

IN THE CAYMAN ISLANDS COURT OF APPEAL

**Chadwick P
Forte JA
Campbell JA**



CRIMINAL APPEAL No 37 of 2010

THE QUEEN

-v-

O'NEIL ALRICK ROBINSON

Hearing date: 12 April 2011

JUDGMENT

Sir John Chadwick, President

1. On 18 November 2010, O'Neil Alrick Robinson pleaded guilty to a charge of wounding with intent contrary to section 203 of the Penal Code. Sentencing was adjourned to enable the preparation of a social inquiry report. He was sentenced on 22 December 2010 to seven years' imprisonment. A more serious count of attempted murder was left on the file.
2. The circumstances of the offence, which was committed on 9 May 2010, are described in the judge's sentencing remarks. The judge's description is accepted as broadly accurate. Put shortly, the victim was a lady with whom Mr Robinson had had an intimate relationship. On the day in question, the parties had an argument about a new relationship between the offender and a lady in Jamaica. In the course of that argument Mr Robinson threatened the victim that he would kill her if she mentioned anything about him to his new girlfriend in Jamaica. Not deterred, the victim did make contact with the new girlfriend. She received back

from her a text with the information that Mr Robinson had threatened to kill both himself and the victim. There is a dispute as to whether the threat was to kill himself first and then the victim afterwards; or, as would be more credible, to kill the victim first and then himself. Nothing turns on that dispute. The importance of the point is that the offender had made threats of violence.

3. On the evening of 9 May 2010, Mr Robinson went to the victim's apartment and asked to be let in. She refused him entry. But he used a key (which he had in his possession) and entered that apartment without her consent. He immediately grabbed her by the throat and started to choke her. He then picked up a metal object and beat her on the head. He threatened to kill her. He then proceeded to kick her about the body and the face; causing her to lose a tooth. She shouted for help; but the door to the apartment was locked. The offender used a knife and stabbed the victim in the back of the neck. The knife broke. That did not stop him and he obtained some scissors and continued stabbing the victim. She pretended to be dead in order to stop the defendant attacking her.
4. The victim suffered injuries to her hands, a punctured left lung and stab wounds to the rear of her neck. The broken tip of the knife was lodged in her spinal canal, which left her with little or no movement on her left side. Following a call to the emergency services by neighbours she was taken to George Town Hospital, where she received treatment. It was noted that she had approximately ten stab wounds at the base of the neck. She was then air lifted to University Hospital in Jamaica for emergency surgery. At that stage, her lower left limbs were incapacitated. But, fortunately, a second surgical procedure relieved the problem. Following physiotherapy, she has largely recovered the ability to walk; although, as the judge thought, with a slight limp.
5. It is said that the judge was wrong to take the view that there were three weapons used; in that the evidence would not support a finding that any weapon other than the knife and the scissors were used. Nevertheless, this, as was accepted on Mr Robinson's behalf, was a serious — and indeed very serious — attack from which the victim was fortunate to recover.

FACTS

6. The offender, himself, had attended at the police station immediately after leaving the apartment and indicated that he had been in a fight with the victim. In effect, he surrendered himself to the police. Nevertheless, in due course, the victim indicated that she would not give evidence against him. But for his plea of guilty, there would have been a trial. It would have been (at least) doubtful whether evidence from the victim sufficient to convict would have been forthcoming; although there would, of course, have been other evidence derived from the blood on the offender's clothes and DNA.
7. In sentencing Mr Robinson on his guilty plea, the judge, Mr. Justice Quin, found that, had it not been for the expert and prompt medical attention which the victim received at George Town Hospital and at University Hospital in Jamaica, she could easily have died from the serious injuries inflicted. He described the defendant's conduct as a repeated and relentless assault which caused exceptionally serious injuries. He recorded that it had been accepted by the defence counsel that this was a truly heinous crime. Nevertheless, he took account of the mitigating factors which had been put forward on behalf of Mr. Robinson by his counsel. He was a man of previous good character. Not only had he no previous convictions, but he did not in fact indulge in either drugs or alcohol. He had a strong record at work and had been described in references submitted to the court as a diligent, honest and hard-working man. We have had the opportunity to read those references and they do indeed speak in favour of the offender's good qualities. They include a reference from the assistant pastor at his church and a reference from the victim herself who states that she has forgiven him.
8. The judge referred to the sentencing guidelines published by the Sentencing Guidelines Council in the United Kingdom in February of 2008. Those Guidelines indicate that in a case where the victim suffers life-threatening or particularly grave injury, but where the offence was not premeditated - or in a premeditated wounding not resulting in life-threatening injury - a starting point is eight years in custody. A sentencing range of seven to ten years would be appropriate. In cases involving premeditated wounding, the starting point is considerably higher, some thirteen years in custody, with a sentencing range of ten to 16 years.

9. The judge did not find as a fact that Mr Robinson had taken the weapon with him with intent to use it. But nor did he find that the offender had picked up the knife at the victim's apartment. It seems likely that the knife was one which Mr Robinson had on his person for use in another connection. The judge treated this as a case which fell just below the most serious band of life-threatening injury from a premeditated wounding. He referred to decision of the Grand Court of *R. v. Omar Robinson*, and to a decision in this court, *R. v. Hyre*.
10. *Hyre* was a case in which the defendant had been convicted after a jury trial. He had received a sentence of seven years' imprisonment. The defendant had appealed on the ground that that was manifestly excessive. This Court dismissed the appeal, finding that seven years in the circumstances of that case could not be regarded as excessive. It indicated in its judgment that an offence involving the infliction of very serious injuries by the use of a knife would usually attract a sentence of between seven and nine years in a contested case. There was no reason to take the view that the guidelines applicable in the United Kingdom were not equally applicable in the Cayman Islands.
11. The judge recognised, of course, that the defendant had pleaded guilty. But he said this:

"I cannot ignore the fact that the defendant in this case used three different weapons to cause his victim grievous bodily harm. There is . . . evidence that the defendant intended to cause the complainant grievous bodily harm and, [also] at the time of doing so, threatened to kill the complainant.

The Court must impose a penalty that properly reflects the seriousness of the offence committed and the gravity of the injuries sustained. Accordingly, in light of the sheer brutal and sustained nature of this assault, and the injuries [suffered by the victim], I sentence the defendant to seven years' imprisonment."

12. In making those remarks, the judge did not indicate whether or not he was taking into account any discount for the guilty plea. It is impossible to know, from those remarks, whether, had there been a plea of not guilty followed by a conviction after trial, the judge would have sentenced to a greater term of imprisonment; and,

if so, what that term would have been. That was important in the context of the judge's earlier remark that the starting point, based on a first-time offender, upon conviction after a trial, was eight years' imprisonment with a sentencing range of seven to ten years. The defendant in those circumstances was left in doubt as to whether he was being given credit for his guilty plea, and, if so, what the extent of that credit was.

13. The proper approach in a case of this nature is reflected in the judgment of the Court of Appeal (Criminal Division) in England and Wales in the case of *R. v. Daryl Robert Kluk* [2005] EWCA Crim 1331. That was a case in which the appellant had pleaded guilty to murder. He was sentenced to a term of life imprisonment with a specified minimum to serve in custody which, after taking into account time already served, was effectively 15 years. The issue in the case, when it came before the Court of Appeal, was whether the judge had given a proper discount for the plea of guilty. In giving the judgment of the court, Lord Justice Waller referred to the sentencing guidelines which came into force in England and Wales in January 2005; and in particular to observations by the Lord Chief Justice on those guidelines in the case of *R. v. Last and others* [2005] EWCA Crim 106. The Lord Chief Justice had said this:

“The purpose of granting a reduction was explained in the Guidelines as follows:

‘A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence’.

It is a separate issue from aggravation and mitigation generally.

The sentencer should address the issue of remorse, together with any other mitigating features present, such as admissions to the police in interview, separately, when deciding the most appropriate length of sentence before calculating the reduction for the guilty plea.”

14. Commenting on those observations, Lord Justice Waller said this, at paragraph 5 of the judgment in *R v Kluk*:

“The recent case of *R. v. Peters* [2005] EWCA Crim 605, makes it clear that it is not a matter of precise arithmetical calculation and that this court will not normally view with favour appeals which attempt to calculate with precise figures the aggravating features, the mitigating features and even the plea of guilty. The approach of the Court of Appeal will in essence be to see whether the minimum term ultimately fixed is manifestly excessive or not. But those guidelines show that a defendant when being sentenced needs to know that he or she is receiving proper credit for a plea of guilty, and it is understandable if in this instance this appellant, particularly after publication of these guidelines, may have a sense of grievance that proper credit was not given. It obviously makes sense, as the guidelines indicate, that the appropriate process for the court to go through is to fix the starting point, then calculate the aggravating and mitigating factors, and then apply the discount for the guilty plea so that a defendant can see that he is receiving a proper discount for that plea. That process, as the guidelines indicate, will encourage others to plead in cases where they should plead.”

In the circumstances of that case, the Court of Appeal thought it appropriate to have regard to the sense of grievance that the appellant might feel in the circumstances that there had been no indication of a discount by way of credit for a guilty plea. They took the view that it would be fair for a discount to be applied to the 15-year period, reducing it by one year from 15 to 14 years.

15. In the present case, in the circumstances that I have described, there are grounds for Mr Robinson to feel a legitimate sense of grievance that his guilty plea was not given the overt recognition in the sentencing process which it deserved. It is that factor which leads us to grant leave to appeal in this case.
16. It is necessary, therefore, to consider whether the sentence that was passed can properly stand. This was a very serious offence. The judge set out the aggravating and the mitigating factors. After taking account of the aggravating factor - namely, the entry to the victim's apartment with an intent to do her harm, and the repeated stabbing, first with the knife and then with the scissors, so that she was reduced to a state where she had to pretend to be dead - and setting those factors against the mitigating factors - that this was an offender who had no previous

record, who had testimonials to his honesty and usefulness in the community, and who had shown remorse, first by his immediate attendance at the police station and secondly by his early plea of guilty - the judge could have come to the conclusion, properly, that an appropriate sentence after a trial would have been in the region of ten years. From that starting point, he would then have properly allowed a discount by way of credit for the fact of the guilty plea, which would have brought him to a figure or a sentence of between six and seven years.

17. Had he gone through that process transparently in his judgment, it would have been impossible to suggest that a sentence of seven years after a guilty plea was manifestly excessive. Had the judge gone through that process, an appeal against a sentence of seven years after a guilty plea would not have been allowed in this Court. But the problem for this Court is that the judge did not, overtly, go through that process; so that the defendant is left with a legitimate sense of grievance because he does not know to what extent (if at all) the judge gave credit for his guilty plea in deciding that a sentence of seven years was the appropriate sentence to impose upon him.
18. In those circumstances - and for those reasons alone - it seems to this Court that the proper disposal of this appeal is to reduce the sentence from seven years to six years on the basis that that reduction marks the need for the defendant to know that his guilty plea has been properly recognised; and because six years is, as it seems to us, the minimum sentence that could have been imposed by any judge applying proper sentencing principles in a case of this kind.
19. We emphasise that this judgment is not to be taken as an indication that a sentence in excess of six years was excessive; but to emphasise that it is important that, in passing sentence, judges of the Grand Court should state clearly what discount is being given for a guilty plea so as to encourage others to plead guilty in appropriate cases; and thereby to avoid unnecessary waste of time and resources.
20. For those reasons, the application for leave is granted. The appeal is allowed. The sentence of seven years is quashed and in its place a sentence of six years is

substituted. The sentence of six years will take account of time served in prison prior to sentence.

