

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

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

CASE NO. ANUHCR 2020/0053

BETWEEN:

THE QUEEN

v.

JUAN DIAZ

Defendant

2020: July 27th,
September 25th,
October 5th.

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr. Michael Archibald, Counsel for the Defendant

JUDGMENT ON SENTENCING

Facts in Brief

- [1] **SMITH, J.:** The complainant, Mrs. Kara-Ann Spencer lived with her husband at Sunset Cove Apartments at McKinnons also being the overseer of the property. She and her husband used one of the apartments as a storeroom for household items and appliances. That room was secured by locking the windows and the two external doors which were fitted with a cylindrical lock and deadbolt. The defendant, Mr. Juan Diaz also occupied one of the apartments.
- [2] On Sunday 7th October, 2018 at about 2:30 p.m., Mrs. Spencer went to the said apartment. She noticed that the lock had been damaged and that the deadbolt was unlocked. In her deposition to the Magistrates' Court she stated that she looked into the room and realized that the room had been ransacked. She stated that she immediately left and returned with her husband. It was then

that she noticed that several items were missing. Of those were a washing machine and dryer, a laundry pedestal, a folding table, an ice cooler and some other kitchen items and appliances. The total value of the missing items was estimated to be EC twenty thousand, four hundred and sixty five dollars and seventy one cents (\$20,465.71).

- [3] Upon Mr. Spencer's arrival, he stated in his deposition that he noticed that several of the wooden louver windows were in an incorrect position and that a window screen at another window was bent and slightly pulled from the window frame. The police were called and shortly thereafter commenced their investigations.
- [4] The following morning Mr. Spencer received a phone call from the defendant through another neighbour whereby the defendant admitted that he had taken the missing items. The police were informed of this development and returned to the property with a search warrant to search the defendant's premises. During the search, the police were able to recover some of the stolen items: - washing machine, dryer, folding table, serving tray and a chafing dish.
- [5] The defendant was taken into police custody and on 11th October, 2018 when the allegation was put to him, he elected to write a statement. In the statement, he admitted to breaking into the apartment and stealing the items. He said he felt bad about it and wanted to speak to the owner but only saw him days later and that the police were already involved.
- [6] He was subsequently arrested and charged. He was twenty two (22) years old at the date of this offence.

Legal Framework

- [7] The maximum sentence for the offence of housebreaking and larceny is seven (7) years imprisonment. The Court is also empowered to order restitution and impose a fine. The offence is contrary to contrary to Section 30 (a) of the **Larceny Act Cap. 241** of the revised edition 1992 of the Laws of Antigua and Barbuda¹.

¹ Within the ECSC, in the nine member states and territories there are different words used to describe entering premises with intent to commit an offence, (e.g. the words 'burglary' and 'housebreaking' are often used), and there are often different maximum sentences. For the purposes of this guideline, the word 'burglary' will be used generically to cover all non-aggravated types, and whether as conspiracy, attempt, or a substantive offence. Where charged, sentences for aggravated burglary will be a separate guideline.

Pre-sentence Report

Early Life

- [8] A pre-sentence report was ordered by the Court on 27th July, 2020 and delivered to the Court in September 2020. The report was prepared by Ms. Nakitia Williams, Probation Officer. The report indicates that the defendant is the father of two small boys and that his formative years were spent with his father and paternal grandmother as his mother had migrated. He added that his mother returned to Antigua when he was aged sixteen (16). His father emigrated when he was aged six (6) and last saw him when he was fourteen (14) years old.

Positives

- [9] At the Jennings High School the defendant was a part of the music programme playing in the steel band. He also passed seven (7) CXC subjects graduating with a High School Diploma. Upon leaving high school he secured employment as a boat captain and obtained a boat master's licence. All of the persons interviewed by the author of the report spoke of the offender's behaviour being out of character. All expressed shock when they learnt of the matter before the Court. A community member when interviewed stated that *"he is not the type of person to get himself into trouble with the law or even within the community"*. It appears to the Court that this defendant is a prime candidate for rehabilitation.

Plea in Mitigation

- [10] Defence Counsel reiterated aspects of the report and pointed out that the offending of the defendant was out of character and was caused by desperation on his part. Counsel pointed out that the defendant was facing serious financial challenges and that he labored under the misinformation that the said premises had been abandoned. This of course was not the case. The report also states that the defendant had recently become a father and wanted his home to be comfortable for his family.

Victim impact Statement

- [11] The complainants attended Court and indicated that while the items had been recovered, the brand new washing machine was scratched and the dryer totally 'burnt' out. Mr. Spencer indicated that he and his wife had been severely inconvenienced by the defendant's conduct. They both stated that they were put to expense in order to replace the damaged items.

Construction of the Sentence

[12] The Court found the following Aggravating and Mitigation factors:-

Aggravating Factors relating to the defendant

- I. There were no aggravating factors relating to the defendant

Aggravating Factors relating to the offence

- I. The value of the goods initially stolen notwithstanding that some items were recovered
- II. Loss and inconvenience experienced by the victims

Mitigating Factors relating to the offender

- I. The defendant is a first time offender
- II. The defendant is the father to two minor children
- III. At the time of the commission of the offence the defendant was aged twenty two (22)
- IV. The defendant has shown remorse²

Mitigating Factor of the offence

- I. A large portion of the goods were recovered

Sentencing Guidelines

[13] The Sentencing Guidelines of the Eastern Caribbean Supreme Court dictates that the Court address the seriousness of the burglary relating it to the harm caused to the victim in the case. As stated in paragraph seven (7) of this decision, in Antigua the offence is worded as Housebreaking and Larceny and is contrary to Section 30 (a) of the **Larceny Act Cap. 241** of the revised edition 1992 of the Laws of Antigua and Barbuda³.

[14] The maximum penalty for this offence is seven (7) years imprisonment. In this case the value of the amount of the goods stolen was EC\$20,465.70 with the vast majority of the items being recovered. The Court places this level of offending into category three medium where the goods are valued between EC\$1,000 to EC\$50,000 and with no significant additional harm. The Court heard from the victims and has noted what they had to say in relation to their goods being stolen and damaged.

[15] In terms of seriousness, the Court after consulting the sentencing guidelines would place this level of offending in category 'C' where there was very little planning and where the defendant acted

² The author of the probation/pre sentence report stated "it is worthy to note that the defendant was tremendously cooperative throughout the interview and appeared remorseful about the matter before the court".

³ Within the ECSC, in the nine member states and territories there are different words used to describe entering premises with intent to commit an offence, (e.g. the words 'burglary' and 'housebreaking' are often used), and there are often different maximum sentences. For the purposes of this guideline, the word 'burglary' will be used generically to cover all non-aggravated types, and whether as conspiracy, attempt, or a substantive offence. Where charged, sentences for aggravated burglary will be a separate guideline.

alone. This offence appears to be an offence of opportunity where the defendant seized upon the opportunity to break into the apartment and steal the contents therein.

- [16] The maximum sentence of housebreaking as set out in paragraph seven (7) is seven (7) years. The Court applies a percentage of 20 per cent of the seven years which would result in seventeen (17) months in prison.
- [17] The sentence of seventeen (17) months will be further adjusted downwards as the mitigating factors outweigh the aggravating factors. The Court will adjust downwards by six (6) months bringing the sentence to eleven (11) months. The defendant has also entered an early guilty plea which will result in the sentence being reduced further by one third bringing the sentence to eight (8) months.
- [18] The Court is guided on the learning of the former Chief Justice Sir Dennis Byron in the case of **Desmond Baptiste vs. The Queen**⁴ where guidelines were set down for sentencing including the guideline of imposing non-custodial sentences for young first time offenders. In his plea of mitigation Counsel also urged the Court to find that the defendant is a fit and proper candidate for a non-custodial sentence.
- [19] The Court is also mindful that it must not pass a custodial sentence unless it is of the opinion that the offence was so serious that no other sentence can be justified for the offence and clearly this is not the case here.
- [20] Consequently, having regard to all of the above and the Sentencing Guidelines of the Eastern Caribbean Supreme Court, this Court will sentence the defendant to a non-custodial sentence.
- [21] The **Probation of Offenders Act** states at section 2(2):-

“Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discarding the offender condonably on his entering into a recognizance with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order”.

- [22] Having regard to the above, the Court will place the defendant on probation for two (2) years. He will be required to adhere to the requirements of his probation supervisor and the terms of the Probation Order. If he breaks the Probation meaning if he commits further offences whilst on Probation he will spend six (6) months in prison. He is to enter a recognizance with the Probation Department without a surety.

⁴ HC Criminal Appeal, 8 of 2003

[23] In considering ancillary matters, the Court orders that the defendant pays to the victims the sum of EC five thousand (\$5,000) which represents the value of the damaged items. This compensation is to be paid on or before 31st January, 2021 in default he will serve six (6) months in prison.

Ann-Marie Smith
High Court Judge