

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0052/2018
5

6 REGINA
7

8 v.
9

10 JAVONNIE JAMAL SILBURN
11
12



13 **Appearances:**

Mrs. Nicole Petit for the Crown

15 Mrs. Lee Halliday Davis of Brady Attorneys
16 for Defendant

17 **Before:**

Justice Frank Williams (Actg.)

18 **Heard:**

19 19th September 2019
20
21

22 **HEADNOTE**

23 *Criminal Law – Wounding with intent – Carrying an offensive weapon –*
24 *Sentence following Guilty plea – Aggravating factors: Previous relevant offences,*
25 *Breach of Suspended Sentence Supervision Orders – Mitigating Factors –*
26 *Defendant's age, Psychological issues.*
27

28
29
30 **SENTENCE JUDGMENT**
31



1. On the 11th January 2019 the Defendant, Javonnie Jamal Silburn pleaded guilty to offences as follows:

- a. Wounding with intent, contrary to s. 203 of the Penal Code (2018 Revision) – with the particulars of the offence being that the defendant on the 31st day of July 2018 at #2602 Seaview Road, East End, Grand Cayman, in the Cayman Islands, unlawfully and maliciously wounded Codie McLaughlin with intent to do him grievous bodily harm;
- b. Carrying an offensive weapon, contrary to s.80 of the Penal Code (2018 Revision) – with the particulars of the offence being that the defendant on the 31st day of July 2018, without lawful authority or reasonable excuse, had with him, in a public space, namely, in the vicinity of #2602 Seaview Road, East End, Grand Cayman, an offensive weapon, not being a prohibited weapon, namely a silver-coloured blade.

2. The background from which the charges arose is that the defendant has a child with a young woman who is said to have become pregnant for the complainant in this case whilst the defendant was in custody between the end of December 2017 and the 1st March 2018. On the 2nd March, 2018 he was the subject of several suspended sentence supervision orders (SSSO's). Those orders were made in respect of summary court charges which were as follows:

a. Case # 03720/2017:

- i. Charges 1-5: Causing fear, or provocation of violence;
- ii. Two charges of threats to kill;
- iii. One charge of Assault causing actual bodily harm

b. Case # 03719/2017:

- i. One charge of causing fear or provocation of violence;

1 ii. One charge of threats to kill;

2 iii. One charge of damage to property.

3
4 3. The defendant pleaded guilty to the charges in respect of Case #03719/2017 between
5 October 19, and December 5, 2017. On March 1, 2018 he was found guilty of those
6 charges in respect of Case #03720/2017. The following were the concurrent sentences
7 imposed for all these offences:

8 i. Suspended sentence supervision order for 12 months;

9 ii. To complete anger management course(s)

10 iii. To complete inter-relationship course(s)

11 iv. To attend counselling as directed

12 v. Prohibited from consuming illegal substances

13 vi. Agree to random drug testing

14 vii. Maintain employment

15 viii. To be of good behavior.



16
17 4. By a summons to offender filed on 23rd October, 2018, he was required to attend court
18 on 4th December 2018 to answer to allegations in a breach report that he is in breach of
19 those orders. Specifically, it is alleged that he is in breach of orders to report to the
20 probation office; and orders (v.) to (viii) above.

21
22 5. In respect of the sentence to be imposed, several submissions were made by the Crown
23 and the defence for the court's assistance on the 19th September 2019.

SUMMARY OF SUBMISSIONS FOR THE CROWN

6. On behalf of the Crown, it was submitted that, there being no sentencing guidelines in these islands stipulating sentences in respect of this type of offence, assistance might be had from the guidelines published in the *England and Wales Sentencing Council's Definitive Guideline for Offences of Assault* (Hereafter referred to as: "The sentencing guidelines").

7. It was submitted that those guidelines suggest that this offence should be considered as falling within Category 1. The basis for this is the nature of the injuries. It was submitted that the complainant suffered two stab wounds - one an eight-cm deep laceration across the right side of his chest; and the other, a one-cm linear wound to the right anterior chest. One of the wounds punctured one of his lungs.

8. Among the aggravating factors, the Crown submitted, are that:

- a. the offence was committed whilst the defendant was on a suspended sentence imposed just four months before; and
- b. the defendant has a previous conviction for assault.

9. The Crown has no issue with a one-third discount being applied, on account of his guilty plea, to any sentence imposed.

10. The Crown put forward the following cases in offering assistance to the court as to the appropriate sentence in this case:

- a. *Hyre v R*¹ – 7 years' imprisonment after a guilty plea with no previous convictions;

¹ (2009 CILR Note 29)

1 b. *R v Robinson*² – 6 years after a guilty plea;

2 c. *R v Dane McPherson*³ – 6 years' imprisonment for a hammer attack.

3
4 SUMMARY OF SUBMISSIONS FOR THE DEFENDANT

5 11. On behalf of the defendant, it was submitted that this case was more suited for placement
6 in Category 2. Among the important considerations, it was submitted, is the fact that
7 there was no evidence of premeditation and the only aggravating feature is the use of a
8 weapon.

9
10 12. Counsel for the defendant sought to emphasize the defendant's disorders highlighted in
11 the psychiatric report of Dr. Susanne Neita and his troubling background spoken to in
12 that report and the Social Inquiry Report (SIR). There is, it was submitted, a clear
13 diagnosis of a post-traumatic stress disorder (PTSD) and anti-social personality disorder.

14
15 13. There is also to be found in this case (the submission went) some element of
16 “provocation” – not in the technical, legal sense, but in an informal sense - arising from
17 the defendant's interaction with the complainant and the complainant's involvement
18 with the mother of the defendant's child.

19
20 14. Two cases were put forward on behalf of the defendant for the court's consideration:

21
22 a. *R v Carlo Malik Webster*⁴ in which a sentence of six years was imposed after a
23 guilty plea in circumstances in which the complainant sustained a life-threatening
24 injury;

² (2008 CILR Note 17)

³ Cayman Islands Court of Appeal (CICA) Criminal Appeal #18/18; Ind. 73/17

⁴ Ind. No 0027/2017



b. *Kenroy Rowe v R*⁵, in which six years' imprisonment was deemed reasonable for an incident in which a man was stabbed just below the heart.

15. Both these cases featured injuries that the court in each matter regarded as falling within Category 2. In terms of the category into which it should be placed, this case should be no different, it was submitted.

DISCUSSION

16. It is appropriate, to use, in order to ascertain a range and the usual starting point, the sentencing guidelines referred to by both sides.

17. It should be noted that general guidelines (but not sentencing ranges and starting points for this offence) are also contained in the Cayman Islands Sentencing Guidelines, 2015.

18. The English guidelines, for example, require, as a first step, the identification of the Category into which the offence falls. Category 1 is the most serious category of the following three:



"Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability"

19. In the Guidelines, there are several factors that might be regarded as indicating greater harm as well as other factors indicating higher culpability.

⁵ CACR 009/2015

1 20. After identifying in which Category an offence falls, the next step in the process outlined
2 in the guidelines is to identify a starting point and category range. These are the starting
3 points and category ranges:

CATEGORY	STARTING POINT	CATEGORY RANGE
Category 1	12 years' custody	9-16 years' custody
Category 2	6 years' custody	5-9 years' custody
Category 3	4 years' custody	3-5 years' custody

4
5 21. Here again there are factors set out in the guidelines that might be considered as
6 increasing the seriousness of the offence.

7
8 22. The other steps involved in the process might be summarized as follows:

- 9
10 a. Step 3: consideration of other factors indicating a reduction, such as cooperation
11 with the prosecution
12 b. Step 4: reduction for guilty pleas;
13 c. Step 5: Dangerousness;
14 d. Step 6: Totality principle;
15 e. Step 7: Compensation and ancillary orders;
16 f. Step 8: Reasons;
17 g. Step 9: Consideration for remand time.



18
19 23. Let us now proceed to an examination of the various steps and considerations.

20
21 STEP 1 –DETERMINING THE OFFENCE CATEGORY

22

1 24. Looking at the cases cited, it is important to bear in mind that no two cases are ever the
2 same. They are considered in the context of the same reason for which they are cited:
3 that is, to be used as general guides.

4
5 25. Nonetheless, it seems to me that the usefulness of the cases of *Hyre* and *Robinson* are
6 considerably limited by the fact that in those cases, the category(ies) in which those
7 injuries fell are not stated. We would not be able to know, therefore, if we are comparing
8 (as we should) like with like. On the 3rd April, 2019 on appeal, *McPherson* was accepted
9 as a category 2 case. The cases of *Webster* and *Rowe* are different for stating the
10 circumstances in those cases as falling within category 2. Even so, some consideration
11 of the facts of those cases is necessary in seeing whether the instant case falls to be
12 regarded as properly falling into Category 2 and, otherwise, the appropriate sentence to
13 be imposed.

14
15 26. In the case of *Rowe*, the CICA affirmed the sentence of six years, although the appellant,
16 who had had no previous convictions, had expressed deep remorse. In that case,
17 however, the appellant stabbed the complainant while the complainant lay on the ground,
18 having fallen. He was stabbed just below the heart and emergency surgery was required.
19 The court of appeal considered that the appellant was lucky not to have been charged
20 with murder or attempted murder and regarded the injuries suffered by the complainant
21 as: "...very serious" and to have had "*a deep impact on his life*".

22
23 27. Similarly, in the case of *Webster*, the sentence of 6 years was imposed in circumstances
24 in which the complainant was stabbed in the stomach, causing his bowels to be exposed.
25 He required emergency surgery for what was described as a life-threatening injury.
26 Discharged after a week in hospital, he had to be readmitted for further surgery after
27 suffering excruciating pain. He also lost over \$12,000 as a result of his injuries.



1 28. The experts by whom the appellant was seen in that case, although recognizing that he
2 had been raised in difficult circumstances, found that he was suffering from no disability.
3 Some allowance was however still made by the sentencing judge for his difficult history.

4
5 29. In the instant case, the defendant had had a difficult upbringing and had come in close
6 contact with violence and death at a young age, for which experiences he had received
7 no counseling intervention. Specifically, he had lost two uncles to gun violence and had
8 seen them shortly after they had been shot, one dead and the other dying. He had also
9 received no intervention in relation to the physical and emotional abuse he, as a child,
10 saw perpetrated against his mother.

11
12 30. Although there can be no gainsaying that the injury is serious, it is my view that this
13 injury is less serious in the context of the offence. Additionally, the only aggravating
14 feature to be seen in the sentencing guidelines that is applicable to this case, is the use
15 of a weapon. The lack of pre-meditation also is another factor indicating lower
16 culpability in this case.



17
18 31. With these factors in mind, I find that the circumstances of this case place it squarely
19 within Category 2.

20 STEP 2 – STARTING POINT AND CATEGORY RANGE

21 32. In the absence of any multiple features of culpability in this case, there would be no
22 merit in an upward adjustment at the outset from the usual starting point.

23
24 33. However, there are several aggravating factors. There is, for example, the fact that the
25 defendant has several previous convictions, and, in particular, a conviction for assault
26 occasioning actual bodily harm. There is also the fact that an SSSO was in effect in

1 respect of the defendant, when the offence was committed. The author of the SIR also
2 considers him to be at high risk of re-offending.

3
4 34. In relation to factors reducing seriousness or reflecting personal mitigation, there is the
5 fact of the defendant's relatively young age⁶ and his diagnosed psychological issues. He
6 has also been using drugs from around age 11. His diagnoses are listed at page 4 of Dr
7 Neita's report as follows:

- 8
9 a. "Post-traumatic Stress Disorder..."
10
11 b. Adjustment Disorder with Mixed Anxiety and Depressed Mood...
12
13 c. Cannabis Use Disorder, Moderate...
14
15 d. Opioid Use Disorder, Mild...
16
17 e. Antisocial Personality Disorder..."



18
19 35. The following excerpts from the psychiatrist's opinion and recommendations (at page 5
20 of the report), are also important. They read as follows:

21
22 *"Mr. Javonnie Silburn presents a complex diagnostic picture of both Post-traumatic*
23 *Stress Disorder and Antisocial Personality Disorder, in addition to his diagnoses of*
24 *Adjustment Disorder with Mixed Anxiety and Depressed Mood and substance use*
25 *disorders. Mr. Silburn meets the diagnostic criteria for Post-traumatic Stress*
26 *Disorder (PTSD). The essential feature of this condition is the development of*
27 *characteristic symptoms after exposure to one or more traumatic event. ...There is*

⁶ The Defendant's d.o.b. is the 17th April 1996, making him now 23 years of age and 22 at the time of the offence.

1 *overlap between PTSD and Antisocial Personality Disorder in his symptoms of*
2 *aggressiveness. Some individuals with PTSD may be quick tempered and may even*
3 *engage in aggressive verbal and/or physical behavior with little or no provocation.*
4 *In Antisocial Personality Disorder, symptoms of irritability and aggressiveness; and*
5 *also, impulsivity are very common characteristics, such that they are among the*
6 *diagnostic criteria.”*

7
8 36. Doing my best at attempting to take into account all these competing considerations, and
9 balancing justice with mercy, the usual starting range of 6 years seems to me to be
10 appropriate.

11
12 STEP 3 – OTHER FACTORS INDICATING A REDUCTION

13 37. This is not a matter in which assistance to the prosecution would be required or expected.
14

15 STEP 4 – REDUCTION FOR GUILTY PLEAS

16
17 38. The defendant in this case pleaded guilty at the earliest opportunity, thus earning a
18 discount of one-third, which makes the applicable sentence at this stage, 4 years’
19 imprisonment.
20

21 STEP 5 – DANGEROUSNESS

22 39. This is not an offence, the circumstances of the commission of which call for any
23 consideration of dangerousness.



1 STEP 6 – TOTALITY PRINCIPLE

2 40. The court will be minded to order the triggering of the suspended sentence supervision
3 order, so that the defendant must now serve the sentence of 12 months that was ordered
4 suspended.

5
6 41. However, it should be noted that those sentences also arose out of the defendant's
7 troubled relationship with the mother of his child. In all the circumstances, and although
8 this offence was committed after those, the court is minded to order that all the sentences
9 are to run concurrently.

10

11 STEP 7 – COMPENSATION AND ANCILLARY ORDERS

12 42. There is no victim impact report in the matter – the probation officer not having been
13 able to make contact with the complainant, despite several efforts to do so. There is also
14 no other information that would warrant the making of a compensation or auxiliary order
15 and so none is made.

16

17 43. The only other order to be made arises from the psychiatrist's recommendation at page
18 5 of the report. That is that: "Psychotherapy and Pharmacotherapy are recommended."
19 It is therefore ordered that the defendant undergo psychotherapy and pharmacotherapy
20 as recommended by the psychiatrist (and as requested by the defendant himself).

21

22 STEP 8 – REASONS

23 44. It is hoped that what has been said earlier in this judgment will give a clear picture of
24 the court's thinking in imposing the sentence that is being imposed. The court has borne
25 in mind the main principles of sentencing. These have been stated in the Cayman Island's
26 Sentencing Guidelines, 2015, as follows:

- a. Incapacitation
- b. Deterrence
- c. Punishment
- d. Rehabilitation
- e. Restitution



45. Because of the defendant's previous convictions and the seriousness of the offence, this case has, without doubt, passed the custody threshold and so a period of immediate imprisonment is required.

46. However, in arriving at the period of imprisonment that is necessary in this case, many inter-related factors have been considered. With the defendant's commission of the offence whilst the subject of an SSSO, one principle that must be considered is that of deterrence: deterring him and others like him from committing an offence of this nature. On the other hand, because of the defendant's youthful age and the unfortunate experiences of his upbringing, considerable emphasis must be given to the principle of rehabilitation. A balancing of all these principles as they relate to the peculiar circumstances of this defendant, will make the overall sentence somewhat lower than it otherwise would have been.

STEP 9 – CONSIDERATION FOR REMAND TIME

47. It is now generally accepted that a court, in imposing a custodial sentence, should give full credit to a defendant for any time spent in custody before sentencing.

48. I order that the Defendant is to receive full credit for time spent in custody in relation to this offence.

1 ORDERS

2 49. The following, therefore, are the orders of the Court:

3

4 a. The defendant is sentenced to 4 years' imprisonment.

5

6 b. The defendant is to be credited with the time that he has spent in custody.

7

8 c. The defendant is to receive psychotherapy and (if necessary) pharmacotherapy.

9

10 d. The suspended sentence supervision orders imposed on 2nd March, 2018 in the
11 Summary Court are triggered, with the result that the defendant is to serve 12
12 months' imprisonment for those offences. The 12-month sentence is to run
13 concurrently with his sentence for this (Indictment 52/18) offence.

14

15 e. In relation to Count 2 on this Indictment (Carrying an Offensive weapon): No
16 separate penalty is imposed.

17

18 Dated this the 3rd October 2019

19

20 *Frank Williams*

21

21 Justice Frank Williams (Actg.)

22

22 Acting Judge of the Grand Court

