

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

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

BVIHCR 2019/0025

BETWEEN:

THE QUEEN

and

KHORI PRINCE

Appearances: Ms. Patrice Hickson, Counsel for the Crown
Ms. Stacy Abel, Counsel for the Defendant

**2021: November 12th
December 3rd**

JUDGMENT

- [1] **FLOYD J:** The Defendant was charged with four counts. On 28th September, 2021 he was arraigned and entered guilty pleas to Escape Lawful Custody, contrary to **s. 104 of the Criminal Code 1997** and Damaging Property, contrary to **s. 265 (4) of the Criminal Code 1997**. On 4th October, 2021 the Defendant was further arraigned and entered a guilty plea to another charge of Escape Lawful Custody, contrary to **s. 104 of the Criminal Code 1997**. A trial commenced that day on the remaining charge of Burglary, contrary to **s. 211(1)(a) of the Criminal Code 1997**. On 15th October, 2021 the jury returned a verdict of guilty to the Burglary charge. The case was adjourned and the matter now proceeds to sentencing.

THE FACTS

- [2] During the overnight hours of 28th – 29th December, 2018, a break-in occurred at the Mi Amor Jewellery Store located on Main Street in Road Town, Tortola. A significant amount of gold,

diamonds and other precious stone jewellery was taken, along with \$200.00 from the cash pan. The total loss had an estimated value of \$500,000.00. The witnesses, store clerk Keisha Almoraes and store owner Eileen Bourke, testified that they locked up the Mi Amor Jewellery store at the end of the business day on 28th December, 2018, after placing most of the jewellery and valuables into containers in the storage washroom. Upon their return next morning, store staff discovered the break in and the loss of jewellery, gold, diamonds and cash. A window was determined to be the likely point of entry and that was later pointed out to police. Due to a detailed accounting and inventory system, along with unique lines of product, many of the items stolen were identifiable.

- [3] The witness, D/C Morris, attended the location the day after the incident. He was designated as an expert in the processing of crime scenes, including photography and fingerprints. He carried out those duties at the Mi Amor Jewellery Store. He processed the ransacked storage room and the front window, which was slightly ajar. He concluded that the window was the point of entry. He developed two palm prints on the inside of the window frame ledge. Other prints were also processed elsewhere in the store. The fingerprint lifts were placed on cards and conveyed to D/C Washington. Although the prints were recent and relatively fresh, he could not say how long they had been there. The process employed involved the use of magnetic powder to develop the latent prints.
- [4] Police Technician Smith obtained fingerprints and palm prints from the Defendant, who cooperated fully and voluntarily with that process. She passed on those prints to D/C Washington.
- [5] D/C Washington was designated as an expert in fingerprint analysis. He has over 20 years' experience in the field and has made over 20,000 fingerprint comparisons. He compared the latent prints found at the crime scene with the prints provided by the Defendant, and had no doubt that the latent prints from the Mi Amor Jewellery Store were made by the Defendant. The prints were identical. He was confident in his examination of the prints and the results obtained.
- [6] Other witnesses, including D/S Etienne, D/S Avril and Insp. Williams, all testified as to the execution of search warrants at a residence in Greenland, East End, a residence in Cane Garden Bay and a motor vehicle parked close to the apartment building in Greenland. The defendant was located at the Greenland apartment. It was his brother's apartment. Jewellery from the Mi Amore burglary was

found there. Jewellery from the Mi Amor burglary was also found in the vehicle. Identification cards belonging to the Defendant were found in the vehicle as well.

- [7] The Investigating Officer, D/C Remy, testified that he interviewed the defendant under caution twice. Those interviews were recorded and transcripts were provided. Over the course of those interviews, the defendant maintained his innocence. However, he also gave conflicting answers as to whether he had ever been at or inside the Mi Amor Jewellery Store and if so, when that was. The defendant also averred that it was a long time ago and he had difficulty remembering.
- [8] On the basis of all of this evidence, the jury returned a verdict of guilty to the Burglary charge.
- [9] In regard to the remaining counts, the Defendant was in custody at the Road Town Police Station on 18th January, 2019 for the Burglary at the Mi Amor Jewellery Store. After being escorted to the restroom, the Defendant was returning to his cell when he bolted. The pursuing officer made use of a conducted energy weapon or Taser, which did not stop the Defendant, who ran out the back door of the station. The Defendant continued running through the station yard, over a wall and into a nearby schoolyard before escaping completely.
- [10] The defendant was at large for thirteen days until he was rearrested on 30th January, 2019. Later that day, while assisting the police with their inquiries, the defendant was transported from the police station to a residential location. Although in handcuffs, he was able to jump over an embankment and flee into nearby undergrowth. After a short pursuit, the defendant was recaptured that same day. The handcuffs he had been wearing were damaged in the process.
- [11] Guilty pleas were entered to two counts of Escaping Lawful Custody and one count of Property Damage.

SENTENCING BACKGROUND

- [12] A sentencing hearing took place on 12th November, 2021. It was confirmed that no Social Inquiry Report was sought in this case. Other than the Agreed Statement of Facts pertaining to the charges

to which guilty pleas were entered, no written submissions were received from Counsel for the Crown at that time. Defence Counsel provided written submissions and authorities, which were elaborated upon orally. However, on 1st December, 2021, the court received written submissions and authorities from Counsel for the Crown which were filed on 30th November, 2021.

THE LAW

[13] Sentencing in criminal cases involves many considerations. In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles set out in cases such as **R v Sargent**¹, referred to with approval by our appellate court in the seminal case of **Desmond Baptiste v The Queen, Saint Vincent and the Grenadines**². In the words of Lawton L.J. in the case of **R v Sargent**, the court endeavours to answer the question: “What ought the proper penalty to be?” Sentencing seeks to promote respect for the law and an orderly society. The sanctions imposed by a court when fashioning the proper penalty are based upon the classic principles of sentencing. In **R v Sargent**, those principles include:

- (a) Retribution, the court must reflect society’s abhorrence of particular types of crime through punishment of such unlawful conduct.
- (b) Deterrence, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences.
- (c) Prevention, to protect the public from offenders who persist in committing crimes by separating them from society.
- (d) Rehabilitation, to engage offenders in activities designed to assist them in their reintegration into society.

[14] The court in the **Desmond Baptiste** case confirmed at **paragraph 20** that “perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed.” The court went on to state that the age of the offender and the presence or lack of any criminal record were factors to consider.

¹ 60 Cr. App. R. 74

² Cr. App. No. 8 of 2003

[15] Five principal objects comprising the aims of sentencing were enumerated long ago in the case from the Court of Appeal of Trinidad and Tobago of **Benjamin v R**³. The court described those sentencing aims as follows:

- The retributive or denunciatory, which is the same as the punitive.
- The deterrent vis-a-vis potential offenders.
- The deterrent vis-à-vis the particular offender then being sentenced.
- The preventive, which aims at preventing the particular offender from again offending by incarcerating him for a long period.
- The rehabilitative which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.

The court recognized that, in some cases, one object will be predominant whereas in others regard must be had more particularly to two or more of them. All of this still holds true today.

[16] The imposition of a fit sentence requires many considerations. Although denunciation may be required, there is also a need to promote a sense of responsibility in the offender and to acknowledge the harm done. To do that, one must return to a weighing of characteristics of the offender with the facts surrounding the offence. The sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender. The court must consider the conduct and the moral blameworthiness of an offender and determine if the public interest is best served by either rehabilitating the offender, removing the offender from the community or a combination thereof.

[17] The Court in **R v Parranto**⁴ recently confirmed that sentencing is one of the most delicate stages of the criminal justice process. More of an art than a science, sentencing requires judges to consider and balance a multiplicity of factors. 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 sanction. Sentencing is a highly individualized exercise, approached on a case-by-case basis for this offence, committed by this offender, harming this victim, in this community. The court must determine which

³ (1964) 7 WIR 459

⁴ 2021 SCC 46 at paras 9, 10 & 113

objectives of sentencing merit greater weight and evaluate the importance of mitigating or aggravating factors to best reflect the circumstances of each case.

[18] I bear all of this in mind when approaching sentencing in this case.

[19] The offence of Burglary carries a maximum penalty of imprisonment for a term not exceeding fourteen years. This offence is enumerated in the **Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court**. Assistance is provided therein for crafting sentences generally and in particular as it relates to offences of dishonesty.

[20] Defence Counsel referred the Court to two cases. However, both were in regard to domestic or residential burglaries and one was a case of aggravated burglary involving the use of a firearm. Those are not the facts here. Defence Counsel, in her oral submissions, directed the court to the case of **R v Elijah Rolle, Brian Bailey & Miguel Estriado**⁵. That was a case involving multiple counts. In what was described as a determined non-residential burglary by a gang at night, causing notable damage and acquiring property to the value of just over \$40,000.00 EC, the starting point for sentence was 5 years or 60 months.

[21] Crown Counsel referred the Court to four cases. However, three were in regard to residential burglaries, including **William Penn v The Queen**⁶. Although Crown Counsel submits there are similar circumstances to the case at bar, other than the use of fingerprint evidence in solving the case, there is little else in common between these cases. The **Penn** case involved three (3) break-ins to tourist villas. Those are not the facts here.

[22] In a case from this Territory involving multiple counts, the court in **The Queen v Jason Leonard & Clifton Stoutt**⁷, imposed a sentence of 7 years for a non-residential burglary. A business was broken into in that case.

⁵ MNIHCR 2019/0013, 2019/0023, 2020/0007 & 2019/0014

⁶ HCRAP 2006/001

⁷ Crim. Case No. 10 of 2007

THE POSITION OF THE PARTIES

- [23] Counsel for the Crown provided an Agreed Statement of Fact for the counts to which guilty pleas were entered. No Victim Impact Statement was provided. Reference was made to the **Sentencing Guidelines of the Eastern Caribbean Supreme Court for Offences of Dishonesty – Burglary**. Although no documentation was provided, it was agreed that the loss suffered by the victim Jewellery Store owner was in the range of approximately \$500,000.00. It was confirmed that the Defendant had no adult criminal record.
- [24] Crown Counsel submitted that the Court should consider as aggravating features, the significant value of the loss, the damage to the property, the inconvenience, financial harm and emotional distress suffered by the victim and the overall impact to the business. In mitigation, she points out that no one was in the store at the time and minimal force was used to gain entry. Although some items had been recovered, most had not.
- [25] Crown Counsel referred to a record for the Defendant, however, it was confirmed during oral submissions that the record is small and is a record as a youth. For that reason, the Court will not consider it in passing sentence. Crown Counsel also pointed to a lack of remorse on the part of the Defendant. However, the Court notes that a Defendant should not be penalised for exercising his or her right to a trial and putting the Crown to the strict proof of its case.
- [26] Crown Counsel asked the Court to consider the prevalence of this type of offence as being an aggravating factor. However, in that regard, the Court refers to **Practice Direction 8A No. 1 of 2019** which holds that judicial notice can be taken of local circumstances, if appropriate. If it affects the sentence, then reasons must be given. Prevalence must, however, be established. The Court can receive evidence from local police, prosecutors, probation officers or other appropriate persons. Therefore, without any such evidence having been tendered in this case, the Court declines to take judicial notice of the prevalence, if any, of this type of offence.
- [27] Crown Counsel applied the **Sentencing Guidelines** and suggests a starting point of 30% of the maximum sentence, with a range of 15% - 45% but submits no final quantum for sentence.

- [28] In addition to the cases submitted, Defence Counsel referred the court to the **UK Sentencing Guidelines for Non-Domestic Burglary** as well as the **Sentencing Guidelines of the Eastern Caribbean Supreme Court, Offences of Dishonesty - Burglary**. They are remarkably similar.
- [29] Defence Counsel candidly submitted that the offences, in particular, the Burglary, were very serious. The loss was substantial, there was very little recovery, the offence occurred at night and the impact upon the victim was significant. In mitigation, Defence Counsel pointed out that no weapon was used, and no planning was indicated. The premises were empty at the time. Although, as the court pointed out, that was more of a neutral factor as unoccupied premises are a prime target for Burglary. However, with no shopkeeper present, the risk of harm was removed. Defence Counsel submitted that there was minimal damage to the premises, other than the apparent point of entry. There was no evidence of gratuitous damage or ransacking. Again, the court viewed that as more of a neutral factor than one of mitigation.
- [30] Defence Counsel submitted the age of the Defendant was a significant consideration. His date of birth is 20th January, 1999. He is 22 years old as of today and at the time of the offence, he was almost, although not yet, 20 years old. He was and still is, a young man. He has no adult criminal record. He entered guilty pleas to some of the charges. He has spent a significant amount of time on remand for these offences, since his arrest on 30th January, 2019. Defence Counsel therefore suggested the court consider a total sentence in the range of five to seven years, on all counts to run concurrently, with appropriate deductions as noted above.

FORMULATION OF SENTENCE

- [31] This is a very serious crime. Breaking into a Jewellery Store and removing so much stock as to effectively destroy the business was a terrible thing to do. Local businesses must be protected and encouraged to carry on their trade in the community. A message of deterrence must be sent specifically to this offender and to anyone else who would consider acting in this fashion, that such behaviour will not be tolerated and will be met with severe punishment, including lengthy incarceration.

- [32] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty, specifically, Burglary**. In establishing a starting point for sentence, the court has considered several issues. In assessing the harm caused by this offence, there can be no doubt that the Complainant suffered serious financial loss. The amount was estimated to be approximately \$500,000.00, perhaps less, but still a significant sum. Although minimal, there was nonetheless, property damage incurred when entry was gained to the premises. The financial harm done to the complainant was vast. She was not insured. She was forced to try and give back to her customers. Some customers lost items of sentimental value that were in the shop for trade, consignment or repair. Emotional distress was caused to the owner and all of the staff members who were distraught, as would be expected after such a terrible loss. The overall impact upon the business was enormous. I therefore place this matter in Category 1, High Consequence.
- [33] In terms of the culpability of the offender and the level of seriousness, I note that there is no evidence of sophistication or significant planning. Entry was gained through a window and then into a locked store room. Items and cash were removed from the storage room and the shop generally. The intrusion was therefore limited. Consequently, I would assign this to Level C, Lesser Seriousness.
- [34] By combining the first and second stages, I find the starting point for sentence to be 45% or 6.3 years or 75.6 months. Although the starting point is noted as 30% in the Guidelines, the range is noted to be 15% - 45% and it must be placed at the higher end due to the immense loss suffered by the complainant.
- [35] When examining the factors relating to the offence, it is noted that a Jewellery Store is a prime target for Burglary. Next to a Bank, a Jewellery Store must be considered a leading candidate for intrusion and theft. The stock is lightweight, valuable, easily transported and sold on. The impact on the local business community of an offence like this would have been significant. The entire Territory was still recovering from the natural disasters that had struck only a year earlier. The offence was motivated by greed and a desire for luxury associated with jewellery. The offence occurred under cover of darkness while the business was closed overnight. These aggravating features would increase the sentence by a further 8.4 months to 7 years or 84 months.

- [36] In considering the factors as they relate to the offender, it is noted that the Defendant has no record as an adult. These are his first convictions as an adult. He is now 22 years of age. He is a young man who obviously lacked maturity at the time of offending. The Defendant is therefore a candidate for rehabilitation. The sentence he receives should be crafted so as not to crush him, leaving him without hope of reintegration back into society. With the combination of youth and lack of record, I would therefore reduce the sentence by 12 months to 6 years or 72 months.
- [37] The Defendant has been incarcerated on this charge since he was arrested on 30th January, 2019. Credit must be given for time spent on remand. He has now served 1,038 days or 2.84 years. The Defendant will therefore receive credit for 2 years and 10 months, thus reducing the sentence to 3 years and 2 months or 38 months for the offence of Burglary.
- [38] As to the remaining counts on the Indictment, the maximum sentence for Escaping Lawful Custody is a term of imprisonment, not exceeding two years and for the offence of Damaging Property, the maximum sentence is a term of imprisonment, not exceeding ten years. Those offences are not enumerated in the **Sentencing Guidelines of the Eastern Caribbean Supreme Court**. Those offences, in particular, the counts of Escaping Lawful Custody are serious. Once detained, prisoners must respect the directions of their custodians. They are not free to move about and must remain where ordered. Behaviour in breach of that must be deterred. Similarly, the damaging of the means of restraint by a prisoner in order to facilitate his escape must also be deterred. A custodial sentence is therefor warranted on all counts. This is particularly so when considering the aggravating feature that, following his escape on 18th January, 2019, the Defendant was unlawfully at large for thirteen days. With regard to the remaining counts, I note the Defendant was recaptured almost immediately and the value of the property damaged, being the handcuffs, was \$70.00.

[39] Taking all of this into account, I therefore impose the following sentence:

Count one, Burglary, six (6) years imprisonment. However, the Defendant will receive credit for the time already served in this case, reducing the sentence to three (3) years and two (2) months.

Count two, Escape Lawful Custody, the sentence will be three (3) months.

Count three, Escape Lawful Custody, the sentence will be one (1) month.

Count four, Damaging Property, the sentence will be one (1) month.

[40] Since all counts are interrelated and arise from the same series of events and transactions, the sentences are to be served concurrently. The total sentence imposed as of today's date is, therefore, imprisonment for a term of three (3) years and two (2) months

Richard G. Floyd
High Court Judge

By the Court

Registrar