

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CR 0074/2015

THE STATE

V

RICHARD CLARKE a/c SMOKEY

FOR

WOUNDING WITH INTENT (2 COUNTS)

SENTENCE RULING

Before the Hon. Madam Justice Lisa Ramsumair-Hinds

Appearances:

Ms Hema Soondarsingh assisted by Ms Anastacia McMeo for the State

Mr Frank Lorris Peterson for the Prisoner

Date Delivered: Monday 26th February 2018

SENTENCE RULING

Introduction

- 1) Richard Clarke a/c Smokey was indicted for two counts of Wounding with Intent contrary to section 12 of the Offences Against the Person Act, Chap. 11:08. He has pleaded guilty and is now to be sentenced. I am grateful to the Police Complainant for obliging me by securing the attendance of one of the victims here today. I have reduced this sentence ruling into writing, detailing the entire process, primarily so that she understands how I got to the end. I found this to be important to ensure that social justice is achieved.
- 2) On 2nd February 2018, Mr Clarke requested a Maximum Sentence Indication in accordance with the relevant Practice Direction¹. A Summary of the Facts as agreed between the Prosecutor and Defence Counsel was filed on February 6th 2018, followed by written submissions from the Defence on February 9th and the Prosecutor on February 15th 2018. Further, the Prosecutor filed a Victim Impact Statement on February 16th and confirmation from the Prison Administrative Offices regarding the time spent in pre-trial custody on February 20th 2018.
- 3) On Wednesday 21st February 2018, in accordance with Directions 5 and 6, I gave a Maximum Sentence Indication. Mr Clarke was afforded time to consider same and to properly instruct Mr Peterson. No specified expiration date was fixed and therefore, the indication remained valid until the expiry of 5 working days. In accordance with Direction 11.1, there being nothing new, and consequent upon Mr Clarke's guilty plea on Friday 23rd February 2018, the sentence indication is binding on me.
- 4) For the reasons which will be outlined below, Mr Richard Clarke is sentenced as follows:
 - I. On Count 1 – For the offence of Wounding with Intent – 3 months at hard labour;
 - II. On Count 2 – For the offence of Wounding with Intent – 3 months at hard labour;
 - III. The sentences are to take effect immediately and are to run concurrently.

The Agreed Facts

- 5) Mr Richard Clarke and Y.B.² shared a personal relationship, which ended early in the month of October 2005. On October 21st 2005, Mr Clarke came to her home and demanded entrance. The second victim, Y.B.'s son-in-law A.E., secured the intervention of the police, who spoke with Mr Clarke upon their arrival. Mr Clarke's persistence continued and, on October 24th 2005, sometime in the early pre-dawn hours, he spoke with Y.B. outside her home asking why she was treating him like that. Y.B. responded that they were 'done'. He went away.
- 6) Mr Clarke returned, and while Y.B. was taking a bath, Mr Clarke pulled the shower curtain in a surprise attack and with the words, "You have to dead!", stabbed her about her head and shoulders with a knife.

¹ Vol. 54 No. 90 of 2015

² Initials used to afford some degree of confidentiality to vulnerable victim

- 7) Son-in-law A.E. rushed to Y.B.'s assistance and grabbed hold of the knife, which had a 5-inch blade. Mr Clarke then turned his attention to A.E. and attacked him with the same weapon.
- 8) It is only after the intervention of another relative, that Mr Clarke then fled from Y.B.'s home. Both Y.B. and A.E. were taken to hospital, treated and immediately discharged. Medical reports obtained later revealed that they had sustained multiple, but minor, lacerations and abrasions.
- 9) At around 6am that same day, the police found Mr Clarke locked inside his own home, lying naked on his bed, holding a bottle containing clear liquid, with blood on his body and froth coming from his mouth. He was taken to hospital by ambulance. While still warded at hospital 6 days later, receiving treatment for multiple small lacerations and the ingestion of a poisonous substance, he was formally arrested. Upon being cautioned, he said, "Boss, I just want to forget that whole scene, yes!"

Approach to Sentencing

- 10) The five principal objects of sentencing are set out in **Benjamin v R**³, and bear repeating:
 - I. The retributive or denunciatory, which is the same as the punitive;
 - II. The deterrent vis-à-vis potential offenders;
 - III. The deterrent vis-à-vis the particular offender then being sentenced;
 - IV. The preventative, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and
 - V. The rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.
- 11) I have also been guided by the four-tiered methodology which is expected to be applied in all sentencing cases, whether it be with respect to an advance indication, upon a guilty plea or a finding of guilt. The learned Judges of Appeal set out the overall sentencing structure in **Aguillera, Ballai, Bali and Ayow v The State**⁴ as follows:
 - I. The calculation of the starting point which takes into account the aggravating and mitigating factors of the offence only; these are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging its seriousness, that is, the degree of harmfulness of the offence;
 - II. An appropriate upward or downward adjustment of the starting point (or dependent on the circumstances, and if there is in effect, a cancelling out, no adjustment at all), which takes into account the aggravating and mitigating factors relative to the offender; these are the subjective circumstances of the offender which in turn inform the degree of the culpability of the particular offender;
 - III. (Where appropriate), a discount for a guilty plea; any deviation from the usual discount requires particularly careful justification and an explanation which is clearly expressed; and
 - IV. Credit for the period of time spent in pre-trial custody.

³ (1964) 7 WLR 459, per Wooding C.J.

⁴ Cr App Nos 5, 6, 7, 8 of 2015, para 24

The Law

12) **The Offences Against the Person Act, Chap. 11:08** states:

“Any person who unlawfully and maliciously wounds or causes any grievous bodily harm to any person ... is liable to imprisonment for 15 years.”⁵

13) Counsel for both sides assisted with the provision of judicial precedents from the Republic of Trinidad and Tobago Sentencing Handbook in relation to sentences for Wounding with intent to cause grievous bodily harm. In my view, three were particularly helpful.

▪ ***Vinova Bhola v The State***⁶

- After A almost knocked down the victim with his truck, an argument took place between them. A then took a cutlass from his truck and chopped the victim on his face. He was convicted of Wounding with Intent and sentenced to five years’ imprisonment with hard labour plus ten strokes with the birch.
- The trial judge considered the following:
 - Aggravating factors:
 - ✓ The seriousness of the offence;
 - ✓ The permanent scars inflicted on the victim.

Mitigating factors:

- ✓ The guilty plea;
 - ✓ The clean record;
 - ✓ The matter had remained hanging over A’s head for a considerable time.
- The Court of Appeal affirmed the conviction, but varied the sentence and placed A on a bond to keep the peace and be of good behaviour in the sum of \$20,000 for a period of two years, in default three years’ imprisonment with hard labour.

▪ ***The State v Haniff Baksh***⁷

- R, 50 years old, chopped the victim several times, causing her to be hospitalized for nine days and resulting in permanent disability and loss of movement in her left little finger. Charged with Wounding with Intent to do Grievous Bodily Harm, he pleaded guilty and was bonded in the sum of \$15,000 for two years. The State appealed on the basis of leniency in the sentence.
- The Court of Appeal affirmed the conviction and sentence, noting the mitigating factors, namely:
 - ✓ The guilty plea;
 - ✓ The clean record;
 - ✓ The offer of compensation to the victim.

▪ ***Hollister Codrington v The State***⁸

- A and the victim knew each other for about fifteen years and had an intimate relationship for about four months. A harassed the victim about a gas cylinder and also about infidelity. He slapped the victim, and chopped her twice on the head and

⁵ Section 12

⁶ Cr App No 18 of 1995 (para B3-32 of the Sentencing Handbook)

⁷ Cr App No 25 of 1999 (para B3-10 of the Sentencing Handbook)

⁸ Cr App No 81 of 1999 (para B3-16 of the Sentencing Handbook)

left leg with a cutlass. Charged with Wounding with Intent, he initially pleaded not guilty, but later changed his plea to Guilty of the lesser charge of Unlawful Wounding. He was sentenced to two years' imprisonment with hard labour.

- The only mitigating factor considered was his age – 66 years
- The Court of Appeal dismissed the appeal, affirming both the conviction and sentence.

14) In this particular matter, I found that the offence of wounding with intent to cause grievous bodily harm occurred in the context of **gender-based/intimate-partner violence**.

15) In this regard, I found a number of decisions from the BVI to be quite useful in determining sentence:

- ***The Queen v Wayne Fahie***⁹
-Fahie had attacked his girlfriend of 11 years with a machete, causing serious injuries, including the amputation of her left hand, lacerations to her forehead, scalp and arm. Charged with Wounding with Intent and Unlawful Wounding, he pleaded guilty and was sentenced to four years' imprisonment, and the payment of US\$25,000 in compensation.
- ***The Queen v Kevin Frett***¹⁰
-Frett threw hot oil on the victim, causing her to suffer terrible burns. Charged with Grievous Bodily Harm with Intent and Unlawful and Malicious Wounding, he was convicted by a jury and sentenced to three years' imprisonment.
- ***The Queen v Ovel Matthew***¹¹
-Mr Matthew attacked his girlfriend after a dispute arose between them regarding the presence of her ex-boyfriend in her jeep. He punched her on her face and head, tried to run her over with her vehicle, choked and kicked her. This all took place on a public road. She spent three days in hospital. Charged with Unlawful and Malicious Wounding and Criminal Damage, he pleaded guilty at the 1st available opportunity and was sentenced to five years' imprisonment.
- ***The Queen v Vernon Anthony Paddy***¹²
-A dispute arose between Mr Paddy and his wife concerning a phone call she had received earlier that day from a male friend. As the argument worsened, Mr Paddy questioned his wife's commitment to their marriage and she responded by expressing her desire to end same. Mr Paddy walked away towards their bedroom and returned to her. He pulled a hammer from behind his back and struck her on her face and head repeatedly. He pushed her onto the bed and continued striking at her face and head with the hammer. She managed to run out of the room and fell on the floor, where he rained more blows on her with the hammer. Eventually, she was able to run to the home of a neighbour who happened to be a police officer. She was hospitalized for eight days. Charged with Unlawfully and maliciously causing grievous bodily harm with intent, Mr Paddy pleaded guilty at the earliest opportunity. He expressed great remorse and had no previous convictions.

⁹ BVI Criminal Case No. 8 of 1998, unreported

¹⁰ BVI Criminal Case No. 12 of 2002, unreported

¹¹ BVI Criminal Case No. 28 of 2009, unreported

¹² BVI HCR 2010/0020

- Mr Paddy raised the issue of provocation and in fact, immediately upon his arrest by the neighbour/officer, he said, "You know what is frustration?" The Court cautioned that neither communication with another man, nor a desire to end the marriage could amount to provocation on the victim's part.

-Per Hariprashad-Charles J:

"In these circumstances, he should have sought counselling and if that did not assist, then he simply had to petition for divorce. Recourse to violence cannot be justified."¹³

-The judge noted further:

"It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated and that men do not have an unfettered licence to batter women. The only way the courts can effectively show this is by the sentences that are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential offenders get the message that society will not condone such behaviour."¹⁴

▪ ***Elton Beazer and Denroy Stephens v The Queen***¹⁵

-On this issue of gender-based violence, Byron CJ (as he then was) noted:

"The incidence of violence against women in our communities has become a serious problem and the court must attempt to curtail this by its sentencing policies. Unless it does so, the perpetrators of violence against women may very well believe that they have a licence to do so unimpeded. Our sentencing policy must necessarily be directed at changing behaviour, especially those abhorrent to human decency."

16) I also found guidance from ***Attorney-General's Reference (No. 80 of 2009); R v Moore***¹⁶

-Her Majesty's Attorney-General, Baroness Scotland QC referred a sentence which she considered to be unduly lenient.

-Mr Moore was charged with causing grievous bodily harm to his wife. He had returned home to find that his wife was not there. Upon her arrival, a dispute arose during which he accused her of infidelity. He blocked her inside a room, and amongst several other injuries, he branded her with a hot iron several times on her face, leaving it on her skin for 2-3 seconds each time, before saying, "That's what happens when you get out of line."

-The Court found that the trial judge was wrong to use a starting point of three years, when five and a half years was more appropriate.

17) Having regard to all of the above, I sentenced as follows:

1. Stage 1- Starting Point

Aggravating factors of the offence:

- The seriousness of the offence (both counts)
- The use of a weapon (both counts)
- The nature of the injuries

¹³ Para 38

¹⁴ Para 51

¹⁵ BVI Criminal Appeal No. 1 of 2001

¹⁶ [2010] EWCA Crim 470

- multiple lacerations on the back, arm and shoulder, but more seriously, at the back of the neck (count one)
- abrasions to neck and hip, lacerations on wrist, shoulder, but more seriously to the mid-spine (count two)
- clearly there was an intention to commit more serious harm than actually resulted (both counts)
- The victim was particularly vulnerable in the context of gender-based violence while trying to end an intimate relationship (count one)
- The vulnerability of the victim owing to the time of the attack (both counts)
- The degree of premeditation – going away and returning to attack the victim in an unguarded moment (count one)
- The attack was unprovoked (both counts)

Mitigating factors of the offence:

- The actual injuries were not life-threatening – indeed, they could even be considered minor – this factor relating to the actual physical harm was considerably mitigating¹⁷

I therefore found the appropriate starting point to be a custodial sentence of 30 months imprisonment with hard labour on each count.

2. Stage 2 – Adjustments to the starting point based on factors relative to the offender
Aggravating factors relative to Mr Clarke:

- The failure to respond to the intervention of police mere days earlier
- The context of intimate-partner violence – specifically, Mr Clarke’s persistent aggression after being told repeatedly by the victim that the relationship had ended; If I can put it colloquially, it’s like Mr Clarke didn’t understand what “done” means
- While I found the context of intimate-partner violence to be aggravating both with respect to the offence and the offender, I took care not to double-count this factor

Mitigating factors relative to Mr Clarke:

- The guilty plea
- The absence of previous convictions
- The victim impact statement from the female victim Y.B. – though there has some interaction since the attack, over the course of time and with the demonstration of civility, her apprehension of future harm has entirely receded

I find therefore, that a downward adjustment is appropriate and I cancel out 6 months, resulting in a sentence of 24 months with hard labour on each count

3. Stage 3 – Guilty plea

In keeping with all of the relevant authorities, I find that Mr Clarke is entitled to the award of the usual discount of one-third for the guilty pleas. He has clearly

¹⁷ See UK Sentencing Council’s Guidelines on Assault and other Offences Against the Person – Category 2 – Lesser Harm, Greater Culpability

acknowledged and accepted responsibility from his unlawful conduct and spared both victims and the criminal justice system.

The award of the usual one-third discount results then in a sentence of 16 months' imprisonment with hard labour on each count.

4. Stage 4 – Deduction of time spent in pre-trial custody

I will give full credit for all time which Mr Clarke spent in custody prior to today's sentencing. The information supplied by the Prison Administrative Offices fixes that at 13 months.

- 18) I therefore sentence you, Mr Richard Clarke a/c Smokey, to serve 3 months' imprisonment with hard labour on each of the two counts. These sentences are to run concurrently and begin today.
- 19) Before leaving this case, I wish to urge all who have a role to play in the management of cases of gender-based/intimate-partner violence, including police, prosecutors, defence counsel, judges and magistrates to read and re-read the UK Sentencing Guidelines Council's Definitive Guideline on Assault and other Offences Against the Person, in particular their **new Definitive Guideline: Overarching Principles: Domestic Abuse**, published only last week and which is to take effect in all matters for sentencing after 24th May 2018, regardless of the date of the offence.
- 20) I note as well, Mr Clarke, that this could easily have been a murder-suicide, indeed a double murder-suicide; not an infrequent occurrence in this country. May I add that if you or if there is anyone who still believes that infidelity or ending an intimate relationship can justify or mitigate violence, you are severely mistaken. **Anyone** is free to end an intimate union, whether it is in the context of marriage or merely a visiting relationship, as in this case. Perhaps, in an effort to re-socialize against skewed gender stereotypes, we should reconsider the utility of the words 'til death do us part'.

Lisa Ramsumair-Hinds

Judge

February 26th 2018