

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR2023/0080

BETWEEN:

THE KING

-and-

SHAQUOR MILLER

Appearances:

Ms. Rashida Jonas for the Crown
Ms. Siobhan Leandro for the Defendant.

2024: March 18;
April 24;
May 7; 13.

SENTENCING JUDGMENT

- [1] **BAKRE, J.:** The Defendant was indicted for the offences of Aggravated Robbery and Robbery. On 18th March 2024 the Defendant pled guilty to the offence of Aggravated Robbery. The prosecution accepted the plea as given and the second count of Robbery was withdrawn.
- [2] The Court has had the benefit of the prosecution's written sentencing brief, the plea in mitigation and the Social Investigation Report. The Defendant is now before the court for sentencing.

BACKGROUND

- [3] On the 2nd day of July 2021, the Defendant entered DNS Grocery Shop on DeSouza Road at around 12:45 p.m. where the owner and her twelve-year-old daughter SJ were present. The shop owner sold a face mask to the Defendant, and he subsequently left.

- [4] At about 1:20 p.m. while SJ was in the shop alone, the Defendant entered wearing a long sleeve button up shirt, long dark blue pants, with his head wrapped in a pink/red t-shirt, a blue disposable face mask and a black backpack in his hand. After a brief exchange, the Defendant pulled a gun from his bag, pointed it at SJ and demanded that she give him money. In fear of being shot, SJ gave the Defendant the money that was in the cash pan which totaled \$350.00. While the Defendant exited the shop, he placed his hand on his mouth which SJ interpreted to mean not to say anything.
- [5] SJ immediately went to the back room of the shop, called 911 and made a report. Upon her mother's return SJ broke down crying while telling her mother what transpired and stated that she was very sad and terrified by what happened.
- [6] The Defendant gave the police a statement on the 4th July, 2021 and admitted that on the day in question he was with his friend JS when they decided to go to the casino. On arrival there, the Defendant was denied entry as he was not wearing a mask and went to the shop next to the casino to purchase one. The Defendant told his friend that there was a little girl in the shop and JS asked the Defendant whether he wanted to rob the shop to which he responded in the affirmative. Before doing so, they journeyed to JS's home in Browne's Avenue where he gave the Defendant what was described as a purple church shirt, a red shirt, a black pants and a bag. The Defendant noted that upon opening the bag he observed a gun inside.
- [7] The Defendant returned to rob the shop while JS waited for him down the road. After robbing the shop the Defendant met up with JS, returned the clothes, bag and gun, gave him some of the money and they went their separate ways.
- [8] At the time he committed the offence the Defendant was 14 years old.

IMPACT ON THE VIRTUAL COMPLAINANT

- [9] The Social Investigation Report prepared by Senior Probation Officer Garolyn C. Cornelius Hector on the 18th April 2024, is to the effect that the Virtual Complainant was 12 years old when the incident happened. She was scared and shaken when the gun was pointed at her, and she lived in fear for a few months after and had restless nights thereafter. It was reported that she has gotten over the event now but continues to be vigilant. It was also stated that the event did not affect her schoolwork.

PLEA IN MITIGATION FOR THE DEFENDANT

[10] Ms. Leandro for the Defendant told this court that the Defendant is now 17 years of age and that he was only 14 years old at the time he committed the offence. Counsel stated that the Defendant is a victim of his circumstances. She indicated that he lost his mother at the age of 6 years as she suffered an untimely death and as a result the Defendant had to go through life with this unexplained and traumatic event.

[11] Ms. Leandro stated that the Defendant was placed in the care of his grandmother who has tried to support him, and that lack of financial provision played a key role in the Defendant's downfall. She also intimated that lack of support and guidance from his father contributed to unfortunate circumstances he now finds himself in. Counsel noted the outcry in the community in support of the Defendant as reported in the Social Investigation Report. She stated further that the Defendant fell in with the wrong crowd and deserves a second chance.

[12] Counsel notes that the Defendant pled guilty at the earliest opportunity and has cooperated with the police. She says that if the Defendant had to do things again, he says he would find work as opposed to stealing. Counsel also indicated that the Defendant is not known to the court.

CHILD JUSTICE ACT 2015

[13] Since the Defendant committed this offence at the age of fourteen, his sentence falls within the ambit of the **Child Justice Act 2015, No. 23 of 2015**. Section 59 of the said Act provides that:

“The Court shall, after a finding of guilt in relation to a child, impose a sentence on the child in accordance with the provisions of this Part.”

[14] The relevant issue to be considered is the age of the Defendant as at the time of committing the offence. The Defendant was fourteen years and nine months at the time of commission of the offence.

[15] Section 68(2) of the Child Justice Act speaks to referral of children to a secure residential facility. It states: *“A sentence involving a residential requirement may be imposed for a period exceeding two*

years if the child is **under the age of fourteen years** and he would have been sentenced to imprisonment due to the seriousness of the offence were it not for section 69(1)(a).”

[16] Section 69(1) of the Child Justice Act provides for the referral of children to prison and states that no court shall impose a sentence of imprisonment on a child unless –

“a. the child was **over the age of fourteen years of age** at the time of commission of the offence;

b. the offence for which the child is convicted is an offence listed under Schedule III, or murder or treason; and

c. substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include a previous failure to respond to alternative sentences, including sentences with a residential element and where the court imposing sentence considers that no other sentence is appropriate.”

[17] All three elements of section 69(1) must be satisfied before this court can impose a sentence of imprisonment on a child.

[18] Section 69(2) of the Act goes on to say, “Where a sentence of imprisonment is imposed on a child pursuant to subsection (1) that sentence shall be of a duration not exceeding three years.”

[19] The court has taken into account the provisions of section 68(2) and 69(1)(a) of the Child Justice Act particularly the seeming lacuna in the provisions of section 68(2) which relates to the imposition of a custodial sentence on a child under the age of fourteen and section 69(1)(a) which provides for the custodial sentence of a child over the age of fourteen without addressing the fate of a child who committed an offence at the age of exactly 14 years old.

[20] Ms. Rashida Jonas for the Crown urged the court to find that the Defendant committed the offence while he was fourteen years and nine months old, she argued that this should be interpreted as being over fourteen years old for the purposes of Section 69(1)(a) of the Child Justice Act. Counsel urged

the court to interpret the provision using the golden rule of interpretation by considering the intention of the Parliament.

[21] On behalf of the Defendant, his counsel Ms. Siobhan Leandro argued that the provision of Section 69 of the Act can only be read to mean a child who committed the offence when he is at least 15 years old. Ms. Leandro asserted that “over the age of fourteen” cannot mean a minute, hour, day or nine months over the age. She asserted that “over the age of fourteen” can only mean one full birth anniversary over the age. (i.e., fifteen years and over).

[22] This court has considered the provisions of Sections 68 and 69 of the Act. Clearly Section 68 makes provisions for a child under 14 who ordinarily would have been sentenced to imprisonment but is under the age of fourteen.

[23] There is no other provision which provides for the imposition of a custodial sentence for a child that is fourteen years old at the time of committing the offence.

[24] Having read the provisions together this court is in agreement with counsel for the prosecution that Parliament must have intended for children aged 14, to be dealt with under the section 69(1)(a). A liberal interpretation of the meaning of “over the age of 14” must therefore be applied to give life to the legislature’s intent. The Crown has therefore established that the first limb under section 69(1) is satisfied.

[25] I now turn to the other two limbs.

[26] The offence the Defendant is charged with is Aggravated Robbery which is listed in the offences in Schedule III of the Act, the second limb is thus satisfied.

[27] As for the third and final limb this court must be satisfied that “substantial and compelling reasons exist for imposing a sentence of imprisonment, which may include a previous failure to respond to alternative sentences, including sentences with a residential element and where the court imposing sentence considers that no other sentence is appropriate”.

[28] Ms. Jonas has submitted that this offence is one that is very serious having regard to the facts of the case, she says that there is substantial reason to impose the sentence of imprisonment and that no other sentence is appropriate. Ms. Leandro on the other hand has submitted that there are other sentences which can be imposed to include compensation and community service. Having listened to both arguments I am in agreement with counsel for the prosecution that due to the serious nature of the offence the only appropriate sentence is a term of imprisonment.

[29] This court has considered the provisions of Sections 69(1) and (2) and has come to the conclusion that the Defendant may be sentenced to a term of imprisonment not exceeding three years.

CONSTRUCTING THE SENTENCE

[30] In constructing the sentence, the Court will be guided by the Sentencing Guidelines of the Eastern Caribbean Supreme Court Re-Issue 8th November 2021 for Offences of Dishonesty, specifically the guidelines for the offence of robbery.

Harm

[31] The first stage is to consider consequence by assessing the harm caused by the offence. This offence falls into Category 2 (Medium) as there was some psychological harm caused to SJ as a result of the Defendant brandishing a gun on her.

Seriousness

[32] At this stage, the court must consider the seriousness by assessing the culpability of the offender. Having regard to the fact that the Defendant produced a firearm to threaten violence the seriousness is Level A (High).

Starting Point

[33] Having assessed the level of harm caused to be Medium and the level of seriousness as High the appropriate starting point is 60% of the maximum sentence within a range of 45%-75%.

[34] As previously stated, the maximum sentence of imprisonment which may be imposed on this Defendant is three years. The starting point thus translates to 1 year, 9 months and 18 days imprisonment.

Aggravating and Mitigating Factors of the Offence

[35] The court considers that the aggravating factors in relation to the offence are as follows:

- I. There was some degree of planning and preparation involved prior to committing the offence.
- II. The Defendant played a leading role in the commission of this offence;
- III. The Defendant attempted to conceal his identity by wearing a mask and wrapping his head with a shirt;
- IV. The decision to commit this offence was motivated by the fact that a defenseless minor was manning the shop;
- V. The prevalence of these types of offences in Antigua and Barbuda.

[36] There are no mitigating factors in relation to the offence.

[37] In the circumstances the sentence is adjusted upwards to 2 years and 3 months imprisonment.

Aggravating and Mitigating Factors of the Offender

[38] There are no aggravating factors relevant to this Defendant.

[39] The mitigating factors in relation to the Defendant are that he has no previous convictions and his young age.

[40] The sentence is therefore adjusted downwards to 2 years imprisonment.

Guilty Plea

[41] The Defendant has pled guilty at the earliest practicable opportunity, his sentence will therefore be reduced by one third bringing it to 1 year and 4 months imprisonment.

Time Spent on Remand

[42] Time spent on remand for this offence is to be accounted for.

SENTENCE

[43] *Shaquor Miller* for the offence of Aggravated Robbery you are sentenced to 1 year and 4 months imprisonment.

Tunde A. Bakre
High Court Judge

By the Court



Registrar