

**IN THE SUPREME COURT OF GRENADA
AND IN THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

GRENADA

CASE NO. GDAHCR2024/0013

BETWEEN:

THE KING

And

DONNIE MC QUEEN

Appearances:

Mr. Jordan Marshall, Crown Counsel of Counsel for the Crown
Mr. Jerry Edwin of Counsel for the Defendant

2024: December 11.

SENTENCING JUDGMENT

- [1] **INNOCENT, J.:** The defendant was indicted on 29th August 2024 for the offence of robbery contrary to section 276(1) of the Criminal Code¹ as amended by section 47 of the Criminal Code (Amendment) Act² and for the offence of money laundering contrary to section 36(1) (a) of the Proceeds of Crime Act.³
- [2] The events giving rise to the two counts in the indictment occurred on 18th January 2024 at Victoria Street in the Parish of Saint Andrew. The defendant would have robbed a businessman of the sum of \$53,000.00.

¹ Chapter 72A Continuous Revised Laws of Grenada

² Act No. 12 of 2012

³ Act No. 6 of 2012

- [3] Upon his arraignment on 14th October 2024 he entered pleas of guilty to both offences. The agreed facts were as follows. On Thursday 18th January 2024, at about 4 pm the virtual complainant was at his business place situated on Victoria Street in the Parish of Saint Andrew. The virtual complainant would have collected deposit bags from the store manager. After collecting the deposit bags, the virtual complainant and the store manager proceeded to walk towards the Republic Bank Limited which is situated on the same street as the store. When they had arrived at the entrance of Republic Bank Limited the defendant grabbed the deposit bags from the virtual complainant who tried to resist but was unsuccessful. The defendant made off with the deposit bags and he fled on foot. The virtual complainant and the store manager gave chase but were unable to apprehend the defendant. The deposit bags contained the sum of approximately \$53,000.00.
- [4] The incident was reported to the police. On Friday 19th January 2024, the defendant was identified on video footage obtained by the police as the person who had robbed the virtual complainant. The defendant was subsequently apprehended and taken into police custody.
- [5] On 22nd January 2024 an interview under caution was conducted by the police with the defendant. The defendant made confessional statements to the police. The court thinks that it is critical to the present sentencing exercise to recite some of the defendant's responses to the questions put to him by the police at the interview. The purpose of this will become relevant when the court goes on to assess the question of the aggravating factors relevant to the defendant.
- [6] When the defendant was initially cautioned by the police investigator he said:
- “... to be honest me that put down the crime ah was buying something from a lady by the bank the same time ah see Mr. Ramdhanny passing he had a bag in his hand and I grab it and I run. Ah give it up or ah doh give it up ah go still make a jail since 2008 ah dealing with police and I know how they operate”

When the defendant was asked in the interview what he meant by these words he said:

“Ah done say what ah say already.”

[7] The defendant was questioned about the route that he took when he fled after the incident. His response was simply that he had no answer to that. When questioned about the contents of the deposit bags and the plight and destination of the same he again replied that he had nothing to say about that. When he was shown the camera footage he replied: “Yeah that is me.” He was shown a second video footage and he replied: “Me that dey officer.” He was shown a third video footage and he replied: “I won’t deny that that’s me dey.” When shown a fourth video footage he said: “They me that dey.”

[8] The defendant also said in the interview that the clothing that he was wearing that day he had disposed of it. When asked whether anyone else was involved in the commission of the offence the defendant replied:

“I doesn’t put down crime with people.”

[9] In fine, it appeared from the interview under caution that the defendant was unwilling to render any information regarding the stolen money. When the defendant was charged with the subject offences the defendant stated:

“ah going and make that jail easy and come out and spend that money Ramdhanny money insure.”

Interestingly, the defendant had denied in the course of the interview knowing the person from whom he had stolen the deposit bags.

[10] In sentencing this defendant the court will follow the guidance set out in the Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Offences of Dishonesty Re-Issue 8th November 2021 (the ‘Guideline’).

[11] The court will deal initially with the offence of robbery. However, the approach to sentencing will be the same in each instance. The court will first arrive at a starting point sentence having regard to the seriousness of the offence which is arrived at by assessing the consequences or harm caused by the commission of the offence and the defendant’s degree of culpability in the commission of the offence. Having arrived at a starting point sentence the court will adjust the sentence arrived at within

the range set out in the Guidelines by assessing the aggravating and mitigating factors present in the commission of the offence and the aggravating and mitigating factors relevant to the defendant. The court will thereafter consider what credit the defendant is entitled to on account of his guilty plea. The court is also mandated to have regard to the totality principle considering that the defendant is being sentenced for two offences. Lastly, the court will grant credit for the time that the defendant has spent on remand.

Robbery

- [12] The sentence prescribed by statute for the commission of this offence is a term of imprisonment not exceeding 20 years' imprisonment.⁴ The court, in sentencing this offender is mindful of the fact, particularly in light of the Guidelines that the maximum statutory sentence is not necessarily or at all the starting point sentence which must guide the court.
- [13] In determining the consequence of the offence by the degree of harm occasioned by the offence, the court has taken into account the following matters. Firstly, the financial harm caused to the virtual complainant's business. Notwithstanding the defendant's notion that the virtual complainant's money was insured, it seems to the court that whether in fact it was or was not is entirely irrelevant.
- [14] Assuming that it was insured, it would mean that the virtual complainant would still have to make a claim to his insurers which may inevitably result in an increase in premium payable to his insurers on account of the loss. In addition, the fact that the victim in this case would have to make a claim to his insurers would have the effect of causing serious inconvenience since reports would have to be submitted, investigations would have to be conducted by the insurers, among other administrative matters which often take a considerable length of time to resolve.
- [15] Assuming that the money was not insured, the commission of this offence would clearly have an impact on the victim's business. It may very well have been the case

⁴ Section 276(1) Criminal Code amended by section 47 Criminal Code (Amendment) Act

that since the victim was a trader, that his goods may have been insured and not the proceeds of the sale of those goods. In the premises, this would result in serious harm to the victim's business. Therefore, the court is in no position to speculate as to whether or not the victim's money was insured or not. There is no evidence placed before the court of this being the case. The court has in the circumstances assessed the harm done as having some detrimental effect on the victim's business. In the premises, it is beyond peradventure that the harm and inconvenience caused to the victim's business was not inconsequential which in the court's view places the harm done at Category 2 – Medium.

[16] In assessing the defendant's degree of culpability in the commission of the offence, the court has taken the following matters into account. Based on what was canvassed in the interview under caution, and the agreed facts in this case, it would seem that not only was the victim targeted on the basis of his vulnerability, but the commission of this offence could not have been just a crime of opportunity. It would seem to the court that there was some degree of planning in the commission of this offence. It was not just a fortuitous event. Initially the defendant would have denied having any knowledge of the identity of the person from whom he stole the deposit bags but yet still in the interview under caution he referred several times to the victim by name. These factors in the court's view would place the defendant's culpability at Level B – Medium.

[17] Therefore, having assessed the seriousness of the offence the court has determined based on the Guidelines, that places the starting point sentence at 40% of the sentence prescribed by statute and adjusted within a range of 25% to 55% when taking into account the aggravating and mitigating factors present in the commission of the offence and those relevant to the offender. Therefore, in the court's view, the starting point sentence should be 8 years' imprisonment.

Aggravating factors – offence

[18] The court has considered the following to be aggravating factors inherent in the commission of the offence. The money in this case was not recovered. In fact, the

defendant by his own admission has stated what his future intentions are regarding the stolen money. This is a clear indication that the defendant had attempted to conceal or dispose of evidence relevant to detecting the commission of the offence. In addition, it would appear based on his response to a question posed to him at the interview with the police, that he admitted to having disposed of the clothing which he was wearing at the time that he committed the offence. This is a clear indication of his attempt at concealing his identity. Also, the fact that the stolen money was not restored, is by itself also an aggravating factor. The court has also considered the defendant's averments made during the interview relative to his intended use of the money once he had served out his sentence as quite telling. It suggests that the defendant's offending was motivated by greed.

Mitigating factors - offence

- [19] When considering the mitigating factors relevant to the offence, it appeared to the court that there was only one identifiable mitigating factor, namely, that there was no weapon nor the threat of the use of one in the commission of the offence.

Aggravating factors – offender

- [20] This defendant has several previous convictions for offences involving dishonesty. The defendant has 26 previous convictions recorded against him 17 of which are offences involving dishonesty. These 17 convictions range from stealing, stealing from dwelling house, stealing from the person, house breaking and entering a dwelling house at night. In July 2023 he was convicted of house breaking. This last offending shows that he committed the subject offence just 6 months after having been convicted of the offence of house breaking.
- [21] The defendant's answers to the questions put to him in the interview conducted by the police clearly shows the defendant's lack of remorse for the commission of the offence. In addition, it also shows his unwillingness to cooperate with the police investigators. The court also regarded his facetious responses in the course of the interview as being suggestive of the defendant's intent to benefit from the spoils of the offence.

- [22] The defendant in this case is a recidivist. This makes him a prime candidate for rehabilitation. Furthermore, the defendant's history of offending and particularly the circumstances of the present case has led the court to find that there is an urgent need to protect the public from serious harm from this offender.

Mitigating factors – offender

- [23] In the court's view, there are no mitigating factors that the court could realistically consider as operating to the defendant's credit or in his favour.
- [24] Therefore, the court having considered the aggravating and mitigating factors relevant to the commission of the offence and the offender, has determined that the offence falls at the highest end of the range which is 75% which amounts to 6 years' imprisonment. Given the fact that the aggravating factors far outweigh the mitigating factors relative to the commission of the offence and the offender the court is of the view that an upward adjustment within the range was necessary and justifiable in all the circumstances of the case.

Discount for guilty plea

- [25] In the court's view, the defendant has entered the plea of guilty at the earliest opportunity and therefore shall be credited with a 1/3 discount from the sentence of 6 years' imprisonment which equates 4 years' imprisonment.

Money Laundering

- [26] The statutory penalty and sentence for the commission of an offence under section 36(1) (a) of the Proceeds of Crime Act on conviction on indictment is imprisonment for a term of fourteen (14) years or to an unlimited fine, or both.

Consequence – harm

- [27] The Guidelines provide that money laundering is an integral component of much serious underlying criminality. Where it is possible to identify the underlying offence, the relevant sentencing guidelines for that offence should be regarded. Thus, an assessment of harm done is conducted by taking into account the level of harm

associated with the underlying offence to determine whether it warrants upward or downward adjustment of the starting point within the range or, in appropriate cases, outside the range.

[28] In assessing harm in this case, the court took into account the same matters relative to the offence of robbery. There is no need to revisit them again. However, following the Guidelines, the court took into account that the sum of \$53,000.00 was stolen; this places the offence within Category 3 relative to consequences.

[29] The court has placed the defendant's culpability in the commission of the offence at Level A – High. This was primarily because of the significant nature of the commission of the offence. The defendant staged a broad day light robbery and robbed the victim of significant sums at the very entrance of a banking institution. Additionally, for reasons that the court has already alluded to there must have been some level of planning on the defendant's part. Additionally, the defendant has remained unrepentant and has advocated his hopeful expectation of substantial financial gain upon his release from incarceration.

[30] In the premises, and based on the Guidelines, this places the starting point sentence at 30% of the sentence prescribed by statute for the commission of the offence and within a range of 20% to 40%. This places the starting point sentence at approximately 6 years.

[31] In the present case, when considering the aggravating factors relative to the commission of the offence, the court took into consideration the defendant's concealment of the proceeds of his criminal conduct. Also, the court took into account the defendant's attempt to avoid detection which has already been canvassed relative to the offence of robbery. It will be recalled that the defendant also took steps to conceal evidence relative to the offence.

[32] In the court's view, there are no mitigating factors in the commission of the offence. This defendant has remained fastidious in his declarations that he is not minded to

restore the stolen money and intends to benefit from the proceeds of his criminal conduct upon his eventual release.

- [33] The court's consideration of the aggravating factors relative to this offender remain the same as for the underlying offence. However, the court having looked at the Schedule to the Proceeds of Crime Act has discerned that the defendant has been convicted of theft offences previously. These convictions therefore were for money laundering offences. Hence, this offender has convictions for money laundering offences and the court considers this an aggravating factor relative to him. Although he has no previous convictions under the Proceeds of Crime Act for money laundering per se, his antecedents disclose recent offending and relevant convictions for offences of dishonesty which amount to money laundering offences notwithstanding that he was not charged with any offence under the Proceeds of Crime Act.
- [34] The court has discerned no mitigating factors relative to this defendant. In the court's view, the defendant's antecedent history discloses that he is a career criminal with a penchant for committing offences of dishonesty and to that extent can easily be described as a veritable menace to society.
- [35] Having assessed the aggravating and mitigating factors relative to the offence and the offender, the court has concluded that the offence requires an uplift from the notional sentence as the aggravating factors far outweigh the mitigating factors present in the case. Therefore, the court thinks that an uplift beyond the range of 40%. The court thinks that an uplift of 50% is appropriate in the present case to reflect the seriousness of the offence and the aggravating factors of the offence and the offender. In the premises, the starting point sentence should be 3 years' imprisonment.
- [36] The defendant shall be entitled to a 1/3 discount for his guilty plea which brings the sentence to 2 years' imprisonment.

- [37] Now the court has considered the totality of the defendant's offending. Therefore, the court thinks that the sentences should run concurrently. The defendant obviously has no means to restore all of the stolen money. It is doubtful whether the stolen property will ever be recovered. Furthermore, the court cannot even consider that in addition to the terms of imprisonment imposed on this offender that he can be ordered to pay a fine relative to the money laundering offence. Mr. Edwin, counsel for the defendant has given the court the undertaking based on his instructions that the defendant is able to pay compensation to the victim of at least the remainder of the stolen money in the amount of \$25,000.00. The court has accepted this undertaking and will incorporate it as part of the sentence.
- [38] Therefore, it seems to the court necessary that the defendant serve a sentence of 4 years' imprisonment to reflect the totality of his offending and also to register society's abhorrence for this kind of offence. It is with great expectation that this period of incarceration will serve as a period of rehabilitation for this offender.
- [39] The court also thinks that the sentence is proportionate to the defendant's degree of culpability in the commission of the offence and the seriousness of the offence. In addition, the court thinks that the defendant is a danger to unsuspecting members of the community and hence this period of incarceration is necessary to protect society from harm from this offender.
- [40] The defendant has served a period of 185 days on remand. He shall be credited for all the time spent on remand. Therefore, the period of 185 days shall be deducted from the sentence of 4 years' imprisonment and 2 years' imprisonment respectively.
- [41] Hence, the sentence of the court is that the defendant shall serve the following sentences:

1. On the count charging the offence of robbery, that is, count 1 on the indictment the defendant is sentenced to 4 years' imprisonment.
2. On the count charging the offence of money laundering, that is, count 2 on the indictment, the defendant is sentenced to 2 years' imprisonment.
3. The sentences at paragraphs 1 and 2 above, shall run consecutively to any term of imprisonment that the defendant is presently serving.⁵
4. In addition, the defendant shall pay compensation to the victim in the sum of \$25,000.00 to be paid 14 days in default 1 year which shall be served consecutively to the terms of imprisonment imposed herein.
5. In order to facilitate the Defendant's compliance with the terms of paragraph 4 above, the Defendant shall be removed from incarceration at His Majesty's Prisons, Richmond Hill, and shall be escorted by prison officials and members of the Royal Grenada Police Force, in the company of his legal practitioner and taken to the location where the stolen money is hidden and the same shall be retrieved and paid into the Court for the purpose of compensation being paid to the virtual complainant in the matter.
6. The sentences on counts 1 and 2 respectively shall run concurrently.
7. The defendant while incarcerated shall be enrolled in and shall engage in any vocational skills and academic programs offered at the His Majesty's Prisons Richmond Hill.

⁵ Section 79(2) Criminal Code

8. The defendant shall engage in counseling sessions to address and curb his impulsivity and propensity towards committing offences of dishonesty and or any other rehabilitative programs available during his period of incarceration.

Shawn Innocent
High Court Judge

By the Court

Registrar