

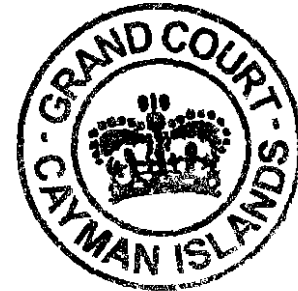
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**

3 **CAUSE NO. IND 1 OF 2014**  
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6

7 **THE QUEEN**  
8  
9

10 **V.**  
11

12 **ALVIN WINSTON BROWN**  
13



14 **Appearances:** Mr. Neil Kumar for the Crown  
15 Mr. John Furniss for the Defendant  
16

17 **Before:** Hon. Justice Richard Williams  
18

19 **Submissions made:** 12<sup>th</sup> June 2014  
20

21 **Sentence and Reasons:** 23<sup>rd</sup> June 2014  
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23 **Distribution:** 24<sup>th</sup> June 2014  
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26  
27 **SENTENCE RULING**  
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- 29 1. On 11<sup>th</sup> April 2014, at the conclusion of a trial by judge alone, the Defendant was  
30 found guilty of **unlawful wounding contrary to Section 204 of the Penal Code**  
31 **(2013 Revision).**  
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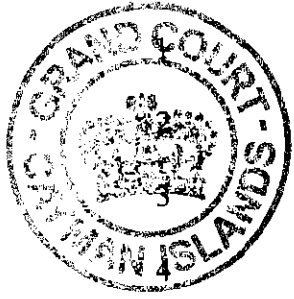
The particulars of the offence are that “*Alvin Winston Brown on Sunday 6<sup>th</sup> day of October, 2013 at Town Hall Road, West Bay, Grand Cayman, unlawfully and maliciously wounded Garfield Craig Powell.*”

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5 3. Following the trial a social inquiry report was ordered. The Court has since  
6 received and considered the Social Inquiry Report prepared by Marvo Callender,  
7 the Victim Impact Report prepared by Marvalee Collins and Mr. Powell’s Victim  
8 Impact Statement. The Court has also reviewed the Defendant’s CRO, received  
9 oral submissions from the Crown and the plea in mitigation from Mr. Furniss.

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11 **The Facts**

12 4. On the night of Sunday, 6<sup>th</sup> October 2013 the Defendant initially approached Mr.  
13 Powell on Powell Smith Drive in West Bay to enquire about the balance of a  
14 payment due to him for a bottle of cologne purchased on Friday, 4<sup>th</sup> October  
15 2013. Mr. Powell indicated to him that he had already informed him on Saturday,  
16 5<sup>th</sup> October 2013 that payment would not be made until Monday, 7<sup>th</sup> October  
17 2013.

18  
19 5. The Defendant then cycled up the road away from Mr. Powell. He turned right at  
20 the junction at the end of the road onto Town Hall Road, travelling in a different  
21 direction to Mr. Powell. However, the Defendant turned around and cycled  
22 towards the area where Mr. Powell was headed, namely the Alfresco Restaurant



on Town Hall Road. The Defendant passed by Mr. Powell, who was at the time on the far side of the road. He parked his cycle on the opposite side of the road towards the side/rear of the restaurant. He then picked up two conch shells from the side/rear of the restaurant, emerged from the side/rear of the restaurant and went towards Mr. Powell on the road. He threw one conch shell at Mr. Powell, hitting him on the head and causing the internal and external injuries set out in the Consultant Neurosurgeon, Dr. Akinwumni's, medical report.

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9 6. In his report, the contents of which were accepted by the Defendant, Dr. Akinwumni stated the following:

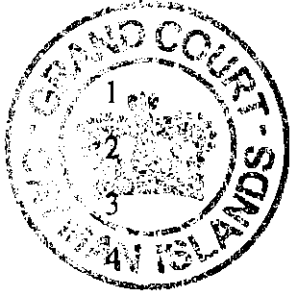
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*"Following a blow to the head, he lost consciousness and suffered a single seizure. Mr. Powell underwent a CT scan that revealed a depressed skull fracture underlying the laceration in the left parietal region.*

*He was taken to the theatre where this was elevated on 7 October 2013. The aim of surgery was to clean out the wound and take the pressure off from the dura. At surgery I found a stellate (star-shaped) laceration in the parietal region. This was extended; I removed several fragments of bone that was pressing onto the dura, which is the outside lining of the brain.*

*There was no evidence of laceration to the dura. There was a small amount of blood in the extradural spaces which was evacuated. The wound was then thoroughly cleaned and the wound sutured.*

*I explained to Mr. Powell that the likelihood that this will cause further problems is small, but present. The most significant risk is seizures. Although this is difficult to determine, the percentage of*



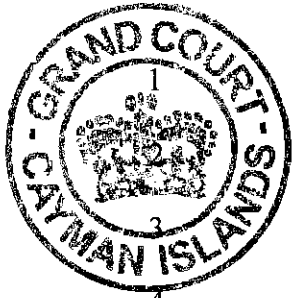
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5 *the risk is greatest in the first week, then rapidly diminishes over*  
6 *the next three or four months, but notwithstanding, there is a risk*  
7 *of seizures which we would term as delayed seizures. At the*  
8 *moment there is no need for anti-epileptic treatment, other than*  
9 *what he was given on the ward."*

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12 7. I am satisfied that the injuries are serious in the context of this offence and  
13 constitute greater harm bringing this case into either a Category 1 or Category 2  
14 Offence as defined in the England and Wales Sentencing Council Definitive  
15 Guidelines.

16  
17 8. In the Victim Impact Statement and the Victim Impact Report, Mr. Powell  
18 indicates that he works in the construction industry and that, as a consequence of  
19 his injuries, when the sun is hot he feels dizzy and he has to take breaks every  
20 half an hour. He says that he is unable to wear a hard hat as it is too heavy on his  
21 head. Mr. Powell states that he has constant headaches, which he believes are  
22 caused by stress as a result of his injuries and the incident. He says that since the  
23 incident he no longer has a social life, because he is concerned that he may have  
24 seizures. He says in his statement that:

25  
26 *"The assault has impacted my life totally. I don't think I will ever*  
27 *be the same again, mentally or physically."*

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29 9. At the trial, the Crown satisfied the Court that the Defendant was the aggressor  
30 and that he was not acting in self-defence. The Court did not find that the

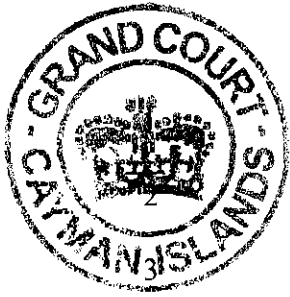


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Defendant intended to cause a serious injury, but was satisfied beyond all reasonable doubt that that he intended to cause some harm falling short of really serious harm. In his plea of mitigation Mr. Furniss reminded the Court that during the trial his client had indicated to him that he wished to plead guilty to the relevant count now before me for sentencing. During the trial, Mr. Furniss had mentioned this to the Court and to the Crown, but he rightly then formed the view that any such plea would not be appropriate, as based upon his instructions, his client's case was clearly one of self-defence. During his plea in mitigation, Mr. Furniss conceded that his client could not receive any discount for a guilty plea.

10. The Victim Impact Report sets out that Mr. Powell was unable to work for six weeks after the incident. Unfortunately, during that period he was "let go" by his then employer, a pool company. He was informed that his employment was terminated, because his employer was concerned about the possibility of him having seizures. He was not able to find full-time work until January 2014. He calculated that he had lost about \$7,200 in earnings. He said that he had incurred total medical costs of \$12,073.77. It is unclear whether his medical expenses are covered by insurance.

11. In his statement, Mr. Powell indicated that he is the sole financial provider for his family, including two young children. He indicated that he sought a compensation order to be made in his favour, compensating him for loss of earnings and for



medical expenses. The author of the Victim Impact Report recommends the making of a compensation order to include the loss of earnings, which she says comes to a total of \$19,273.77.

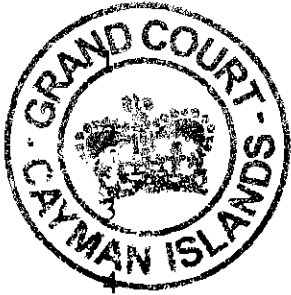
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5 12. The Social Inquiry Report highlights that the Defendant was subjected to a lot of  
6 criminal activity and violence in his home, both by parents and his older siblings.  
7 The Defendant told the social worker he had seen his older brothers doing  
8 improper things which included fighting, abusing alcohol and drugs. He said that  
9 he had personally struggled with alcohol and drug abuse. His girlfriend of seven  
10 years informed the reporter that he needed help with drinking, because drink  
11 could "set him off." She informed the social worker that she felt he needed to  
12 receive help with anger management. The Defendant's mother also stated that he  
13 had a temper and that he gets "vexed a lot", and that this can be caused by his  
14 drinking.

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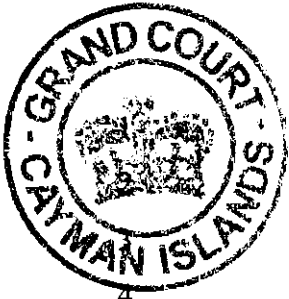
16 13. The Report highlighted that he was arrested as a juvenile but was never convicted.  
17 His CRO show that he has a total of 21 previous adult criminal convictions and  
18 traffic violations, regrettably a number of which are for offences of violence. I  
19 note in particular:

20 (i) threatening violence in August 2000 for which he received two weeks  
21 imprisonment;



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- (ii) assaulting a police officer in August 2000 for which he received three weeks imprisonment;
  - (iii) assault causing actual bodily harm in August 2000 for which he was sentenced to two months imprisonment, suspended for two years, with a compensation order of \$350 or one month custody;
  - (iv) carrying an offensive weapon in April 2003 for which he was sentenced to five days imprisonment;
  - (v) carrying an offensive weapon in November 2003 for which he was sentenced to ten days imprisonment;
  - (vi) causing grievous bodily harm with intent in December 2006 for which he was sentenced to three years imprisonment; and
  - (vii) grievous bodily harm in November 2008 for which he was sentenced to five years imprisonment, which was reduced to four years on appeal.

16 14. The CRO highlights that the Defendant has a number of convictions for offences  
17 of violence. He has had periods of incarceration, as well as receiving fines or  
18 community service. Before the current offence, the last conviction was in 2011 for  
19 offences in relation to ganja for which he received probation. The period of  
20 probation was for two years from January 2011 and would have expired in  
21 January 2013. The Social Inquiry Report indicates that Mr. Powell:



*“was warned about his non-compliance to the Order but still managed to participate and complete the Department’s Anger Management Programme, receiving a certificate for improvement and growth during the programme.”*

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6 15. Having regard to the matter before me, and matters currently pending before the  
7 Summary Court including offences of drunk and disorderly, carrying an offensive  
8 weapon, threats to kill and assault causing actual bodily harm, it does not appear  
9 that the Defendant has particularly benefited from his period on probation.  
10 However, when I sentence, I caution myself that these are pending matters and are  
11 not convictions.

12

13 16. In the Social Inquiry Report, the reporter notes that the Defendant states that he is  
14 sorry for what happened. However, it is clear from pages 5 and 6 of the report that  
15 he still seeks to lay the blame for the incident upon Mr. Powell. The Defendant’s  
16 expression of remorse is not a meaningful one and he will receive no credit for  
17 this.

18

19 17. The Social Inquiry Report recommends that, if there is a custodial sentence, there  
20 should also be an 18-month probation order. It is suggested that this would afford  
21 the Defendant the opportunity to access programmes in the community addressing  
22 his needs. It is suggested that, if a probation order was granted, there could be  
23 conditions stating that he attends and participates in anger management program



for any psycho – social programme deemed necessary by the probation officer. Of course, the Court is entitled to expect that similar programs should be made available at the prison.

4

5 18. The author of the Social Inquiry Report also recommends that, if there were a  
6 probation order, there be further conditions that he attend for an assessment at the  
7 Department of Counselling Services and follow through with any  
8 recommendations made by the drug counsellor. There could be a condition that he  
9 must not consume alcohol or any illegal substances, also that he should attend at  
10 AA/NA at least twice per week and submit to random alcohol/drug tests.

11

12 19. The Crown placed before me the Chief Justice’s “Statement on Tariffs and  
13 Guidelines for Sentencing of Certain Offences” dated 16<sup>th</sup> January 2002. It is  
14 clear that these do not contain specific guidance in relation to the offence before  
15 me. However, I do have regard to the general principles of sentencing set out at  
16 pages 8 to 10 therein.

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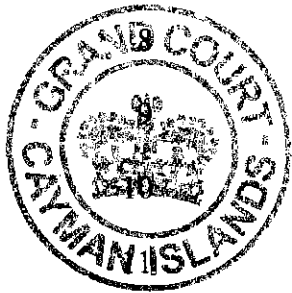
18 20. Both Counsel submit that the Court should have regard to pages 8 to 10 of the  
19 England and Wales Sentencing Council Definitive Guidelines. Both counsel  
20 informed the Court that the Court of Appeal of the Cayman Islands has indicated  
21 that these guidelines should be considered at a sentencing hearing.

22

1 21. The Crown, with reference to these Guidelines, submit that this case falls to be  
2 considered as a Category 1 Offence - an offence of greater harm with higher  
3 culpability. This type of offence has a starting point of three years custody, and a  
4 sentencing range of two years six months to four years custody.

5

6 22. The Crown, when making this submission, refers to the serious nature of the  
7 injury, the Defendant's antecedents for offences of violence/weapon possession,  
his pending cases in the Summary Court (including offences of violence) for  
which he is currently remanded in custody, the effect on Mr. Powell's  
psychological and physical health and the effect on Mr. Powell's employment  
prospects and life generally. The Crown concedes that there is no recent expert  
evidence before the Court dealing with the physical and psychological harm.

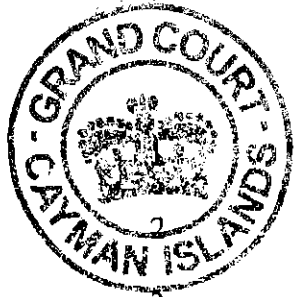


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13 Therefore, I have regard to the content of Dr. Akinwumni's report, from which I  
14 note the possibility of Mr. Powell suffering seizures.

15

16 23. To his credit, Mr. Furniss quite rightly accepts that this offence, resulting in a  
17 serious injury and involving the use of a weapon, will result in a custodial  
18 sentence. However, he submits that, when considering the Sentencing Guidelines,  
19 this should be regarded as the high end Category 2 offence rather than an  
20 immediate Category 1 offence. Under the Guidelines a Category 2 offence has a  
21 starting point of 1 year 6 months custody with a sentencing range of between 1 to  
22 3 years custody. He submits that the incident happened on the "*spur of the*



moment” with a lack of premeditation, a single blow with the conch shell. Mr. Furniss repeats the difficulties set out in the report about the Defendant’s issues with alcohol and his family background.

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24. Mr. Furniss invites the Court to consider partly suspending any custodial sentence and coupling that with some form of probation to assist the Defendant with his “underlying needs” upon his return into the community. Mr. Furniss indicated that the Defendant did not have the financial means to meet any compensation order.

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25. Counsel were asked by the Court whether they had any written sentencing rulings, especially from cases in the Cayman Island Courts, which they wished it to consider as part of the sentencing deliberations. Neither Counsel sought to do so.

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26. This is a case that must result in a custodial sentence. Accordingly, I do not think it is appropriate for a compensation order to be considered as an alternative to sentence. This was made clear by Scarman L.J. in *Inwood* (1974) 60 CR App R 70 when he stated at page 73:

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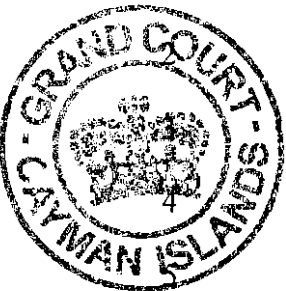
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*“Compensation orders were not introduced into our law to enable the convicted to buy themselves out of the penalties for crime. Compensation orders were introduced into our law as a convenient and rapid means of avoiding the expense of the resort to civil litigation when the criminal clearly has means which would enable the compensation to be paid.”*



1 27. I do not believe it appropriate to combine a compensation order with a sentence of  
immediate custody, especially as the Defendant is not able to pay – see *Love*  
(1999) 1 CR App R (S) 484. Of course, Mr. Powell is at liberty to sue the  
Defendant and obtain monetary redress in the civil courts after a detailed and  
comprehensive assessment of the losses suffered by him.

6

7 **Factors Considered in Sentencing**

8 28. In determining the appropriate sentence I have regard to all of the above  
9 circumstances and factors. The use of any weapon to settle a dispute is not  
10 acceptable. Where anger has been displayed in so violent a manner in a public  
11 place the matter must necessarily result in a serious punishment and other than in  
12 quite exceptional circumstances, which do not appear to be present here, must  
13 result in an immediate custodial sentence.

14

15 29. A significant aggravating feature is the use of a conch shell as a weapon,  
16 especially to cause a head injury. The Defendant rode his bicycle past Mr. Powell,  
17 he parked it at the side/rear of the restaurant, he picked up the conch shells and he  
18 approached Mr. Powell with them. It is clear that the serious injuries have  
19 detrimentally affected Mr. Powell's employment prospects and, having regard to  
20 the medical evidence before the Court, may well have an ongoing and delayed  
21 negative impact on his health. These are also aggravating features.

22

1 30.

I am unable to regard this offence as being out of character for the Defendant. He has a number of convictions for matters of violence and for offences involving possession of weapons. Although now aged 34, Mr. Powell still appears not to have learned his lesson. I do not accept the dispute in relation to payment for the cologne as amounting to any provocation.

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7 31.

However, I am not satisfied that the offence committed by the Defendant in the present case is one necessarily involving higher culpability as there was a lack of premeditation, it involved a single blow and it appears to be an isolated incident between the two gentlemen.

11

12 32.

I accept also that the Defendant has had a troubled past due to substance abuse and dysfunction within his family unit. As highlighted in the Social Inquiry Report, he clearly has anger management issues. In mitigation, I note that he has this difficulty or problem, but I also note that he has already received assistance to try and address the same under the 2011 probation order. I do hope that he seeks assistance with his problems whilst in prison, but having regard to the circumstances of this offence, I do not think it appropriate to part suspend the sentence nor make a probation order.

20

21 33.

I am satisfied that this case falls somewhere within Category 2 in the Guidelines, as it involves serious injury with what I term medium culpability. I accept Mr.

22

1 Furniss' submissions made on behalf of the Defendant that this case falls towards  
2 the higher end of Category 2.

3

4 **The Sentence**

5 34. In all of the circumstances of this case an appropriate sentence for a guilty verdict  
6 at the end of a trial is two years and four months custody. Credit should be given  
7 for any time the Defendant has spent remanded in custody for this offence.

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15 **The Honourable Mr. Justice Richard Williams**  
16 **JUDGE OF THE GRAND COURT**



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