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Civil Court

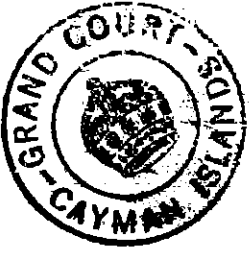
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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA NO. 70 OF 1993



FREDERICK GEORGE MILLER



-v-

REGINA

For the CROWN: Mr. Michael Clarke
For the APPELLANT: Mr. John Furniss

JUDGMENT

Schofield, J.

The appellant was convicted on his own plea of guilty in the Magistrate's Court on the 4th of August, 1993 of burglary and various drugs offences. He received a sentence of imprisonment of 18 months on the burglary charge, which was expressed to commence on the 15th of June, 1993. He also received sentences on the drugs offences which were expressed to run concurrently with the sentence on the burglary charge. The appellant appeals only against the 18-month prison sentence for the burglary offence.

The appellant had appeared before the Magistrate's Court on the 15th of June, 1993 and was then sentenced to 12 months imprisonment for various burglary offences. At least one of those offences had been committed after the offence for which he was sentenced on the 4th of August, 1993.



Two matters fall for determination in this appeal.

Firstly, whether the 18-month prison sentence was an appropriate sentence. Secondly, whether the learned Magistrate had power to antedate his sentence. This was not a major offence of its kind, but the learned Magistrate rightly pointed out in sentencing the appellant that it was a residential burglary committed at night. It was for this reason, as I see it, that he chose a sentence of 18 months imprisonment, rather than a 12-month period of imprisonment as he chose for the offences dealt with on the 15th of June. To my mind one could not fault him in his decision in that regard. The appellant has an appalling record, and the sentence chosen was well within the proper range of sentences for this offence; I can see no reason for interfering with the learned Magistrate's approach to sentence.

However, I must deal with the second point, and that has some effect upon my final determination in this appeal. Counsel have addressed me on the matter of whether the Magistrate had power to antedate a sentence. My attention has been drawn to two statutory provisions within our Codes which determine the position. Section 77 of the Criminal Procedure Code reads as follows:

"77. Where a Summary Court convicts a person and orders him to be imprisoned without the option of a fine, the court shall, by warrant, commit him to prison, there to be imprisoned for the period mentioned in the warrant."

Section 33 of the Penal Code reads:

"33. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence other than a sentence of death or corporal punishment, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof."

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under Section 24(c)(i) of this law or of any part thereof."



There is nothing in either of those two sections which gives the learned Magistrate power to antedate a sentence, and it is my view that he erred in so doing in this case. Reference to the English law fortifies that view. In the English Court of Appeal case of R. v. Arthur Ernest Gilbert (1975) 60 Cr.App.R. 220, their Lordships had to determine whether, on a reading of the English statutory provision in that regard, a court had power to antedate a sentence of imprisonment. The English statutory provision at that time in force was Section 11(1) of the Courts Act, 1971 which reads:

"11(1) A sentence imposed or other order made by the Crown Court when dealing with an offender shall take effect from the beginning of the day on which it is imposed, unless the Court otherwise directs."

In Gilbert, it was determined that, even in the face of that wording, the Crown Court had no power to antedate a sentence of imprisonment.

The next question which arose was whether that determination would have any effect upon the practice of the Magistrate's Court of ordering time spent in custody prior to sentence to be taken into account in reducing the term of imprisonment imposed. A reference to Section 31 of the Prison's Law shows that it does not. It is as well to recite the section here for the benefit of the learned Magistrates, and to draw its somewhat quaint provisions to their attention.

Section 32(1) reads:

- "32(1) A prisoner who is on remand may opt to work and, if having so opted and being permitted to work, -
- (a) (does not apply);
 - (b) he is subsequently convicted and sentenced to a term of imprisonment, the period during which he has been on remand shall, unless the court otherwise directs, be counted as part of his sentence and he shall in any case be entitled to receive his token earnings for such work."

It has been the practice of the Court, despite this provision, to specifically express when it considers that time spent in custody ought to go in reduction of a sentence

of imprisonment. Perhaps that practice ought to continue, lest the Prison Authorities become confused.

In this case, the Magistrate's view that the appellant should only serve his punishment from the date on which he was sentenced for the earlier offences was a proper and commendable view. However, it will be seen that he had no power to make the order he made.

To give effect to the Magistrate's intention, I therefore allow his appeal to the following extent: I reduce the sentence of imprisonment imposed from 18 months to 16 months, and order that the imprisonment take effect from the date of his original sentence, that is the 4th of August, 1993.

Dated this 11th day of February, 1994.



Judge

