

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No. 9 of 2009
(Indictment No. 11/07)
(Summary Court No. 8776/06)

Libby

Between:

HER MAJESTY THE QUEEN

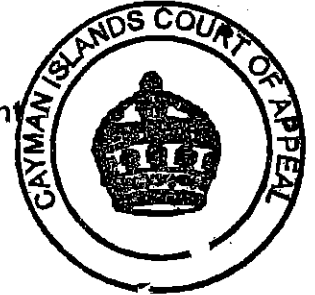
Respondent

- and -

RICARDO AZENYO HYRE

Appellant

BEFORE: THE RT. HON. SIR JOHN CHADWICK, P.
THE HON. MR. JUSTICE MOTTLEY, J.A.
THE HON. MR. JUSTICE VOS, J.A.



Appearances: Mr. George Keightley of Mourant for the appellant and Ms. Tanya Lobban for the Crown.

Heard and Judgment reserved: 26th August, 2009. Judgment and Reasons delivered: 2nd September, 2009.

Sir John Chadwick, President:

1. The applicant, Ricardo Azenyo Hyre, was convicted on 18 December 2008 before Justice Quin and a jury of the offence of wounding with intent to cause grievous bodily harm contrary to section 203 of the Penal Code (2006 Revision). On 3 April 2009, after consideration of a social inquiry report dated 15 January 2009, case status reports dated 27 February and 27 March 2009 and the psychiatry report referred to in the latter of those reports, he was sentenced by the judge to a term of seven years imprisonment.
2. By notice dated 6 April 2009 Hyre seeks leave to appeal from that sentence. The ground on which leave is sought is that the judge erred in law and in principle in passing a sentence which was manifestly excessive.
3. The facts which led to Hyre's conviction – and on the basis of which he was sentenced – were set out in the Ruling handed down by Justice Quin on 3 April 2009. They may be summarised as follows. The complainant, Mr Charles Rowe, was in the Margaritaville nightclub on the evening of Saturday 11 November 2006 when the applicant approached him, accused him of being a gangster, took out a knife and held it to his side. Mr Rowe sought to leave; but was pursued by Hyre and others. He picked up a bottle from a table

knife – into that public place; (iii) that the attack was unprovoked; and (iv) that the injuries suffered by Mr Rowe were of a serious nature – in particular, that one of those injuries could have led to his death.

9. Counsel for Hyre submitted to the judge: (i) that four of the five stab wounds were superficial; (ii) that, although it was accepted that Mr Rowe's lung was punctured – with consequences that were potentially fatal – he had, in fact, made a full recovery; (iii) that this was not a persistent or sustained attack; in that, after the stabbing, the knife had been put away while the fight continued; (iv) that in the culture of the Cayman Islands (as distinct from the United Kingdom) the carrying of a knife for the purposes of work or recreation was accepted practice; (v) that the psychiatric report showed that Hyre suffered from psychosis associated with cannabis abuse, and was in a poor state of mental health at the time of the offence; (vi) that Hyre had had a very difficult upbringing; and had found it difficult to deal with the death of his two infant sons (a fact which had been concealed from him by their mother for some months); and (vii) that Hyre had no previous convictions. We should add that it was accepted before this Court that the death of Hyre's two sons had occurred in or about September 2007 – some time after the offence was committed – so could have had no effect on his state of mind at the time of the offence; but it was said to be relevant to the sentence which the judge should have passed.

10. The judge treated the offence as a "serious, unprovoked knife attack, which caused serious injury – one of which could easily have been fatal". He went on to say this:

"19. There has been a very disturbing increase in crimes of violence and knife attacks, such as this one – an attack that can only be described as very serious. There is no difference between the UK and the Cayman Islands in relation to the effect of this type of attack on the victim and, indirectly, on the community.

20. I also must take into account that the complainant was forced to give evidence before the jury which ultimately found the defendant guilty. However, I do acknowledge that the defendant has no previous convictions."

After taking into account, as he said, all the circumstances of the case and the submissions from counsel, he imposed a sentence of seven years.

11. The maximum penalty prescribed for the offence of wounding with intent to do grievous bodily harm under section 203 of the Penal Code (2006 Revision) is life imprisonment; but it is common ground that, on a conviction under that section, the sentence must reflect

injuries to the victim. He survived after immediate medical treatment at the Jackson Memorial Hospital in Miami – to which he was flown by air ambulance – and subsequently made a full recovery; but, in the view of the Professor of Surgery by whom he was treated, he was very lucky to live. The defendant pleaded guilty to a charge under section 202 of the Penal Code. He had a previous conviction for assault occasioning actual bodily harm. In sentencing him to six years imprisonment, the judge said this:

“I have to say that when I take into account the defendant’s unprovoked assault on Mr Whittaker at the petrol station, and the defendant’s eight (8) stabbings on his unarmed victim, with consequential serious injuries, I was thinking of a sentence of ten (10) or more years. However the proffering of his early guilty plea, his admission of full responsibility and his expressions of remorse, have led me to reduce that sentence. Taking all the circumstances of this case, and the submissions from both the Solicitor General and Mr Dixey [counsel for the defendant] into account, I am imposing a sentence of six (6) years . . .”

In the course of his submissions counsel for the defendant had sought to argue that the growing increase of knife attacks in the United Kingdom might have led to heavier sentences being imposed in that jurisdiction for offences of that nature than had been thought appropriate in the Cayman Islands. It is, we think, implicit in the judge’s remarks that he did not accept that submission; or, at the least, that he thought that conditions in the Cayman Islands called for a comparable response. That view is reflected in his remarks in the present case to which we have already referred.

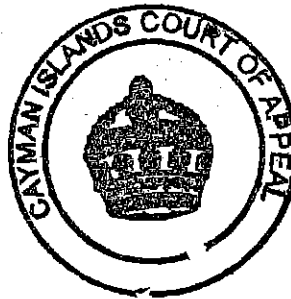
14. There is nothing in the authorities to which we have referred thus far to support a conclusion that, on the facts in the present case, a sentence of seven years imprisonment after a trial was in excess of what a defendant with no previous convictions might reasonably have expected; let alone to support a conclusion that the sentence was manifestly excessive. But, it is said, that is the conclusion to which this Court should come in the light of the decision of Justice Hibbert in *R v Jackson and Solomon* (No 53/2006) (unreported, 30 August 2007) and its own decision on the appeal by the defendant Solomon (unreported, 4 August 2008).
15. We have been provided only with a transcript of the submissions made in that case immediately before sentence and the judge’s sentencing remarks. The picture which emerges from that material is less than complete; and it is impossible to feel confidence that the following summary of the facts reflects a full appreciation of all the

it in the course of his Ruling. But, plainly, he did not find it of assistance. We think he was correct to take that view.

18. Given the need, in the light of the decision in *R v Jackson and Solomon*, for this Court to review the authorities, we think it right to grant permission to appeal. But, following that review, we are not persuaded that the sentence of seven years in the present case was manifestly excessive. On the contrary, we are satisfied that it was within the range properly open to the judge on the facts of this case. We dismiss the appeal.

Chadwick, P.

Mottley, J.A.



Vos, J.A.