

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCRA2022/0004

BETWEEN

DE ANDRE HENRY

Appellant

and

THE KING

Respondent

Before:

The Hon. Mr. Trevor M. Ward
The Hon. Mr. Eddy D. Ventose
The Hon. Mr. Gerard St. C. Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag]

Appearances:

Mr. Jason Tiwari for the Appellant
Ms. Shannon Jones-Gittens, Director of Public Prosecutions [Ag.], for the
Respondent

2024: November 26;
2025: February 28.

Criminal Appeal – Appeal against sentence - Aggravated Burglary – Section 33(1) of the Larceny Act of Antigua and Barbuda – The maximum sentence for the offence of aggravated burglary – Whether the appellant’s sentence is excessive in the circumstances

On 3rd January 2014, the appellant was charged with the offence of robbery alleging that four men, including the appellant, robbed and physically assaulted Mr. Midhat Lwisch in Old Parham Road, St. John’s Antigua (the “First Offence”). The appellant was also charged with a second offence along with Mr. Katawama Bright and Mr. Julian King alleging that on 25th July 2014, the three accused committed aggravated burglary contrary to section 33(1)(a) of

the Larceny Act (the “Second Offence”). The appellant pleaded guilty to both charges on 1st February 2017 and was sentenced by the learned trial judge on 9th May 2018 to 15 years imprisonment for the First Offence and 18 years imprisonment for the Second Offence. Both sentences were to run concurrently.

In respect of the sentencing for the First Offence, the learned judge was of the opinion that the First Offence was a professionally planned armed robbery. As it pertains to the Second Offence, the learned trial judge considered that the maximum sentence for the offence was 25 years imprisonment and assessed the starting point for any planned armed robbery in Antigua and Barbuda as 20 years. The learned judge in considering the aggravating factors, increased the notional sentence by 3 years to 25 years and then reduced this to 24 years affording a one-year reduction for the mitigating factor. A 25% discount was afforded to the appellant for his guilty plea.

In his amended notice of appeal filed on 28th May 2024, the appellant appealed against his sentence on the Second Offence on the following grounds: 1.) the learned trial judge erred in sentencing the appellant to a manifestly excessive sentence with regard to all the circumstances of the case; and (2) that in passing sentence the learned trial judge relied heavily on the mandatory minimum set out in section 6 of the Law Revision, Miscellaneous Provisions Act 2000 (the “Law Revision Act 2000”). The issues for determination are: 1.) what is the maximum sentence for a conviction for aggravated robbery contrary to section 33(1) of the Larceny Act; and 2.) whether the sentence imposed by the learned trial judge on the appellant of 18 years imprisonment on the Second Offence of aggravated robbery was manifestly excessive.

Held: allowing the appeal against sentence on the Second Offence, setting aside the sentence of 18 years imprisonment imposed by the learned trial judge, and substituting a sentence of 10 years 5 months and 3 days, commencing from the date of the sentencing of the appellant on 9th May 2018, that:

1. When the appellant was convicted of aggravated robbery on 1st February 2017, section 6 of the Law Revision Act 2000 was still in force. Under this section, section 33 of the Larceny Act was amended to impose a mandatory minimum sentence of 25 years for the offence of aggravated robbery. Section 3 of the Larceny (Amendment) Act 2017 which amended the Larceny Act to impose a maximum sentence of 35 years for the offence of aggravated robbery only came into force on 14th December 2017. Thus, at the material time, the relevant legislation in Antigua and Barbuda provided a mandatory minimum sentence of 25 years for aggravated robbery. The practice of the judges in Antigua and Barbuda was to treat the mandatory minimum sentence of 25 years as a maximum of 25 years for aggravated robbery in accordance with the approach of **Zuniga v R** where the doctrine of severance was deployed to remove the mandatory aspects of relevant legislation to remove the inconsistency with the constitutional provisions. Applying that approach, the words “not less than” can be excised from section 33A(1) to provide for a maximum period of 25 years for the offence of aggravated burglary. This is broadly

similar to the approach taken by the learned trial judge and reflects the previous practice by trial judges in Antigua and Barbuda.

Section 33A(1) of the **Larceny Act** Cap 241 of the Revised Laws of Antigua and Barbuda applied; Section 6 of the **Law Revision, Miscellaneous Provisions Act** No. 2 of Act No. 9 of 2000 applied; Section 3 of the **Larceny (Amendment) Act** No. 29 of 2017 considered; **Zuniga v R** (2014) 84 WIR 101 applied.

2. An appeal against sentence is an appeal against the exercise of the sentencing judge's discretion. An appellate court will only interfere with a sentence passed by the trial judge where it is manifestly excessive, or where the wrong principle has been applied in imposing the sentence. In determining whether the sentence was manifestly excessive, the Court must consider the circumstances of the offender and the circumstances in which the offence was committed. In this case, the learned judge erred in using a starting point of 20 years. He was bound by the decision of **Glenis Messiah v The Queen and Corian Thomas v The Queen** which established that the appropriate starting point used in Antigua and Barbuda at the time for aggravated robberies involving a firearm was 15 years.

Glenis Messiah v The Queen and Corian Thomas v The Queen ANUHCRA2018/0002 and 2016/0004 (dated 12th June 2018, unreported) applied; **Akim Monah v The Queen** GDAHCRAP2021/0015 (delivered 23rd February 2022, unreported) considered; **Simon Marius v The King** SLUHCRA2008/0007 (delivered 16th January 2025, unreported) applied; **R v Sergeant** (1974) 60 Cr App R 74 applied.

3. Given that the maximum sentence in cases of aggravated robbery should be 25 years imprisonment, the appropriate starting point on the notional sentence shall be 15 years in keeping with the principles of **Glenis Messiah v The Queen and Corian Thomas v The Queen**. With a starting point of 15 years, decreased by one year for the mitigating factor of no previous convictions, the notional sentence is reduced to 14 years with an increase of 5 years for the combined aggravating factors with a total notional sentence of 19 years. In respect of the credit for plea and cooperation, the learned judge noted that the appellant was to receive a 25% discount for his guilty plea, because the plea was not given at the first opportunity, although it was given before any listing for trial. The appellant takes no issue with this 25% discount, and it would not be appropriate for this Court to interfere. This means that the appellant's sentence should be 14 years, 3 months (171 months). Deducting the total period of 3 years, 9 months, 27 days that the appellant spent on remand, the sentence imposed on the appellant for the conviction on the Second Offence is 10 years, 5 months and 3 days.

Glenis Messiah v The Queen and Corian Thomas v The Queen ANUHCRA2018/0002 and 2016/0004 (dated 12th June 2018, unreported) applied; **Desmond Baptiste v The Queen** Criminal Appeal No.8 of 2003 (dated 6th

December 2004, unreported) applied; **Omari Phillip v The King** (ANUHCRA2016/0008 dated 13th November 2024) applied.

JUDGMENT

- [1] **VENTOSE JA:** This is an appeal by the appellant against his conviction for the offence of aggravated robbery contrary to section 33(1)(a) of the **Larceny Act** of Antigua and Barbuda (the “**Larceny Act**”).¹

The Factual Background

- [2] On 3rd January 2014, the appellant was charged with the offence of robbery alleging that four men, including the appellant, robbed and physically assaulted Mr. Midhat Lwisch (“Mr. Lwisch”) in Old Parham Road, St. John’s, Antigua (the “**First Offence**”). The appellant was also charged with a second offence along with Mr. Katamwa Bright (“Mr. Bright”) and Mr. Julian King (“Mr. King”) alleging that on 25th July 2014 the three accused committed aggravated burglary contrary to section 33(1)(a) of the **Larceny Act** (the “**Second Offence**”). The appellant pleaded guilty to both charges on 1st February 2017 and was sentenced by the learned trial judge on 9th May 2018 to 15 years imprisonment for the First Offence and 18 years imprisonment for the Second Offence. The sentences were to run concurrently.

The decision of the court below

- [3] The learned trial judge read his sentencing remarks into the record at the hearing on 9th May 2018, and subsequently reduced it to writing. For the purposes of this judgment, I will refer to the written ruling of the learned trial judge which is identical to his remarks found in the transcript of the proceedings at pages 92-108.
- [4] In respect of the First Offence committed on 3rd January 2014, the learned trial judge stated at para [7] that the appellant, then aged 24, with three others robbed Mr. Lwisch and his staff of \$26,200.00 in cash, a small empty safe valued at \$500.00, and a mobile telephone valued at \$2,000.00. The learned judge stated that they all

¹ Cap. 241 of the Revised Laws of Antigua and Barbuda.

wore masks, each carried a firearm, and Mr. Lwiseh was twice struck on the head with the gun, causing a 2x3cm jagged laceration. During the robbery, a round of firearm was also discharged. The learned trial judge was of the opinion that this was a professional planned armed robbery. He explained that the appellant made admissions on 12th -13th January 2014 when there was little evidence against him.

- [5] On 1st February 2017, the appellant pleaded guilty to armed robbery for the Second Offence. The learned trial judge assessed credit for plea at 25%, which was not the maximum of 33%, reflecting that the guilty plea was not given at the first opportunity, although it was before any listing for trial. At the time of the Second Offence, the appellant was on bail for the First Offence.
- [6] In respect of the Second Offence, the learned trial judge stated at para [10] that the appellant and two others (Mr. King and Mr. Bright) robbed Ms. Sherry Carter of a briefcase and \$1,500.00. The learned trial judge noted that the appellant: (1) and Mr. King and Mr. Bright hired a vehicle and changed its number plates; and (2) wore overalls and a mask and was armed with a firearm, a round of which was fired while wrestling the briefcase from Ms. Carter. In the learned trial judge's view, this was a professional planned armed robbery.
- [7] The learned trial judge stated at para [11] that on 1st February 2017, the appellant and Mr. King pleaded guilty on the second day of trial, after hearing evidence from their friend (and accomplice) Mr. Julian Braithwaite. He continued that, on 11th April 2018, Mr. King gave a statement to the prosecution implicating Mr. Bright, which meant that Mr. Bright then pleaded on 16th April 2018 on the second day of the trial. The learned trial judge assessed credit for plea in relation to each defendant, including the appellant, at 25%, which he explained was not the full 33%, because each guilty plea was given after the trial began.
- [8] In considering the personal circumstances of the appellant, the learned trial judge noted at para [14] that the appellant, who was by now 29 years old, had no relevant

convictions and that he was in custody for armed robbery prior to the date of the sentencing. The learned trial judge stated that the appellant's time on remand will count toward his sentence but would have to be calculated carefully by the prison. The learned trial judge also stated that, in the appellant's pre-sentence report of 27th April 2014, the appellant was described as one of 16 siblings with no relationship with his father, suffers high blood pressure, left school without distinction, and had been a good worker in construction. The learned trial judge continued that the appellant had apologized for his behaviour to his mother to whom he has expressed sincere regret.

[9] In constructing the sentence, the learned trial judge stated as follows:

“Constructing the sentences

18 The offence of robbery armed with a firearm is peculiar on Antigua & Barbuda. It is governed by the s6 Law Revision (miscellaneous provisions) Act no. 2 of Act no. 9 of 2000. This specifies a minimum term of 25 years for robbery with a firearm, but no maximum term, where robbery with violence or any other offensive weapon is otherwise limited to 15 years, under s33 Larceny Act cap 241.

19 However, within the jurisdiction of the Eastern Caribbean Supreme Court, minimum terms for offences were struck down as ‘inhuman and degrading punishment’, being not capable of allowing for mitigation of sentence and defendant (sic) personal circumstance, and therefore being in breach of article 5 of the Constitution of St Lucia, notwithstanding the theoretical sovereignty of parliament, in a strong judgment of Gordon JA, supported directly by Rawlins JA, in the Court of Appeal in *Thelbert Edwards v Regina* Criminal Appeal no. 3 of 2006, at paras 16-37 and 75.

20 On Antigua & Barbuda, article 7 of the Constitution here has the same clause as article 5 on St Lucia, namely that ‘no person shall be subjected to...inhuman or degrading punishment...’, meaning the judgment of Gordon JA is equally applicable here, so that I will not proceed automatically to pass a minimum term of 25 years on each defendant.

21 There is very real uncertainty on Antigua as to the maximum sentence available for robbery with a firearm and this court urges the legislature to address the problem. Anecdotally, counsel at the Bar report that the 25 years is being used as a maximum, which seems wrong if constructed to be a minimum. In the UK it is well known the maximum for robbery is life imprisonment.

22 By analysis, if on Antigua & Barbuda there is a notional minimum of 25 years, it must be right that the maximum is at least 25 years, and this court cannot be wrong to work within that parameter.”

- [10] In relation to the appropriate starting point, the learned trial judge stated at para [23] that in assessing a sentence for aggravated robbery, he had chosen to be assisted by the United Kingdom sentencing guidelines, and for commercial armed robbery, where he would place the offending in category 1A. The learned trial judge observed that he was influenced by the aspiration of the local legislation that the minimum term for robbery with a firearm should be 25 years, given the prevalence of firearms offences locally, suggesting a slightly higher starting point than in the United Kingdom. Consequently, the learned trial judge assessed the starting point for any planned armed robbery in Antigua and Barbuda as 20 years.
- [11] In respect of the aggravating factors, the learned trial judge stated at para [24] that the Second Offence is aggravated because: (1) a round of firearm was discharged, increasing the sentence by two (2) years; and (2) it was committed while the appellant was on bail for the First Offence, so the notional sentence was increased by 3 years to 25 years. In relation to the mitigating factors, the learned trial judge stated at para [27] that the appellant had no relevant convictions, and being mindful of his overall circumstances, reduced the notional sentence by one year from 25 years to 24 years.
- [12] In respect of credit for plea and cooperation, the learned trial judge explained at para [30] that the appellant should receive a discount of 25%, reducing the notional sentence from 24 years to 18 years for his conviction on the Second Offence and from 20 years to 15 years on the First Offence. In considering the principle of totality, the learned trial judge stated at para [31] that the appellant faced 18 years imprisonment for his conviction on the Second Offence and 15 years imprisonment for his conviction of the First Offence. The learned trial judge concluded consequently that he would not pass consecutive sentences, totalling 33 years, but instead would allow the sentences to run concurrently. The total sentence was one of 18 years with time spent on remand to count toward the sentences.

The Appeal

- [13] In his amended notice of appeal filed on 28th May 2024, the appellant appealed against his sentence on the Second Offence on the following grounds: (1) the learned trial judge erred in sentencing the appellant to a manifestly excessive sentence with regard to all the circumstances of the case; and (2) that in passing sentence the learned trial judge relied heavily on the mandatory minimum set out in section 6 of the **Law Revision, Miscellaneous Provisions Act 2000**,² (the “**Law Revision Act 2000**”). The issues that arise on this appeal are as follows: (1) what is the maximum sentence for a conviction for aggravated robbery contrary to section 33(1) of the **Larceny Act**; and (2) whether the sentence imposed by the learned trial judge on the appellant of imprisonment for 18 years on the Second Offence of aggravated robbery was manifestly excessive.
- [14] At the hearing of the appeal, the Court questioned counsel for the appellant enquiring whether the appeal was concerned only with the sentence on the Second Offence and that the Court was not concerned with sentence on the First Offence. Counsel for the appellant confirmed that the appeal against sentence was not in respect of the sentence for the conviction for the First Offence but that the appeal was concerned solely with the sentence for the conviction for the Second Offence.

The Relevant Statutory Provisions

- [15] Section 33(1)(a) of the **Larceny Act** provides as follows:
33. (1) Every person who-
- (a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or
- (b) robs any person and, at the time of or immediately before or immediately after such robbery, uses any personal violence to any person,
- shall be guilty of felony, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding fifteen years.
- [16] Section 6 of the **Law Revision Act 2000** states that:

² Act No. 2 of Act No. 9 of 2000.

6. The Larceny Act is amended by the insertion after section 33

“33A(1) Every person who, being armed with a firearm, commits any of the crimes mentioned under sections 29, 30, 31 or 33 shall be liable on conviction to a term of not less than twenty-five years.

(2) Every person who, being armed with a firearm, commits any of the crimes mentioned under sections 29, 30, 31 or 33 and if during the process of committing any of these aforesaid crimes, he also commits the crime of rape or buggery he shall be liable on conviction to imprisonment for life.”

[17] Section 3 of the **Larceny (Amendment) Act 2017**³ provides as follows:

3. Amendment of section 33A of the principal Act

Section 33A of the principal Act is amended by repealing subsection (1) and substituting the following —

“(1) Every person who, being armed with a firearm commits any of the crimes mentioned under sections 29, 30, 31 or 33 shall be liable on conviction to a term of imprisonment not exceeding thirty-five years.”

Analysis and Conclusions

[18] When the appellant was convicted of aggravated robbery on 1st February 2017, section 6 of the **Law Revision Act 2000** was still in force. Section 3 of the **Larceny (Amendment) Act 2017** came into force on 14th December 2017 when it was assented to by the Governor General. Therefore, at the material time, the relevant legislation in Antigua and Barbuda provided a mandatory minimum sentence of 25 years for aggravated robbery. The practice of the judges in Antigua and Barbuda was to treat the mandatory minimum sentence of 25 years as a maximum of 25 years for aggravated robbery. This practice is not surprising given the approach adopted by the Caribbean Court of Justice in **Zuniga v R**⁴ where the doctrine of severance was deployed to remove the mandatory aspects of relevant legislation to remove the inconsistency with the constitutional provisions. Applying that approach the words “not less than” can be excised from section 33A(1) to provide for a maximum period of 25 years for the offence of aggravated robbery. This is broadly similar to the

³ Act No. 29 of 2017.

⁴ (2014) 84 WIR 101.

approach taken by the learned trial judge and reflects the previous practice by trial judges in Antigua and Barbuda.

[19] The next question is whether the sentence imposed by the learned trial judge on the appellant of imprisonment for 18 years on the Second Offence of aggravated robbery was manifestly excessive. The appellant complains that: (1) the learned trial judge failed to properly adopt and apply the four cardinal principles of sentencing, namely: (a) retribution, (b) deterrence, (c) prevention, and (d) rehabilitation; (2) credit should have been given to the appellant for his guilty plea; (3) the age of the appellant at the time of the offence should have been considered by the learned trial judge; (4) the sentence of the appellant was higher than that of his co-accused; and (5) the range of sentences for aggravated robbery was 12-15 years imprisonment.

[20] The appellant was sentenced by the learned trial judge on 9th May 2018, well before the promulgation by the Eastern Caribbean Supreme Court of the new Sentencing Guidelines. This Court in **Akim Monah v The Queen**⁵ explained at para [46] that the Sentencing Guidelines cannot be applied to determine whether a judge committed an error of principle in sentencing the appellant long before the date of promulgation of the new Sentencing Guidelines. The Court continued that, first, despite this, there is not much difference in the approach of the sentencing in the Court's cases and the new Sentencing Guidelines; and second, the latter seeks to crystallize the guidelines that predated them and which emanated from the cases of this Court.

[21] The principles which guide this Court in appeals against sentence were recently restated by this Court in **Simon Marius v The King**⁶ as follows:

“Appellate Review

[21] An appeal against sentence is an appeal against the exercise of the sentencing judge's discretion. In the case of *R v Ball Hilbery J*, in stating the principles which must guide an appellate court in deciding what is the right sentence to pass on a convict, said:

⁵ GDAHCRA2021/0015 (delivered 23rd February 2022, unreported).

⁶ SLUHCRA2008/0007 (delivered 16th January 2025, unreported).

“In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene.”

[22] Baptiste JA in giving the reasons of the Court in *Steve Gurrie v The Queen* aptly stated at paragraph 4 that :

“...Appeals against sentencing to the Court of Appeal are not conducted as exercises in re-hearing *ab initio*. It is not the function of this Court on an appeal against sentence, to conduct a sentencing hearing. On appeal, a sentence is examined to see whether there was an error in law or in principle or whether it was manifestly excessive, and those questions are determined according to the law and practice obtaining at the time the sentence was passed by the judge.”

[23] The jurisprudence is clear that an appeal court will only interfere with a sentence passed by the trial judge where it is manifestly excessive, or where the wrong principle has been applied in imposing the sentence. It should also be clear that when an offender appeals against an allegedly excessive sentence the court concerns itself almost exclusively with circumstances presented to the trial judge.”

[22] Armed with that guidance and the other relevant principles, I must give equal consideration to the well-known principles of sentencing that were enunciated in **R v Sergeant**,⁷ namely, retribution, deterrence, prevention and rehabilitation. In determining whether the sentence was manifestly excessive, I must consider the circumstances of the offender and the circumstances in which the offence was committed.

[23] I agree with the appellant that before the Sentencing Guidelines were promulgated, through practice, benchmarks or starting points would be established by the courts over time. In determining the appropriate starting point, as noted above, the learned trial judge at para [23] of his written judgment stated that, first, he was influenced by

⁷ (1974) 60 Cr App R 74.

the aspiration of local legislation that the minimum term for robbery with a firearm should be 25 years, given the prevalence of firearms offences locally, suggesting a slightly higher starting point than in the United Kingdom; and, second, he would assess the starting point for any planned armed robbery in Antigua and Barbuda to be 20 years. The appellant submits that the learned trial judge erred in this regard because he was influenced by the mandatory minimum of 25 years and he did not apply or consider any case law precedent from within the jurisdiction, which would have afforded much assistance in arriving at the appropriate starting point for sentencing related to armed robbery.

[24] The appellant submits that, based on the decision of this Court in **Glenis Messiah v The Queen and Corian Thomas v The Queen**⁸ the appropriate starting point for a sentence based on the facts of this case for armed robbery should be fifteen (15) years. The appellant also submits that the starting point used in the jurisdiction of Antigua and Barbuda at the time for aggravated robberies involving a firearm was fifteen (15) years. In my view the learned trial judge erred in using a starting point of 20 years for the reasons he gave. He was bound by the decision of this Court in **Messiah** to use a starting point of 15 years for the offence of aggravated robbery. As explained above, this Court can only interfere with the sentence that was imposed by the learned trial judge if it were to conclude that the learned trial judge committed an error of principle in so doing. The learned judge, as just stated, committed an error of principle in using an incorrect starting point in conducting the sentencing exercise. It therefore falls upon this Court to consider afresh the sentence for the conviction of the appellant on the Second Offence of aggravated robbery.

[25] As explained above, given that the maximum sentence in cases of aggravated robbery should be 25 years imprisonment, in my view, the appropriate starting point on the notional sentence should be 15 years. This is in keeping with the settled approach of this Court in **Messiah**. The next step in the sentencing exercise would be to consider the aggravating and mitigating factors of the offence and the offender

⁸ ANUHCRA2018/0002 and 2016/0004 (dated 12th June 2018, unreported).

to arrive at a just sentence in accordance with the principles established by this Court in **Desmond Baptiste v The Queen**.⁹

[26] The learned trial judge considered one mitigating factor at para [27], namely, the appellant had no relevant convictions and reduced the sentence by one (1) year. In terms of aggravating factors, the learned trial judge noted at para [14] that: (1) a round of firearm was discharged during the offence, thereby qualifying for an increase in the notional sentence by two (2) years; and (2) the appellant was on bail for an earlier armed robbery on 3rd January 2014, thereby qualifying for an increase in the notional sentence by three (3) years. With a starting point of 15 years, decreased by one year for mitigating factor, reduces the notional sentence to 14 years with an increase of five (5) years for the combined aggravating factors with a total notional sentence of 19 years (or 228 months). In my view, the age of the appellant, who was an adult of 29 years of age when the offence was committed, is not relevant since it could hardly be said that the appellant is a young offender. I agree with the respondent that the sentence of the appellant's co-accused on conviction for different offences is not a relevant consideration in respect of the appellant's sentence for his conviction on the Second Offence.

[27] This Court in **Desmond Baptiste** made clear at para [28] that a defendant who has pleaded guilty is entitled to a considerable discount. In respect of credit for plea and cooperation, the learned trial judge noted that the appellant was to receive a 25% discount for his guilty plea, because the guilty plea was not given at the first opportunity, although it was given before any listing for trial. The respondent submits that a 25% discount was generous since the plea came after the main prosecution witness, the appellant's former friend and accomplice, had given evidence. The appellant takes no issue with the 25% discount given by the learned trial judge. In the circumstances, it would not be appropriate for this Court to interfere with the discount of 25% allowed for by the learned trial judge. This means the appellant's

⁹ Criminal Appeal No.8 of 2003 (dated 6th December 2004, unreported).

sentence should be 14 years, and 3 months (171 months) as submitted by the appellant.

[28] Concerning the totality principle, the learned trial judge ordered that the two sentences, including the sentence of 18 years imprisonment for the Second Offence, would run concurrently. Having carefully assessed the appellant, the learned trial judge did not find him dangerous, meriting an elongated sentence for public protection. The respondent submits that the higher sentence on the Second Offence would not reflect the overall criminality involved in the two offences, and that that overall sentence could properly be increased by at least 4 years with the result that the overall sentence would be the same as the one imposed by the learned trial judge. I do not agree that it would be appropriate in relation to sentencing on the Second Offence for this Court to consider the issue of totality since the appellant did not appeal against his conviction on the First Offence.

[29] This Court in **Omari Phillip v The King**¹⁰ explained the regime in respect of remand time:

“[86] I am not unmindful that in Antigua and Barbuda, Section 63A of the Criminal Procedure Act provides that where a person has been remanded in custody in connection with an offence or a related offence for which he is charged, the number of days for which the person was remanded in custody in connection with the offence or related offence shall count as time served by the person as part of the sentence imposed by a Court, and such time shall be credited by the Superintendent of Prison as time served by him as part of the sentence imposed by a Court. However, this does not absolve the judge of his or her own responsibility to transparently explain during the sentencing exercise how they have treated with time in custody, consistent with the authorities cited above.”

[30] The prison authorities have advised that the appellant spent the following times on remand: (1) 15 days from 15th to 29th January 2014; (2) 74 days from 29th March 2014 to 10th June 2014; and (3) 1311 days from 7th October 2014 to 9th May 2018. The appellant has therefore spent a total of three (3) years, nine (9) months and 27 days spent on remand for which he will have to be credited.

¹⁰ ANUHCRA2016/0008 (dated 13th November 2024, unreported).

[31] The notional sentence that I would impose on the appellant is 14 years, and 3 months. Deducting the total of period of 3 years, 9 months, 27 days that the appellant spent on remand, the sentence that is imposed on the appellant for the conviction on the Second Offence is 10 years, 5 months and 3 days.

Disposition

[32] Accordingly, I would allow the appeal against sentence on the Second Offence, set aside the sentence of 18 years imprisonment imposed by the learned trial judge, and substitute a sentence of 10 years 5 months and 3 days, commencing from the date of the sentencing of the appellant on 9th May 2018.

[33] I am grateful for the assistance provided by learned counsel.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Gerard St. C Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar