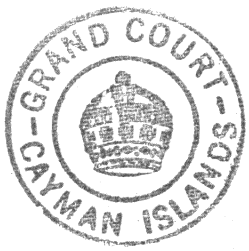
IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0075/2015

THE QUEEN

V

MICHAEL AARON BUSH



Appearances: **Ms. Nicole Petit for the Crown**

Ms. Alice Carver of Samson & McGrath for the Defendant

Before: **Mr. Justice Robin McMillan**

Submissions heard: **3rd February 2016**

SENTENCE RULING

1. The Defendant was charged with two offences as follows:

   i. *Robbery* – contrary to s.242(1) of the Penal Code (2013 Revision) and the particulars of this offence are that the Defendant, on the 9th day of September 2015, at 249 North West Point Road, West Bay, Grand Cayman, Cayman Islands, together with another person, stole an undetermined sum of cash from Digna Ebanks of Deliza's Grocery and Variety Store and at the time of doing so and in order to do so put or sought to put the said Digna Ebanks in fear of being then and there subjected to force.

ii. *Possession of an imitation firearm with intent to commit an offence* – contrary to s.18(6) of the Firearms Law (2008 Revision) and the particulars of this offence are that on the 9th day of September 2015, at Deliza's Grocery and Variety Store at 249 North West Point Road, West Bay, Grand Cayman, Cayman Islands had in his possession an imitation firearm with intent to commit an offence, namely, Robbery.

2. The Defendant pleaded guilty to both offences in the Grand Court on the 18th December 2015.

THE DEFENDANT'S AGE

3. The Defendant's date of birth is the 14th January 1998 and, therefore he is now 18 years of age. However, at the time of the offence (on the 9th September 2015) the Defendant was approximately 17 years and 8 months old. Therefore, though no longer a "young person" pursuant to s.2 of the Youth Justice Law, this Court shall throughout this Ruling make reference to the Defendant as a "young man" as distinct from a young person under the Law. This definition is in keeping with submissions and authorities from both the Crown and the Defence.

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SUMMARY OF FACTS

4. At approximately 5:10 p.m. on Wednesday the 9th September 2015, two masked men – one armed with what appeared to be a gun – entered the shop of the Complainant, Digna Ebanks, on North West Point Road in West Bay. The two masked men demanded and took an undetermined sum of cash from her.

5. One male was described as short and wearing an "old-man" mask of rubbery material, dark top and carrying a beige and black backpack. The second male was tall, about six feet in height, skinny with rounded shoulders and wearing a helmet. From his gait the Complainant believed she recognized the taller male to be a previous customer of the store who is about 18-20 years of age. Both men left the store on a small scooter and drove off in the direction of the Four-Way Stop.

6. Gainza, a friend of the Complainant, was in the store at the material time and described the taller of the two robbers as wearing a black helmet and also wearing a red bandana on his face. Gainza also described the scooter the men used to make their escape.

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7. Galeas, the daughter of the Complainant states that the accused, Michael Aaron Bush, came to her store on Birch Tree Hill Road earlier that day at about 10 a.m. or 11 a.m. He came on a black scooter, was carrying a red bandana and was with another person who wore a rubber old-man mask.

8. On the 10th September 2015, in interview under caution, the accused admitted to committing the robbery, but said initially that he was forced to do so by the other male. Subsequently he [Michael Aaron Bush] said that it was because of his ganja problem and he needs help.

9. The Court has reviewed the Sentencing Note provided by the Crown as well as the written submissions provided by the Defence, both of which are extremely helpful.

10. In addition, the Court has reviewed the report from the Department of Children and Family Services (DCFS)[1] – to which the Court will return in due course.

11. The Court has been informed that, apart from one minor conviction for a non-violent offence, this Defendant is of previous good character.

12. A number of relevant local authorities have been brought to the attention of the Court in relation to the commission of robbery by young persons or persons who can be considered as such. In this regard I note in particular the cases of ***R v. Courtney Bryan***[2] and ***R v. Haylock, Avila, McLaughlin & Watson***[3], and ***R v. Young Person (WDW)***[4].

13. The Court however reminds itself that the circumstances of each case are unique and so are the circumstances of each offender. It should nonetheless be added that, in terms of general guidance, the Court considers, in the present instance, that the case of ***Haylock*** is particularly helpful. The facts are summarily set out at paragraphs 4 and 5 of the judgment of the Cayman Islands Court of Appeal (CICA) President (as he then was), Sir John Chadwick, and they are as follows:

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[1] The Department of Community Rehabilitation (DCR) is responsible for the preparation of reports for adult offenders, which, technically, this defendant was at the time of the offence. However, because the defendant had not yet attained 18 years of age, though being older than 17, the report was assigned to the DCFS.
[2] Ind. 0064/2013
[3] CICA Criminal Appeal Number 33 of 2010
[4] Ind. 0063/2013

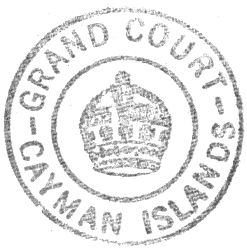
"4. *The circumstances of the offence are not in dispute. Put shortly, for reasons which have so far been wholly unexplained, these offenders decided on the morning of the 3 June 2010 to rob a pizza house (Domino's Pizza). They equipped themselves with machetes and masks for that purpose. Later in the day they proceeded to the pizza house in a car driven by Mr. McLaughlin. The three girls entered the pizza house with their weapons and demanded money. Mr. McLaughlin remained in the car. The amount of money which they obtained was comparatively small, under some $400. On the way out they helped themselves to two bottles of fizzy drink.*

5. *The four respondents were arrested and they pleaded guilty: Ms. Avila on 23 July; Mr. McLaughlin and Miss Watson on 6 August 2010.*"

14. The learned President had previously stated in paragraph 1 of the judgment that the defendants, at the time of the offence of robbery, to which they pleaded guilty, were all aged 17 years. While the CICA considered that the sentencing Judge had erred in the particular sentences which he had imposed, the Cayman Appellate Court went on to state:

> "*Three years' imprisonment would have been the proper sentence for the Judge to impose in this case.*"

15. In addition to this authority the Court also reminds itself of the 2015 Cayman Islands Sentencing Guidelines.



SENTENCING ISSUES

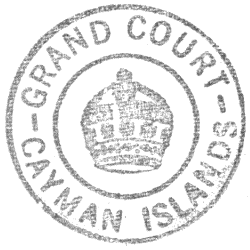
16. In this case I accept the Crown's submission that this was a commercial robbery in which an imitation firearm was used. Therefore, in terms of culpability, because of the introduction and use of the imitation firearm to threaten violence, these crimes are of medium culpability. Although this Court has not had the benefit of a Victim Impact Report, nonetheless the Court recognizes that the shopkeeper, Ms. Digna Ebanks, was a woman of 56 years of age at the time of the robbery and the Court accepts that some psychological distress and harm must inevitably ensue.

17. Bearing in mind the principle that the applicable Guidelines are only guidelines and not tramlines, I accept the Crown's submission that these are Category 2 offences with a corresponding range of 7 to 14 years. However, in all the circumstances I consider it to be in the interests of justice that the starting point for an inevitable period of imprisonment should be at the bottom of the range, namely, 7 years.

AGGRAVATING FACTORS

18. The Court finds that these offences involved planning and the operation of two persons functioning as a group. The Court also finds that the use of disguises – as in fact occured in this case – is an additional aggravating factor.

19. While bearing fully in mind that the offences in question are extremely serious offences to begin with, I conclude that a further six (6) months should be added to the starting point of 7 years in order to reflect those factors – thereby increasing the period of custody to seven (7) years and six (6)months.



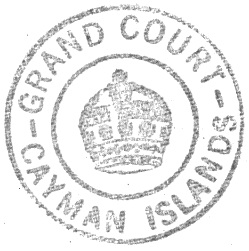
MITIGATING FACTORS

20. As the Defendant was only approximately 17 years and 8 months old when he committed these offences, this Court accepts that the Defendant is a very young man, influenced by an older male to commit the offences. It is clear from the Guidelines that the age of the offender is an important mitigating factor "*where it affects the responsibility of the individual Defendant.*"

21. In addition, the offences were out of character, especially because the Defendant has no previous convictions for offences of this nature.

22. A final consideration for the Court to weigh is simply set out in the DCFS social worker's report. The Defendant's family rents a one-bedroom-one-bathroom apartment even though it is quite an extensive family.

23. It appears that the Defendant's father does not take part in the family life and, moreover, there are indications in the report of domestic disruptions. Accordingly, in light of this very helpful report, I conclude that these personal factors should properly be considered as a mitigating factor.



SENTENCE

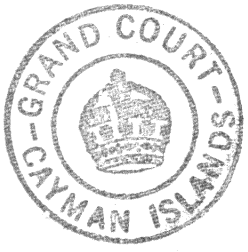
24. In summary, having reviewed the various mitigating factors it is the finding of this Court that the sentence of seven (7) years and six (6) months should be reduced by 2 years and 6 months for each offence – resulting in a total period of imprisonment of five (5) years.

25. It is common ground between Crown counsel and Defence counsel that the Defendant has pleaded guilty at the first reasonable opportunity and therefore a reduction of 33 1/3% is further deemed appropriate. This therefore results in a sentence of three (3) years and four (4) months' imprisonment.

26. Finally, the Court in exercising its discretion and, in the interests of justice, further reduces the period of imprisonment by an additional four (4) months. This will therefore result in the imposition of a period of three (3) years' imprisonment for each offence – reflecting the approach with the CICA identified as being the appropriate one in the case of ***Haylock***[5].

27. I order that the sentence of three (3) years' imprisonment for each offence must run concurrently, with time spent in custody to be deducted.

28. It is clear from the submissions of defence counsel that the use of ganja has contributed to the Defendant's involvement in these offences and this drug problem is also confirmed in the social worker's report. It has been said on the Defendant's behalf that he recognizes this to be substance abuse and he wishes to take steps to address the problem.



[5] *supra*

29. In the present case the Defendant is fortunate not to be facing a considerably higher sentence in light of the very serious offences committed.

30. It is to be hoped that Mr. Bush will use the time in custody to take advantage of the opportunities offered to him in Northward to rectify his substance abuse problem and become a productive and law-abiding member of the Caymanian community.

Dated this the 21st March 2016

Robin McMillan

Mr. Justice Robin McMillan
Judge of the Grand Court

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