In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 4 of 2020

BETWEEN:

THE QUEEN

-and-

ALVIN LEVEROCK

Before: **The Hon. Mr. Justice Juan P. Wolffe, Puisne Judge**

Appearances: Ms. Nicole Smith for the Prosecution
Mr. Charles Richardson for the Defendant

Date(s) of Hearing: 21st July 2022
Date of Sentence: 19th August 2022
Date of Reasons: 26th August 2022

SENTENCE

Wounding with Intent – Section 305(a) of the Criminal Code Act 1905

WOLFFE J.

1. On 22nd July 2021 the Defendant pleaded guilty to the offence of Wounding with Intent to do Grievous Bodily Harm contrary to section 305(a) of the Criminal Code Act 1905 (the "Criminal Code"). On the 19th August 2022 I sentenced the Defendant as follows:

(i) **6 years immediate imprisonment with time in custody to be taken into consideration**; **to be followed by,**

(ii) **Probation for 3 years with the following conditions:**

(a) To refrain from use of all illicit substances and alcohol;
(b) To submit to random drug and alcohol testing when required to do so by the Department of Court Services ("DCS");
(c) To complete any drug or alcohol counselling as deemed necessary by DCS;
(d) To undergo any psychiatric/psychological assessment and treatment as deemed necessary by DCS;
(e) To report to DCS when required to do so and in any event within 24 hours of being released from custody;
(f) To attend Court when required to do so.

2. Set out herein are my reasons for imposing the sentence that I did.

3. It must be noted that an inordinate amount of time has elapsed since the Defendant pleaded guilty and the date of his sentence. This is due to a multitude of reasons such as: reduction in Court operations as a result of the COVID-19 pandemic; delays in the DCS producing a Social Inquiry Report ("SIR") because of the Defendant's violent conduct in March 2020, July 2020, and June 2021 whilst being held on remand at the Westgate Correctional Facility ("Westgate") and which resulted in the Defendant appearing in the Magistrates' Court for relevant offences; a justifiable determination by DCS, after conducting interviews with the Defendant, that a comprehensive psychological and psychological assessment of the Defendant would be of assistance; delays in the production of a psychological and psychiatric assessment due to the unavailability of a forensic psychiatrist within the Mid-Atlantic Wellness Institute ("MWI") to carry out such; and inquiries being made by Prosecution and Defence as to whether appropriate arrangements could be put in place for

a Hospital Order to be made pursuant to section 33 of the Mental Health Act 1968 (ultimately no such arrangements were possible).

4. Whilst most of the above reasons for the delay in the sentencing of the Defendant are understandable it is imperative that all stakeholders responsible for the provision of psychological/psychiatric services to offenders devise a strategic and financial plan to address any resource issues which may be an impediment to such services being provided in a timely and comprehensive manner. Failure or refusal to do so will invariably lead to offenders not receiving the necessary mental health intervention that would ultimately curtail their criminal behavior. To be clear, in saying this I cast no aspersions on any treatment providers (including MWI), probation officers, social workers or others within the criminal justice system who routinely carry out stellar work with compassion.

Summary of the Facts

5. At 11.30am on Wednesday, 1st January 2020 police officers responded to a report of an unresponsive man lying on the sidewalk along Reid Street outside of the Washington Mall in the City of Hamilton. A witness informed the police that she earlier came upon the victim, Mr. Herndon Smith, and observed that his eyes were open but not focused and that he was still breathing. She did not see any physical injuries but she saw blood coming from his nose. After a few minutes Mr. Smith regained consciousness and with the help of a passerby pulled himself to a sitting position. An ambulance eventually arrived and Mr. Smith was conveyed to the King Edward VII Memorial Hospital ("KEMH") where he was treated for a cracked skull, head trauma due to bleeding on the brain, and swelling to the left side of his face. He was admitted to the Intensive Care Unit of the KEMH in an unconscious state and then by medivac conveyed to a hospital overseas for further treatment and surgery. He remained overseas until the 12th February 2020.

6. Upon review of footage from CCTV cameras covering Reid Street police observed that earlier about 10.30am that same day the Defendant parked a motorcycle on Church Street in the City of Hamilton and walked to the entrance to the Washington Mall and placed his

black knapsack on the ground. The Defendant remained there for about an hour and at about 11.28am Mr. Smith reached the lower entrance to the Washington Mall where the Defendant engaged him in a conversation. The Defendant then, from a pivoting position, used his left hand and hit Mr. Smith to the right side of this face thereby knocking him to the ground. It is unclear as to whether the Defendant used a slapping motion or a punching motion to hit Mr. Smith, but there is no dispute that the Defendant used only one blow. As Mr. Smith fell to the ground he hit his head on the concrete pavement.

7. After he hit Mr. Smith, and presumably after watching him hit the concrete pavement, the Defendant collected his belongings, looked at Mr. Smith lying motionless on the ground and then left the area and eventually getting on his motorcycle to go to the 24 Hour Gas Station (which I take Judicial Notice of the fact that it is a few blocks from the area where the assault took place).

8. On the 2nd January 2020, the next day, a witness viewed the CCTV footage and identified the Defendant. A "look out" was dispatched by the Bermuda Police Service ("BPS") for the Defendant to be arrested and on the 3rd January 2020 the Defendant was seen by police riding a motorcycle. He was subsequently arrested on suspicion of causing Grievous Bodily Harm to Mr. Smith. When cautioned the Defendant replied, *"Fuck you police, why you didn't come get me earlier"*. The Defendant then assaulted one of the police officers by kneeing him in the groin area and hitting the police officer to the left side of his face. Eventually the Defendant was subdued and taken to the Hamilton Police Station ("HPS") where he was held in custody. As a result of his behavior though the Defendant was conveyed to MWI to be assessed.

9. On the 5th January 2020 the Defendant was charged for the offence for which he is now being sentenced.

10. At the time of the incident Mr. Smith was approximately seventy (70) years old (therefore a senior citizen) and the Defendant was approximately forty-one (41) years old.

Sentence Guidelines

11. Pursuant to section 305 of the Criminal Code the offence of wounding with intent to do grievous bodily harm carries a maximum sentence of imprisonment for life. Obviously, such a high maximum sentence registers the Legislature's and the public's desire for offences of this nature to be treated harshly. But of course, each case turns on its own facts and any sentence ultimately meted out must reflect this. In this regard, the Bermuda Court of Appeal authority of *R v. Gregory Millington Johnson [2004] Bda. L.R. 63* and the guidelines of the Sentencing Council for England and Wales (those effective 1st July 2021[1]) lend assistance.

12. The Appellant in *Johnson* was found guilty by a jury for the offence of wounding with intent to cause grievous bodily harm. The brief facts are that the victim was outside of a restaurant when he, without warning, received a blow which caused a large linear fracture of the left parietal skull and a large laceration to his scalp. He was unconscious for a time but fortunately he was ably assisted by a nurse who was coincidentally passing by.

13. The trial judge sentenced the Appellant to three (3) years imprisonment which was suspended for three (3) years, and this was coupled with a period of probation for three (3) years. The Court of Appeal however deemed this sentence to be unduly lenient and substituted it with a sentence of fifteen (15) months immediate imprisonment. In doing so, Evans JA stated the following:

> "*There is ample authority which supports the Crown's submission that, for the offence of wounding or causing grievous bodily harm with intent, contrary to section 305(a) of the Criminal Code, the sentence "will normally fall within the range of three to five years' imprisonment, depending on such factors as the nature of the weapon, the degree of injury, the actual injury and the degree of provocation" (per Sir Denys Roberts, Acting President, in George Rushe v Richard Vivian 15th November 1989 Crim App 17/89 at page 2). That was expressly affirmed by the Court in1991 (Earl Kirby v Kevin McDonald Rogers Crim App 32/91)and a corresponding sentence in Quincy Stanley Brangman v The Queen Crim App 23/01(21) the Acting President observed that sentences below three years*

[1] The Prosecution cited Sentencing Council guidelines which were effective from the 13th June 2011.

were normally found, in the English authorities, only when there were unusually strong mitigating factors. Conversely, the presence of aggravating factors could increase the sentence to between five and eight years, and sometimes, though rarely, even longer. He then said:

> *The Courts have a difficult task to perform. It is accepted that they must take into account the necessary degree of deterrence, having proper regard to the feelings of outrage of the community..... On the other hand, it is right for a Court to bear in mind always the interests of the individual".*
>
> *In that case, where the defendant pleaded guilty, the sentence was two and a half years' immediate imprisonment, and the Court refused the Crown's application for leave to appeal on the ground that that was "manifestly inadequate". It was a sentence "with which we do not feel able to Interfere" (page 4).*

This Court respectfully endorses and adopts this approach to sentencing for the offence of wounding or causing grievous bodily harm with intent contrary to section 305(a) of the Criminal Code. It is wholly consistent with the statutory requirements of the Criminal Code Amendment Act 2001, which establishes the purpose of sentencing (section 53) and the fundamental principle that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (section 54), and further provides that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorised by law (section 55). The offence under section 305(a) is a serious one with major implications for the public order. A sentence of imprisonment remains the proper and necessary sanction, except when unusual or mitigating factors are present and are of compelling weight.

The length of a sentence of imprisonment must depend primarily upon the severity of the injury, the manner in which it was caused, and the general circumstances of the offence. We can see no reason to depart from the Court's previous rulings that the normal range of sentence for this offence, subject always to mitigating and aggravating factors, is from three to five years.

The Court emphasises that mitigating factors are relevant to the length of a sentence of imprisonment, as well as to the question whether a custodial sentence should be imposed at all. The purposes of sentencing which justify a sentence of imprisonment under sections 53 and 54 of the Criminal Code Amendment Act 2001 must nevertheless be balanced against mitigating factors, including those listed in section 55 and, more generally, what were called "the interests of the individual" in the Court's judgment in George Rushe v Richard Vivian (above). These and other relevant matters have to be taken into account when assessing the length of a sentence of imprisonment, just as section 55 of the 2001 Act requires them to be taken into consideration by the Court before any sentence of imprisonment is imposed."

14. The sentencing principles in ***Johnson*** have stood the test of time and its essence is mirrored in the 2021 sentencing guidelines of the Sentencing Council (although the Sentencing Council's report is, understandably, more detailed than the content in ***Johnson***).

15. As to the level of culpability for offences involving wounding with intent to do grievous bodily harm the Sentencing Council stated that it *"is determined by weighing all factors of the case. Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability".* The Sentencing Council then went on to categorize culpability into high, medium and low levels. Specifically:

> *"**A – High culpability***
>
> - *Significant degree of planning or premeditation*
> - *Victim obviously vulnerable due to age, personal characteristics or circumstances*
> - *Use of a highly dangerous weapon or weapon equivalent**
> - *Strangulation/suffocation/asphyxiation*
> - *Leading role in group activity*
> - *Prolonged/persistent assault*
> - *Revenge*
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> ***B – Medium culpability***
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> - *Use of a weapon or weapon equivalent which does not fall within category A*
> - *Lesser role in group activity*
> - *Cases falling between category high and low culpability because:*
> - *Factors in both high and lesser categories are present which balance each other out; **and/or***
> - *The offender's culpability falls between the factors as described in high and lesser culpability*
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> ---
>
> ***C – Lesser culpability***
>
> - *No weapon used*
> - *Excessive self defence*
> - *Offender acted in response to prolonged or extreme violence or abuse by victim*
> - *Mental disorder or learning disability, where linked to the commission of the offence"*

16. As to the assessment of harm, the Sentencing Council added that *"All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level caused with reference to the impact on the victim."* The following categories of harm were established:

> ***"Category 1***
>
> - *Particularly grave or life-threatening injury caused*
> - *Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment*
> - *Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work*
>
> ***Category 2***
>
> - *Grave injury*
> - *Offence results in a permanent, irreversible injury or condition not falling within category 1*
>
> ***Category 3***
>
> - *All other cases of really serious harm*
> - *All other cases of wounding"*

17. The following can therefore be distilled from *Johnson* and the Sentencing Council's guidelines when considering the appropriate sentence for wound with intent to do grievous bodily harm offence:

(i) Sentences will normally fall within the range of 3 to 5 years' imprisonment i.e. the starting point.

(ii) Sentences less than 3 years' imprisonment can be imposed when there are unusually strong mitigating factors.

(iii) Sentences between 5 to 8 years' imprisonment can be imposed where there is a presence of aggravating factors, and on rare occasions even longer terms of imprisonment may be warranted.

(iv) Factors which should be taken into consideration when determining the proper sentence for wounding with intent to do grievous bodily harm offences can be but are not limited to:

- The nature of the weapon used.
- The severity of injury sustained by the victim, such as where: the injury is grave or life-threatening; the victim will require life-long dependency on third party care or medical treatment; or, there is a long term effect on the victim's ability to carry out their normal day-to-day activities or on their ability to work.
- The manner in which the injury was caused, such as whether the assault was prolonged or persistent.
- Vulnerability of the victim due to age or circumstances.
- The degree of provocation by the victim.
- Whether the assault was a group activity.
- The degree of planning on the part of the offender.
- Whether there is a mental disorder or learning disability of the offender which is linked to the commission of the offence.

18. Given the above, and taking into consideration sections 53 to 55 of the Criminal Code, it would be safe to conclude that offenders convicted of wounding with intent to do grievous bodily harm offences, whether by their own plea or after trial, should expect to receive an immediate custodial sentence, particularly where the levels of culpability and harm are medium to high or where there are little to no mitigating features. I should add however that although ***Johnson*** concluded that in the specific circumstances of that case that a suspended sentence was not warranted pursuant to section 70K of the Criminal Code, the possibility of there being good reason to impose a suspended sentence was not ruled out.

However, one should be cautious to even contemplate a suspended sentence unless the levels of culpability and harm are low, the mitigating features are strong, and there are absolutely no or little aggravating components.

Sentencing Decision

19. I should first deal with the mitigating circumstances, primarily because they are miniscule in number. The Defendant should be given the normal discount in sentence for his guilty plea. It should be noted that the Defendant, who at the time had legal representation, entered a guilty plea as far back as the 3rd February 2020 i.e. just over a month after the offence was committed and on the first occasion that he appeared in the Supreme Court. The matter was actually fixed for sentencing to take place on the 13th March 2020 however then Counsel for the Defendant did not appear and sentencing was adjourned to a date to be fixed administratively. On the 18th May 2020 Mr. Charles Richardson appeared on behalf of the Defendant for the first time and all indications were that another sentencing date would be scheduled. However, on the 28th July 2020 Mr. Richardson wrote to the Court indicating that an application was going to be made to have the Defendant's plea revoked. To this end, on the 13th August 2020 the Defendant vacated his plea and the matter followed the usual procedural road towards the holding of a trial (including an unsuccessful dismissal application being made by the Defendant under section 31 of the Criminal Jurisdiction and Procedure Act 2015). Eventually, and presumably after discussions between the Prosecution and the Defence, the Defendant pleaded guilty to the offence on the Indictment on the 22nd July 2021.

20. I say all of the above to say that although significant time has elapsed between the Defendant's first appearance in the Supreme Court on the 3rd February 2020, and although there was a failed section 31 application, the Defendant should not in any way be penalized by way of a "reduced" reduction in his sentence. One should not speculate about what discussions took place between the Defendant and Mr. Richardson which led him to vacate his guilty plea, advancing a section 31 application, and then pleading guilty again. But clearly, the Defendant had every intention of taking responsibility for his actions and

pleading guilty from the absolute very beginning. It would therefore be fair to the Defendant to treat him as if he pleaded guilty at the earliest opportunity and to give him the normal discount in sentencing.

21. In respect of the Defendant expressing regret and remorse, in the SIR dated 20th May 2022 it is reported that the Defendant stated that he stopped outside of the Washington Mall to get Wi-Fi and that he was *"minding his own business"* when the victim Mr. Smith kept asking him for money and that although he [the Defendant] told Mr. Smith that he did not have any he [Mr. Smith] would not leave him alone. So he slapped Mr. Smith once (this is consistent with the Summary of the Evidence). He admitted that he acted in a wrong manner and that is why he pleaded guilty to the offence. However, the Defendant was unable to give a direct response when asked how this offence had affected Mr. Smith and instead attempted to justify his actions by partly blaming Mr. Smith. He repeatedly stated though that he *"was wrong for putting his hands on"* Mr. Smith.

22. It may have come across in the SIR that the Defendant was contradicting himself by acknowledging on the one hand that what he did was wrong but on the other hand blaming the victim for what happened. However, I find that the Defendant did express some regret and remorse (he said that he especially felt sorry as he is a distant relative of Mr. Smith and has spent time with Mr. Smith's children at their home when he was growing up). Admittedly, it may not have been a full throated expression of regret and remorse, and this may have been a manifestation of the Defendant's mental health condition (which I will speak about later), but I do conclude that at his core the Defendant was sorry for causing grievous bodily to Mr. Smith.

23. Unfortunately, this is the extent of any mitigation which the Defendant may have. It would be an understatement to say that the Defendant's criminal history is atrocious. Since 1995 the Defendant has committed offences related to theft, drugs, breaking and entering dwelling houses, and relevant to the case at bar, offences of violence. The Defendant has even taken his offending behavior overseas to the UK having being convicted of serious assault offences in 2011 and 2015, and theft in 2014. Despite the fact that the Defendant

has received varied sentences across the sentencing spectrum it does not appear that they have deterred him from continuing to commit offences. To compound the situation the Defendant was convicted of an assault offence while he was being held on remand at Westgate for this matter. Any sentence meted out to him must therefore reflect the Defendant's persistent offending behavior and what appears to be his inability or reluctance to respond in a positive way to the sentences which he has already received (including community based sentences which were designed to address the criminogenic needs of the Defendant)[2].

24. Guided by ***Johnson*** and the Sentencing Council's parameters I also have regard to the following:

The degree of injury to Mr. Smith (the victim): Mr. Smith sustained severe traumatic brain injury ("TBI") with resulting cognitive and physical limitations affecting performance in his functional mobility and daily routines. For some, this may be a fate worse than death and the Victim Impact Statements ("VIS") filed and the oral evidence of Mr. Smith's daughter at the sentencing hearing tells us why. Together, the VIS state that:

- Prior to being assaulted Mr. Smith was a quiet man who was self-reliant and independent, and that he enjoyed sitting in the park, reading, and listening to his radio. He lived on his own and rode a motorcycle and drove a car.

- Mr. Smith played an active role in his grandchildren's lives by babysitting them, taking them on ferry rides, picking them up after school and taking them to their afternoon activities, attending their football games and karate lessons, and having lunch with them in the park.

[2] The SIR indicated that the Defendant has consistently been non-compliant with orders of the Court. Such as, in 2016 when he was supervised by the National Probation Service in the Camden & Islington area of London (UK) he attended all appointments, but he did not attend programmes that were deemed necessary. He was also aggressive towards members of the public, his peers (including whilst in prison), intimate partners, and staff in approved premises. Further, on 21st November 2019 the Defendant was enrolled in the Mental Health Treatment Court Programme ("MHTC") but it was whilst in the MHTC that he committed the offence which is the subject of this sentencing.

- Mr. Smith is no-longer independent and requires 24 hour care. He cannot eat solid foods, his blood sugar levels are tested before every meal, and he cannot bathe, dress or go to the bathroom on his own. He needs to use a wheelchair, rolling walker, bedrail, shower chair and toilet assistance equipment. He can no longer ride a motorcycle or drive a car.

- Mr. Smith has experienced a vast amount of pain and discomfort, dizziness and nausea, weight loss, insomnia, and UTI infections because of a catheter.

- Mr. Smith is often very confused and incoherent, and that he is no longer a calm man and instead is very aggressive and easily agitated even when his grandchildren are playing.

- The incident has affected Mr. Smith's children tremendously, in particular their mental, physical and emotional health has deteriorated as they find it increasingly difficult to come to terms with what has happened to their father. So much so that one of them was on medication and was seeing a psychologist, and another has suffered from daily migraines.

- Mr. Smith's grandchildren have also suffered. One of them had to see a school counsellor because Mr. Smith is no longer immersed in his life, and one of them uncontrollably cried in class. Further, no longer will the grandchildren be able to enjoy spending time with their grandfather.

- The cost for care and therapy for Mr. Smith are high and unbearable for Mr. Smith's family. Mr. Smith is a retired Government worker and the Government Employee Health Insurance ("GEHI") does not cover home care. Therefore, Mr. Smith's children are responsible for meeting the associated prohibitive costs (various receipts/invoices for Mr. Smith's care were attached to the VIS). Further, the mother of Mr. Smith's children had to take off from work, without pay, in order to care for him.

It is obvious that the injury to Mr. Smith is grave and that he and his family have suffered and continue to suffer physically, mentally, and emotionally. I would therefore put the harm done by the Defendant into the Sentencing Council's highest Category 1 of harm.

Vulnerability of Mr. Smith due to age: At 70 years old Mr. Smith was a senior citizen (and likely a pensioner) whereas the Defendant, at least from his appearance in Court, was a strapping and much younger man at 41 years old. There was no way whatsoever that Mr. Smith would have been able to defend himself against what must have been a thunderous hit to the left side of his face. To make matters worse, after hitting Mr. Smith the Defendant callously walked away leaving an elderly person lying on the sidewalk with life altering injuries.

No weapon was used, a single blow was delivered, no planning by the Defendant, and the Defendant acted alone: These are aspects of this case that would take it out of the high levels of culpability and place it within the range of medium culpability. However, the fact that there was no sustainable evidence of there being any provocation on the part of Mr. Smith the Defendant's culpability is only a smidgen outside of the high level of culpability. For the avoidance of doubt, I do not in any way whatsoever accept that Mr. Smith did or said anything to the Defendant which would justify him hitting Mr. Smith (as alluded to by the Defendant in his SIR). But even if Mr. Smith did or said anything to provoke the Defendant, the Defendant could have easily just walked away given the disparity in age between the two.

Mental disorder of the Defendant: In a Psychiatric Report dated 17th May 2022 Dr. Johnson Nwabueze Okoro, a Consultant Psychiatrist with the Bermuda Hospitals Board ("BHB"), stated that the Defendant was diagnosed as suffering from *"Severe Personality Disorder with prominent traits of Dissociality and Negative Affectivity"*. This is characterized by the Defendant sometimes acting without provocation or warning signs, and that his victims are not specific and could be anyone he has paranoia against or who he feels is persecuting him or disrespecting him. Further, that the Defendant turning to

violence suggests that he lacks the skills to deal with frustration, anger and conflict in a non-violent manner.

Dr. Okoro's report also chronicled a history of the Defendant's interaction with mental health services. Such as: his admission into the Prospect Park Hospital in the UK in 2015 when he expressed paranoid thoughts and was diagnosed as having "Paranoid Personality Disorder/Morbid Jealousy/Cannabis Use"; on 28th April 2017, after returning to Bermuda from the UK, the Defendant walked into the KEMH himself with complaints of "feeling low in mood, abandoned and not loved" and a diagnosis of Dissocial Personality Disorder was suggested; on the 7th May 2017 at MWI he presented with similar complaints, as well as reporting challenges with employment, finance, and accommodation, and he was diagnosed with acute situational crisis and acute stress reaction; on 21st November 2019 the Defendant received a Mental Health Order after being charged with an assault (at the time of committing the offence in the case at bar the Defendant was under the aforementioned Mental Health Order); and, on 27th November 2019 the Defendant was reviewed for Mixed Personality Disorder with Paranoid and Dissocial Traits and Paranoid Psychosis was considered as an alternative diagnosis.

Dr. Okoro also concluded that:

- The Defendant's adverse childhood experiences may have predisposed him to his disorder, and with cannabis use and sustained stressors his mental health state deteriorates (the SIR sets out various issues which the Defendant had with his family over the years, including the Defendant's feelings of abandonment).

- The outcome of what occurred in respect of the offence currently before the Court would have been different had the Defendant complied with psychotropic medication and psychological interventions as previously recommended.

- As part of risk management for the Defendant, interventions aimed at reducing risk should include psychological intervention, psychotropic medication, stable employment and accommodation.

- The Defendant has a moderate to high risk of violent re-offending and this, along with the severity of his illness, would be diminished by psychological intervention, psychotropic medication, stable employment and accommodation (the SIR sets out in detail the Defendant's educational deficiencies and employment challenges).

  It should be noted that the SIR indicated that the results of a risk assessment concluded that the Defendant has a high risk of re-offending, a high risk of engaging in future acts of violence, and a very high need for rehabilitative programming.

25. It would therefore appear that the Defendant's mental health challenges, particularly the elements of paranoia, are linked to his serious assault of Mr. Smith. This is something which I will take into consideration in sentencing the Defendant. However, I wish to make it patently clear that Mr. Smith's level of culpability is in no way whatsoever diminished because of his mental health issues. Over the years the Defendant has been given ample opportunity, in Bermuda and in the UK, to engage in psychiatric, psychological, rehabilitative, and medicinal treatment modalities which would have significantly arrested his offending behavior. Regrettably, he failed or refused to take advantage of the help that was readily available to him by not attending appointments and not taking his medication (as shown in the SIR and Dr. Okoro's report). Had he complied with Court orders and submitted to the treatment process then it is quite possible that Mr. Smith would still be living a jovial and independent life.

Conclusion

26. In consideration of the above paragraphs, including my assessment that there is a medium degree of culpability on the part of the Defendant and that there is a high degree of harm

caused to Mr. Smith and his family, I confirm the sentence articulated in the opening paragraph herein.

Dated the 26th day of August , 2022

The Hon. Mr. Justice Juan P. Wolffe
Puisne Judge of the Supreme Court of Bermuda