

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CRIMINAL JURISDICTION

Central District

Indictment No C78/2014

THE QUEEN

v.

LINDSAY GLADDEN

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Ms. Romey Wade for the Crown**
Accused unrepresented

DATES: **4 April 2022, 11 April 2022, 16 May 2022, 25 May 2022, 3 October 2022, 11 October 2022, 17 October 2022 and 14 November 2022.**

SENTENCING

i. Introduction and procedural history

1. On 3 October 2022, Mr. Lindsay Gladden entered a plea of guilty to the alternative offence of grievous harm pursuant to Section 81 of the Belize Criminal Code.¹

¹ Section 81, Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

2. The agreed facts are that on 23 March 2013, around 5.15 p.m., the Virtual Complainant, Ernesto Bol, went to the Accused's home, where alcohol was consumed and an argument between the two men ensued. Mr. Gladden asked Mr. Bol to leave his yard, and Mr. Bol attempted to do so. While Mr. Bol was leaving, the Accused attacked him with a machete, striking him four times. Mr. Bol blocked one of these blows, sustaining an injury to his left arm. The third blow injured Mr. Bol on the left side of his forehead, just above his left eye. The fourth was intercepted by Mr. Bol, who held onto the blade of the machete, and a struggle ensued, during which Mr. Bol sustained injuries also to the palm of his hands. Mr. Bol spent four days in hospital obtaining medical treatment for his injuries.
3. On 29 September 2014, Mr. Gladden was indicted for the offence of use of deadly means of harm, contrary to Section 83(c) of the Criminal Code, and in the alternative, grievous harm, contrary to Section 81 of the Criminal Code.
4. This matter first came before me in April 2022. An initial Sentencing Indication Hearing took place on 16 May 2022. On 3 October 2022, discussions regarding the appropriate sentencing framework given the age of this indictment and circumstances of this case resumed, with Mr. Gladden entering a plea of guilty to the alternative count of grievous harm on 3 October 2022. A sentencing hearing followed on 11 and 17 October 2022, where the Crown called Mr. Bol in relation to victim impact, and Mr. Gladden, who is self-represented, called his son and sister in law as character witnesses, in mitigation.

ii. Legal Framework

5. Section 81 of the Belize Criminal Code provides that “[e]very person who intentionally and unlawfully causes grievous harm to a person shall be liable to imprisonment for seven years.” This offence thus attracts a maximum custodial sentence of seven years imprisonment.
6. This offence is contrasted with the more serious offence of use of deadly means of harm, under Section 83(b) of the Criminal Code, which attracts a maximum penalty of ten years imprisonment.² Previously decided cases under Section 83(b) have however frequently

² Section 83(c) of the Criminal Code provides that “[e]very person who uses a sword, dagger, bayonet, firearm, poison or any explosive, corrosive, deadly or destructive means or instrument, shall, [...] if he does so with intent unlawfully to wound or cause grievous harm to a person, be liable to imprisonment for ten years”; see also *Director of Public Prosecutions v. Eston Young*, Criminal Appeal No. 6 of 2006 (2006) (“*Eston Young*”), at para. 3 (Accused indicted on a count of attempted murder and pleading guilty to the use of deadly means of harm with intent to cause grievous harm sentenced to five years of imprisonment).

awarded custodial sentences of five years or less,³ and on occasion, some cases have not resulted in custodial sentences at all, or sentences in default.⁴

7. Section 164 of the Indictable Procedure Act further confers a general discretion to impose a fine *in lieu* of any other sentence, and Section 168 of the same Act provides that when a person is convicted of any crime, the court may issue either or both of the following orders:
 - (a) Payment of the prosecution costs, in whole or in part; and/or
 - (b) Payment of a sum by way of compensation to any person injured by the crime in question.
8. In the absence of previous decisions outlining the quantum of compensation awarded under the lesser offence in Section 81 of the Criminal Code, I have noted the quantum awarded under the above-mentioned cases decided under Section 83(b), and also a decision of this court in relation to the offence of wounding by negligence pursuant to Section 94 of the Criminal Code, where a fine of \$1000 and sum of \$3,000 compensation were awarded following limb loss and permanent debility.⁵ It should be stressed that the sentencing regime under all of these provisions comprises a form of pecuniary penalty rather than being compensatory in a strict sense.⁶

iii. Sentencing considerations

9. Having regard to this sentencing framework and my duty to arrive at an individualized sentence which reflects the circumstances of the particular case, I have considered the seriousness of the offending and the consequences of this incident for Mr. Bol. I have also weighed a number of mitigating factors in Mr. Gladden’s favour.

a. Aggravating factors

10. The principal aggravating circumstance in this case is the innate seriousness of the offence and the consequences of it for Mr. Bol, which were by no means trivial.

³ N16/06 *Director of Public Prosecutions v. Dionicio Acosta* (2007) (following a verbal altercation, the Accused cut the victim with a machete on his left leg, left wrist and right thigh); C20(1)/2013 *Director v. Public Prosecutions v. Romolo Garcia* (2013) (both unreported) (also imposing a five year sentence where the victim was cut twice with a machete) and C58/2017 *Department of Public Prosecutions v. Anthony Crawford* (2019) (unreported) (Accused sentenced to four years of imprisonment and ordered to participate in drug rehabilitation programs whilst in prison after firing a weapon at a neighbourhood party, hitting the 13 year old victim in the cheek).

⁴ See *R. v. Gilbert Palacio*, C16/2019, 13 April 2022, at paras 7-8 (citing *Alvaro Cucul* (N6/2015, *Director of Public Prosecutions v. Alvaro Cucul* (unreported)), where the Accused cut the victim twice and attempted to inflict more wounds, resulting in a fine of \$3,000.00 and 18 months imprisonment in default, and *Renford Tillett Jr.*, where the Accused was fined \$5,000.00 and ordered to pay \$2,000.00 compensation to the victim, having stabbed him once in the chest following a disagreement (C48/2013 *Department of Public Prosecutions v. Renford Tillett Jr.* (unreported)).

⁵ See e.g. *R. v. Dwayne Willacey*, C70/2022, 29 July 2022, at para. 7 (“Compensation payments in this respect comprise a criminal penalty and are not intended to place a monetary value on human life or injury”).

⁶ *R. v. Dwayne Willacey*, C70/2022, 29 July 2022, at para. 24.

11. Mr. Bol testified during the sentencing hearing that in the aftermath of the incident, he was hospitalized for a few days while his injuries were tended to. He continues to experience numbness in his hand and some pain, which has on occasion caused him to miss work. Despite this, Mr. Bol describes Mr. Gladden as a friend and indicated to the court that he has since forgiven him, and that good relations have been restored between the two. He has no wish to now see a term of imprisonment imposed on Mr. Gladden.
12. The long-term harm caused by this offence to Mr. Bol is fortunately moderate. I also assess Mr. Gladden's culpability as the same. He indicated during the sentencing hearing that at the time of the incident, he was under the influence of alcohol and became angered. Although the escalation of the disagreement between the two men in this manner is by any measure concerning, Mr. Gladden has since acknowledged his wrongdoing and accepted responsibility for his offending. He has also since striven to improve his conduct and to put his life on a better path.

b. Mitigating factors

13. Mitigating factors in the present case include Mr. Gladden's guilty plea and acceptance of responsibility, remorse and subsequent positive conduct since the commission of this offence, which occurred almost 10 years ago.
14. Mr. Gladden's guilty plea avoids the need for a trial by jury, thus saving the court and members of the public time and resources. It also avoids undue further prolongation of these proceedings for Mr. Bol. By pleading guilty to this offence, Mr. Gladden has also acknowledged his wrongdoing and taken responsibility for his conduct, and enabled this long-standing matter finally to be brought to an end.
15. At the sentencing hearing, Mr. Gladden expressed remorse for this incident and apologized to Mr. Bol for it. He stated that he has learned from it, and has since focused his attention on his son, and the avoidance of conflict. He gave the court his assurance that he poses no risk to the public and that he will not offend again in this manner. Mr. Bol in turn indicated that he had forgiven Mr. Gladden and expressed a wish to put this incident behind him, and his desire that Mr. Gladden not now be subjected to a term of imprisonment.
16. Mr. Gladden was born on this day, 58 years ago. At the sentencing hearing, Mr. Gladden's son described him as an honest and hard-working person, who has been a good father, and a constant and encouraging presence in his life. He affirms that in the decade since this offence, Mr. Gladden has not, to the best of his knowledge, behaved in a violent manner.
17. Mr. Gladden's sister-in-law also stated that in terms of his mindset and conduct toward others, Mr. Gladden has made a complete change and has become a better person over the past ten years. While at first, she did not see eye to eye with her brother-in-law, their relationship has improved now that Mr. Gladden has made a real effort to be a caring husband and father. She stated that Mr. Gladden appears determined to refrain from past

behaviours and to ensure that his family remains his focus going forward. She expressed the hope and the expectation that this will continue.

18. Mr. Gladden has previously come to the attention of the courts. His Defendant History shows a series of assault, wounding, harm, and some drug and property offences as a younger man. However, he has been non-offending since this offence in 2013, save for a single minor traffic offence, for which he was fined \$80. The court accepts that Mr. Gladden's efforts to become a law-abiding citizen are borne out by this record, and that he indeed appears now to have embarked upon a better path.
19. Mr. Gladden is of modest means, and provided receipts to the court showing that he earns weekly cash payments of \$150 in his job.

iv. Determination of sentence

20. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
 1. A fine of \$200.00, payable within twelve (12) months of the date of this judgment;
 2. A sum of compensation of \$500.00, payable within twelve (12) months of the date of this judgment, to Mr. Ernesto Bol.
21. Given Mr. Gladden's current age, the significant time which has elapsed since the commission of this offence, the forgiveness expressed by Mr. Bol, Mr. Gladden's vastly improved conduct since, and his remorse and willingness to accept responsibility for this crime, I find that no positive purpose would now be served by imposing a term of imprisonment. However a sentence of three (3) months imprisonment shall be imposed in default of payment.

Dated this 14th day of November 2022

Susan Lamb
Justice of the Supreme Court