

**THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: SVGHCR 2021/004

BETWEEN:

THE KING

and

ELROY ROGERS

Appearances:

Ms. Renee Simmons, Counsel for Crown
Mr. Elroy Rogers, Self-Represented Defendant

**2024: February 26th
March 27th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J. [Ag]:** The defendant, Elroy Rogers, was represented by defence counsel, Michael Wyllie. However, on the eve of trial, a breakdown in the solicitor-client relationship occurred. The defendant advised the court that he wished to represent himself, and defence counsel was removed from the record. Elroy Rogers was charged with robbery and wounding. On 26th February 2024, he was arraigned and guilty pleas were entered to both counts. The defendant was remanded into custody. A Social Inquiry Report was ordered, and the case was adjourned to 27th March 2024 for sentence. The Social Inquiry Report was filed on 21st March 2024. Written submissions were filed by Crown counsel on 22nd March 2024. Oral submissions were received on 27th March 2024. The matter now proceeds to sentencing.

The Facts

- [2] Lisa Wilson operates a business known as Thomas' Mini Mart, in Brighton. She was working there on 14th September 2018. Staff in the store were beginning to close up for the day. It was approaching 9:00 PM. Two employees were outside the store when three masked men suddenly appeared. Witnesses described one or two of the men as being armed with guns. Ms. Wilson and her son were inside the store. The masked men told everyone to put their hands in the air. One employee ran and hid in the bathroom. Another employee, Grafton McDonald, was struck in the head and knocked to the floor, by one of the gunmen. Tevin Thomas, the son of the storeowner, called out to his mother, telling her to run. Lisa Thomas screamed for help, retreated to an office in the rear of the store, and barricaded herself in. The employees were told to get down on the ground, as guns were pointed at them.
- [3] The intruders searched the store. They removed a cash register, worth EC\$1,600.00, cash money of EC\$630.00 and US\$115.00, and fled the scene. Those persons present in the store were terrified. The entire incident took about 5 minutes. Police were immediately called and attended. They described the scene as ransacked, with blood on the floor. Although there was adequate lighting inside and outside the store, and security camera footage was seized and reviewed by police, no one was able to identify the robbers.
- [4] The defendant was arrested soon after. He was given his rights to counsel and cautioned. He gave two recorded statements to police, one on 17th September 2018, and the other on 19th September 2018. The defendant told police that he and three others took part in the robbery. One man was placed as a lookout, while the defendant and two others entered the store. The defendant was armed with a handgun. They all wore masks to conceal their faces. Once inside the store, the defendant kicked at the office door, where Ms. Thomas had retreated. When one worker tried to flee, the defendant advised police that he struck him in the head with the butt of the gun. One of the other robbers removed the cash machine. The defendant and the two other robbers then ran to their motor vehicle, and left the area.

- [5] The victim, Grafton McDonald, suffered a laceration to the mid-scalp, which required 5 sutures.
- [6] The Social Inquiry Report was prepared by Social Worker, Janeil George. It confirms the defendant is age 32, with a date of birth of 12th November 1991. He has a lengthy criminal record, with convictions for similar offences. Interviews with prison officials indicated that, in his past incarcerations, the defendant had a reputation for accessing contraband, including cell phones and marijuana. He engaged in fights and confrontations with other inmates, but was respectful towards prison officers. During his current incarceration on remand for these offences, the defendant has been subdued and reserved.
- [7] The defendant is one of six children. Although he is in a common law relationship, he has no children of his own. He described himself as hardworking, does not socialize much outside of work, and has a good relationship with his family.
- [8] The defendant left school at an early age. As an adult, he has always worked in the construction field, as a labourer. His most recent employer confirmed that the defendant had worked there for approximately one and a half years. He was described as disciplined, reliable, dedicated, and responsible. He was a trusted employee, and the employer was surprised to learn of the role played by the defendant in this incident. The defendant had been building a home with the support of the company. The employer confirmed that the defendant has a job and a home to return to, following his sentence.
- [9] The defendant is in good health, with no medical or psychological issues. He stated that he drank socially, and was an avid user of marijuana, on a daily basis. He owns his own home, located on family land.
- [10] With regard to the offence, the report indicates that the defendant admitted he was part of a group of men who carried out the robbery. He stated he only got involved because of a friend. One of his accomplices was someone he met while serving a sentence. He was coerced into executing the robbery, and was forced to plead

guilty, while those involved “walked free.” The report describes the defendant as nonchalant and unemotional, stating he “just wants to get rid of the case.” He advised his only offence was wounding, not robbery.

- [11] Members of the defendant’s family were interviewed. The defendant was described as funny, bossy but responsible, and a hard worker. The defendant and his siblings were the product of an abusive and broken home. Their needs were often not met, and this led the defendant to resort to stealing. Both parents were substance abusers. The defendant made poor choices in friends, and eventually joined a gang. A criminal lifestyle increased over the years, and the defendant came into conflict with the law.
- [12] When the defendant lost an older brother, who had a similar lifestyle, the defendant appeared to change. He directed his younger brother away from that path, but suffered a mental break down and was admitted to the Mental Health Centre for one month. He obtained employment after release, and became somewhat reclusive. It was thought that the defendant had, once again, been caught up with bad company, leading to this incident.
- [13] The defendant’s mother confirmed that in his teenage years, the defendant developed a criminal lifestyle. He eventually left school without completing his secondary education. He also failed to complete studies at a technical vocational centre. The defendant’s mother shared that she was forced to flee St. Vincent for a number of months due to death threats made against her and the defendant from persons he had come into conflict with. However, following his mental health collapse, the defendant had recovered, obtained employment, and had improved his life.
- [14] The proprietor of the store that was robbed in this case, described the financial and emotional impact of the event on his business, and his family. Property was damaged and lost. His son, who was present during the robbery, was traumatised from being held at gunpoint. The proprietor’s son is angry. He felt powerless, and helpless when it happened. The elderly victim, who was struck in the head and

injured during the robbery, has sadly passed away. The proprietor's wife, who was present during the robbery, also felt angry. She was afraid for the well being of her son at the time. The experience impacted her greatly, as memories of her parents being the victims of a double shooting some years earlier, were revived.

[15] Views of members of the defendant's community were mixed. Some stated the defendant was a criminal with a bad character, and a poor reputation. Others said that he worked hard, was trying to better himself, and change his bad habits.

[16] The report concluded that the defendant is a recidivist, and a high-risk offender.

The Position of the Parties

[17] Learned counsel for the Crown recited the material facts of the case, and referred the court to the classic principles of sentencing, which include retribution, deterrence, prevention, and rehabilitation.

[18] Reference was made to the Sentencing Guidelines of the Eastern Caribbean Supreme Court, for the offence of robbery. In considering consequence, Crown counsel submits that both physical and psychological harm was caused to the victims, and there was a detrimental effect on the business. This places Consequence into Category 2 – Medium.

[19] As to Seriousness, Crown counsel refers to the use of a weapon, the substantial risk of serious harm, and the leading role played by the defendant in the incident. This places Seriousness into Level A – High.

[20] All of this leads to a starting point of 60% or 18 years, with a range of 45% - 75%.

[21] Aggravating factors of the offence include, it is submitted, the offence occurring at night, and victims being restrained. There are no mitigating factors of the offence.

[22] Crown counsel submits that aggravating factors of the offender include his record of previous convictions for similar offences, and crimes of violence. Mitigating factors include the assistance given to police by way of inculpatory statement.

- [23] Crown counsel submits the defendant should receive the benefit of a one third sentence reduction, in light of his guilty plea, and credit should be applied for time spent on remand.
- [24] For the count of wounding, reference is again made to the Sentencing Guidelines of the Eastern Caribbean Supreme Court. Since the victim suffered serious physical harm, the Consequence is Category 2 – High.
- [25] As to seriousness, Crown counsel submits the court should consider that violence arose in the course of another offence (robbery), the defendant played a leading role in the offence, and a weapon was used.
- [26] All of this places the starting point at 60% or 8.4 years, with a range of 45% - 75%.
- [27] There are no aggravating factors and no mitigating factors of the offence, it is submitted. The previous criminal record is an aggravating factor of the offender. Mitigating factors of the offender include steps taken to address his offending by restricting his associations, and genuine remorse, based on the rendering of assistance to the police. Unfortunately, the court notes that the steps taken to address the offending behaviour referred to by Crown counsel, occurred before this offence, and therefore show that those steps were unsuccessful. Further, the court notes that the Social Inquiry report indicates a lack of genuine remorse on the part of the defendant.
- [28] As in the first count, the defendant should receive a one third discount for his guilty plea, and credit should be given for time served on remand.
- [29] In consideration of the facts of the case, and the principle of totality, Crown counsel submits the sentences should be served concurrently. Some case law was submitted on that point.
- [30] The defendant addressed the court and asked that he be given an opportunity to be released from custody in order to assist his grandmother. Indirectly, the defendant was asking the court to consider a sentence of time served.

- [31] The grandmother of the defendant attended, and she was given an opportunity to address the court under oath. She spoke passionately on his behalf. She obviously cares for her grandson very much. She said she has been attending court to find out what this case was about. She never believed the defendant would do what he has been convicted of. He was always helpful to her. She begged the court to be merciful in its sentence.

The Law

- [32] Under **s. 216** of the **Criminal Code**¹, upon conviction for robbery, the penalty is imprisonment for life. Under **s. 174**, upon conviction for wounding, the penalty is fourteen years.
- [33] Sentencing in criminal cases involves many considerations in order to reach an appropriate penalty. While the sentencing process is governed by clearly defined objectives, it remains a discretionary exercise in balancing all relevant factors in order to meet those basic objectives. Sentencing is designed to protect society and to contribute to respect for the law, and the maintenance of a peaceful and safe community, by the imposition of fair and just sanctions.
- [34] Sentencing objectives include retribution, deterrence (both general and specific), prevention and rehabilitation. They are confirmed in the well-known cases of **R. v Sargent**² and **Desmond Baptiste et al v The Queen**³. The case of **Renaldo Anderson Alleyne v The Queen**⁴ from the Caribbean Court of Justice, refers to the principles of punishment, deterrence, and rehabilitation. A sentencing court must consider the facts of the case, as well as the nature and gravity of the offence. It must balance this with the circumstances of the offender, including his age and background, whether he has a criminal record, the role he played in the offence, the design and execution of the offence, and his reform and reintegration into society.

¹ CAP 171

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

[35] The case of **R. v Parranto**⁵ further emphasizes the importance of sentencing in the criminal justice process. The task of sentencing requires judges to consider and balance many factors. The process is governed by clearly defined objectives, but remains a discretionary exercise for courts in balancing all relevant factors to meet the basic sentencing objectives. The goal in every case is a fair, fit, and principled sanction. Sentencing is approached on an individual, case-by-case basis. The court must determine which objectives of sentencing merit greater weight, while evaluating all of the mitigating and aggravating factors to best reflect the circumstances.

[36] All of this has been considered by this court in formulating an appropriate sentence in this case.

Analysis

[37] Having received and carefully reviewed the written and oral submissions of counsel for the Crown, the oral submissions of the defendant, and the Social Inquiry Report, what follows is the sentencing decision. This was a crime of violence. The defendant was armed with a gun. He struck and injured an innocent worker in a local market or convenience store. Fortunately, he used the gun as a blunt instrument instead of using it as it was intended, and firing it. The use of firearms in the commission of offences presents a significant danger to the community, and instills general fear. The gravity of gun crime cannot be exaggerated.

[38] Convenience stores such as Thomas' Mini Mart, are prime targets for robberies. They are vulnerable for many reasons. They are generally open late, have minimal security features, and are easily accessible from the street. Cash is readily available, and the number of store clerks, and customers is usually low. When these stores are robbed, owners suffer economic loss, and employees who are present, suffer physical and psychological harm. A message of deterrence must therefore be sent that such violent robberies will not be tolerated.

⁵ [2021] SCC 46

- [39] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty, Re-Issue 8th November 2021**. Sentencing for a case of Robbery, requires an assessment of the seriousness of the offence, and its consequences, with reference to the harm caused. The assessment of seriousness includes reference to the culpability of the offender. A starting point for the offence within the relevant range, must be established. **Footnote 5** of the **Sentencing Guidelines** for the offence of Robbery, indicates that where the maximum sentence is life imprisonment, for the purposes of the calculation, it is to be treated as thirty (30) years.
- [40] To establish the starting point for the offence within the relevant range, there are four stages. The first stage is to consider consequence by assessing the harm caused by the offence. This will include an assessment of the evidence. In this case, there was fear and emotional distress caused to everyone in the store, as well as physical injury to one person. By using a gun in the commission of the offence, the risk of significantly greater injury was clear. The property and money taken would have been a significant loss and detrimental to a small business such as the victim's. That is confirmed in the Social Inquiry Report. For all of these reasons, the consequence is Category 2 – Medium.
- [41] The second stage involves the consideration of seriousness by assessing the culpability of the offender. Seriousness is confirmed in this case by the production and use of a firearm to administer and threaten violence. In using a firearm, there was a substantial risk of serious harm or injury to the public. The defendant played a leading role in this group robbery. The appropriate category must therefore be Level A - High.
- [42] Having determined the consequence and level of seriousness, the starting point is found by using the sentencing guidelines grid. Bearing in mind the 30-year benchmark for life imprisonment, as indicated in the guidelines, this calculation

leads to a starting point of 60%, with a range of 45% - 75%. In this case, the court has determined the appropriate starting point to be 60%, which is 18 years.

[43] Having established a starting point of 18 years, the court must consider the aggravating and mitigating factors of the offence, and adjust the figure upwards or downwards, as appropriate. In this case, the defendant wore a mask to conceal his identity, the offence was motivated by greed, one victim was restrained by being physically struck when attempting to flee, and others were restrained at gunpoint by being told to get down and raise their hands. The sentence is therefore increased by 1 year to 19 years. There are no mitigating factors to the offence.

[44] The court must go on to consider aggravating and mitigating factors pertaining to the offender, and adjust the figure upwards or downwards accordingly. In this case, the defendant has a criminal record with entries for relevant offences. This increases the sentence by 1 year to 20 years. By way of mitigation, the court takes into account the cooperation provided to authorities by providing an inculpatory statement. This is significant because, there was no identification made by witnesses of any of the robbers. This serves to reduce the sentence by 1 year to 19 years.

[45] Credit must be given to the defendant for his guilty plea. Although it was not entered as early as it might have been, owing to a breakdown in the solicitor-client relationship, the court is prepared to grant a one third reduction in sentence. This reduces the sentence by 76 months, to 152 months or 12 years and 8 months. The defendant must also receive credit for time spent on remand. Following his arrest, the defendant spent 2 years, 6 months, and 8 days on remand. This will be deducted from the total sentence.

[46] For count 2, the offence of wounding, the court turns to the Sentencing Guidelines, under the heading of Unlawful Violence Without Intent to Cause Really Serious Harm. This requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

- [47] The first stage is to consider consequence by assessing the harm caused by the offence. This will include an assessment of the evidence. Fortunately for the victim, the harm caused was lesser, and there was no long-term impact. The appropriate Consequence is therefore Category 3 – Lesser.
- [48] The second stage is to consider seriousness by assessing the culpability of the offender. Levels of seriousness may be demonstrated in several ways. In this case, a weapon was used, the violence arose in the course of another offence, robbery, the defendant played a leading role in a gang or group attack, and there were other threats of violence by the defendant. All of this places the matter into Seriousness – Level A – High.
- [49] Having determined the consequence and level of seriousness, the starting point is found by consulting the grid. The starting point is therefore 45%, with a range of 30% - 60%. The court is satisfied that the appropriate starting point is 45% or 6.3 years.
- [50] Having determined the starting point of 6.3 years, the court next considers the aggravating and mitigating factors of the offence, and adjusts upwards or downwards, as required. While it cannot be said that the wounding was premeditated, the overall incident, the robbery, was planned, and the risk of others getting hurt, such as the victim, certainly existed. Others were present when it occurred. All of this serves to increase the sentence by .7 years, to a total of 7 years.
- [51] The court moves on to consider the aggravating and mitigating factors relating to the offender, and adjusts upwards or downwards accordingly. The court notes the criminal record of the defendant with entries for relevant offences as an aggravating factor. This increases the sentence by 1 year to 8 years or 96 months. No mitigating factors of the offender are noted.
- [52] Just as in count 1, the court recognizes the guilty plea entered by the defendant, and reduces the sentence by one third. This reduces the total sentence by 32

months to 64 months, or 5 years, and 4 months. Time spent on remand will be deducted from the total sentence.

[53] Since the offences in counts 1 and 2 were committed in the course of the same transaction, and arise out of the same set of facts, the sentence for count 2 will run concurrently to the sentence for count 1.

[54] For all of these reasons, the defendant is hereby sentenced as follows:

[55] **Count 1:** For the crime of Robbery, to a period of imprisonment for 12 years and 8 months.

[56] **Count 2:** For the crime of wounding, to a period of imprisonment for 5 years and 4 months. The sentences for counts 1 and 2 are to be served concurrently.

[57] Taking into account the time the defendant has served on remand, and giving him full credit for that, the total sentence is reduced by 2 years, 6 months, and 8 days. The total sentence imposed as of today's date is therefore 10 years, 1 month and 22 days.

Richard G. Floyd
High Court Judge [Ag]

By the Court

Registrar