

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE**

**MONTSERRAT**

**CLAIM NO. MNIHCR 2024/0005**

**BETWEEN:**

**[1] The Crown**

Claimant

**and**

**[1] Jose Samil Jiminez Santana**

Defendant

**Appearances:**

Mr. Oris Sullivan for the Crown

Mr. Jose Samil Jiminez Santana Litigant in Person

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2024: NOVEMBER 1

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**SENTENCING**

**COTTLE [AG.]:**

[1] The Defendant was indicted on a single count of burglary. Upon his arraignment he pleaded guilty. He now stands to be sentenced for his crime.

## **Facts**

- [2] On Friday 1st March 2024 the Virtual complainant Elizabeth Breuer, a resident of Old Towne left her home and went out for a meal with her daughter Kristen Breuer around 5:10 p.m. They returned home about an hour later. Around 8:00 p.m Kristen again left home. Around 11:30 p.m she was contacted by her mother who informed her that she was unable to find her jewellery box. Kristen returned home. The dwelling is equipped with CCTV cameras. Kristin reviewed the footage and realised that someone had entered the house while they were out having dinner. The police were called in. The camera footage was given to the police and a report was made to them that items of jewellery had been stolen. Kristin also posted the footage to social media. About 10:45 a.m. the following morning the Defendant and his sister came to the Breuers' home. At first they suggested that the person who was seen in the footage entering the home of the Breuers was not the Defendant. Kristen showed the images to the sister of the Defendant who began to remonstrate with him. The police were summoned. They arrived and arrested the Defendant. He took them to where they were able to recover two jewellery boxes. He also took the police to his home where he handed over most of the jewellery. The police carried out further investigation and recorded two statements from the Defendant. In both statements he admitted entering the home of the Breuers and stealing the jewellery. The value of the jewellery not recovered is \$8,500 US.
- [3] The maximum sentence upon conviction on indictment for burglary in Montserrat is imprisonment for 14 years.

## **The Defendant**

- [4] The Defendant is 31 years old. He was born in the Republica Dominicana. He came to Montserrat in 2017. He resides at Davy Hill with his wife of 3 years and their 2 young daughters. He works as a labourer in the construction industry earning approximately \$650 each week. His monthly expenses amount to about \$1280. His wife has been living in Montserrat for 18 years. She is employed at the Montserrat Port Authority.
- [5] There are now in place sentencing guidelines which assist judges when sentencing for criminal offences. Following the sentencing guidelines, I must first establish the starting point. I do so by assessing the seriousness of the offence and its consequences by reference to the harm caused.

There are three categories of consequence provided for in the guidelines. This offence I place in category 1 or high. The items stolen were of significant value. Some also carried much sentimental value to the victim. The victim also suffered from the emotional distress caused by having a stranger enter into her house uninvited, thereby violating what has hitherto been a safe space for the victim.

[6] When I assess the seriousness of this offence, I place it at level C or lessor as provided in the guidelines. I do not think this to have been an offence which demonstrated any level of planning. It was opportunistic. The Defendant chanced upon an unsecured dwelling which happened to be unoccupied at the time. There was no violence or threat of violence. The intrusion into the house was of limited duration. A consultation of the grid set out in the guidelines reveals a suggested starting sentence of 20% of the maximum sentence within a range of 5% to 35%. I will adopt a starting sentence of 2 years and 9 months imprisonment.

[7] Having selected a starting point, I must next consider the aggravating and mitigating factors of the offence and the offender and make any needed adjustments.

[8] Aggravating factors are set out in a non-exhaustive list in the guidelines.

#### **Aggravating factors of the Offence**

[9] In this case the Defendant attempted to conceal the stolen goods. This offence was not committed at night. The evidence showed that it occurred between 5:10 p.m. and 6:10 p.m.

#### **Mitigating factors of the offence**

[10] Most of the stolen items have been recovered. The Defendant cooperated with the police in this regard.

#### **Aggravating factors of the offender**

[11] There are no aggravating factors which apply to the Defendant.

#### **Mitigating factors of the offender**

[12] The Defendant is of good character in that he has no previous convictions. He has expressed genuine remorse for his actions. As noted before, he cooperated with the police.

- [13] Having regard to the aggravating and mitigating factors and having concluded that the mitigating factors outweigh the aggravating factors I will move downwards from the starting sentence by 9 months to reflect this. I therefore arrive at a notional sentence of 2 years imprisonment at this point.

**Credit for early guilty plea.**

- [14] The Defendant confessed to the police and pleaded guilty at the first opportunity. Consistent with the sentencing guidelines he is entitled to a discount of one third of his notional sentence. This operates to reduce the sentence to 1 year and 4 months in prison.

**Time spent on remand**

- [15] The Defendant has spent no time on remand.

- [16] The totality principle is not engaged as this is a single offence.

- [17] At this stage I have arrived at a notional sentence of imprisonment for 1 year and 4 months. However I go on to consider whether I should impose a custodial sentence in this matter.

**Custodial or non-custodial sentence**

- [18] In the sentencing guidelines the court is required to consider the following matters when deciding on whether to impose a suspended sentence.
- a. Can appropriate punishment only be achieved by immediate custody?
  - b. Does the offender present a risk or danger to the public or to the victim?
  - c. Has there been a history of poor compliance with court orders?
  - d. Is there a realistic prospect of rehabilitation?
  - e. If sentencing a person under 21, is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation?
  - f. Is there strong personal mitigation?
  - g. What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?

[19] I have considered these matters. This Defendant has no criminal antecedents. He is the father of two daughters aged 5 and 7. His wife works on a shift system and the Defendant looks after their daughters when his wife is at work on a late shift. Community members including those who have employed the Defendant speak of his trustworthiness as well as his work ethic. All who were interviewed thought that the offence was quite out of character for the Defendant. He is assessed as being of low risk of reoffending or causing harm to the public or himself. The officer who compiled the social enquiry report for the court emphasized that the Defendant has shown remorse. He found himself at the home of the victim before the police apprehended him. He apologized for his actions and sought forgiveness. Before this court he has accepted full responsibility for the offence. I have also considered section 2 (2) of the Probation of Offenders Act. That subsection permits this court where it is of the opinion that having regard to the character, antecedents, age health or mental condition of the offender it is expedient to release the offender on probation on condition that he enters into a recognizance to be of good behavior and to appear for sentence when called upon at any time up to 3 years later. In all the circumstances of this matter I have concluded that it is expedient to release the Defendant on probation.

### **Sentence**

[20] The Defendant is sentenced to three years' probation from today.

[21] The sentence is conditional upon the Defendant being of good behaviour during this period and he will appear for sentence at any time within the next three years if the court should call on him to appear.

[22] He is also to pay a fine of \$1000 within one month as a further condition of his parole.

[23] As another condition the Defendant will pay compensation to the victim in the sum of \$8,500. US within three months, this being the value of the items not recovered.

[24] A restitution order is made to return the recovered items to the victim.

**The Hon. Brian Cottle**  
(Ag) High Court Judge

**By the Court**

**REGISTRAR**