

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

3
4 INDICTMENT NO: 0063/2017 & 0099/2017

5
6
7 REGINA

8
9 v.

10
11 CLAYBURN WILLIE EBANKS



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13
14 **Appearances:**

Ms. Toyin Salako for the Crown

15
16 Mr. Nicholas Dixey of Nelson & Co for Defendant
17 (Ind. 63/17)

18
19 Mr. Crister Brady of Brady Attorneys for Defendant
20 (Ind. 99/17)

21 **Before:**

Justice Frank Williams (Actg.)

22
23 **Heard:**

1st March 2019

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27 **HEADNOTE**

28 *Criminal Law – Wounding with intent – Wounding – Sentence following trial –*
29 *Aggravating factors - Mitigating Factors.*

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32 **SENTENCE JUDGMENT**

1 1. This matter comes before me for the convict, Clayburn Ebanks, to be sentenced on two
2 indictments. The indictment that was first in time was indictment number 63/2017 which
3 charged him with the offence of wounding with intent, contrary to s.203 of the *Penal Code*
4 (2017 Revision). He was convicted of that offence on 20 September 2018 after a jury trial
5 over which I presided and on that day remanded in custody for sentencing. The incident
6 giving rise to that charge and conviction occurred in the early morning of 29th July 2017. The
7 complainant in that case was Mr Neill Fellner, on whom Mr Ebanks inflicted some 8 wounds.

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9 2. The other indictment is indictment number 99/2017 which was tried by Chapple, J (Actg.),
10 sitting alone. On that indictment the Defendant was convicted for the offence of wounding,
11 contrary to s.204 of the *Penal Code* (2017 Revision). The complainant in that matter was his
12 brother, Mr Alvarado Rohelio Wright, who received some three wounds.

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14 3. The Defendant, Mr. Ebanks, was injured as well in both incidents.



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16 **THE APPROACH TO SENTENCING**

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18 4. In approaching this always-difficult task of sentencing, the court bears in mind the objects of
19 sentencing as set out in a number of authorities and in the *Cayman Islands Sentencing*
20 *Guidelines of 2015*. The relevant part of the Sentencing Guidelines is as follows:

21 *"1. Aims of Sentencing*
22 *In sentencing an offender, the Court has to balance a number of*
23 *competing interests and objectives, tailoring the punishment to the*
24 *individual circumstances of the offender whilst ensuring that the*
25 *punishment is commensurate with the seriousness of the offence.*
26 *A number of aims govern the sentencing process and it will be rare for*
27 *them all to be met; the task of the Court is to consider which of these aims*
28 *will be best served by the sentence to be passed on an individual*
29 *offender.*

1 INDICTMENT NUMBER 63/2017

2 SUMMARY OF SUBMISSIONS FOR THE CROWN

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4 7. The Crown, in summary, sought to persuade the court of the view that, in sentencing the
5 offender, the matter should be treated as a category 1 offence. According to the UK Assault
6 Definitive Guidelines, this category carries a sentencing range of 9-16 years, with a starting
7 point of 12 years.

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9 8. In support of its submissions that a sentence for this offender for this offence should fall
10 within that range, the Crown cited the following cases:

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12 i. *R v Mark A Seymour*¹ - in which a sentence of 8 years' imprisonment after trial
13 was upheld;

14 ii. *Kenroy Howe v R*² - in which a sentence of 6 years' imprisonment after trial was
15 upheld; and

16 iii. *R v Ricardo Azenyo Hyre*³ - in which a sentence of 7 years' imprisonment after
17 trial was upheld.

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¹ Criminal Appeal No: 11 & 14 of 2016

² Criminal Appeal No: 9 of 2015

³ Criminal Appeal No: 9 of 2009

1 **FOR THE DEFENCE**

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3 9. On the other hand, the defence sought to rely on cases based on convictions under s.204 of
4 the *Penal Code* which deal with the lesser offence of wounding. These were the cases of:

- 5 i. *R v Erin Logan*⁴;
6 ii. *R v Carla Davis*⁵; and
7 iii. *R v Kenneth Green*⁶.

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9 10. The defence sought to place heaviest reliance, however, on the case of *R v Travis Arlington*
10 *Ebanks*⁷, in which a sentence of 14 months' imprisonment was imposed after a guilty plea.

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12 11. These cases were cited by Mr Dixey in support of his submissions that the applicable
13 category for this case is category 3, which carries with it a sentencing range of 3-5 years, with
14 a starting point of 4 years. He submitted that it might not be inappropriate for the court to
15 impose a sentence of 3 years.

16 **DISCUSSION**

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18 12. The court has given very careful consideration to the cases cited by counsel on both sides, as
19 well as other cases, and has endeavoured to find sentences that might objectively be viewed
20 as condign punishment for these offences. It has been a difficult task.



4 Ind. #29/16, unreported 21 October 2016
5 Ind. # 56/13, unreported 21 March 2014
6 Ind. # 84/13, unreported, 10 February 2014
7 Ind. # 61/16, unreported, 7 December 2016

1 13. In relation to the submission that the matter ought to be viewed as a category 1 offence, the
2 court is unable to agree.

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4 14. I am of the view that the injuries in this case, although stated to be serious by the medical
5 evidence, do not approach the seriousness of the injuries in the cases cited by the Crown. For
6 example, in the case of *Mark Seymour v R*, although the injury in that case consisted of a
7 single stab wound, paragraph 3 of the judgment reveals that that single wound punctured his
8 lung, causing it to collapse, and resulting in the complainant having difficulty breathing. The
9 Cayman Islands Court of Appeal (CICA) referred to the stabbing as “a gratuitous act of
10 extreme violence” (*vide para 42 of the judgment*); and, noting the applicant’s 60 previous
11 convictions, including for offences such as assault occasioning actual bodily harm and
12 assaulting the police, commented on the applicant’s “appalling criminal record” (paragraph
13 44). At the same paragraph it was also observed that the attack was “wholly unprovoked”.
14 From the discussion at paragraphs 43 and 44, it appears that the trial judge and the court of
15 appeal dealt with the offence as falling within category 2. To similar effect is the case of
16 *Kenroy Rowe v R* – another case in which there was a single stab wound. A close reading of
17 that case, however, indicates that the court dealt with the matter as a category 2 offence. The
18 effect of the single stab wound in that case and the circumstances of the stabbing are also of
19 some significance. In that case, the appellant had stabbed the complainant with a flick knife
20 as he, the complainant, lay on the ground. The stab wound went just below the heart. The
21 complainant was bleeding into his chest cavity and a tube had to be inserted to evacuate the
22 blood. The court of appeal opined that the appellant was lucky not to have faced a charge of
23 murder or attempted murder for that offence.

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1 15. Similarly, the appellant Rowe's victim was said by the court to be lucky to have been alive.

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3 16. By comparison, these were the injuries in the indictment # 63/2017:

- 4 i. A 5 cm curved laceration to the right forehead;
- 5 ii. A 6 cm laceration to the base of the back of the head;
- 6 iii. A stab wound between his ribs;
- 7 iv. A 7-8 cm incised wound to the left side of his lower back;
- 8 v. Two 5 cm stab wounds to the left side of his ribs and hip;
- 9 vi. A 2 cm incised wound to the upper right arm; and
- 10 vii. A 5 cm incised wound to the left elbow.
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13 17. Mr. Fellner was admitted to the surgical ward but did not have to undergo life-saving surgery,
14 as did the complainants in the cases cited.

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16 18. Looking at the degree of harm, the degree of culpability and other factors by way of
17 comparison between those cases cited, other cases and the instant case, it seems that this case
18 would fall within category three (or, just possibly, towards the lower end of category 2). The
19 starting point for category 3 is 4 years' imprisonment. To impose that, however, would be to
20 completely ignore the Defendant's several convictions, although the most recent one for
21 violence or the threat of violence was recorded in July of 2014 for common assault.
22 Considering that and counterbalancing that consideration with the fact that he is to be
23 sentenced for another offence, the sentence that the court considers to be fair and just in all
24 the circumstances is five (5) years' imprisonment.

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1 INDICTMENT # 99/17

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19. In respect of the offence of wounding for which he was convicted by Chapple J (Actg.) the verdict judgment reflects the likelihood that the complainant, Mr. Wright, was the aggressor on the night in question⁸. However, at paragraph 31 of the verdict judgment the learned judge also found that Mr. Ebanks used unreasonable force in response to the initial attack (being hit with a fan belt), by using a knife to inflict wounds to Mr. Wright. The wounds to Mr. Wright were: a stab wound to the chin and to the right anterior chest and to the abdomen. However, the verdict judgment indicates, as Mr. Brady submitted on Mr. Ebanks' behalf, some mitigating factors. These might be noted to include: a lack of premeditation; and some amount of provocation.

20. Considering all the circumstances, the question arising is whether the case on this indictment properly falls to be dealt with under category 3 or category 2, as Mr Brady argues; or category 1, as Ms. Salako contends. For category 3, the sentencing guidelines indicate a range of between a low level community service order at the lower end, and 51 weeks' imprisonment on the upper end, with a high-level community order being the starting point. For category 2, the guidelines indicate a range of between 1 and 3 years' imprisonment, with a starting point of 18 months' imprisonment. The category 1 range is between 2 years and six months' at the lower end and 4 years' imprisonment at the upper end with a starting point of 3 years' imprisonment.

21. To my mind the features of this case place it in category 2: although the injuries are described as serious, the circumstances indicate a lower level of culpability on the part of the Defendant. The fact that the offence was committed whilst the Defendant was on bail for a

⁸ (see paragraph 26 of the judgment)

1 similar offence must be taken into account. But that will have to be considered against the
2 background of the particular (and what I would consider to be the unusual and unfortunate)
3 features of this case in which the complainant initiated the physical confrontation. In the
4 result, it seems to me that a sentence of two years' imprisonment would be fair and just.

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6 **CONSECUTIVE OR CONCURRENT**

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8 22. In the Cayman Islands Sentencing Guidelines, at s.6, the following guidance, *inter alia*, is
9 given about concurrent and consecutive sentences:

10 *“Concurrent sentences will ordinarily be appropriate where:*

- 11 (a) Offences arise out of a related incident or facts
12 (b) There is a series of offences of the same or similar kind especially when
13 committed against the same victim

14 *Where concurrent sentences are passed, the sentence should reflect the overall*
15 *criminality involved.*

16 *The sentence should be appropriately aggravated by the presence of the*
17 *associated offences and thus the court may increase sentence for the principal*
18 *offence to reflect the gravity of conduct:*

19 *Consecutive sentences will ordinarily be appropriate where:*

- 20 (a) Offences arise out of unrelated facts or incidents
21 (b) Offences are of the same or similar kind but where the overall
22 criminality will not sufficiently be reflected by concurrent sentences for
23 example:

- 24 I. Where offences are committed against different victims
25 II. Where sexual offences or domestic violence are committed
26 against the same individual
27 III. Where the offender commits the same or similar offence after
28 being arrested for the original offence...”

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31 23. To my mind, the underlined portions of the above quotation, show, where they relate to the
32 appropriateness of concurrent sentences, why it might be inadvisable to impose concurrent
33 sentences in this case and, where they relate to the appropriateness of consecutive sentences,
34 why it might be best to order that the sentences should run consecutively to each other in
35 these matters.

1 24. It will be seen that the emphasized parts of the quotation touch and concern factors that are
2 present in the instant matters. They need not be rehearsed. Additionally, as is indicated earlier
3 in this Judgment, the totality principle of sentencing was considered when the sentence on
4 indictment number 63/2017 was being considered.

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6 25. The sentences of the court are, therefore, as follows:
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8 **SENTENCES**

9 26. On indictment # 63/2017:
10 a. Five (5) years' imprisonment. From this must be deducted the 204 days that the prisoner
11 has spent in custody since being remanded in custody on 20 September 2018.
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13 27. On indictment # 99/2017:
14 a. Two (2) years' imprisonment; and that sentence will run consecutively to the sentence
15 imposed on indictment # 63/2017.
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17 **Dated this the 12th April 2019**

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20 **Justice Frank Williams (Actg.)**
21 **Acting Judge of the Grand Court**

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