

**IN THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**ON MONTSERRAT**

**CASES MNIHCR 2019/0013, 2019/0023, 2020/0007 [& 2019/0014]**

**REGINA**

**V**

**ELIJAH ROLLE, BRIAN BAILEY & MIGUEL ESTRIADO**

**APPEARANCES**

For the Crown: Mrs Korah Galloway on cases 2019/0013 and 2019/0014; Mrs Kristin Taylor-Hilton on case 2019/0023; and Mr Oris Sullivan, Director of Public Prosecutions, on case 2020/0007.

For Elijah Rolle: Mr Warren Cassell on case 2019/0013; and Mr Hogarth Sergeant on cases 2019/0013, 2019/0023 and 2020/0007.

For Brian Bailey: Mr Kenroy Hyman on cases 2019/0023 and 2020/0007.

For Miguel Estriado, on cases 2019/0014 and 2020/0007 he represented himself.

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**2020: JULY 16**

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**SENTENCE**

**Of three defendants on variously four sets of offences, mostly for dishonesty**

- 1 **Morley J:** Three defendants face sentence for various offences as follows:
  - a. Elijah Rolle aged 19 (dob 01.06.01) for:
    - i. On case 2019/0013, one count of indecent assault on 22.10.18 to which he pleaded during trial on 04.10.19.

- ii. On case 2019/0023, one count of forgery (count 3) on about 19.08.19 of 9 cheques burgled from a drawer at 'Eye-mobile' store within 24 hours earlier, belonging to Ronnie Cooper, to the forged value of more than \$4900ec, while on bail for the indecent assault, to which he pleaded guilty at the first practicable opportunity on 14.01.20.
  - iii. On case 2020/0007, one count of burglary overnight on 28.01.20 of 'Karishma' store, stealing goods and money to the value of \$40080ec and doing damage to gain entry via the roof to the value of \$7650ec, totalling \$47730ec, while on bail for both the indecent assault and the forgery, to which he pleaded guilty at the first practicable opportunity on 29.05.20.
- b. Brian Bailey aged 20 (dob 12.03.00) for:
  - i. On case 2019/0023 five counts (counts 1,2,4,5,6): being two counts of handling stolen goods, respectively 13 items of electronics on 22-23.08.20, within 24 hours earlier burgled from 'Amobile' store, to the value of \$4050ec, and 10 items of variously electronics, jewellery and clothing on 18-19.08.19, within 24 hours earlier burgled from 'Hook me up girlfriend' and 'Unlock me now' store, to the value of \$6550ec; being goods handled to the total value of \$10600ec; and three counts of uttering of forged documents, being the encashment of three cheques belonging to Ronnie Cooper, respectively on about 28.08.19 for \$600ec at Angelos supermarket, \$600ec at Victors supermarket, and \$700ec at Aravins supermarket; being \$1900ec cashed; all totalling \$12500ec; all to which he pleaded guilty at the first practicable opportunity on 14.01.20.
  - ii. On case 2020/0007 one count of burglary, as for Rolle, while on bail for the handling and encashments, pleading guilty at the first practicable opportunity on 04.06.20.
- c. Miguel Estriado aged 30 (dob 27.05.90) for:
  - i. On case 2019/0007 one count of burglary, as for Rolle and Bailey, pleading at the first practicable opportunity on 29.05.20.
  - ii. On case 2019/0014, by the burglary on 28.01.20 Estriado is in breach of a suspended sentence of 8 months suspended for 18 months, imposed on 03.12.19 for handling stolen goods on about 25.04.19, namely four rings belonging to Rose

Irish, valued at \$942.94ec, burgled days earlier from her home by Elvis Aymer aged 18 (separately sentenced), and for which on sale of the rings Aymer gave Estriado waiting outside the shop \$250ec with which he then bought a pendant and chain.

- 2 Dealing with the sentence, by zoom with counsels' agreement, the judge being on Antigua owing to covid, so far has taken an astonishing five hours, on 14.07.20, with the prosecution opening the facts over 2hrs 20mins, from 13.15 to 15.35, there was a break, with then mitigation from 16.00 to 17.55, a short adjournment following, with then a decision at 18.10 to reduce the sentence to writing for today, 16.07.20. Hereafter in future cases time limits may arise.
- 3 Concerning the indecent assault, it began as a trial, but Rolle pleaded guilty after hearing the evidence of the complainant, a relative KB<sup>1</sup>, aged 12. It was alleged after dinner in the kitchen Rolle, a minor aged then 17, had grabbed KB by the buttocks, pulled down her shorts, her panty came down too, he knocked her to the floor, and had held her down by the shoulder with both hands, making threatening growling noises. She complained immediately, and he was arrested, denying everything.
- 4 Adjourning for a stand-down social enquiry report for sentence, the court intimated it would contemplate a non-custodial term given Rolle was a minor, and on returning was then told of his being charged with various burglaries, so that the sentence was delayed without opposition from counsel for resolution of any outstanding matters.
- 5 During mitigation, Counsel Warren Cassell, appearing only on the indecent assault, insisted there should be a non-custodial sentence for that offence, suggesting he was not concerned with later developments, of further offences, and on bail, which is legally and logically nonsense. I have made it plain any custodial sentence which may follow for the subsequent dishonesty offences will not be elongated by the indecent assault, but Counsel Cassell persists there should be a non-custodial disposal notwithstanding Rolle may be jailed for his other offences. This court is on its guard against irrational argument, supported by disingenuously

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<sup>1</sup> KB is not identified publicly as being a minor and it being a sexual offence she is entitled to anonymity.

narrow focus on limited hearings, where the full picture is cleverly withheld from the Court of Appeal. Such practice, whenever it arises, may be a form of misconduct. If any point is taken on the sentence which will follow for the indecent assault, it is hoped this judgment will serve to keep the bigger picture properly before the senior court so that it is not led astray by filtering of events, and selective quotes from limited transcripts.

- 6 Moreover, as a matter of good practice, it is arguably desirable if only one counsel appears for one defendant for all offences at a time.
- 7 Concerning case 2019/0023, it is to be noted the burgled goods and cheques were all in the hands of Bailey and Rolle within 24 hours of the burglaries, Rolle having 5 cheques uncashed but forged in his wallet, each poised forged for \$600ec, while Bailey had already cashed 3 others. This all suggests proximity to the burglars.
- 8 Concerning case 2020/0007, the burglary was planned, with Rolle sending a whatsapp to Bailey to alert him to help, while another aged 13 was also recruited and led astray, with Estriado, and as Rolle acted as lookout, the other three entered into the store through the roof, breaking the cash register open, for which they had tools and a crowbar, showing determination.
- 9 Captured on cctv, all three defendants have been in custody since the burglary, meaning now more than six months. Rolle and Estriado made admissions, while Bailey made no statement.
- 10 Concerning mitigation:
  - a. Of Rolle, there was a stand down report on 14.10.19 and a pre-sentence report on 29.06.20. He has had an uneven upbringing, living with his older sister in recent years. He moved out as soon as he turned 18, and it appears was quickly in dishonest company.
  - b. Of Bailey, there was a presentence report on 06.05.20, while his mother Tricia Taylor Richmond spoke movingly to the court on 14.07.20 of the challenges of his conception on Jamaica and her sadness she had been absent from her son's life between 4 and 15, how he came to Montserrat in 2015, but had to leave in 2016 after trouble at school, being left on his own on Jamaica, living with his very elderly grandparents, before return to her in 2018, though in trouble from 2019.

- c. Of Estriado, there was a pre-sentence report on 08.07.20, and he spoke well to the court how he was not a bad person, had fallen into poor company, had made mistakes, was remorseful, but was weak in answer when confronted with why it was that he spent time, now 30, the father of a child aged 12, with persons so very much younger, their being less than 20, including Aymer, plus on a burglary with one aged 13, raising the spectre he really ought to have known better, and begging whether he might be the coordinating personality. However I cannot be sure and so will not sentence him as such, but he will be held to account for his greater maturity.
- 11 Much was said by Counsel Hogarth Sergeant the youth of Rolle, plus his unstable home background, suggests psychologically he needs support, though no report was requested, including when the court asked if sought. The same might be said of Bailey. However, both know right from wrong, and a fortiori were on bail committing offences, so that while the curious feature of the psychology of events may attract some sympathy for a first offence, the feature weakens when offending is persistent and in the teeth of court appearances.
- 12 Moreover, I am mindful on Montserrat burglary and dishonesty are regarded with particular abhorrence, it being a thankfully rare event, unlike for example in London, and the public will expect any sentence ought to deter, to preserve this idyll where folk can leave their homes and cars unlocked.

### **Constructing the sentence**

- 13 Maximum sentences are: for indecent assault, 10 years; forgery, or uttering a forged document, arguably up to life, alternatively 14 years; handling stolen goods, 10 years; and burglary, 14 years.
- 14 I will begin with the burglary. This was a determined non-residential burglary by a gang at night, causing notable damage, and acquiring property to the value of just over \$40000ec. I calculate the starting point is 5 years, or 60 months. By the time of the burglary on 28.01.20, each defendant had a previous conviction for dishonesty, increasing the sentence by 9

months, to 69 months, but reduced for Bailey and Rolle by 12 months to 57 months for their youth. Discounted one-third for plea, the sentence for Rolle is 38 months, Bailey is 38 months, and for Estriado is 46 months.

- 15 Concerning Rolle, as to the forgery concerning 9 cheques, which was calculated, and multiple, closely associated with the burglary of Eye-mobile, the sentence shall be 2 years, or 24 months, discounted one-third for plea, being 16 months. This shall be consecutive to the burglary sentence, as one was on bail for the other (in reverse), making a total of 54 months. As to the indecent assault, I have already said that should not result in separate time in custody, and it is perhaps unfortunate I cannot pass a probation order, with community service, but it is pointless in the teeth of the custodial sentences here expressed, and so, as the indecent assault is capable of passing the custody threshold, I shall pass 12 months, but concurrent to the forgery so it amounts to no separate penalty. For youth, the total of 54 months should now be adjusted down for totality by 3 months, to 51 months, which I will take from the forgery, being now 13 months, with 38 months consecutive, making 51 months, or 4  $\frac{1}{4}$  years.
- 16 Concerning Bailey, as to the encashments the sentence shall be 12 months on each of the three counts, discounted for plea to 8 months, concurrent to each other, while for the two counts of handling of stolen goods, there shall be 2 years on each, discounted for plea to 16 months, concurrent to each other, but together consecutive to the forgery counts, as these were separate styles of offending, all closely associated in time to burglaries of three other premises. This means a total of 24 months as the combination of the handling and the encashments, and this will be added as consecutive to the burglary sentence of 38 months, as they were offences on bail (in reverse), meaning the total sentence is 62 months. For youth, the total of 62 months should now be adjusted down for totality by 8 months, which I will take from the handling, being now 8 months with 8 months consecutive, being 16 months, with 38 months consecutive, making 54 months, being 4  $\frac{1}{2}$  years.
- 17 Concerning Estriado, he is in breach of the suspended sentence, as described, and so it shall be activated, consecutively to the 46 months, making a total of 54 months, or 4  $\frac{1}{2}$  years.

- 18 Distilling the sentences, they are as follows:
- a. For Rolle: for the burglary on case 2020/0007 38 months; with 13 months consecutive for forgery (count 3) on case 2019/0023; and with 12 months concurrent for indecent assault on case 2019/0013; all making a total of 4 ¼ years imprisonment.
  - b. For Bailey: for the burglary on case 2020/0007 38 months; with 16 months consecutive on case 2019/0023, being for handling stolen goods (counts 1 and 2) 8 months on each count concurrent to each other, and for uttering a forged document (counts 4, 5, and 6) 8 months on each count concurrent to each other, but consecutive to the 8 months for the two handling offences, making a total of 16 months, and which total is to be consecutive to 38 months for the burglary on case 2020/0007; all making a total of 4 ½ years imprisonment.
  - c. For Estrado: for the burglary on case 2020/0007 46 months; with 8 months consecutive for breach of the suspended sentence passed on 03.12.19 on case 2019/0014; all making a total of 4 ½ years imprisonment.
- 19 There shall be restitution of items recovered.
- 20 *Elijah Rolle, Brian Bailey and Miguel Estrado, please stand up.* For the reasons I have explained, calculating the sentences for your various offences, you will each be jailed in total as follows: you Estrado aged 30 for 54 months or 4 ½ years, you Bailey aged 20 for 54 months or 4 ½ years, you Rolle aged 19 for 51 months or 4 ¼ years. Time on remand will count. Presently you will be eligible for automatic remission of one-third of your sentence if of good behaviour. You may go with the gaoler.

**The Hon. Mr. Justice Iain Morley QC**

**High Court Judge**

**16 July 2020**