

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

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

CRIMINAL CASE No. 3 of 2021

BETWEEN:

THE QUEEN

and

LEKHOUY HUGHES

Appearances: Ms. Patrice Hickson, Senior Crown Counsel
Ms. Ruthilia Maximea, Counsel for the Defendant

2022: May 24th, 25th
2022: July 28th

Judgment on Sentence

- [1] **FLOYD J:** The defendant, Lekhouy Hughes, was charged, along with two others, with two counts of robbery, contrary to **s. 210(1)** of the **Criminal Code 1997** and one count of possession of a firearm with intent to endanger life, contrary to **s. 27A** of the **Firearms Ordinance CAP 126** as amended. He entered guilty pleas to the robbery charges on 24th May 2022 and to the firearms offence on 25th May 2022, prior to the taking of evidence at the trial. Sentencing was adjourned and a social inquiry report was ordered. The report was received on 20th July 2022.
- [2] Written submissions and authorities were filed by the Crown on 1st July 2022 and by the defence on 27th July 2022. Oral submissions were received on 28th July 2022. The matter now proceeds to sentence.

THE FACTS

- [3] The robbery in this case involved the stealing of two purses and their contents, one belonging to Rubi Manzueta and one belonging to Marilyn Hernandez. The women were sitting at a table and socializing with others at the Bay 6 mini market located in The Valley, Virgin Gorda, on the night of 15th October 2020. Two persons, both wearing dark clothing and masks, approached and snatched their purses. The robbers were armed with handguns. The guns were carried openly with at least one of the robbers pointing the weapon in the direction of the women.
- [4] Just before the robbery, the women and their friends were watching videos on their cell phones. The incident happened quickly. It was over in approximately 2 – 3 seconds. The purses were grabbed from the table and the robbers fled on foot. One robber slipped and fell, dropping his gun. He quickly got up, retrieved his weapon and, along with his companion, disappeared into the darkness of the rear parking lot. Saad Khadoura, the owner of Bay 6, who was sitting with the women at the time of the incident, called his brother, who is a police officer. Some of the people present searched the area, eventually following a suspicious vehicle driving in the direction of North Sound.
- [5] Mr. Khadoura spoke with police when they arrived on the scene at approximately 8:30 pm. D/C Emelandu and Insp. Saif Khadoura responded to the call. After receiving information from witnesses, they briefly searched the area, and then travelled to a basketball court in North Sound. Upon arrival, they discovered a white Kia Sportage vehicle parked there. This matched the description of a vehicle that they had received earlier. A male exited the passenger door and ran into the undergrowth. Although pursued by Insp. Khadoura, he escaped. Three males were found inside the motor vehicle, including the defendant, who was located in the right rear passenger seat. All three men were ordered out of the vehicle and on to the ground. They were taken into custody. The stolen purses were found on the floor of the vehicle, on the right front passenger side. One purse was inside the other. The purses were identified by their owners, who had followed the police to North Sound. The purses were empty. All of the contents were missing. This included a pay cheque for one of the victims, cell phones for each woman, cash money, including rent money for one victim, ear buds, personal identification, credit cards, and bank cards. The owner of Bay 6, Mr. Khadoura, provided police with a CCTV video recording of the incident from his security camera system.

- [6] On the 16th October 2020, the defendant was interviewed under caution by police. He admitted to being one of the two masked men who robbed the women of their purses. He was charged the same day with these offences.

THE POSITION OF THE PARTIES

- [7] In the submissions of 1st July 2021, learned Senior Crown Counsel filed a copy of the **Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court: Offences of Dishonesty**, specifically for the offence of robbery. She also submitted a number of authorities to assist the court.
- [8] In following the **Sentencing Guidelines**, Crown counsel submits the offence should be placed in the medium category for the following reasons:
- (a) Theft of items of significant value to the victims.
 - (b) High level of inconvenience caused to the victims.
 - (c) Consequential financial harm caused to the victims and others.
 - (d) Emotional distress caused to the victims.
 - (e) Risk of injury to persons or damage to property.
- [9] Senior Crown Counsel submits that the case falls within Level B, in assessing the seriousness of the offence, as there was use of significant force or violence in the commission of the offence, the threat of violence by a weapon existed, the defendant played a significant role in the offence, which was a joint enterprise with others, and some degree of planning was involved. The starting point is therefore 40% with a range of 25% - 55%.
- [10] Learned Senior Crown Counsel further submits that the court should consider the seriousness of the offence, the prevalence of the offence, the disposal of a significant portion of the items stolen by the defendant, and the motivation of the defendant by greed or the desire for luxury, as being aggravating factors.
- [11] In mitigation, Senior Crown Counsel submits that the court should consider that the defendant has no previous record of convictions and some of the stolen items were recovered.

- [12] In the submissions of 27th July 2022, learned counsel for the defendant referred to the **Sentencing Guidelines** and other authorities. She pointed out the age and personal circumstances of the defendant. He is a BV Islander and still only 22 years of age. His father, step-father and sister are all deceased. He has a 4-year-old son in St. Vincent. The defendant did not graduate from high school and he has never had steady employment. He has been generally non-compliant with prison rules while on remand since 16th October 2020.
- [13] Defence counsel recognizes that these are serious offences, for which the defendant is liable to a significant penalty. Reference is made, however, to **s. 23(1) of the Criminal Code 1997**, which states that a person liable to imprisonment for life or any other period may be sentenced to a shorter term, except in cases of murder. The court is urged to bear that in mind when passing sentence in this case.
- [14] Learned counsel for the defendant submits that since the defendant entered guilty pleas, court time and resources were saved. He should receive credit for that. A number of mitigating factors are presented on behalf of the defendant:
- (a) He cooperated fully with police and admitted to being one of the masked robbers.
 - (b) He has no previous criminal record and is therefore a person of good character.
 - (c) Some of the stolen items were recovered.
 - (d) The items taken were of a generally low monetary value.
 - (e) There was no damage to property and no injuries to anyone.
 - (f) He is a young man of 22 years.
 - (g) The serious illness of his mother (which caused him to leave school) and the deaths of family members, were life changing experiences, effecting his ability to function properly within society, continue his education and maintain employment.

[15] Defence counsel also recognizes that there are several aggravating factors for the court to consider. That includes:

- (a) A firearm was used.
- (b) The firearm was never recovered.
- (c) The defendant wore a mask to conceal his identity.
- (d) The robbery occurred in a public place.
- (e) Some planning was involved.
- (f) This is a serious and locally prevalent offence.
- (g) Fear was instilled in the victims through the use of a firearm.
- (h) Other offences were committed during the robbery.

[16] Learned counsel for the defendant refers to the **Sentencing Guidelines** and submits that, although greed may have motivated the defendant overall, he was driven by the desperation of his personal circumstances to carry out these offences. His judgement was clouded and he made the wrong choices. The defendant is, however, a good candidate for rehabilitation and can yet become a productive member of society.

THE LAW

[17] Sentencing in criminal cases requires judges to consider many factors. As confirmed in the case of **R. v Parranto**¹ and others, while the sentencing process is governed by clearly defined objectives, it remains a discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing. The goal in every case is a fair, fit and principled disposition.

[18] Sentencing is designed to protect society and to contribute to respect for the law and the maintenance of a peaceful and safe society by the imposition of just sanctions that have the following objectives:

- (a) Denunciation of unlawful conduct and the harm done to victims.
- (b) Deterrence of the offender and other persons from committing offences.
- (c) Separation of offenders from society when necessary.

¹ [2021] SCC 46

(d) Rehabilitation of offenders.

(e) Promotion of a sense of responsibility in offenders and the acknowledgement of the harm done to victims.

[19] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It should be increased or reduced to account for all aggravating and mitigating circumstances relating to the offence and the offender.

[20] These fundamental principles of sentencing are confirmed in the well-known cases of **R. v Sargent**² and **Desmond Baptiste et al v The Queen**³, and more recently in the case of **Renaldo Anderson Alleyne v The Queen**⁴.

[21] The penalty for robbery, under **s. 210(2)** of the **Criminal Code 1997** is imprisonment for life. The penalty for possession of a firearm with intent to endanger life, under the **Firearms Ordinance CAP 126**, which was amended by the **Firearms (Amendment Act) 1993** and later by the **Firearms and Air Guns (Amendment) Act 2015** at **s. 27A(2)**, is a fine of not less than two hundred thousand dollars or imprisonment for a term of not less than twenty years, or both. However, notwithstanding the mandatory minimum penalties set out, there is a sentencing discretion afforded to the court by **s. 27A(3)**, which indicates that a court may, in its discretion, impose a lesser penalty where it is fair and just in all the circumstances of the case to impose a penalty other than the minimum, or it is of the opinion that the imposition of the minimum penalty would be arbitrary and disproportionate. Those discretionary powers bring all of the traditional sentencing considerations back to the forefront of the decision.

[22] The court bears all of this in mind in formulating a sentence in this case. Direction in sentencing for firearms offences and offences of dishonesty (robbery), are found in the **Compendium of Sentencing Guidelines of the Eastern Caribbean Supreme Court, Re-Issue 8th November 2021**.

² 60 Cr. Ap. R. 74

³ Cr. Ap. No. 8 of 2003

⁴ [2019] CCJ 06 AJ, 93 WIR 155

ANALYSIS

- [23] Having carefully reviewed the written and oral submissions of both parties, what follows is the decision of the court in this sentencing matter. The incident that gave rise to these charges is an armed robbery. Two masked men carrying handguns stole the purses of two young ladies as they sat at a table in a local market café, enjoying an evening with friends. It is a place open to the public. The brandishing of a firearm in such a place is extremely dangerous. The risk of harm to members of the public in such a situation is enormous. The court must therefore give primary consideration to the objectives of denunciation and deterrence. A message must be sent that the commission of offences involving firearms will not be tolerated, and will attract a period of incarceration. However, in this case, the court must also consider the young age of the defendant and his lack of previous convictions, which make him a prime candidate for rehabilitation.
- [24] The social inquiry report provides a detailed picture of the defendant. He is 22 years of age, born on 3rd November 1999 in Tortola. His father came from St. Kitts while his mother came from St. Vincent and the Grenadines. He has a 4-year-old son who resides in St. Vincent, for whom he tries to provide financial support when he can. The defendant had a generally stable household growing up, with relatively positive parental relationships. Corporal punishment was used in the home. His parents eventually separated but he had a “decent” relationship with his step-father. Unfortunately, his step-father passed away. Thereafter, the defendant was expelled from school and he moved in with his father on Virgin Gorda. Further sadness followed when his mother suffered a stroke in 2017 and the defendant dropped out of school in order to assist with her care on Tortola. Later that year, his sister, who suffered from diabetes, relocated to St. Vincent where she too passed away. His brother moved away and the defendant lost contact with him. Money was tight and eventually the family was evicted from their home. This caused his mother to return to her native St. Vincent later in 2017. The defendant then moved back to Virgin Gorda to live with his father. He last saw his mother in 2018 while visiting St. Vincent. Yet more sadness was encountered when his father was diagnosed with Alzheimer’s. In 2019 the defendant constructed a small “shack” and lived there alone until he was arrested on these charges in 2020. The condition of his father deteriorated, and he too passed away while the defendant was on remand on these charges.

- [25] Records from the Bregado Flax Educational Centre and the Seventh-Day Adventist School, where the defendant attended, showed a poor performance overall. Comments on the records from the latter institution indicated that academic and behavioural challenges on the part of the defendant required intervention during his time there. The defendant's last school placement was grade 8, which was not successfully completed.
- [26] The defendant's employment history is sporadic at best, with jobs in construction, gardening and plumbing. He is in good physical and mental health, and has a keen interest in the sport of basketball. He has no prior criminal record. When asked about these charges, the defendant told the author of the social inquiry report: "I pleaded guilty. I did what I had to do as my father was sick and I was dealing with other situations. I've learnt my lesson."
- [27] A report from Restorative Justice Officer Walter Barrett at HM Prison Balsam Ghut, dated 27th June 2022, was also received. It confirmed that, while on remand, the defendant had not participated in any work programs. He had not participated in any counselling programs either. The defendant was also unable to participate in any educational programs because, and the court finds this very troubling, all academic classes have been suspended due to a lack of any teachers attached to the prison. No indication was given as to how long that situation has existed nor when it may improve.
- [28] The prison report also indicates that the defendant has not been a model prisoner. From July 2021 to February 2022, he has generated seven incidents of disobedient, disrespectful or aggressive behaviour.
- [29] Although the social inquiry report recommends the defendant make use of counselling and mentorship programs, as well as educational upgrading, his lack of involvement thus far in such programs does not bode well for him. In the end, the determination to take part in those programs and improve his situation, is something that he will have to decide for himself.
- [30] We move now to the fashioning of an appropriate sentence in this case by application of the **Sentencing Guidelines**. Dealing first with counts one and two, the offences of robbery, begins with an assessment of the seriousness of the offence, its consequences and the harm caused. The items

stolen were of significant value to the female victims, regardless of their actual monetary worth. This is evident by the fact that one victim lost her pay cheque, although it was apparently later replaced. The loss of banking, credit and identification cards would have had a high level of inconvenience. There was consequential financial harm caused to the victims. Emotional distress caused by the robbery would have been obvious. It was a frightening experience. The risk of injury to persons or damage to property was extreme, due to the presence of the handguns in this incident. However, the business activity at Bay 6 was not affected overall. No one suffered any physical injury and there is no evidence of significant psychological harm to anyone. Taking all of that into account, the court places this case in category 2 - medium.

- [31] The second stage considers the seriousness of the offence by assessing the culpability of the offender. A firearm was produced. There was a substantial risk of serious harm or injury to members of the public, including the victims, as the robbery occurred in a public place. The defendant played a leading role in the incident as one of the two robbers, and admitted that to police under caution. All of this places the case into level A - high.
- [32] By combining consequence and seriousness, the starting point is calculated to be 60% or a range of 45% - 75%. However, since the penalty for robbery is imprisonment for life, we must turn to footnote 5 in the **Sentencing Guidelines**, which states that where the maximum sentence is life imprisonment, it is to be treated as 30 years for the purpose of calculation. The court therefore finds the appropriate starting point to be 60% of 30 years or 18 years.
- [33] The court must go on to consider the aggravating and mitigating factors pertaining to the offence. In this case, there was an attempt by the defendant to conceal his identity by wearing a mask. By dressing in dark clothing and wearing a mask, some degree of planning was obviously involved. It is also clear that the motivation behind the offence was greed. All of these are aggravating factors. No mitigating factors pertaining to the offence are present. Although prevalence of the offence is a potential consideration in this section, **ECSC (Sentencing Guidelines) Rules 2019 – Practice Direction 7A No. 1 of 2019** indicates that it must be established in some fashion. In this case, no evidence was presented by Senior Crown Counsel from local police, probation officers or any other

source as to the prevalence of this offence in this community. Without some evidence, the court is not prepared to take judicial notice of local circumstances relating to the incidence of this offence.

[34] After considering the aggravating features of the offence and determining that there are no mitigating features, the sentence shall be increased by 2 years to 20 years.

[35] As it pertains to the offender, the court considers aggravating and mitigating factors as set out in the **Sentencing Guidelines**. None of the aggravating factors listed, apply to this offender. However, there are a number of mitigating factors. The defendant is a young man, lacking maturity. He was 20 years of age at the time of the offence and is only now age 22. He is a person of good character with no previous criminal record. He rendered assistance to the authorities by cooperating with police and providing a statement under caution, describing the role he played in the incident. Given his age and lack of previous criminal record, he is a strong candidate for rehabilitation. After reviewing the defendant's personal history, as outlined in the social inquiry report, it is clear that his particular circumstances were severe if not desperate. He suffered multiple family illnesses and deaths. He lost the stability and structure of a family. He lost the support of his parents and his siblings, and found himself living in a homemade structure with no regular income. While that in no way justifies this serious criminal behaviour, the court must take it into account. Further, the cases on the principles of sentencing, such as **Desmond Baptiste**, tell us that a court should be mindful of the general undesirability of imprisoning young first offenders, although the more serious the offence, the less relevant that will be. These are all important factors for consideration.

[36] After applying the mitigating features of the offender, there being no aggravating features, the court grants a reduction in sentence of a further 3 years, taking the sentence to 17 years.

[37] Although it was not entered at an early opportunity, credit must be given to the defendant for his guilty plea. His plea was entered before his trial began and no evidence was taken in his case. The court therefore grants a further one third reduction in sentence, taking it to 11 years and 4 months. A sentence of 11 years and 4 months shall apply to each of count one, robbery and count two, robbery. The sentences shall, however, be served concurrently.

- [38] The defendant has been incarcerated on these charges since his arrest on 15th October 2020. Credit must be given for time spent on remand. He shall therefore receive credit for one year and 9 months, thus reducing his sentence to 9 years and 7 months. The sentence of 9 years and 7 months shall apply to each of count one, robbery and count two, robbery. The sentences shall, however, be served concurrently.
- [39] Turning to the offence of possession of a firearm with intent to endanger life, the court undertakes the same sentencing exercise using the **Sentencing Guidelines**. The penalty for this offence is a fine of not less than two hundred thousand dollars or imprisonment for a term of not less than twenty years, or both. The court is satisfied that the defendant would be unable to pay a fine of any significance and, more importantly, the court is satisfied that a custodial disposition is warranted on these facts. The court must therefore determine the appropriate length of imprisonment, and begins by assessing the seriousness of the offence, its consequences and the harm caused. In this case, the firearm was carried openly by the defendant during the commission of the robbery. It was pointed at the victims. That was assertive and intimidating behaviour, although the incident was over in seconds. This places the offence in category 2 - high.
- [40] The court next considers seriousness by assessing the culpability of the offender. Although there were two masked robbers involved in this incident, with the defendant being the only person convicted, the court would not go so far as to classify the incident as a group activity. The firearm was, however, openly carried in a public place. This places the offence into level B – medium.
- [41] Having determined the consequence and level of seriousness, the court determines the starting point to be 50% or a range of 35% - 65%. In this case, the court finds the appropriate starting point to be 50% of 20 years, or 10 years.
- [42] At the next stage, the court considers the aggravating and mitigating factors relating to the offence. The court can find no mitigating factors pertaining to the offence. However, an aggravating feature is the fact that the gun was never recovered and is still at large. Taking that into account, the court increases the sentence by one year, to 11 years.

- [43] In considering the aggravating and mitigating factors affecting the offender, the court notes the defendant's good character. He has no prior criminal record. He is a young man. The defendant was 20 years old and lacking in maturity when he committed these offences. He is 22 years of age today. The defendant is therefore a good candidate for rehabilitation. He assisted the authorities by providing an inculpatory statement to police under caution. Taking all of that into account, the court reduces the sentence by two years to 9 years.
- [44] The defendant must receive credit for entering a guilty plea. Although the plea was not as early as it might have been, it was entered before his trial began and no evidence was taken. He shall therefore receive a one third reduction, taking the sentence to 6 years.
- [45] Credit must also be given for time spent on remand. As already noted, the defendant has been in custody for these offences since his arrest on 15th October 2020. He shall receive full credit for that, in the amount of one year and 9 months, thus reducing his sentence to 4 years and 3 months. In determining this sentence, the court is satisfied that the imposition of a lesser penalty is fair and just in all of the circumstances, pursuant to **s. 27A(3) of the Firearms and Air Guns (Amendment) Act 2015**.
- [46] The court bears in mind the principle of totality, such that the sentence imposed for all the offences reflects the total degree of criminality, but remains just and proportionate. It reflects the overall offending behaviour but does not crush the defendant, thus eliminating the possibility of effective rehabilitation. These offences were committed in the course of the same transaction. The court finds it is therefore just and appropriate for the sentences to be served concurrently.

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

- (a) For the offence of robbery, count one, Lekhoy Hughes shall be imprisoned for a period of 11 years and 4 months. However, he shall receive credit for time served on remand, reducing the sentence to 9 years and 7 months.
- (b) For the offence of robbery, count two, Lekhoy Hughes shall be imprisoned for a period of 11 years and 4 months. However, he shall receive credit for time served on remand, reducing the sentence to 9 years and 7 months.
- (c) For the offence of possession of a firearm with intent to endanger life, count three, Lekhoy Hughes shall be imprisoned for a period of 6 years. However, he shall receive credit for time served on remand, reducing the sentence to 4 years and 3 months.
- (d) All of the sentences for counts one, two and three are to be served concurrently.
- (e) The total sentence imposed will take effect as of today's date.

Richard G. Floyd
High Court Judge

By the Court

Registrar