



# In The Supreme Court of Bermuda

## CRIMINAL JURISDICTION

2020 No: 13

### BETWEEN:

THE KING

And

JAHA MALLORY

## RULING ON SENTENCE

*Section 305(a) of the Criminal Code (wounding with intent to cause grievous bodily harm)*

Sentencing Hearing Dates: Monday 3 October 2022

Date of Ruling on Sentence: Monday 3 October 2022

Counsel for the Crown: Mr. Jevon Rogers for the Director of Public Prosecutions

Counsel for the Accused: Mr. Charles Richardson, Compass Law Chambers

RULING of Shade Subair Williams J

## **Introduction**

1. The Accused, Mr. Jaha Mallory, appears before the Court for sentence, upon his guilty plea entered on 16 May 2022, to Count 1 of Indictment No. 2 of 2020 charging him with wounding with intent to do grievous bodily harm, contrary to section 305(a) of the Criminal Code. The charge under Count 2, namely the offence of having a bladed article in a public place, contrary to section 315C(1) of the Criminal Code, shall remain on the Court file.

## **Summary of the Facts**

2. The facts of this case were outlined in the Summary of Evidence read to the Court. In short, the Accused and the Complainant were personally known to one another before the Accused stabbed the Complainant in the chest area with a knife while the two men were socializing at Place's Place Bar on Court Street between 5:00pm and 6:00pm.

## **Analysis:**

### *Maximum Penalty*

3. The offence of GBH W/I carries a maximum penalty of is life imprisonment.
4. That said, section 54 of the Criminal Code provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

### *Part IV (Sections 53-55) of the Criminal Code*

5. Part IV of the Criminal Code requires this Court to have regard to the purpose and principles of sentencing. I have considered the objectives of sentencing under section 53 and the fundamental principle of proportionality under section 54.
6. This Court is duty bound to have regard to and to give proper weight to the nature and seriousness of the offence, including any physical or emotional harm done to a victim. In this case, a Victim Impact Statement was produced and I have had particular regard to the physical harm caused to the Complainant as a result of the Accused's violent conduct. (The Complainant was stabbed in his chest area and suffered serious injuries requiring surgery. He was hospitalized between 24 December 2019 to 2 January 2020 and unconscious, at a time where most Bermudians were enjoying the Christmas and New Year holidays. Thereafter the Complainant was unable to work for a 7 week period and was later restricted to performing light duties in his area of employment. Further, he has been unable to engage in his sporting activities to the level that he did prior to the attack.

7. It is also of note that the Accused has a criminal history of violent offences. In April 2002 he was convicted on indictment for the offence of wounding. In December 2008 he was convicted in the Magistrates' Court for the offence of actual bodily harm and he was again convicted and sentenced in 2017 for the offence of common assault.

#### *The Reports before the Court*

8. I have considered the BARC report placed before the Court and accept that the Defendant has been engaging in alcohol abuse since no later than September 2020. He is, in my judgment a suitable candidate for a combination sentence which would be imprisonment and a Probation Order importing the conditions under both section 70A and 70B of the Criminal Code.

#### *Mitigation*

9. In sentencing the Accused, I necessarily had regard to his guilty plea and his expressions of remorse for which I credited him the full portion of the ordinary 30% discount. He was also eligible for an additional discount under the temporary sentencing discount policy I issued on Monday 25 April 2022 under Court Circular No.6 of 2022. That temporary discount entitles offenders to a discount which may go up to an additional 30%. In this case, I applied a majority portion of the 30% (25%) given that the Court was first informed of the Defendant's decision to enter a guilty plea on the day that the trial of this matter was fixed to commence.
10. As a matter of statutory obligation, I considered all lawful sanctions other than imprisonment as the Court is required to do under section 55 of the Criminal Code. However, only a custodial sentence was appropriate in this case. That was accepted by both the Prosecution and the Defence.
11. The DPP, having referred to previous case law, submitted that the appropriate range of sentence in this case is 3-4 years imprisonment followed by probation.
12. Mr. Richardson, on the other hand suggested in his submissions that the more appropriate sentence would be 3 years imprisonment followed by probation.

#### **Conclusion**

13. In my judgment, the Accused would have likely been sentenced to a period closer to 8 years of imprisonment had this matter proceeded by trial. Applying a lion-share of the 60% discount for his guilty plea (which includes the addition temporary discount of 30%) the Defendant is entitled to serve no more than 3 years imprisonment.
14. The Accused through his Counsel has confirmed his willingness to comply with a Probation Order. In the circumstances, I find it appropriate to sentence him to 3 years imprisonment to

be followed by 2 years of probation pursuant to conditions under section 70A and 70B of the Criminal Code.

15. The relevant conditions under section 70B are as follows:

(b) submit to drug testing as directed by the court;

(c) abstain from-

(i) the consumption of alcohol or other intoxicating substance;

(ii) the consumption of controlled drugs within the meaning of the Misuse of Drugs Act 1972 except in accordance with a medical prescription

(d) with the agreement of the offender and the director of the relevant programme, participate in a treatment or rehabilitative programme approved by the Minister responsible for drug prevention and comply with the rules of the programme

...

(g) refrain from –

(i) participating in specified activities or attending specified places.

Dated this 3<sup>rd</sup> day of October 2022

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**THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS**  
**PUISNE JUDGE**