



In the Supreme Court of Bermuda
CRIMINAL JURISDICTION
2018: No. 11 & 2019: No.4

B E T W E E N:

THE QUEEN

- v -

KEVIN MELLO

Before: **Justice Charles-Etta Simmons**

Appearances: Charles Richardson, Legal Aid Dept., for the Defendant;
Cindy Clark, Office of the Director of Public Prosecutions, for the Crown

Date of Hearing: **2nd October 2019**
Date of Sentence: **3rd October 2019**

SENTENCE

*Mental Disorder within meaning of Mental Health Act 1968 – Not warranting hospital disposal-
Medical opinion detrimental effect of lengthy incarceration. Whether and to what extent provides
mitigation of sentence –Guilty plea.*

SIMMONS J:

1. Mr. Mello, you are before the court on two indictments - No. 11 of 2018 and No. 4 of 2019. The 2018 indictment contains two charges; threatening to murder contrary to section 290 of the Criminal Code Act 1907 and Stalking contrary to sections 3 and 4 of the Stalking Act 1997. The victims in both charges did not know you.

2. As to count 1 threatening to murder you were clearly the aggressor in the fight that ensued at the Cosmopolitan Club with a third party. Mr Clark sought to resolve the dispute that arose with the third party. Your subsequent social media threats against Mr Clark's life were no doubt intended to put him in fear. In his victim impact statement he states that he had cause to fear for himself and for his family's safety.
3. As to count 2 you persisted in you social media posts that had a detrimental effect on Ms Trott you were unrelenting in your slanderous posts about her. She was put in fear that you would follow through with your threats.
4. In respect to the victim of indictment No 4 of 2019 Mr Medeiros, he was your neighbour of many years standing. You had a long time concern about his kite flying which may have gone unaddressed, at least in your view, by the police to whom you had previously lodged numerous complaints. You began a rock throwing campaign because a hummer kite was being flown by Mr Medeiros your neighbour. Rocks hit his parked car. When Mr Medeiros went along a path to see who was throwing the rocks he came upon you whereupon you stabbed him twice with a small knife. Mr Medeiros received penetrative injuries in the area of his shoulder.
5. Your course of conduct in each of these offences was over the top, excessive, and unreasonable. You could have avoided the confrontations because as has been borne out by the psychiatric report (paragraph 54) you know the difference between right and wrong or you would be dealt with rather differently by the court. However you were relentless in pursuing each victim with scant regard if any to your criminality.
6. In sentencing you the court is required by sections 53 to 55 to take several matters into consideration:
 - a. **The nature and seriousness of the offence.** The most serious offences are that of threatening to murder and wounding, offences that are not the most serious on the criminal statute but involve putting victims in fear for their lives.

- b. **The extent to which you are to blame.** You are the only one to blame for each offence. You used varying degrees of intimidation and threats. In all of the counts but for the wounding your offending behaviour was not one off events but persisted over many weeks.
- c. **The need for the community to be protected.** The community does indeed need to be protected from you when you are suffering from the untreated mental disorder of schizophrenia. To your credit you have not sought to blame the victims in any way for your behaviour.

- 7. **Aggravating circumstances:** Counsel for the Crown relies on the fact that you were on bail for the 2018 threatening to murder offence when you committed the 2019 wounding offence. Under ordinary sentencing principles that calls for a higher sentence in the 2019 offence.
- 8. The Crown have provided the court with an array of cases of what they determine to be guideline cases to both establish a starting point for the sentence in each charge. As to indictment 11 of 2018 count 1 they suggest a starting point of 2 years imprisonment; as to count 2, 9 months imprisonment. As to indictment 4 of 2019 they suggest a starting point of 2.5 years imprisonment. The court accepts these as appropriate starting points.
- 9. The Crown accept that some reduction should be given considering the opinion expressed in the psychiatric report (see paragraph 13 below). They arrive at 16 months, 6 months and 20 months respectively for the offences referred to above. Ms Clark also submits that your case is a proper case for post imprisonment probation.
- 10. The court is required to consider matters that mitigate against the seriousness of the offence in each case as well as matters relating to you personally Mr Mello, and your guilty plea, to the extent that it qualifies for a reduction, that ought to be taken into account in reducing a sentence.
- 11. Mr Richardson on your behalf refers the court to Dr Henagulph's report where in the doctor observed that you suffer from the mental health disorder of schizophrenia which has gone untreated for 14 years. It is small wonder that you have not been before these courts before for

these types of offences. The doctor observes that you have a history of impulsivity and aggression all associated with your mental condition. The court accepts that observation and finds that it goes a long way to explain your behaviour on each occasion covered by the charges.

12. The Psychiatrist also points out that you are willing to undergo treatment and the Dr goes on to observe that treatment can be offered in prison as well as in the community. In fact he states that he would be willing to continue to treat you.
13. The part of the doctor's report that Mr Richardson stresses is relevant to imposing the appropriate sentence is stated briefly in the executive summary at paragraph 5. It states "I would have concerns that a prolonged period of incarceration could have a detrimental effect on his mental disorder in terms of his health and safety and the safety of others". That statement analysed at any depth warrants serious consideration by the court.
14. Mr Richardson intimated that the puncture would to Mr Medeiros was not that serious. The court refuses to contemplate that in the circumstances as there is no evidence supporting that assertion. He further submitted that the cases that the crown has referred to involve domestic disturbance backgrounds and or are glassing cases. This court would be loath to make any statement that suggests that domestic partners or family members deserve less consideration than strangers would. Ms Clark suggests that there should be an uplift in the sentence because of your use of face book. Mr Richardson submits that the victims put themselves out there on social media and so the use of social media is not an aggravating feature. The court holds that in the circumstances of this case and your personal mental health condition the social media aspect of the facts ought not to be considered an aggravating feature.
15. The court is aware that if a sentence includes attendance at prison programs – or if a probation order is made to include treatment for your mental health both are voluntary. That is not a reason for the court to ignore the availability of such programmes. This is especially so since you have indicated a willingness to be treated.

16. As to your guilty plea. It would appear that preparations for a trial were continuing up until February at least of this year. No indication has been given that defence counsel and crown counsel were talking at the time toward the entering of a plea. Judging by an order of the court of the 11th July, it is apparent that guilty pleas had been entered by that time. The court takes notice that it may have been difficult for counsel to take clear instructions somewhere along the line from first appearance. In the circumstances some reduction in sentence for your guilty plea ought to be given that is more than *deminimus*.
17. The court is not expected to delve into a strict mathematical exercise in arriving at a discount for your guilty plea. Rather in the circumstances the court takes it into account in arriving at each sentences.
18. Taking into consideration the starting point in each sentence and giving due consideration to the concern that the Psychiatrist has expressed about the effect that a prolonged period of incarceration may have on your health and safety, and providing a deduction for your guilty plea you are sentenced as follows:
 - i) Count 1 of indictment number 11 of 2018 – threatening to murder; 12 months imprisonment.
 - ii) Count 2 stalking; 4 months imprisonment.
19. As to indictment number 4 of 2019:
 - i) Count 1 wounding; 16 months imprisonment.
20. These sentences are to run concurrently. You have been in custody for over 9 months; that period is to be taken into account in determining your release date.
21. The Court also determines that for your protection as well as the public's protection, you will be subject to a probation order of two years duration. The compulsory conditions under section 70A have already been read to you, and you accept to be bound by them. They are:
 - (a) not commit another offence during the period of the order;

- (b) appear before the court when required to do so by the court;
- (c) notify the probation officer in writing in advance of any intended change of address and promptly notify the probation officer of any change of employment or occupation;
- (d) report to a probation officer at the place and within the times stated in the order and thereafter when required by the probation officer and in the manner directed by the probation officer; and
- (e) not leave Bermuda without the written permission of a probation officer

22. You have agreed to be bound to the following additional conditions under section 70B:

- (a) submit to drug testing as directed by the court;
- (b) 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;
- (c) with the agreement of the offender and the director of the relevant programme, participate in a treatment or rehabilitative programme with an aim to addressing your mental health condition.
- (d) comply with such other reasonable conditions as the court may direct for facilitating the successful reintegration of the offender into the community.

SIMMONS J