

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

SCA NO. 172/92

MARLON BUSH V. REGINA

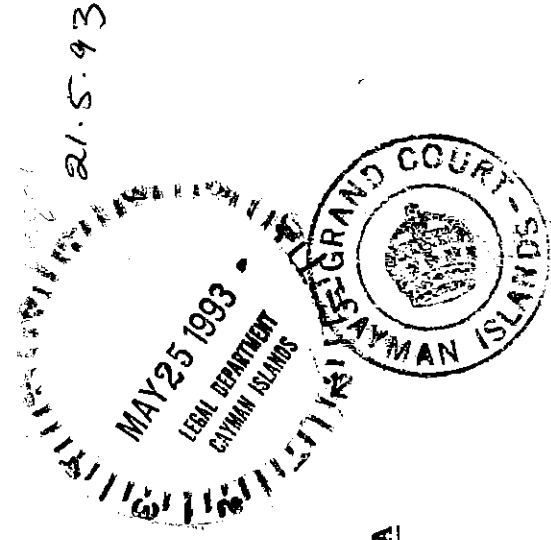
Mr. Furniss for the Appellant
Mr. Roberts for the Crown

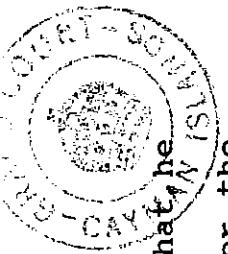
SCHOFIELD J.

JUDGMENT

Marlon Bush was eighteen years old on the 8th October, 1992. Just prior to his birthday, in the August of 1992, he was involved with other youths, some juveniles and some just adult, in a series of offences. He was charged with four counts of burglary of business premises which involved the theft of small amounts of cash and goods which in total valued about \$400. With the other youths he was also involved in taking and driving away a motor car. The motor car was not recovered for four days. Bush had some six months previously been convicted of similar motoring offences and had been given a suspended prison sentence and had been disqualified from driving for 12 months, and he was charged not only with taking and driving away, but with driving whilst disqualified, driving without insurance and driving without a driving licence.

All these charges were brought before the Summary Court on the same day, the 4th November 1992, when Bush was less than one month past his eighteenth birthday. For some reason (and I shall return to this) the burglary charges, on which Bush was jointly charged with a juvenile, were put in the Senior Magistrate's list. The motoring offences were put in the list of the Magistrate. The learned Senior Magistrate heard the facts on the burglary counts after Bush pleaded "guilty" to all four counts. He also heard that Bush had previously been made the subject of a Community Service Order when convicted as a juvenile of three counts of burglary. Those Orders had nearly been served, satisfactorily, when the new offences were committed. It seems that the learned Senior Magistrate was not told that Bush had





several serious motoring offences pending against him or that he was the subject of a suspended prison sentence imposed for the earlier offence of taking and driving away a motor vehicle. Bush was sentenced on each burglary count to twelve months imprisonment, six months of which was suspended. The sentences were expressed to run concurrently both in regard to the periods to be served forthwith and the periods to be served in the event that the suspended periods were to be put into effect.

Later in the same day Bush appeared before the learned Magistrate for the traffic offences. He pleaded "guilty" on all counts. The learned Magistrate heard how another youth entered a condominium and took the keys for a Nissan motor car and gave them to Bush who drove the motor car. The learned Magistrate also heard that Bush had been before the Senior Magistrate earlier in the day and was told of the sentences which had been handed down. As earlier indicated, on February 27th, 1992, Bush had appeared in the Summary Court charged with several traffic offences including two charges of taking and driving away a motor vehicle. On the second of those offences he was sentenced to six months imprisonment suspended for two years. He was thus in breach of that suspended sentence.

The learned Magistrate put into effect that suspended sentence and imposed further sentences of imprisonment some of which were expressed to run concurrently, but one of which, a two month sentence for driving without insurance, was expressed to run consecutively. The total sentences amounted to eight months imprisonment which were to take effect after the immediate sentence of imprisonment imposed by the learned Senior Magistrate. Periods of disqualification were also imposed.

The upshot was that in one Court Bush received sentences of twelve months imprisonment, six months of which were suspended, and in another Court immediately afterwards he received sentences totalling eight months imprisonment to take effect on the expiration of the six months immediate term imposed in the first

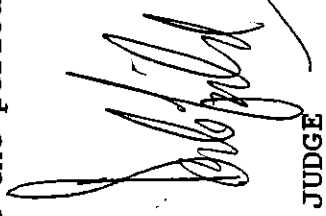
Court. Bush, at the end of the day, received an immediate term of fourteen months imprisonment and the suspended portion of the sentence imposed by the Senior Magistrate would be served in prison as a result of the learned Magistrate's sentence.

The learned Magistrate's sentence cut across the sentence of the learned Senior Magistrate but neither Magistrate could be faulted for adopting the approach to sentence which he adopted. The apparent disparity in approach to sentence was as a result of the two sets of offences being dealt with in different Courts. The type of confusion in sentencing encountered here could be avoided if all charges against one offender were put in the same Court. It is the better practice, where an offender is to be sentenced on a number of charges, where possible, for the sentencing to be carried out by the same Court and on the same occasion.

It is argued for Bush that a total period of fourteen months imprisonment for these offences, having regard to his age, is excessive. Clearly the Summary Courts had no alternative but to give him an immediate term of imprisonment. He had previously committed both types of offences. Neither a Community Service Order nor a suspended prison sentence had deterred him from re-offending in a serious way. The six month sentence previously suspended fell to be put into effect. Perhaps fourteen months as a first term of immediate imprisonment for a youthful offender is on the high side, but in all the circumstances it is not manifestly excessive so as to warrant interference by me.

There is no appeal against the periods of disqualification.

The appeal is dismissed.


JUDGE



Dated this 21st day of May, 1993