

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

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

CASE NUMBER: ANUHCR 2019/0083

BETWEEN:

THE QUEEN

V

KATHY-ANN ISAAC

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr. Wendell Robinson, Counsel for the Defendant

2020: February 24th
December 7th
2021: February 2nd, 18th
April 6th, 20th

JUDGMENT ON SENTENCING

Background

- [1] **SMITH, J.:** On 24th February, 2020 the defendant, Kathy-Ann Isaac entered a plea of guilty to the offence of aggravated robbery. The second count of conspiracy to commit robbery was withdrawn by the Crown.
- [2] In May 2020, the facts were presented to the Court by the Crown. Counsel Michael Archibald presented a plea in mitigation on behalf of the defendant. The Court also heard viva voce

evidence from Ms. Maxine Cannonier, the complainant who suffered substantially as a result of this offence.

- [3] The defendant was almost nine months pregnant and due to deliver her baby in June 2020 therefore sentencing was adjourned to 1st December, 2020.
- [4] On 7th December, 2020, after retaining new Counsel Mr. Wendell Robinson an application was made on behalf of the defendant for her plea to be vacated. This application was successful and the defendant upon her re-arraignment pleaded guilty to the offence of conspiracy to commit robbery. The aggravated robbery charge was discontinued by the Crown.

Facts

- [5] The defendant, Kathy-Ann Isaac was employed as an accounts clerk at the Carlisle Bay Resort located at Old Road. The complainant Ms. Maxine Cannonier was her supervisor.
- [6] On Monday 25th June, 2018 the defendant was scheduled to work and also the Tuesday 26th June of that week but called to report that her child was sick and that she would not be coming in. She reported for work on the following Wednesday but failed to show on Thursday and was late on the Friday.
- [7] On the Friday the defendant reminded her supervisor, of her absences and requested to work on Saturday 30th June, 2018 in order to make up for the lost hours. She was granted permission to do so.
- [8] On the said Saturday at about 11:20 a.m., the complainant arrived at work and went to the accounts department where she was employed as a junior accountant. She was joined in the office by the defendant a few minutes after midday. The defendant then left the office and returned a few minutes later.
- [9]. A short time later, there was a knock at the door and the defendant inquired as to whether the complainant was expecting anyone to which she replied “yes” and explained that a colleague was to come to collect her vehicle keys to wash it.
- [10] The defendant then went to open the door after which the complainant heard her let out what was described as “a loud frightening scream”. The complainant looked up and saw a masked individual with a silver gun pointing at her. The defendant who was with him appeared nervous and stated that she wanted to run.
- [11] Ms. Cannonier realizing that a robbery was taking place on the instructions of the robber she approached the safe and attempted to open it. However due to being petrified she entered the

code incorrectly three times. The man then told her she had two minutes to get the safe open and to give him the money. The defendant according to the complainant still appeared nervous at this time.

- [12] The robber did not go into the room where the safe was located and avoided being caught on the security camera located therein. Ms. Cannonier upon realizing that the robber could not see in the safe only put the monies from top of the safe which was a small amount in the bag which the robber had provided. The bulk of the money was at the bottom of the safe. The defendant then said to her to give him all the money and she started to pull all the money including the coins from the safe and put it in the bags. She then threw the bags at the man.
- [13] The man then asked for a vehicle key and the complainant gave him her key and he said she must give it to the defendant. All this time the defendant still appeared nervous and also reluctant to go with the man. She eventually left and went to the vehicle to start it before the man joined her in there.
- [14] The complainant made a call to inform another employee of what had transpired and the security guards were informed. Shortly thereafter the guards saw the defendant driving the complainant's vehicle. The security guards indicated that the man got out and pointed the gun at them and demanded that they open the gate. The defendant was in the vehicle screaming that she didn't want to die so they should open the gate. One of the guards opened the gate and the vehicle drove off at a high speed.
- [15] Mr. Freston Prince, a bus driver reported that he was at the back of Old Road at Claremont Estate when he saw a vehicle pull up, the defendant emerged from the left side and stumbled into some bushes and the vehicle then sped off. The defendant was observed gasping for breath as she held on to the bus and fell a few times before finally opening the door and throwing herself on a seat. She said nothing to the driver and his friend in the bus but when the bus stopped by the crowd that had gathered at Carlisle Bay she disembarked. She went on the compound of the hotel and collapsed and was assisted by other staff members who were still awaiting the police and emergency personnel. Her vitals were checked and were found to be normal while on the other hand Ms. Cannonier's blood pressure was found to be extremely high.
- [16] The ambulance eventually arrived and Ms. Cannonier and the defendant were transported together to the hospital. The defendant during this journey was observed messaging on her phone which Ms. Cannonier found to be suspicious.
- [17] The police commenced their investigations and learnt that the defendant was experiencing financial problems weeks prior to the offence being committed. This led to her speaking to a coworker about being paid off if she resigned approximately a week prior to the incident.

- [18] The defendant's boyfriend revealed to the police that the defendant had become very stressed in May 2018. He indicated that she had been given official notice that she would need to move the house she lived in from the land it was on as it belonged to a family member. She had been trying but was unable to purchase a piece of land as she was unable to obtain the funds. This financial stress according to him may have contributed to her suffering a miscarriage.
- [19] Prior to the robbery the defendant had expressed to him that she was worried about having to leave the house with her three children. She then stated that she and his brother were "going on a move".
- [20] The police subsequently took the defendant into custody where she gave a caution statement on 4th July, 2018.

Police Interview

- [21] In her first police interview the defendant stated that she had been experiencing financial difficulties and was very depressed and therefore felt trapped and suicidal but thought about her children.
- [22] She then came up with the plan for the robbery and sought the assistance of her boyfriend's brother Mr. Anthony Govia. The two met and discussed a plan. She told him she would drive him onto the compound in her car as she knew they didn't search staff members' vehicles arriving but only when they were exiting. Anthony agreed to the plan. They put the plan into action on the fateful day and she picked him up around 10:00 a.m. and drove him to the hotel in her trunk. She told him to come out at a certain spot and hide by some trees near the accounts department. They had already discussed that he was to come and knock on the door and he did so. She said when she opened the door and saw him well disguised she knew it was him but was still shocked as it was "real now".
- [23] The defendant explained that her accomplice stood outside the safe room because she had briefed him about the cameras. She stated that when they were leaving the compound and he was shouting at the guards that she was very frightened even though she had set up the robbery.
- [24] In her police interview on the following day, the defendant stated that she selected the weekend because less people worked then. According to her it was not part of the plan that she would leave the compound with Anthony. She said that she had planned to share the money between them and she would have used her share to get a house.
- [25] According to her she had never discussed with Anthony how she would get her share of the money because she did not think of that when they made the plan. She also claimed that after he put her out the vehicle she has not seen or heard from him. She further stated that she has not tried reaching out to him since the robbery as she has no contact number for him.

- [26] She explained that she found it strange that she was in police custody and that he had not brought in the money. She then remarked that she felt like a fool and she was played but this incident was a “learning lesson”.
- [27] The money stolen from the hotel on that day was EC\$64,149.00 and US\$12,626.00 – a total of approximately EC\$98,000.00.
- [28] The defendant was aged 33 years old and a first time offender. She was released from prison on bail on 25th July, 2018.

Aggravating and Mitigating Factors

- [29] The prosecution posited the following aggravating and mitigating factors in relation to the offence:

Aggravating Factors

Offence

- i. The conspiracy manifested into the commission of the offence of armed robbery during which a firearm was brandished
- ii. The armed robbery which stemmed from the conspiracy was committed at a hotel (one of Antigua’s 5 star rated hotels in a country where the economy depends largely on tourism)
- iii. The offence led to a large sum of money being stolen from the hotel - approximately EC\$98,000 which was never recovered

Offender

- i) There was a significant breach of trust as the defendant was an employee of the hotel in the accounts department
- ii) She was the mastermind behind this conspiracy and therefore can easily be considered a leader and not a follower.

Mitigating factors

Offence

There are no mitigating factors

Offender

- i) The defendant is a first time offender

The Pre-Sentence Report

- [30] A Pre-sentence report was requested by the Court. This report was prepared by Senior Probation Officer Alvin Jarvis. The report indicated that the defendant comes from a large but tight knit family. At the time of the commission of the offence she was in her early 30's.
- [31] The report stated that the defendant's mother is deceased but that she enjoyed strong emotional support from her siblings. She is the mother of four children. The report also indicated that the defendant at the time of the incident was President of the School PTA and that the Principal of the school expressed satisfaction with the defendant's contributions to the school and her involvement in her children's school life.
- [32] The author of the report stated that the defendant indicated that the defendant was sorry for her actions and of the role she played in the matter. Admittedly, her actions have been an embarrassment to her family, in particular her children, who the defendant claims were periodically teased at school over the incident.

The Matter before the Court

- [33] In terms of the relationship between the defendant and her accomplice, she disclosed that prior the incident she knew him for approximately six months, during which time they planned the robbery. In what appears to be an attempt by the defendant to minimize her role in the robbery, she stated that the idea was primarily that of her accomplice who she facilitated by providing him with the necessary details about the internal procedures of the accounts department.
- [34] At the time of the interviews with the probation officer, the defendant said she could not give a definitive reason for plotting and planning the robbery although an explanation was put forward to the police. According to the defendant she received none of the approximately \$98,000.00 that was stolen, and has not been in contact with her accomplice since the incident and has no knowledge of his whereabouts. This account coincides with the information provided in her police interview for the most part.

Family Situation

- [35] The defendant's father indicated that he is a bus driver by profession and has been operating his own bus service for many years. Mr. Isaac said he has been caring for the defendant since the

passing of her mother at the age of 12 and that to the best of his knowledge, she has had a good upbringing. He is of the opinion that during her formative years the defendant achieved all her developmental milestones with little or no challenges and always maintained good physical and mental health.

- [36] He further maintained that with the support of her paternal grandmother the defendant was taught good moral values that helped to guide her behavior over the years. He further stated that to the best of his knowledge the defendant was happy and content with what she had in life.

Work Relationships

- [37] Since this robbery was carried out at her then place of work this part of the report sheds some light on her work relationship, how her colleagues viewed her and how she viewed them. During an interview with the defendant's supervisor, the complainant it was revealed that she knew the defendant for 12 years prior to the incident. The supervisor characterized the defendant as a person whose attitude was not complementary to the work environment. The defendant was said to appear hostile, uncooperative, and disrespectful to management and staff on most occasions. Hence, the quality of her relationship with her peers in the accounts department deteriorated over time.
- [38] The report highlighted that the residual effects of the defendant's anti-establishment mannerism manifested in her reluctance to adhere to policies and guidelines. For example, her unwillingness to participate in training and other activities designed for staff development, such as to improve customer service skills. It was also reported that many of the service providers whose representatives would have come into contact with the defendant have made regular complaints about her poor customer service and unprofessionalism. At best the defendant's attitude was described as cold, and at worst abrasive.
- [39] The supervisor further stated that often times the defendant would express her desire to leave the establishment which would explain her crass behavior, with the hope of being terminated and receive compensation for her 12 years of service. It was reported that the defendant ascertained on the previous day leading up to the robbery that her supervisor would be at work and again early in the morning on the day of the robbery called to confirm that she was actually at work and in the office (accounts). The defendant's supervisor claimed that she was held at gunpoint throughout the ordeal and was terrified, thinking that her life may be cut short as the assailant had the gun trained on her. The traumatic experience is still indelibly etched in her mind and as such, has no feelings of sympathy for the defendant.
- [40] The defendant was given an opportunity to respond to the manner in which she was characterized by her supervisor. In so doing, according to the defendant she was not aware that she was thought of in such manner, because to the best of her knowledge they including the accounts staff) had a

good relationship. The defendant went on further to say that she can understand the emotional state of her peers because of her role in the robbery.

Supplemental Pre-sentence Report

- [41] A supplemental report was ordered by the Court to clarify certain assertions made by the defendant to her Counsel. The supplemental report clarified that the only award the defendant had received from her employers was for “personal grooming”.
- [42] The performance review forms showed average and sometimes below average grades for her. Many of the reports highlighted the “need for her to work on her people skills” and her dissatisfaction with her placement in the accounts department.¹¹ In addition to the employee performance reviews submitted to the Court, a series of questions were put to the human resource and accounts department seeking to clarify certain instructions given to defence Counsel.
- [43] To summarize the responses from the department *“the defendant’s role at the awards ceremony was primarily to be the master of ceremonies to announce the mimes of the winners. She was nominated on several occasions in various categories because she would have displayed some measure of potential. However she had never won any of the categories. According to the culture within the organization every member of staff every member of staff is required to assist with the distribution of ham and turkey around Christmas time. This is not an activity unique to the defendant and she would have done so for approximately three years”* In relation to the defendant’s ascertain that she would work extra hours and overtime to assist the department her supervision the complainant had this to say”
- [44] The report went on to add that it was mandatory for the accounts staff to complete assigned takes by the end of each workday which was not allowed to be carried over into the following day. Therefore it was the defendant’s choice to stay back late in order to complete her quota of work, “a result of her procrastination during her regular hours”.
- [45] The Court commends the efforts of defence Counsel in relation to putting forward a well-rounded and robust plea in mitigation. However the supplemental pre-sentence report as the original report does not put the defendant in a positive light, in fact the responses corroborate what the complainant and other members of staff at the Carlyle Hotel observed about the defendant and her attitude towards them and her work.

Victim Impact Statement

- [46] The Court had the benefit of hearing directly from the complainant. She indicated that she had suffered substantially as a result of this offence. She told the Court that she often had flashbacks, difficulty in sleeping and that she suffered from panic attacks. She was visibly shaken and she

¹¹ Employee Report 18th June 2018.

explained to the Court how the actions of the defendant had affected her mentally and physically meaning manifested in high blood pressure.

Mitigation

[47] Counsel Robinson put forth robust mitigation on behalf of his client. He called two character witnesses. Both spoke in glowing terms of her contribution to the Parents Teachers Association and to the general school life of her children. Ms Brazier a teacher of over 40 years at the Jennings Primary School spoke to knowing the defendant for many years as a student and as a parent. She said that she found her to be “determined to achieve academically and always worked hard, was willing and helpful. She was never rude”. She also said that in her view the offending was “out of character and I never expected this”.

[48] Counsel also indicated that there were several mitigating factors pertaining to the defendant namely:

“The last child has a heart condition.

- I. She co-operated fully with the police and give a confession and caution statement frankly;
- II. Court should accept the plea as one of guilty at first opportunity;
- III. She suffered depression, went to hospital and was placed on sick leave for two weeks;
- IV. Her financial woes are well documented; she had to move the house from the land within 28 days; she had a number of loans; and she felt helpless;
- V. The depression, etc. must have seriously impacted on her pregnancy because the child who is now 7 and a half months old has a medical issue that has to be monitored i.e., heart murmur. Additional child has overgrown head for his age.
- VI. Defendant is 35 and the mother of 4 children;
- VII. No previous conviction;
- VIII. Remanded in prisons for 2 weeks and a half;
- IX. Gained nothing from the incident; no financial gain
- X. She apologized before and the apology still hold true;
- XI. She regretted her actions and felt like a fool, got played and learn her lesson; she expressed regret towards the end of her interview with the police and WPC Ralford consoled her;
- XII. Insurance compensated the Hotel-our instructions;
- XIII. Not gotten her Thrift fund despite request in writing;
- XIV. Still the President of the Parents/Teachers Association and did a very recent zoom meeting with the Ministry of Education regarding the children and covid19 situation”

[49] Defence Counsel also stated that there was “*subtle manipulation or manipulation or acquiescence or nonchalant attitude on the par of Amoy Govia in the commission of the offence. While not seeking to cast blame, it is respectfully submitted that the lack of a robust resistance and rebuke from her ex-boyfriend, Amoy Govia, knowing the criminal background of the brother and noting something was afoot for 2 weeks (two Saturdays prior), should have been much more robust. This*

is lacking as he appeared only to be a Pontius Pilot, washing his hands, knowing that something serious was about to happen. It begs a number of questions”.

- [50] Counsel sought to show that the Larceny Act, Cap 241 and the amendment to the Law Revision Miscellaneous Amendment Act 2000 should not be applied as it created a lacunae in the law and that a sentencing Court had to be extremely cautious as to how it should be applied. Counsel submitted that the defendant entered a plea of guilty to the second count on the indictment and that it must be taken and understood to mean conspiracy to commit robbery simpliciter i.e. larceny under section 33 (2) of the Larceny Act, Cap 241.

Covid and Her Majesty's Prison

- [51] The defence has urged the Court to impose a non-custodial sentence. Counsel has referred the Court to the **Probation of Offenders Act** and has indicated that the provision can operate as a suspended sentence. The Court was also referred to the UK case of **R vs. Christopher Manning**². In that case the Court of Appeal (Criminal Division) confirmed that the impact of Covid-19 on prison conditions represented a legitimate factor which could be taken into account by sentencing Courts in deciding whether or not to suspend a sentence of imprisonment.
- [52] The Lord Chief Justice of England and Wales made this important comment in the context of a prosecution application that the sentence imposed on Christopher Manning was unduly lenient. Manning had been sentenced to 12 months in prison suspended for 24 months after he entered a guilty plea to four counts of sexual activity with a child and one count of inciting a child to engage in sexual activity. In addition, the Court imposed a tagged curfew for 9 months and a Rehabilitation Activity Order for 30 days. A strict Sexual Harm Prevention Order was imposed for 7 years and Manning was ordered to pay the girl £7,500 in compensation together with court costs of £1,200. The Crown appealed saying the sentence was too lenient.
- [53] The Court of Appeal in **Manning** ruled that the Judge had adopted as a starting point which was too low considering that there were four distinct contact offences and that the incitement was serious and imposed two years.
- [54] The 'real issue' for the Court of Appeal was whether it had been open to the judge to suspend this sentence. On this point, the Court determined that this decision was not wrong in principle as there was, for example, on the evidence before it a realistic prospect of rehabilitation.
- [55] The Court mentioned one other factor of relevance:

“We are hearing this Reference at the end of April 2020, when the nation remains in lock-down as a result of the Covid-19 emergency. The impact of that emergency on prisons is well-known. We are being invited in this Reference to order a man to prison nine weeks after he was given a suspended sentence, when he has complied with his curfew and has engaged successfully with the Probation Service. The current conditions in prisons represent a factor which can properly be taken into account in deciding whether to

² [2020] EWCA Crim, 592

suspend a sentence. In accordance with established principles, any court will take into account the likely impact of a custodial sentence upon an offender and, where appropriate, upon others as well. Judges and magistrates can, therefore, and in our judgment should, keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are, for example, confined to their cells for much longer periods than would otherwise be the case – currently, 23 hours a day. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19.”

- [56] The Court allowed the application to the extent that it substituted for the custodial term of 12 months as opposed to 24 months. The sentence remained suspended and all other orders remained unaffected.
- [57] In the case at bar the Court heard from the Acting Superintendent of the Prison, Mr. Jermaine Anthony Jnr. His testimony to the Court indicated that the total population as at 17th February, 2021 was 242 with 8 females being housed on the female wing. He responded to a question posed regarding the conditions of the female wing that *“it is much better position than the male in terms of infrastructure, staff and amenities”*. He also indicated that 34 inmates had contracted corona virus but no female prisoners had tested positive for the virus. The Court has taken judicial notice of the female wing at the prison and the fact that the wing is spacious with females being able to move around and pursue recreational activities. The female wing is not overcrowded.

Sentencing for Conspiracy

- [58] The offence of conspiracy to commit robbery is governed by the common law. The punishment for conspiracy at common law is a fine or imprisonment or both, and there is no limit upon either provided that the sentence awarded is not inordinate³:
- [59] In the case of **R v Morris** [1951] 1 K.B. 394, the Court of Appeal held that though it was lawful to pass a sentence greater for conspiracy than the substantive offence in exceptional circumstances, in the usual course, it is not right to do so.
- [60] Additionally, in the case of **The Queen v Andrew Milton, Dennis Campbell and George O'Connor** [No. 18 of 2007], from the High Court of the British Virgin Islands, Hariprashad-Charles, J at paragraph 15 cited the case of **Barot**⁴ with approval and highlighted three factors to be borne in mind when sentencing in a conspiracy matter:
1. Seriousness of the offence
 2. Detail of planning involved
 3. Whether the conspiracy would have been put into practice

³ Archbold Criminal Pleading, Evidence and Practice (41st Edition) – paragraph 28-42

⁴ [2007] EWCA Crim 1119

- [61] The Court agrees with the Crown's submission that In order for the Court to sentence for the offence of conspiracy to commit an offence, the Court must have regard to the substantive offence and its penalty. There is some guidance found in the case of **Barot (supra)** at **paragraph 47**:

"In approaching the sentence for an inchoate offence it is appropriate to start by considering the sentence that would have been appropriate had the objective of the offender been achieved."

- [62] The Court further stated at **paragraph 62** that another relevant factor will be the nature of the involvement of the particular defendant in the attempt or the conspiracy. A leader should receive a more severe sentence than a follower. In the case at bar despite Counsel's submissions the facts clearly show this defendant to be the mastermind and the leader in this plot.
- [63] In the case of **R vs. Turner**⁵, a bank robbery case, Lawton LJ said that the normal starting-point for sentence for anyone taking part in a bank robbery or in a hold-up of a security should be 15 years, if firearms were carried and no serious injury done. The lack of a previous criminal record is not to be regarded as a powerful mitigating factor.
- [64] The Court notes that there are no sentencing guidelines issued by the Eastern Caribbean Supreme Court In relation to any conspiracy offence. Crown Counsel in her submissions has said that the Court can be guided by "the maximum penalty for aggravated robbery which may be treated as twenty five years imprisonment' The Court has a difficulty with this submission as the defendant clearly entered a plea of guilty to conspiracy to rob and **NOT** aggravated robbery.
- [65] Having considered the facts and the contents of the defendant's police interview there can be no doubt that this defendant was indeed the leader and the mastermind behind the plot to rob her place of work clearly being what is commonly called "an inside job". Her play acting during and after the robbery shows that she had thought out her role and how it would be executed.
- [66] The Court finds the following aggravating and mitigating factors but has discarded many of the factors put forward by Counsel as no supporting evidence has been placed before the Court to support them.

Aggravating Factors

Offence

- I. The conspiracy manifested into the commission of the offence of robbery during which a firearm was brandished
- II. The offence was planned in detail and premeditated
- III. The robbery which stemmed from the conspiracy was committed at a hotel (one of Antigua's 5 star rated hotels in a country where the economy depends largely on tourism)

⁵ [1975] 61 Cr. App. R. 67, CA at p.91

- IV. The offence led to a large sum of money being stolen from the hotel - approximately EC\$98,000 which was never recovered

Offender

- I. There was a significant breach of trust as the defendant was an employee of the hotel in the accounts department
- II. She was the mastermind behind this conspiracy and therefore can easily be considered a leader and not a follower

Mitigating factors

Offence

There are no mitigating factors

Offender

- ii) The defendant is a first time offender
- iii) She entered a guilty plea
- iv) She is the mother of minor children
- v) Expression of remorse

Sentencing Guidelines

- [67] The Court will be following the Eastern Caribbean Supreme Court Sentencing Guidelines for the offence of robbery⁶. Within the Eastern Caribbean, in the nine member states and territories there are different approaches to robbery, particularly with or without firearms, and there are often different maximum sentences. For the purposes of this guideline, the word 'robbery' is used generically to cover all types, and whether as **conspiracy or a substantives offence** (my emphasis).
- [68] The Court will be using robbery simpliciter as indicated in paragraph 29 of this ruling the defendant entered a plea to the alternate count on the indictment which read "conspiracy to commit robbery contrary to common law". The maximum penalty for robbery is 7 years as indicated by section 33 (2) of the Larceny Act Cap
- [69] Having said that, the Court views this offence as being very serious. This is based on the fact that there was some detrimental effect on a business in the form of the loss of a large sum of money.

⁶ Within the Eastern Caribbean, in the nine member states and territories there are different approaches to robbery, particularly with or without firearms, and there are often different maximum sentences. For the purposes of this guideline, the word 'robbery' is used generically to cover all types, and whether as **conspiracy or a substantives offence** (my emphasis).

Additionally there was some psychological harm to a victim in the matter, namely Ms. Maxine Cannonier who after this incident was traumatized to the extent that her blood pressure became elevated. Significantly, the Court heard testimony from the complainant who indicated that the offence was still having an adverse effect on her over two years later.

- [70] In terms of the seriousness of the offence, this matter can be considered in the Level A category since there was the production of a firearm during the commission of the offence, there was a breach of a high degree of trust and there was some significant planning involved in order to execute the robbery. In those circumstances, the Court recognizes and has regard to the authorities from around the region and the role which this defendant played in the robbery. The learning in the case of **Turner** is instructive,
- [71] Additionally, the Court considers paragraph 29 of the judgment in **Desmond Baptiste v The Queen et al**⁷ an often cited sentencing authority from our Court of Appeal. At that paragraph Byron, CJ (as he then was) stated:

“As to the fact that the offender was committing a crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all the other mitigating circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance.”

- [72] Finally, the Court of Appeal in the case of **Harry Wilson v The Queen**⁸ expressed that it is mandatory for a judge to take into account the personal and individual circumstances of the convicted person and that factors that might have influenced the conduct of the person must be considered. In the instant case, the offence appears to be out of character for the defendant and according to her it was motivated by financial difficulties which lead to depression. Nonetheless, while the Court takes account of her personal circumstances, this must be balanced against one of the primary objectives of sentencing – deterrence (both for the offender and potential offenders in society). The Court has to send a message that this type of conduct will not be tolerated and so the sentence has to reflect the abhorrence with which the public regards those who rob and conspire to rob.
- [73] With a starting point of 7 years the Court will scale this upwards and downwards to take into account the aggravating and mitigating factors. The Court agrees with the aggravating and mitigating factors as put forward by the Crown.
- [74] The aggravating factors will scale the figure upwards by five years to take into account these factors. This will bring the figure to 12 years. The mitigating factors as set out in paragraph 30 will when applied bring the figure down to 7 years. The defendant entered a plea of guilty which will result in a 1/3 reduction bringing the figure to 4 years and 6 months.

⁷ Appeal no. 8 of 2003

⁸ Appeal no.30 of 2004)

- [75] The Court will also take into account the situation at Her Majesty's Prison and the fact that we are in the grip of a pandemic. However, the Court is reassured by the testimony of Acting Superintendent Jeremie Anthony and is satisfied that the defendant will not suffer any adverse treatment or punishment or any extraordinary conditions while incarcerated. In any event a further two years will be deducted in keeping with the learning in the **Manning** case. The defendant is therefore sentenced to 2 years and 6 months imprisonment. The sentence is to take place from today's date.
- [76] The Court wishes to thank the Crown for its detailed sentencing brief and Counsel Robinson for his robust plea in mitigation while acting *amicus*. Also, the Court wishes to thank Mr. Jarvis of the Probation Department who submitted a detailed Pre-Sentence Report and the supplemental report both of which were extremely helpful in this sentencing.

Ann-Marie Smith
High Court Judge