

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE

NEVHCR2023/0002

BETWEEN:

Director of Public Prosecutions

v

Ketron Springette

Appearances:

Ms. Megan Nisbett for the Director of Public Prosecutions

Mr. Tyler Martin and Ms. Anmarieta Staines for the Defendant

2023: April 24th
May 26th
July 21st
September 21st

JUDGMENT

[1] **THOMPSON JR J:** Ketron Springette is a recidivist.

[2] He is now aged 39 but has been known to the courts and the police since he was 15 years old. The table below sets out the details of Mr. Springette's offending and the penalties imposed on him.

<u>Date of offence</u>	<u>Offence</u>	<u>Penalty</u>	<u>Ketron Springette's Age</u>
August 13, 1999	Carrying abroad an offensive weapon	One year at the Home for Boys and ordered to enroll in Project Strong	15 years old
April 6, 2004	Building breaking and larceny	A fine of \$4,000.00 payable in 5 months or one month imprisonment	19 years old

August 18, 2004¹	Found with implements of house breaking	14 days imprisonment	20 years old
April 12, 2005	Building breaking and larceny	2 years imprisonment	20 years old
November 14, 2006	Obstruction under the Drugs Act	3 months imprisonment	22 years old
January 30, 2007	Larceny of money	1 year imprisonment	22 years old
April 30, 2009	Unlawful wounding	15 years imprisonment	24 years old
November 24, 2021	Possession of ammunition	A fine of \$2,335.00 payable by 28 th February 2022 in default of payment, 2 years imprisonment	37 years old

Factual Background:

- [3] At around 8 pm on the night of May 20th, 2021, Mr. Springette, tied a black shirt around his head, armed himself with a firearm and went to the Reliable Motors Gas Station in Charlestown, Nevis. Mr. Springette, cranked his firearm, shouted robbery and demanded that the employees open the cash register and give him all of the money.
- [4] The owner of the gas station who was not far away, shouted “Ketron, what are you doing?”. Mr. Springette did not answer, brandished the firearm and a gas station employee gave him the sum of \$4,746.17 from the cash register and Mr. Springette fled the scene. Mr. Springette was identified by several of the witnesses who were present and was arrested by the Police on the following day and has been in custody since that date.
- [5] Mr. Springette appeared before this Court on April 13th, 2023. At that case management conference the DPP was ordered to file and serve their indictment on or before April 20th, 2023. Mr. Springette was unrepresented but indicated to this court that he may be interested in a sentence indication¹. As a result, this court assigned a Ms. Anmarieta Staines and a Mr. Tyler Martin² of Oral Martin Chambers to assist Mr. Springette.
- [6] The DPP filed their indictment on April 24th, 2023. That indictment charged Mr. Springette with the offence of robbery. Robbery in St Kitts and Nevis attracts a maximum penalty on conviction of 20 years imprisonment as opposed to the penalty of life imprisonment that applies in other Commonwealth Caribbean jurisdictions. The maximum penalty is a matter for Parliament in their undisputed wisdom.

¹ A sentence indication allows a defendant to ask a High Court for an indication as to the maximum sentence it will impose if the defendant were to plead guilty now. A sentence indication is a ceiling and not a floor as to the sentence but can move upwards or downwards as the court may not have every relevant fact in front of it when it gives the indication.

² Mr. Martin had been recently called to the Bar and it was felt that both himself and Ms. Staines could benefit from assisting Mr. Springette. The fact that they were both assigned had no bearing on the fees payable to their chambers by the State.

- [7] Mr. Springette promptly sought a sentence indication for the offence of robbery. At a hearing on 24th April, 2023 this court gave a sentence indication of 8 years imprisonment which Mr. Springette promptly accepted. The matter was then fixed for sentencing on May 26th, 2023 with orders for pre-sentence reports, victim impact statements and skeleton arguments to be filed before the sentencing hearing.
- [8] At the sentencing hearing, this court inquired of Mr. Springette, through his counsel, whether there were other offences which he wished for this court to take into consideration when it came to sentence him. This procedure of taking other offences into consideration is in its relative infancy in the Eastern Caribbean but allows a court to take offences into consideration thus clearing up those offences even when the offender has not been charged or convicted for those offences. In this Court's view, Mr. Springette's antecedent history and frankness with the court at his initial appearance suggested that he may wish to take advantage of this procedure.
- [9] A lot will depend on the nature of the other offences when they are taken into consideration but these are often for similar offences as the one before the court and the court's task is to weigh up the credit due to the offender for confessing to offences not formally before the court with the need to punish the offender for his offending. The benefits of this procedure are clear. Unsolved matters are resolved without the need for a trial or further sentencing hearing while offenders avoid the risk of a consecutive sentence for offences which may have been prosecuted after a sentence had been imposed for another matters. No doubt, the Sentencing Guidelines Advisory Committee will in the fulness of time issue written guidance on this topic.
- [10] Mr. Springette wanted this Court to take into account a robbery at Octagon Bar on May 18th, 2021. This robbery involved the use of a firearm and took place 2 days before the Reliable Gas Station robbery matter. In brief, Mr. Springette felt that he had been cheated at cards and returned armed with a mask and firearm and robbed the person(s) that he felt had cheated him. Initially, there was some dispute about the circumstances of the Octagon Bar incident but Mr. Springette and his counsel eventually agreed to the prosecution version of events.
- [11] The sentencing hearing proceeded apace but Mr. Springette's erratic behaviour at court, even with the assistance of 2 able counsel suggested to this court that the intervention of a mental health professional was required. For this reason, Mr. Springette was ordered to see a psychiatrist and the sentencing hearing was adjourned to July 21st, 2023.
- [12] The psychiatric report, though dated July 19th, 2021 was not received by the court until July 21st, 2023. Counsel for the Crown and defence would not have been able to properly make submissions on the report and for this reason the matter was adjourned to September 21st, 2023. Part of the rationale for the adjournment was that the psychiatrist recommended that Mr. Springette could benefit from regular sessions of psychotherapy that would assist him with his impulse control and emotion regulation. It was thought that the services of a psychotherapist could be found in St Kitts and Nevis during the interregnum occasioned by the Court's long vacation but none were found.
- [13] This Court applied the ECSC Guideline for Dishonesty Offences – Robbery and everyone was agreed that Mr. Springette's offending fell into Consequence, Category 2, Medium on the

Guideline since there was some physical and psychological impact on the employees of the business and some detrimental activity on the business. The offence was also at Seriousness Level A – High since a firearm was brandished, though not used, to threaten harm.

[14] The starting point for Mr. Springette's offending was thus 60 % of the 20 year maximum which amounted to 12 years imprisonment with a sentencing range of 9 years to 15 years imprisonment when the grid on the Guideline is calculated.

[15] The offence was aggravated by the fact that Mr. Springette used a mask to conceal his identity, although he was promptly identified in spite of his mask. No firearm was recovered and in this Court's view amounts to an attempt to conceal or dispose of evidence which further aggravates Mr. Springette's offending.

[16] There are no mitigating factors of the offence since Mr. Springette did not return the money that he stole. Mr. Springette's offending is further aggravated by the fact of his previous convictions as detailed above.

[17] Mr. Springette's offending is mitigated by the fact of the assistance given to the authorities by his confession to the Octagon Bar robbery. This Court is also satisfied that Mr. Springette is genuinely remorseful for his offending. When the allocutus was put to Mr. Springette he earnestly apologized for his offending. His apology appeared genuine particularly since he had indicated his desire to plead guilty even before he had a lawyer and even before an indictment had been filed in this matter. Tellingly, Mr. Springette appeared to be at a loss to explain why he had committed this offence and this fact confirms the findings of the psychiatric report.

[18] As a matter of law, mental health conditions and disorders may be relevant to sentencing since they may affect a court's assessment of an offender's culpability in committing the crime in question. See R v PS, Dahir and CF [2020] 4 WLR 13. It is also significant that physical or mental disability or ill health or vulnerable personality trait is a mitigating factor in the ECSC Guideline for this offence.

[19] Mental disability or vulnerable personality disorders do not excuse an offender's offending but provide valuable insight and context into an offender's offending. The UK Sentencing Guideline on sentencing offenders with mental or developmental disorders or neurological impairments sets out the relevant considerations. A court that is satisfied that an offender is found to suffer from a mental disability must consider that disorder when sentencing since the sentence imposed may require hospital or guardianship orders.

[20] The psychiatrist's report confirmed that Mr. Springette suffers from the following:

- Alcohol and cannabis use disorder, mild in a controlled environment
- History of crack cocaine use disorder, severe, in apparent remission
- Possible anti-social personality disorder
- Possible intellectual disability

[21] The learned doctor opined that persons with an intellectual disability may encounter difficulty in planning, emotional regulation and understanding the consequences of their actions. They may act impulsively and behave immaturely for their age. Impulsive behaviors are worsened by substance abuse. In his view, persons with an anti-social personality disorder, particularly one that has been manifesting itself since Mr. Springette was 15 years old are likely to exhibit the following characteristics:

- Lack of remorse
- Failure to conform with social norms
- Impulsivity
- Reckless disregard for the safety of self and others
- Consistent irresponsibility
- Deceitfulness
- Irritability and aggressiveness

[22] The foregoing characteristics can be summarized as sociopathy and while there is no medical treatment for this disorder, Dr. Gilliard was of the view that it may remit, with time, if the person is in a positive therapeutic environment. Finally, Dr. Gilliard recommended that Mr. Springette be encouraged to attend any skills training programs and that he may benefit from regular psychotherapy sessions that would assist him with his impulse control and emotional regulation. In his view 'without these he may have difficulties with his moods, drug use and impulse control' which may result in recidivism.

[23] The ECSC Guideline for Sentencing for Dishonesty Offences requires this court to determine and then apply the discount for Mr. Springette's guilty plea. Mr. Springette pled guilty at the first reasonable opportunity and will receive the maximum 1/3 discount permissible from the notional sentence, not the maximum sentence. Therefore, even with an uplift in sentence after the aggravating and mitigating factors are weighed the relevant 1/3 discount means that Mr. Springette's sentence remains in single digits.

[24] Mr. Springette has been in custody or on remand for this offence for approximately 332 days as at September 21st, 2023. This court has taken that time into account and imposes a sentence of 8 years imprisonment on Mr. Springette from September 21st, 2023. In this court's view, that sentence balances the need to give credit for taking other offences into consideration with the credit due to the defendant for drawing that other offence to the attention of the court.

[25] Mr. Springette has spent almost a year on remand for this offence and when this time on remand is taken into account this court sees no reason to depart from its sentence indication of 8 years imprisonment from September 21st, 2023. That sentence is just and proportionate in all the circumstances of this case.

[26] The victim impact statements indicate that Mr. Springette has caused some psychological harm to the owner and staff of Reliable Gas Station and this Court has taken this harm into account in assessing where Mr. Springette's culpability falls on the Guideline. To tack on a further period of imprisonment because of the psychological impact would be double counting and thus contrary to law. If this court were certain that Mr. Springette either had the means to compensate Reliable

Gas Station for the monies they had lost or was likely to do so then it would have made an order to that effect.

[27] Mr. Springette is not gainfully employed and has been on remand for some time. An order for compensation may well lead Mr. Springette to commit further offences whenever he is released in order to pay compensation thus dooming him to further incarceration or worse.

[28] This court is guided by the reasoning of Justice of Appeal Barrow in *Dwight Dookie v R* that “the core consideration that the sentence imposed should be no longer than is necessary to meet the penal purpose that the court intended. Sentencing, it must be acknowledged, is essentially subjective even when appropriate guidelines are followed.”

[29] Put another way, a court’s task is to impose the shortest possible sentence that meets the objectives of sentencing as opposed to the longest possible sentence that meets that objective. The imposition of a custodial sentence of double digits on Mr. Springette is unlikely to meet any penal purpose and may well undo the scope of any rehabilitative aspect of the sentence.

[30] The penal element is only one aspect of this sentence. It is imperative that Mr. Springette be given the opportunity to better prepare himself for his eventual re-entry into society. By all accounts he is hard working, though functionally illiterate, and during his time in prison to date he has been a model prisoner. There is every reason to believe that he can learn a trade and become a useful and productive member of society in years to come.

[31] It is for this reason that he is sentenced to enroll, participate and complete in any literacy programs offered by HM Prison during his incarceration. He is also sentenced to enroll, participate and complete any skills training program offered by HM Prison, during his incarceration. In default of compliance with these orders Mr. Springette is to serve terms of 6 months imprisonment consecutive to the 8 year sentence imposed above. Therefore, should he fail to participate and complete both of these programs he will serve a further year in prison.

[32] The State owes it to offenders such as Mr. Springette to ensure that they are able to fully rehabilitate themselves for their re-entry into society. The Federal Government is thus ordered to ensure that Mr. Springette receives psychotherapy sessions with a mental health professional in the Federation, at least once per month, during his incarceration.

[33] In order to ensure that Mr. Springette is receiving the requisite treatment and to monitor his compliance with the orders for skills training and literacy courses this court has fixed this matter for report on March 15th, 2024. The Federation’s Chief Medical Officer and/or their designate are invited to attend this report hearing to determine whether the psychotherapy sessions are being provided to Mr. Springette and if they are not when they expect same to be available.

[34] Finally, this Court will review Mr. Springette’s sentence on March 15th, 2024 and fix dates for further hearing dates. It may well be that Mr. Springette can benefit from a more positive and therapeutic environment in his native Nevis at the tail end of his sentence such that his transition to his release can be properly managed with the capable assistance of the Social Development Department in Nevis.

Postscript:

[35] Sentencing offenders with mental health disorders requires a careful analysis of a host of competing considerations. If the ECSC were to promulgate a Guidance Note on sentencing offenders with mental or developmental disorders this would be the first of its kind in the Commonwealth Caribbean. Regional governments should have little difficulty providing the requisite mental health resources to support such a Guidance Note since regional leaders have been vocal about crime and how it is dealt with. This Court has little doubt that there are scores of other offenders, just like Ketron Springette, in prison in the Eastern Caribbean. This fact should inspire our leaders to take the necessary actions and commit the necessary resources to tackle this problem.

[36] Finally, this Court wishes to put on record its gratitude to counsel for both the crown and the defence for their invaluable assistance in this matter.

**Patrick Thompson Jr.
Resident High Court Judge**

By the Court

Registrar