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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

SCA #37/00

REGINA

V.

RESPONDENT

ELOISA (LISA) BROWN

APPELLANT

APPEARANCES:

**Sam Bulgin, Esq. Acting Attorney General for the Crown.
John Furniss, Esq. for the Appellant.**

On the 7th November, 2000.

BEFORE MR. JUSTICE TAYLOR



ORAL REASONS FOR JUDGMENT

On August 10th, 2000 the Appellant was sentenced to a total of 39 months imprisonment after pleading guilty to two charges of burglary from dwellings, one charge of interference with a motor vehicle and one charge of breach of the term of an earlier probation order requiring that she be of good behaviour.

From her record and social inquiry report it is apparent that the Appellant, who is now 32, was a user of ganja 10 years ago and has been a cocaine user since at least 1997. The charges which led to the sentence now under appeal relate to events during the first five months of this year. Prior to these offences the Appellant had been convicted between 1991 and 1997 inclusive on charges of illegal drug consumption, assault and disorderly

conduct for which she received penalties from suspended sentence to terms of three, four and nine months imprisonment. In 1999, she was convicted on two burglary charges and sentenced to four months imprisonment. The charges on which the sentences under appeal were imposed represent a continuation of such property offences, driven by the Appellant's dependency on illegal drugs. It was because of the complex chronology of events concerned, and the significance of their sequence to the learned Magistrate's disposition, that I reserved decision on the appeal.

In January of this year, after serving the four-month sentence for the two 1999 burglaries to which I have referred, the Appellant committed three property offences which are the subject of sentences under appeal, one involving interference with a motor vehicle which she was found to be searching and the other two involving burglary of a bicycle, and \$1,200 cash and a walkman tape player. On April 25 she received a probationary sentence on the charge of stealing the cash and tape recorder. This was a considerable concession made in the interest of the Appellant's prospects of rehabilitating herself, despite the two prior burglary convictions. At the time that she extended the Appellant that opportunity, in April of this year, the learned Magistrate was not aware that the Appellant had committed two other property offences in January, involving the bicycle theft and the motor vehicle intrusion.

In August of this year the Appellant was before the Magistrate again, charged with those two further January offences and also with the jewellery theft, committed in May, and

charged also with breach of the term of the Probation Order imposed in April, which required that the Appellant be of good behaviour.

The learned Magistrate then observed that she would not have given the Appellant the probationary sentence in April had she been aware that the Appellant had committed not one but three property offences in January. The Magistrate also observed that the May offence involving theft of jewellery was committed within two weeks of the probationary sentence having been granted which was, of course, a serious matter. The Magistrate noted also that the Appellant had not kept counselling appointments made for her as a term of her probation. The "second chance" had not, it seemed, been deserved nor had the Appellant taken advantage of it. Rather the Appellant, led no doubt by her drug dependency, was continuing along the same path of criminal activity on which she had entered the year before.

These then were the circumstances in which the learned Magistrate imposed the following terms of imprisonment: (i) interfering with the motor vehicle on January 1, three months; (ii) breach of probation imposed in April for burglary of \$1,200 and the record player on January 8, nine months; (iii) burglary of the bicycle on January 27, 12 months; and (iv) burglary of the jewellery item on May 7, 15 months. The sentences were to run consecutively, making a total sentence of three years, three months.

Mr. Furniss, for the Appellant, conceded that when considered individually the sentences could not in all the circumstances be said to be unreasonable. It was the overall totality of

the sentence which, in his submission, should be regarded as excessive. Mr. Bulgin, for the Crown, pointed to the record which I have reviewed and the Magistrate's observations which I have mentioned, to English cases in which terms of three years and 21 months have been upheld for individual burglaries, and to the fact that burglary carries a maximum sentence of 14 years, or eight years on summary conviction.

It is, of course, well recognized that an offender who persists in a life of crime will generally receive increased sentences for similar offences as his or her criminal career progresses. Having in mind the previous four-month burglary sentence it was appropriate that sentences of three and nine months be imposed on the motor vehicle and breach of probation charges and the resulting total sentences of 12 months would also be entirely reasonable. The addition, however, of a further 27 months for the other January burglary and that committed in May, while in themselves reasonable as Mr. Furniss acknowledges results in a very substantial escalation, producing a total of 39 months, as compared with the four months imposed for similar offences in 1999.

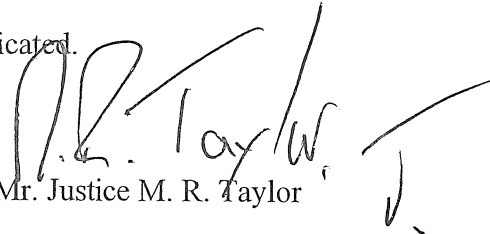
The first and chief purpose of sentencing is, of course, protection of the public. This will always be served by rehabilitation of the offender, where that seems possible. Deterrence of others may sometimes demand a sentence of such length as to put at risk the chance of rehabilitation. Sometimes, where rehabilitation seems highly unlikely, the best the Court can do to protect society is to take an offender out of circulation for a substantial period of time so that at least for that period society will be protected. These matters have to be weighed and sometimes a compromise reached. In the present case the learned Magistrate

plainly considered rehabilitation with institutional treatment to be a possibility because she speaks of the availability of drug counselling while in prison. The Magistrate obviously felt the need also for a deterrant sentence. The case does not, however, appear to be one in which society's interests could be served only by taking the offender out of circulation for a lengthy period.

With the great benefit of hindsight, and the opportunity for reweighing all the factors involved, it seems to me that the objectives of the learned magistrate could better be achieved by a somewhat shorter sentence, one which would give greater emphasis to the obviously important objective of rehabilitation.

Addressing the sentence in its totality, it seems to me that the overall sentence should be reduced by 12 months. I would accomplish this as follows. The sentence on charge 4225, for interference with the motor vehicle, is reduced to two months (from three months); that on charge 1591, for breach of probation to six months (from nine months); that on charge 4224(2), for burglary to nine months (from 12 months); and that on charge 4224(1), for burglary to 10 months (from 15 months). All sentences are to run consecutively, for a total sentence of 27 months.

The appeal is allowed to the extent indicated.


Mr. Justice M. R. Taylor



10th November, 2000