



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2008: No. 21

BETWEEN:

THE QUEEN

Plaintiff

-and-

RASHAD COOPER

Defendant

Dates of Trial: 2 July 2008 - 4 July 2008

Date of Sentence: 4 July 2008

Ms. Nicole Smith of DPP, for the Crown;

Mr. G. Rick Woolridge of Phoenix Law Chambers for the Defendant.

EX TEMPORE RULING

The accused man has today been convicted by a jury of his peers in a majority verdict of ten to two for the offences of wounding with intent and possession of a bladed article in a public place. It has been agreed that in light of the principles applicable to sentences in respect of the two offences and in particular to count two, that is, the bladed article offence, it would be unnecessary and unhelpful to request a social inquiry report at this time since the mandatory minimum for count two is five to seven years imprisonment and is suspendible only if there are exceptional circumstances. Further that in respect of count one, the wounding with intent matter, the guideline cases have established a sentence of

between five to eight years. Thus applying the totality principle it is considered that a sentence is not likely to be less than five to seven years unless exceptional circumstances can be established. It is accepted that there are no exceptional circumstances in this case and there are unlikely to be any.

The circumstances of this case are indeed serious. It appears from the evidence that the attack against the virtual complainant by the accused was motivated only by his dislike of persons or this person with such a sexual orientation as that of the victim who says that he is gay. In some jurisdictions such as the United States of America, such offences have come to be known as hate crimes and they attract severe penalties much above that attracted by the normal offence. No such legislation has yet been enacted in this jurisdiction nor has the defendant been so charged, but this court is entitled to and should take into account the basis for the attack on the part of the defendant, and the court does indeed find that basis to be an aggravating factor. It is the constitutional right, it is the human right of every citizen that he ought not to be discriminated against on the basis of his race and his origin and such like. This court can see very little difference if any between such rights and the right and expectation not to be violently attacked by one on the basis of one's sexual orientation. In fact, I believe at this time there is a movement in the House of Assembly for the amendment of the Human Rights Act of Bermuda to make it clear that discrimination against one on the basis of their sexual orientation is unlawful.

By its sentence the court should, I think, send a strong message to the accused and other like-minded individuals that behaviour such as his shall not be tolerated in this modern, civilised, enlightened and fair-minded society. He who attacks one on the basis of hate for one matter or the other may do so in respect of hate for some other reason or the other. In this case the defendant has some history of violence. The court will take into account his violent past, his propensity for violence. Today it has learnt that he has several previous convictions for wounding and assaults occasioning actual bodily harm against other persons, together with other convictions.

There appear to be no matters of favourable mitigation in this case. This was a serious attack. The victim in this case actually passed out as a result of this machete attack to his face. There was no one around to assist him. Fortunately, he has been a fortunate person. In a recent case in which an assailant attacked a police officer with a bladed weapon he was sentenced to seven years imprisonment by this court after a guilty plea. The injuries were no more serious than those in the instant case. On appeal that sentence was reduced to six years imprisonment. One aggravating factor in that case was that the victim, a police officer was actually in uniform on duty investigating a matter on the compound of that defendant. Another mitigating factor in that case was that the assault and injuries were not of the worst kind and the accused pleaded guilty at an early opportunity thus earning discount. In this case there is no guilty plea. The accused has had a fair and full trial. He has been convicted by his peers. A further aggravating factor is that he laid in wait of this victim in the still of the night. And as I said before he was motivated by hate of such persons only because of the sexual orientation of the victim. In all of the circumstances I think that a sentence of up to eight years in this matter would not be unreasonable. And certainly I think a sentence of seven years cannot be said to be

excessive. I therefore sentence the defendant as follows: On Count One seven (7) years imprisonment, on Count Two seven (7) years imprisonment to run concurrently with time previously spent in custody in respect of these matters to be counted.

In respect of the submission for a community sentence I see no benefit in that at this time. Whatever treatment there is to assist the defendant I believe would be extended to him while he is in prison. Furthermore in this jurisdiction parole is a long process and there they have all the opportunities to impose whatever conditions they may wish to, when he is paroled or if he is paroled. Furthermore it appears that at the time of this offence this defendant had been on probation. He had been convicted by the Magistrate below on the 9 January 2006 for possession of an offensive weapon, a knife, and for using violence to Amir Shakir on account of his appearing as a witness in a judicial proceeding and further for unlawfully assaulting that Amir Shakir and doing him bodily harm. He had been on three years probation therefor at the time of this offence another aggravating factor.

Dated the 4th of July 2008

CARLISLE GREAVES
Puisne Judge