant. Her only child, a  
5 daughter is now 5 months old.

6  
7 14. The Defendant reports that she met the Deceased in 2017 and they began a relationship  
8 shortly thereafter. In the course of the relationship there was verbal and physical abuse.  
9 She says that he would head-butt her and throw things at her. Between the 20<sup>th</sup> January  
10 2018 and the 20<sup>th</sup> February 2020, there were 16 reports made to the Police in which the  
11 Defendant was classified as a victim and the Deceased, the suspect<sup>1</sup>. The majority of  
12 these related to incidents of domestic assault, and damage to property. The Deceased  
13 was removed from the home by the police on a number of occasions. He was convicted  
14 of the offence of Common Assault in respect of an incident against the Defendant which  
15 had been reported to the Police on the 8<sup>th</sup> May 2019.

16  
17 15. With respect to the night in question, the Defendant told the Probation Officer that in the  
18 course of the argument the Deceased had verbally abused her while she had been on her  
19 way home from the bar. She drove the rest of the way home alone, leaving him at the  
20 side of the road. After he arrived at the home, he had punched her to her face while they  
21 were both outside the house. He was upset and drunk. When they went inside, he started  
22 to head-butt her and threatened her by saying that a nearby pond was the perfect place  
23 to hide a body. When he said this he had a fishing knife in his hand which he was  
24 swinging back and forth. She said that she does not know if she lost consciousness but  
25 remembers him going into the master bedroom and that she followed him and they

---

<sup>1</sup> Hearing Bundle pages 236 to 244

*Judgment: The Queen v. Smith (Olga Elizabeth). Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021*

1 continued the argument. He left and went into the bathroom and when she followed him  
2 thereafter, she saw him on the floor.

3  
4 16. Members of the community were contacted by the Probation Officer. They describe the  
5 Defendant as a good and kind-hearted person and as someone who has always been a  
6 victim in relationships. In her past marriage she is said to have been a victim of abuse.  
7 She is said to be caring and helpful to others and not known to be violent. The offence  
8 is said to be out of character for her.

9  
10 17. Under Assessment /Evaluation the Probation Officer describes her as having had the  
11 benefit of a stable upbringing, devoid of dysfunction. She appeared to have presented no  
12 behavioural challenges and had no negative relationship issues at home. As an adult she  
13 has led a generally productive and law-abiding lifestyle and has no previous criminal  
14 convictions.

15  
16 18. She is described by the Officer as having feelings of guilt and remorse and possibly  
17 experiencing post-traumatic stress. She was assessed using the LS/CMI Instrument. Her  
18 overall risk of re- offending is said to be low, with none of the eight criminogenic factors  
19 ranking in the high or very high category. Alcohol/drug problem was one of the two  
20 factors in the medium range - given her level of alcohol use while cohabiting with the  
21 Deceased.



1 19. Under specific risk/ need factors, the Officer records that the Defendant reports receiving  
2 threats via social media from friends of the Deceased and that she engages in  
3 denial/minimization – this, given her indication that she lost consciousness and cannot  
4 remember fatally injuring the Deceased.

5  
6 20. The Officer recommends that, should a custodial sentence be imposed, the Defendant be  
7 offered the opportunity to engage in rehabilitation programmes - in particular those  
8 dealing with relationships, substance misuse and counselling.

9  
10 21. Seven letters of support for the Defendant have been provided. These attest to her good  
11 character, the toxicity and abusiveness of the relationship between the couple, her  
12 hardworking nature, her dependability and honesty as an employee.

13  
14 **SENTENCING GUIDELINES**



15  
16 22. In the absence of offence-specific guidelines in the Cayman Islands, both the Prosecution  
17 and the Defence referred the Court to the United Kingdom Guidelines. However there is  
18 disagreement between Counsel as to the applicable guidelines following changes to the  
19 statutory position in the United Kingdom.

20  
21 23. Sections 54 -56 of the *Coroners and Justice Act* 2009 ["CJOA"] which abolished the  
22 defence of provocation are set out below:

23 ***“54. Partial defence to murder: loss of control***

- 24 (1) *Where a person (“D”) kills or is a party to the killing of another (“V”), D*  
25 *is not to be convicted of murder if—*  
26 (a) *D's acts and omissions in doing or being a party to the killing*  
27 *resulted from D's loss of self-control,*  
28 (b) *the loss of self-control had a qualifying trigger, and*  
29 (c) *a person of D's sex and age, with a normal degree of tolerance and*  
30 *self-restraint and in the circumstances of D, might have reacted in*  
31 *the same or in a similar way to D.*



1                   **“55. Meaning of “qualifying trigger”**

- 2                   (1)       *This section applies for the purposes of section 54.*
- 3                   (2)       *A loss of self-control had a qualifying trigger if subsection (3), (4) or (5)*  
4                   *applies.*
- 5                   (3)       *This subsection applies if D's loss of self-control was attributable to D's fear*  
6                   *of serious violence from V against D or another identified person.*
- 7                   (4)       *This subsection applies if D's loss of self-control was attributable to a thing*  
8                   *or things done or said (or both) which—*
- 9                   (i)       *constituted circumstances of an extremely grave character, and*  
10                  (ii)       *caused D to have a justifiable sense of being seriously wronged.*
- 11                  (5)       *This subsection applies if D's loss of self-control was attributable to a*  
12                  *combination of the matters mentioned in subsections (3) and (4).*
- 13                  (6)       *In determining whether a loss of self-control had a qualifying trigger—*
- 14                  (i)       *D's fear of serious violence is to be disregarded to the extent that it*  
15                  *was caused by a thing which D incited to be done or said for the*  
16                  *purpose of providing an excuse to use violence;*
- 17                  (ii)       *a sense of being seriously wronged by a thing done or said is not*  
18                  *justifiable if D incited the thing to be done or said for the purpose*  
19                  *of providing an excuse to use violence;*
- 20                  (iii)       *the fact that a thing done or said constituted sexual infidelity is to*  
21                  *be disregarded.*
- 22
- 23

24                   **56. Abolition of common law defence of provocation**

- 25                  (1)       *The common law defence of provocation is abolished and replaced by*  
26                  *sections 54 and 55.*
- 27                  (2)       *Accordingly, the following provisions cease to have effect—*
- 28                  (i)       *section 3 of the Homicide Act 1957 (c. 11) (questions of provocation*  
29                  *to be left to the jury);*
- 30                  (ii)       *section 7 of the Criminal Justice Act (Northern Ireland) 1966 (c.*  
31                  *20) (questions of provocation to be left to the jury).”*
- 32

33                  24.       The Prosecution contends that the new Guidelines in the United Kingdom issued  
34                  effective from 1<sup>st</sup> November 2018 which refer to *Manslaughter by reason of loss of*  
35                  *control* should be used as a guide. These Guidelines categorise high culpability as  
36                  including loss of self-control in circumstances which only just met the criteria for a  
37                  qualifying trigger and lower culpability where the qualifying trigger represented a very  
38                  high degree of provocation.

39

40                  25.       The Defence contend that the older Guidelines as to *Manslaughter by provocation*  
41                  continue to apply in the Cayman Islands where the offence remains unchanged.

1 26. Defence Counsel refers to the abolishment of the blended common law and statutory  
2 defence of provocation by the CJOA and submits that the new Sentencing Council  
3 Guidelines are tailored to the new defence of “loss of control” as set out in section 54 to  
4 56 of the said Act. Counsel submitted that the partial defence of provocation is different  
5 from the defence of “loss of control”.

6  
7 27. By way of illustration, Counsel referred to the case of *R. v Ward (Arron)*<sup>2</sup> in which the  
8 use of the older Guideline was held to have been justified, notwithstanding the change  
9 in the law.

10 28. Counsel’s primary submission, which is one of some force, is that in the Cayman Islands  
11 there has been no statutory change and the language which continues to be used does not  
12 contain the term “qualifying triggers”.

13  
14 29. In addition to the cited case of *R v. Ward*, the Court’s attention has been drawn to a  
15 number of decisions of the English Court of Appeal. These include:

16 a. *R v. Thornley*<sup>3</sup>

17  
18 b. *AG’s Reference (No. 8 of 2011) (Edwards)*<sup>4</sup>

19  
20 30. All three were cases decided after there had been two changes in the legislative position  
21 in the United Kingdom but before new sentencing guidelines had been issued. In addition  
22 to the reformulated defence of loss of control, Schedule 21 to the *Criminal Justice Act*  
23 inserted a specific provision relating to the use of a knife as a murder weapon and  
24 imposed minimum terms where loss of life resulted from injuries caused by such use.



---

<sup>2</sup> 2013 2 Cr. App. R. (S) 35

<sup>3</sup> 2011 2 Cr. App. R. (S) 62

<sup>4</sup> 2012 1 Cr. App. R. (s) 53



1 31. In summary, the Courts stated that the Guidelines with respect to *Manslaughter by*  
2 *provocation* continued to provide useful assistance but that adjustments needed to be  
3 made as a result of the two changes.

4  
5 32. In *R v. Thornley* the Court summarised the matter in this way:  
6

7 *“Since the definitive guidance was issued in November 2005 there have been*  
8 *at least four developments relevant to the sentencing decision in cases of this*  
9 *kind. First, this Court has addressed the issue of knife crime generally and*  
10 *the need for courts to be alert on appropriate occasions to impose deterrent*  
11 *sentences on those who carry knives. Secondly, in more recent times the*  
12 *Court has come to appreciate and address the impact of Sch.21 to the 2003*  
13 *Act on sentencing as it applies to cases of manslaughter, not*  
14 *because Sch.21 is directly concerned with manslaughter, but because it*  
15 *identifies aggravating and mitigating features which may well be relevant to*  
16 *any cases of homicide, whether manslaughter or murder; but also because*  
17 *of the disparity (as Calvert-Smith J. put it) between the practical*  
18 *consequences of sentences imposed for the offences of murder and*  
19 *manslaughter, which, depending on whether the defendant was convicted of*  
20 *murder or manslaughter, was becoming excessive.*

21  
22 *The weight to be attached to decisions of this Court on sentencing issues or*  
23 *policy is, in our judgment, undiminished by the issue of guidelines, whether*  
24 *by the Sentencing Guidelines Council or the Sentencing Council. If it had*  
25 *been the intention of Parliament to indicate that somehow or other the*  
26 *authority of this Court had been reduced in any way, the language would*  
27 *have had to have been express and unequivocal. It is not.*

28  
29 *Next we reflect on legislative changes since November 2005. Since then*  
30 *Parliament has introduced into Sch.21 a specific provision relating to the*  
31 *use of a knife as a murder weapon. And finally, lest we overlook it, only a*  
32 *few months ago the entire law on provocation was changed by*  
33 *legislation. These changes cannot be ignored by sentencing judges on the*  
34 *basis of a guideline issued in November 2005. It is clear to us from the*  
35 *developments analysed by Calvert-Smith J. that the use of a knife, even in*  
36 *cases of manslaughter by provocation shall now be regarded as a more*  
37 *significant feature of aggravation than it was when the guideline was*  
38 *published. In the end everything depends upon the individual circumstances*  
39 *of each case: why and how the knife came to be picked up and eventually*  
40 *used.*

41  
42 *In any event, the Sentencing Guidelines Council’s Definitive Guideline for*  
43 *Manslaughter by Provocation in circumstances such as the present offers a*  
44 *starting point of 12 years’ custody, but a sentencing range from 10 years to*  
45 *life imprisonment. That provides an ample bracket, which makes allowance*  
46 *for the changes and developments indicated by this Court in its judgments,*



1 35. The Court concluded that a higher and different threshold than the common law had been  
2 created, which would impact the culpability of the offence. The Court also said that the  
3 greater focus on the death of the victim equally fell to be considered

4  
5 *“Lord Judge noted that even with a starting point (as in this case) of a*  
6 *determinate term of 12 years’ imprisonment, the range was from 10 years*  
7 *to life which provided “an ample bracket which makes allowance for the*  
8 *changes and developments indicated by this Court in its judgments or*  
9 *indeed by the legislation”. Such legislation obviously includes ss.54–55 of*  
10 *the Coroners and Justice Act 2009 which introduces new provisions relating*  
11 *to loss of control to replace the defence of provocation and which came into*  
12 *force for offences committed after October 4, 2010. Although by s.54(2) of*  
13 *the Act, loss of control does not have to be sudden, there must be a qualifying*  
14 *trigger: see s.54(1)(b). These consist of fear of serious violence from the*  
15 *victim or another and things said and/ or done constituting circumstances*  
16 *of an extremely grave character and causing the defendant to have a*  
17 *justifiable sense of being seriously wronged: s.55 .*

18  
19  
20 *Thus, what appears to be a higher (and certainly a different) threshold than*  
21 *the common law has been created and will have to be taken fully into*  
22 *account in its impact on the culpability of the offence while, at the same*  
23 *time, the greater focus on the death of the victim as represented by the*  
24 *authorities to which we have referred equally falls to be considered. Just as*  
25 *important will be the adjustment to minimum terms in sentences for murder*  
26 *(a mitigating factor being provocative conduct albeit not sufficient to*  
27 *provide a partial defence in circumstances such as sexual infidelity), which*  
28 *might have generated a partial defence under the old law. At this stage, it is*  
29 *inappropriate to seek to elaborate upon the likely impact of these changes*  
30 *by reference to hypothetical situations although we anticipate that they will*  
31 *shortly fall for consideration.”*

32  
33  
34 36. In the local case of **Paul Gordon v. R.**<sup>6</sup> the Cayman Islands Court of Appeal (CICA)  
35 referred with approval to the cases of **Thornley** and **Edwards** and other cases from the  
36 English Court of Appeal. The Court held that in cases of *Manslaughter by provocation*  
37 the United Kingdom Sentencing Guidelines on *Manslaughter by reason of provocation*  
38 as modified by later English case law should be applied.



---

<sup>6</sup> 2012 (2) CILR 68

Judgment: *The Queen v. Smith (Olga Elizabeth)*. Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021

1 37. Those Guidelines refer specifically to s.3 of the *Homicide Act* 1957 which is in similar  
2 terms to the Cayman provision set out above:

3 *“Where on a charge of murder there is evidence on which the jury can find*  
4 *that the person charged was provoked (whether by things done or by things*  
5 *said or by both together) to lose his self-control, the question whether the*  
6 *provocation was enough to make a reasonable man do as he did shall be*  
7 *left to be determined by the jury; and in determining that question the jury*  
8 *shall take into account everything both done and said according to the effect*  
9 *which, in their opinion, it would have on a reasonable man.”*  
10

11 38. The CICA approved the approach of the English Court of Appeal in the case of *AG’s*  
12 *Reference (Nos. 74, 95 and 118 of 2002) (Suratan)*<sup>7</sup> which was later encapsulated in  
13 those Guidelines. This requires the Sentencing judge when sentencing an offender in  
14 such a case to make four assumptions in favour of the offender in order to be faithful to  
15 the verdict of manslaughter.



16  
17 39. In relation to the starting points the Court stated:  
18

19 *“20 From this review of the decisions of the Court of Appeal in England*  
20 *and Wales which post-date the Sentencing Guidelines Council’s*  
21 *guideline, issued in 2005, this court concludes that in cases of*  
22 *manslaughter involving the use of a knife, where the degree of*  
23 *provocation is low, occurring over a short period, the appropriate*  
24 *starting point, after a trial, in that jurisdiction, is not more than 12*  
25 *years (and, perhaps, a little less), within a sentencing range of 10*  
26 *years to life.”*  
27

28 ...  
29

30 *23 We have taken into account what are said to be the special*  
31 *circumstances prevailing in this jurisdiction. In our view, those*  
32 *circumstances do not provide sufficient reason for the courts of the*  
33 *Cayman Islands to differ so substantially from the approach set out*  
34 *by the Sentencing Guidelines Council in England and Wales. We*  
35 *are satisfied that, in a case of manslaughter by reason of*  
36 *provocation involving the use of a knife, where the degree of*  
37 *provocation is low and has occurred only over a short period, the*  
38 *appropriate starting point, after a trial, in this jurisdiction also, is*  
39 *12 years within a sentencing range of 10 years to life.”*

---

<sup>7</sup> 2003 2 Cr. App. R. (S) 42

Judgment: *The Queen v. Smith (Olga Elizabeth)*. Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021



1       40.     In the case of *R v. Elsy Barralaga*,<sup>8</sup> the Grand Court, following review of the case of  
2       *Gordon*, followed the SGC Guidelines on *Manslaughter by provocation*. The Court  
3       found both self defence and a substantial degree of provocation and adopted a starting  
4       point of eight years.

5  
6       41.     In this Court's view given the absence of legislative change to the defence in this  
7       jurisdiction, and the clear position of the CICA in the cited case, the Guidelines which  
8       are presently applicable are those in relation to *Manslaughter by provocation*.

9  
10      42.     The Prosecution also submitted that while there has been no legislative change in respect  
11      of the defence of provocation, there has been one significant development since these  
12      cases were decided. This is that the Cayman Islands now has the imposition of minimum  
13      terms in respect of cases involving loss of life where a person is convicted for the offence  
14      of murder. These were brought into force by the *Conditional Release Act*, Law 18 of the  
15      30<sup>th</sup> October 2014. This provides for minimum terms of 30 years in cases of murder  
16      unless there are circumstances exceptional in nature which aggravate or mitigate the  
17      sentence. It is submitted that these minimum terms clearly reflect the view which must  
18      be taken as to the sanctity of life and thus that this Court in light of that change should  
19      if it determines to be guided by the older Guidelines take what is described as a blended  
20      approach between the two sets of Guidelines which recognizes this newer emphasis on  
21      the loss of life. The submission of greater emphasis on loss of life is one which is  
22      accepted by this Court noting that the minimum terms in the Cayman Islands are in some  
23      respects higher than those in the United Kingdom. This may well mean that in the  
24      future, there will be changes in the approach to sentencing or in the Guidelines in this  
25      jurisdiction.

---

<sup>8</sup> Unreported.....

*Judgment: The Queen v. Smith (Olga Elizabeth). Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021*



1     **THE CASES – APPLICATION OF THE GUIDELINES**

2  
3     43.     In the case of **R. v. Ward (Arron)**, the English Court of Appeal considered an appeal  
4             against a sentence of 9 years’ imprisonment following a guilty plea to *Manslaughter by*  
5             *reason of lack of control*. The sentencing judge had adopted a starting point of 12 years  
6             - applying the Guidelines on *Manslaughter by reason of provocation*. The Court  
7             categorised the provocation as low over a short period of time.

8  
9     44.     The sentence was upheld on appeal. The Appellate court concluded that the Sentencing  
10            Judge was correct and stated:

11                           20.     *In this case, in our view there was a low degree of provocation over*  
12                           *a short period of time. It is true there was a short period between*  
13                           *the provocation and the killing, a factor capable of lowering*  
14                           *culpability, and that the threshold trigger was actual and*  
15                           *anticipated violence. But as the judge pointed out, the offence*  
16                           *occurred in the context of a trivial argument. There was a headbutt*  
17                           *to the appellant's brother by someone who was a friend to both*  
18                           *which caused an insignificant injury. Despite the victim's violent*  
19                           *background, there was no evidence that there had been any*  
20                           *animosity between them. Following his loss of control, the appellant*  
21                           *then picked up a pick axe handle and used violence which was*  
22                           *disproportionate to the force used or threatened by the deceased.*  
23                           *None of the aggravating features identified in the guidelines were*  
24                           *present. However, there were other aggravating features including*  
25                           *that the appellant left Mr Worton dead or severely injured, and*  
26                           *failed to call the emergency services.”*  
27

28     45.     In **AG’s Reference No. 8 of 2011 (Ronald Edwards)** the Appellant pleaded guilty to  
29             *Manslaughter by reason of provocation*. He was sentenced to 5 years’ imprisonment  
30             which was increased to 7 ½ years on appeal. He had stabbed his former partner who  
31             resided in the same house with him. She had constantly nagged and belittled him over a  
32             period of time. On the day in question he picked up a knife from the kitchen of the  
33             home, followed her into the study where she sat at a desk and stabbed her 1 to 2 times  
34             to parts of her body including her head, neck and upper body. He said that he could not



1 remember the attack. The evidence indicated that after the attack he had telephoned two  
2 sets of lawyers and had spoken for a combined time of about 15 minutes before he  
3 telephoned the emergency services. A jury acquitted him of murder and he fell to be  
4 sentenced for the offence of manslaughter on his own plea.

5  
6 46. On the facts of that case, the Appellate Court said that although the impact of prolonged  
7 low level provocation was recognized, the deceased did not present a threat to the  
8 appellant who could have left the house or found some other way of dealing with the  
9 tension between them. Additionally, while he did not bring the knife to the scene, he did  
10 pick it up from the kitchen and followed the deceased into the study. The Court said that  
11 for every offence of violence, the use of a weapon, in particular a knife, will always be  
12 an aggravating feature.

13  
14 47. In *R v. Elsy Barralaga*, the Grand Court summarised the key factual circumstances as  
15 being a violent disagreement over a trivial argument – as to whether to go to another bar  
16 or to go home. Having returned home, the deceased lost his temper and swept all the  
17 bottles, jars and, most significantly, kitchen knives from the counter on to the floor. The  
18 deceased held on to the defendant's hair and punched her to her head. The defendant  
19 initially used one of the kitchen knives which was close at hand in lawful self defence  
20 to stab the deceased while he was behind her. The Court considered that the degree of  
21 provocation was substantial. In applying the SGC Guidelines, the Court said that on  
22 examining the aggravating and mitigating factors it could find no good reason for  
23 departing from the starting point of 8 years. To this, the court applied a discount of 25%,  
24 on the basis that although her guilty plea was not at the very earliest opportunity it was  
25 still at an early stage of the proceedings.



1   **THE SUBMISSIONS**

2  
3       48.    By reference to the Guidelines with respect to *Manslaughter by reason of loss of self-*  
4           *control*, the Prosecution submits that the instant offence is one of high culpability with  
5           a starting point of 14 years' custody and a sentencing range of 10 to 20 years' custody.

6       49.    In support of this submission the Prosecution points to the following factual  
7           circumstances:

8  
9                   a.    The initial indication from the Defendant to the First Responders was that  
10                  the couple had had an argument and the Deceased had committed suicide;

11  
12                  b.    There is no indication that at the time of the incident there was any imminent  
13                  or continuing assault upon her by the Deceased. She had no serious or life  
14                  threatening injuries on her body and did not complain of any;

15                  c.    She said that injuries to her wrist were caused by the Deceased at an earlier  
16                  date but on the 23<sup>rd</sup> February 2020 she advised medical officers at Health  
17                  City that the injury was self-inflicted.  
18

19  
20       50.    In summary, the Prosecution submitted that there is nothing in the circumstances which  
21           is suggestive of lower culpability.

22  
23       51.    The Defence submit that on the facts, the background to the killing is a toxic relationship  
24           marked by love, alcohol, jealousy, rows, exploitation and abusive violence. Counsel  
25           argues that this case falls into the lower end of offending for a number of reasons  
26           including the following:-  
27

- 1 a. Account needs to be taken of the nature of the conduct of the Deceased  
2 toward the Defendant over the course of the relationship and the cumulative  
3 effect of that conduct upon her;  
4  
5 b. The impact of the provocative behaviour built up over a period of time;  
6  
7 c. The provocation on the night consisted of actual violence towards her;  
8  
9 d. There was no significant gap of time between the provocation and the fatal  
10 blow nor is it one where favourable circumstances were chosen to facilitate  
11 the killing;  
12  
13 e. The balance of power between the parties, including as to the use of a knife;  
14  
15 f. There is no suggestion nor evidence that the Defendant had attacked him in  
16 a similar way before.



17  
18 **AGGRAVATING FACTORS**

19  
20 52. The Prosecution submits that the aggravating factors are use of a knife to commit the  
21 offence, and the suggestion of the Defendant to First Responders that the Deceased had  
22 committed suicide. Counsel also points to the possible delay in summoning assistance  
23 and highlights the following circumstances:

- 24  
25 a. The statement of the EMT Officer Hal Ebanks that the incident appeared to  
26 have occurred sometime before assistance was sought or EMS arrived.  
27 There was a significant amount of water on the floor of the bathroom and a  
28 strong scent of isopropyl alcohol was noted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

b. Jasmine Ebanks noted on her arrival at the home that the Deceased was white and the blood was dry.

53. The Defence submitted that it has to be accepted that the Defendant tried to pretend that the Deceased had committed suicide.

**REDUCTION FOR GUILTY PLEA**

54. The Prosecution submitted that the Defendant did not enter the plea at the first reasonable opportunity. The Defendant pleaded not guilty and maintained the not guilty plea until 30<sup>th</sup> October 2020 when she pleaded guilty to Manslaughter. The Prosecution therefore submits that the plea should not attract a discount of one third but closer to one quarter. This submission is accepted.



**THE SENTENCE**

55. This was a serious and tragic incident which has resulted in loss of life and deep grief to the families of both the Defendant and the Deceased. The couple had been out drinking earlier that evening at a local bar. There was evidence - from damaged furniture and damage seen by officers to the bathroom door and door to the master bedroom - that a fight had taken place. There were ornaments on the floor and broken glass. The Defendant was hit to the face at one point and the Deceased, on examination, had bruises to his knuckles.

56. The applicable United Kingdom Sentencing Guidelines state that the starting point in the usual case should be a custodial sentence given the loss of life but that:



1                                    *“Although both murder and manslaughter result in death, the difference in*  
2                                    *the level of culpability creates offences of a distinctively different character.*  
3                                    *Therefore the approach to sentencing in each should start from a different*  
4                                    *basis.”*

5  
6       57.     In establishing the basis for sentencing in this case, the Court makes the following  
7                                    assumptions:

- 8                                    a.   The Defendant had, at the time of the killing, lost her self-control;
- 9
- 10                                  b.   She was caused to lose self-control by things said or done, by the Deceased;
- 11
- 12                                  c.   Her loss of control was reasonable in all the circumstances, even bearing in  
13    mind that people are expected to exercise reasonable control over their  
14    emotions and that, as society advances, this ought to call for a higher  
15    measure of self-control;
- 16
- 17                                  d.   The circumstances were such as to make the loss of self-control sufficiently  
18    excusable to reduce the gravity of the offence from murder to manslaughter.

19  
20       58.     In assessing the degree of provocation as shown by its nature and duration, account is  
21                                    taken of the following:

- 22                                  a.   The nature of the provocation, whether it involved gross and extreme  
23    conduct on the part of the victim, which would be a more significant  
24    mitigating factor than conduct which, although significant, is not as  
25    extreme:
- 26    -   In this case on the agreed facts the provocation involved abusive  
27    words in the course of an argument and a punch to the face. This is  
28    significant but not in my view extreme.



1                   b. The offender's previous experiences of abuse and/or domestic violence  
2                   either by the victim or by other people.

3                   - The Defendant is said to have had a previous abusive relationship  
4                   and there had been physical and verbal abuse of her by the Deceased  
5                   in the course of their three year relationship.

6  
7                   c. The nature of the conduct, the period of time over which it (the provocation)  
8                   took place and its cumulative effect:

9                   - The conduct occurred with breaks over a matter of hours on the  
10                  night in question. There is additionally the cumulative effect over  
11                  time of the physical and verbal abuse.

12  
13          59. In this regard the Court is mindful that the impact of provocative behavior on an offender  
14          can build up over a period of time and that consideration should not be limited to acts of  
15          provocation that occurred immediately before the victim was killed. The Guidelines state  
16          that in domestic violence cases, cumulative provocation may eventually become  
17          intolerable, with the latest incident seeming all the worse because of what went before.

18  
19          60. In this case there was actual violence from the Deceased in the course of the argument.  
20          The time gap of the response of the Defendant appears to have been a short one.

21  
22          61. The Guidelines state that the use or not of a weapon is a factor heavily influenced by the  
23          gender of the offender. Use of a weapon should not necessarily move a case into another  
24          sentencing bracket. Whereas men can and do kill using physical strength alone, women  
25          often cannot and thus resort to using a weapon. Thus it may reflect the imbalance in

1 strength between the offender and the victim. How it came to hand is more important  
2 than the use of the weapon itself.

3  
4 62. On the agreed evidence there is no evidence as to how the knife came to be in the  
5 bathroom where the Deceased was stabbed. On the account of the Defendant there is  
6 movement from outside to inside the house and into different rooms of the house

7  
8 63. Under Sentence Ranges and Starting Points, the Guidelines state:

9  
10 *“This guideline establishes that:*

11 *There are three sentencing ranges defined by the degree of provocation –*  
12 *low, substantial and high within the three ranges, the starting point is based*  
13 *on provocation taking place over a short period of time.*

14  
15 *The court will move from the starting point (based upon the degree of*  
16 *provocation) by considering the length of time over which the provocation*  
17 *has taken place, and by reference to any aggravating and mitigating*  
18 *factors.”*

19  
20 64. The additional aggravating factors include concealment or attempts to dispose of  
21 evidence subject to para 3.6. Para 3.6 of the Guidelines states:

22  
23 ***“Post-offence behaviour – The behaviour of the offender after the killing can be***  
24 ***relevant to sentence:***

25 *a. immediate and genuine remorse may be demonstrated by the summoning*  
26 *of medical assistance, remaining at the scene, and co-operation with the*  
27 *authorities.*

28 *b. concealment or attempts to dispose of evidence or dismemberment of the*  
29 *body may aggravate the offence.*

30 *Post-offence behaviour is relevant to the sentence. It may be an aggravating or*  
31 *mitigating factor. When sentencing, the judge should consider the motivation*  
32 *behind the offender’s actions.”*



1 65. Additional mitigating factors include, spontaneity and lack of premeditation, previous  
2 experiences of abuse and/or domestic violence, evidence that the victim presented an  
3 ongoing danger to the offender or another and actual (or reasonably anticipated) act of  
4 violence from the victim.

5  
6 66. On the agreed evidence the Defendant received a single blow resulting in a very minor  
7 injury. There was also verbal abuse. While each case must be decided on its own facts,  
8 it is noted that in the case of *Edwards*, in a domestic violence context, the Appellate  
9 Court considered that the Appellant could have considered other options such as  
10 leaving the home when faced with abuse. In *R v. Barralaga*, the level and extent of the  
11 provocation was considered in circumstances where the Defendant was subject to  
12 repeated assaults such that she feared for her life.

13  
14 67. In my view in the instant case the provocation appears to be to a low degree in relation  
15 to the events of that night.

16  
17 68. This Court will thus adopt a starting point of 12 years as recommended by the CICA in  
18 the case of *Gordon*.

19  
20 69. In *Thornley* the Court considered the behaviour of the Appellant to be an aggravating  
21 factor where he tried to direct attention from himself.

22  
23 70. In this case, the Defendant's post-offence behaviour is an aggravating factor in this case.  
24 There was a clear attempt to mislead the authorities as to what had happened which may  
25 well have persisted, had the medical evidence not been so clear that the wound was not  
26 self-inflicted.



1 71. In the view of this Court, this aggravating factor would increase the sentence to one of  
2 12 years and 6 months.

3  
4 72. This case could have been approached in one of two ways, - either to use a lower starting  
5 point on the basis of history of abuse and actual violence or to consider those aspects as  
6 is suggested by the Guidelines as mitigating factors.

7  
8 73. The latter option is chosen.

9  
10 74. The Court considers that there are a number of significant mitigating factors in this case.  
11 Under this heading account is taken in particular of:

- 12  
13 a. The Defendant's previous experiences of abuse and or domestic violence;  
14 and  
15 b. Actual violence from the victim.



16  
17 75. Relatives of the Deceased who had been around the couple described them as always  
18 fighting. Relatives on both sides have provided statements as to bruises seen on both  
19 from time to time.

20  
21 76. The Defendant was subject to actual violence on the night in question at some time  
22 before the killing.

23  
24 77. She has a past history of being in abusive relationships. This was clearly one such.

25  
26 78. On the 23<sup>rd</sup> February 2020 the Defendant attended Health City Hospital in relation to a  
27 wound in the flexor aspect of her right wrist. Two of the tendons had been completely  
28 severed and one was partially cut. The doctor's report records an alleged history of her



1 using the kitchen knife on herself and questioned whether she was suicidal. This appears  
2 to have been her state of mind about 22 days before this incident.

3  
4 79. Following the hearing on the 6<sup>th</sup> of May 2021, on the 2<sup>nd</sup> June 2021, Defence Counsel  
5 sought leave to make further submissions in mitigation on the basis that they ~~have~~ had  
6 been made aware that the Deceased had been on bail awaiting sentence for an offence  
7 of Possession of an Unlicensed Firearm, a .38 Revolver contrary to s.15(1) and s.15(5)  
8 of the *Firearms Act* (2008 Revision) – Indictment 28/17. This offence was committed  
9 in March 2016 and thus about one year before the couple began a relationship. The  
10 Police became aware of this offence when a photograph was discovered on the telephone  
11 of the Deceased which showed him to be in possession of the firearm. His defence was  
12 that the firearm belonged to an acquaintance, and he chose to pick up the firearm and  
13 take a photograph(s) of himself in possession of it. The Defence suggest this is relevant  
14 to the sentencing of the Defendant in two ways:

15 a. Firstly, the fact that he was the type of person who had access to deadly  
16 weapons, and/or associated with people that had access to deadly weapons  
17 would have been known by the Defendant. This, it is suggested, would have  
18 amplified for the Defendant any violence or threats of violence that the  
19 Deceased directed towards her.  
20

21 b. Alternatively it is suggested that coming into possession of a firearm in the  
22 way referred to above speaks to an unpredictable and challenging nature, on  
23 the part of the Deceased, which would also have played a part in how the  
24 Defendant would have perceived any threats or acts of violence that he may  
25 have directed towards her.  
26  
27



1 80. It is submitted that these features of this offence should have a bearing upon the Court's  
2 assessment of the level and context of the provocation that on the 15<sup>th</sup> of March 2020  
3 was directed towards the Defendant that caused her complete loss of self-control.

4  
5 81. The Court considers it surprising that the Defendant herself did not raise at any time  
6 prior to this any fear of the Defendant due to his having access to guns or being  
7 associated with persons having access to guns.

8  
9 82. Nevertheless the Court will consider as a relevant circumstance the alternative of the  
10 unpredictable and challenging nature of the Deceased and how this may have affected  
11 the Defendant's perception of him.

12  
13 83. Account is also taken of all the Defendant's personal circumstances as outlined in the  
14 SIR and by Counsel on her behalf - her low risk of reoffending and her genuine remorse.

15  
16 84. This was on all accounts a difficult and abusive relationship which members of the  
17 community say that they encouraged her to leave. Unfortunately she did not do so, no  
18 doubt, because as Counsel submitted, she loved the Deceased. For the rest of her life  
19 she will have to live with what happened on this night and going forward will face the  
20 difficult circumstance of the absence of a father for her young child.

21  
22 85. When all the mitigating circumstances are considered they serve to significantly reduce  
23 the sentence to one of 9 years' and 6 months' imprisonment.

24  
25 86. The Defendant's guilty plea was not made at the first reasonable opportunity. A discount  
26 of one quarter is applied rather than one third. This reduces the sentence to one of seven  
27 years and one month imprisonment.



1 **TIME SPENT ON CURFEW**

2  
3 87. The Defendant has been on bail since the 2<sup>nd</sup> April 2020 and was subject to a 24-hour  
4 curfew. To date this is a period of 427 days.

5  
6 88. The *Cayman Islands Sentencing Guidelines* at paragraph 12 deals with reduction in  
7 sentence for time spent on remand subject to conditions curtailing liberty. It states that  
8 the court should:

9  
10 *“Consider whether credit should be given for time spent on bail where conditions*  
11 *have been imposed which curtail the liberty of the defendant. This is most likely to*  
12 *be relevant where a defendant has been subjected to a curfew, especially where*  
13 *compliance with that curfew can be verified through electronic monitoring.”*  
14  
15

16 89. The relevant factors to be taken into account in the exercise of discretion include:

- 17
- 18 • *The total length of time the defendant has been subject to a curfew;*
  - 19 • *The number of hours each day that curfew was imposed during the curfew*  
20 *period;*
  - 21 • *Whether the curfew included daytime hours or was solely a night time curfew*  
22 *(recognising that being indoors at night during, for example, normal sleeping*  
23 *hours may be less of a curtailment of liberty than being indoors during the day);*
  - 24 • *Any breach of the conditions of curfew.*

25 90. The Guidelines further provide that in deciding how to exercise its discretion in the  
26 absence of statutory provisions in the Cayman Islands, the Court will bear in mind the  
27 statutory provisions in England and Wales as set out in s.240A of the *Criminal Justice*  
28 *Act* (CJA) 2003 as amended in relation to electronically monitored curfew.  
29  
30



1           91.     Section 240 as amended states:

2                     “(1)    This section applies where—

3  
4                             (a) a court sentences an offender to imprisonment for a term in  
5                                 respect of an offence committed on or after 4th April 2005,

6  
7                             (b) the offender was remanded on bail by a court in course of or in  
8                                 connection with proceedings for the offence, or any related  
9                                 offence, after the coming into force of section 21 of the Criminal  
10                                Justice and Immigration Act 2008, and

11  
12                            (c) the offender's bail was subject to a qualifying curfew condition  
13                                and an electronic monitoring condition (“the relevant  
14                                conditions”).

15  
16                     (2)    Subject to subsection (4), the court must direct that the credit period is to  
17                                count as time served by the offender as part of the sentence.

18  
19                     (3)    The “credit period” is the number of days represented by half of the sum  
20                                of—

21  
22                             (a) the day on which the offender's bail was first subject to  
23                                 conditions that, had they applied throughout the day in  
24                                 question, would have been relevant conditions, and

25  
26                             (b) the number of other days on which the offender's bail was  
27                                 subject to those conditions (excluding the last day on which it  
28                                 was so subject),

29  
30                                rounded up to the nearest whole number.

31  
32                     (4)    Subsection (2) does not apply if and to the extent that—

33  
34                             (a) rules made by the Secretary of State so provide, or

35  
36                             (b) it is in the opinion of the court just in all the circumstances not  
37                                 to give a direction under that subsection.

38  
39                     (5)    Where as a result of paragraph (a) or (b) of subsection (4) the court does  
40                                not give a direction under subsection (2), it may give a direction in  
41                                accordance with either of those paragraphs to the effect that a period of  
42                                days which is less than the credit period is to count as time served by the  
43                                offender as part of the sentence.

44  
45                     (6)    Rules made under subsection (4)(a) may, in particular, make provision in  
46                                relation to—

47  
48                             (a) sentences of imprisonment for consecutive terms;

49

1 (b) sentences of imprisonment for terms which are wholly or partly  
2 concurrent;

3  
4 (c) periods during which a person granted bail subject to the  
5 relevant conditions is also subject to electronic monitoring  
6 required by an order made by a court or the Secretary of State.  
7

8 (7) In considering whether it is of the opinion mentioned in subsection (4)(b)  
9 the court must, in particular, take into account whether or not the offender  
10 has, at any time whilst on bail subject to the relevant conditions, broken  
11 either or both of them.  
12

13 (8) Where the court gives a direction under subsection (2) or (5) it shall state  
14 in open court—  
15

16 (a) the number of days on which the offender was subject to the  
17 relevant conditions, and  
18

19 (b) the number of days in relation to which the direction is given.  
20

21 (9) Subsection (10) applies where the court—  
22

23 (a) does not give a direction under subsection (2) but gives a  
24 direction under subsection (5), or  
25

26 (b) decides not to give a direction under this section.  
27

28 (10) The court shall state in open court—  
29

30 (a) that its decision is in accordance with rules made under  
31 paragraph (a) of subsection (4), or  
32

33 (b) that it is of the opinion mentioned in paragraph (b) of that  
34 subsection and what the circumstances are.  
35

36 (11) Subsections (7) to (10) of section 240 apply for the purposes of this section  
37 as they apply for the purposes of that section but as if—  
38

39 (a) in subsection (7)—  
40

41 (i) the reference to a suspended sentence is to be read  
42 as including a reference to a sentence to which an  
43 order under section 118(1) of the Sentencing Act  
44 relates;  
45

46 (ii) in paragraph (a) after “Schedule 12” there were  
47 inserted or section 119(1)(a) or (b) of the  
48 Sentencing Act; and  
49  
50

1 (b) in subsection (8) the reference to subsection (3) of section 240  
2 is to be read as a reference to subsection (2) of this section and,  
3 in paragraph (b), after “Chapter” there were inserted or Part  
4 2 of the Criminal Justice Act 1991.

5  
6 (12) In this section—

7  
8 “electronic monitoring condition” means any electronic  
9 monitoring requirements imposed under section 3(6ZAA) of the Bail  
10 Act 1976 for the purpose of securing the electronic monitoring of a  
11 person's compliance with a qualifying curfew condition;

12  
13 “qualifying curfew condition” means a condition of bail which  
14 requires the person granted bail to remain at one or more specified  
15 places for a total of not less than 9 hours in any given day; and

16  
17 “related offence” means an offence, other than the offence for  
18 which the sentence is imposed (“offence A”), with which the  
19 offender was charged and the charge for which was founded on  
20 the same facts or evidence as offence A.]”  
21

22 92. In the case of **R v. Nicholas Tibbetts**<sup>9</sup> the Grand Court stated:

23  
24 “74. I take the Cayman Islands Guidelines as a starting point. There is clearly a  
25 discretion as to whether, and to what extent, credit should be given. To  
26 adopt the defence submission that the practice of the Cayman Islands is to  
27 automatically deduct half the time on curfew, would take away the  
28 discretion clearly set out in the Guidelines. Each case has to be considered  
29 on its own facts – for example the conditions of the curfew will vary  
30 considerably in cases – some being more onerous than others.”  
31

32 93. In this case, at the time the 24-hour curfew was imposed, the entire Island was subject  
33 to hard and soft curfews six days of the week and 24-hour curfews on Sundays. This  
34 continued with some changes for the period March to July 2020.



---

<sup>9</sup> Grand Court, Ind. 71/2015 unreported judgment dated 16th December 2016

Judgment: *The Queen v. Smith (Olga Elizabeth)*. Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021

1        94.     It is proposed to apply a reduction of 25 % rather than one half during this period and  
2             from there on through to the present a reduction rate of 50%.<sup>10</sup>

3  
4

5     **Dated this the 3<sup>rd</sup> June 2021**



6  
7     **Honourable Justice Cheryll Richards Q.C.**  
8     **Judge of the Grand Court**

---

<sup>10</sup> The calculation was subsequently agreed by Counsel to be one half the qualifying curfew days of 420 for a total of 210 days of remand time to be taken into account. 7 of the 420 days were complete lock downs as a result of hard curfews.

*Judgment: The Queen v. Smith (Olga Elizabeth). Ind. 22 of 2020. Coram: Richards J, Q.C. Date: 3<sup>rd</sup> June 2021*