

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASES ANUHCR 2016/0063, 2015/0061, 2015/0048

REGINA

V

DEANDRE HENRY, KATAMWA BRIGHT and JULIAN KING

APPEARANCES

Mr Adlai Smith for the Crown.

Mr Lawrence Daniels for Henry.

Mr Sherfield Bowen and later Ms Jan Peltier for Bright.

Mr Warren Cassell for King.

2018: MAY 09

SENTENCES

For armed robberies, sexual offending, offending on bail, and where cooperating

- 1 **Morley J:** Deandre Henry aged 29 (dob 17.04.89), Katamwa Bright aged 27 (dob 24.09.90), and Julian King aged 31 (dob 12.03.87) fall to be sentenced for aggravated robbery with a firearm together on 25.07.14 following late pleas of guilty. In addition, Henry falls to be sentenced for an aggravated robbery with a firearm on 03.01.14, and Bright falls to be sentenced for unlawful sexual intercourse on 22.08.13 with a girl aged 14, both again being late pleas.

2 It will be a feature of the sentence of Julian King that he was prepared to give Queen's evidence against Bright on the armed robbery of 25.07.14.

3 To deal clearly with this sentencing exercise I will proceed chronologically.

Bright - 22 August 2013

4 On 22.08.13, Bright, then aged 22, inflicted sexual intercourse on the daughter of a friend, KS¹, then aged 14 in her home on her mother's bed. He had known her for two years as a family friend. He had popped over to deliver bug spray. KS was alone, looking after her brother aged 1. She was dressing her brother on her mother's bed. Bright grabbed her from behind, threw her on the bed, choked her, while her brother was beside her crying, pulled off her panties and put his penis into her vagina, told her to stop screaming, ejaculated, and told her to tell no one.

5 On 16.04.18, he pleaded guilty to having unlawful sexual intercourse on the second day of his trial for rape, following an adjournment of the cross-examination by defence counsel Bowen of KS and the prosecution accepted the plea, offered for the first time in the proceedings, so that the indictment was amended and the count added. I have said that I will not ignore the testimony of KS, as I have heard her account before me, and while I am mindful the allegation of rape has not been pursued further, nevertheless it was clear the intercourse was unsought and unwanted by her. In this sense, this is not a case of an inappropriate underage relationship where the parties may have strong feelings for each other, and I will approach it as an event of frightening violence. I have assessed credit for plea at 20%, not the full 33%, as it is very late, though it was also the first time it was acceptable. The maximum sentence for having unlawful sexual intercourse with a girl aged 14 or 15 on Antigua is 10 years².

6 At the time of the aggravated robbery of 25.07.14, Bright was on bail for the offence of 22.08.13, then being prosecuted as rape, (and also on bail for possession of a firearm on 14.11.13, namely a shotgun used to protect cannabis plants for which on 01.07.15 he received a year in prison).

¹ The complainant is not identified as entitled to anonymity.

² Contrary to **s6 Sexual Offences Act no.9 of 1995**.

Henry – 3 January 2014

- 7 On 03.01.14, Henry, then aged 24, with three others robbed Midhat Lwisch and his staff at Fades building supplies on Old Parham road of \$26200ec in cash, a small empty safe valued at \$500ec, and a phone valued at \$2000ec. They all wore masks, each carried a firearm, and to press their demand for money, Midhat was twice struck on the head with the butt of a gun, causing a 2x3cm jagged laceration, while a round was also discharged into the ceiling, making him think he had been shot. This was a professional planned armed robbery. Henry made admissions on 12-13.01.14 when there was little evidence against him, which is to his credit.
- 8 On 01.02.17, Henry pleaded guilty, as part of his pleading out on the same day to the armed robbery of 25.07.14. I have assessed credit for plea at 25%, which is not the maximum of 33%, reflecting that the plea was not at the first opportunity, (which had been 17.01.17), though it remains high as it was before any listing for trial.
- 9 At the time of the aggravated robbery of 25.07.14, Henry was on bail for this like offence of 03.01.14.

Henry, Bright & King – 25 July 2014

- 10 On 25.07.14, Henry then aged 25, Bright then aged 23, and King then aged 27, robbed Sherry Carter of a briefcase and \$1500ec in Woods Mall. She worked for Benito construction, and had collected cheques and cash as payroll for the workers. The defendants hired a car, a Toyota Vista, changed its number plates, King kept look out for Sherry in his Toyota Corolla, Henry put on overalls and a mask, was armed with a firearm, Bright drove the Vista to Woods Mall, intercepting Sherry, Henry hopped out, fired off a round to intimidate her, or perhaps by accident wrestling for the briefcase, got it, Bright sped off, and the three met up at Burma Quarry, to distribute the money. This was a professional planned armed robbery.
- 11 On 01.02.17, Henry and King pleaded guilty on the second day of trial, after hearing evidence from their friend (and accomplice) Julian Braithwaite. The jury was discharged against Bright, who faced re-trial. In the meantime, on 11.04.18, King gave a statement to the prosecution

implicating Bright, which meant that Bright then pleaded on 16.04.18, on the same day as he pleaded to the sexual offence of 22.08.13.

- 12 I have assessed credit for plea in relation to each defendant at 25%, which is not the full 33%, and might be thought perhaps too generous, as each plea was after trial began. However, I do appreciate the tactical consideration of wanting to hear from Braithwaite to see if he really would implicate any defendant, and the later impact of King forcing Bright's hand, so that the late pleas to such serious offending were not without reasoning.
- 13 Concerning King being prepared to give Queen's evidence, there are longstanding UK authorities³, relevant here, to show that had he gone into the witness box and been subjected to cross-examination, he might have attracted a further substantial discount, which could be as high as 33%. This is because it is in the public interest to encourage cooperation by defendants in prosecutions, particularly for serious crime. However, Bright headed King off by pleading, so that the further discount can only reflect King's willingness to give evidence and not the more arduous deed of doing so. As such I assess it to be a further 25%, meaning that King will receive *in toto* a discount of 50%.

Personal circumstances

- 14 Concerning Henry, now 29, he has no relevant convictions, having been in custody on the armed robbery of 25.07.14 since 07.04.15 to the present. It is unclear exactly how much time he has spent in custody since the armed robbery of 03.01.14, as he received 3 months for escaping custody on 29.01.14, at some point was released to commit the robbery of 25.07.14, and it appears he was on technical bail for the robbery of 03.01.14 until his plea on 01.02.17 (meaning time on remand for the robbery of 25.07.14 from 07.04.15 to 01.02.17 may not count toward his sentence for the robbery of 03.01.14). However, in principle, his time on remand will count, and will have to be calculated carefully by the prison. In his pre-sentence report of 27.04.17, by Nakitia Williams, he is described as one of 16 siblings, with sadly no relationship with his father, as they have only spoken once when wished happy birthday. He suffers high blood pressure, left school without distinction, and has been a good worker in construction. He has apologized for his behaviour to his mother to whom he has expressed sincere regret.

³ See **Blackstones 2017** para E1.12-13, **s73 Serious Organised Crime and Police Act 2005**, and in particular **R v P 2008** 2CrAppRS 16.

- 15 Concerning Bright, now 27, he has three young children, aged 3, 4, and 7, is a fisherman by trade, with a relevant conviction concerning the shotgun, and also for discharging a firearm on 08.05.09 for which he was placed on probation for a year. No pre-sentence report was sought for him. Time spent on remand shall count toward his sentence, though will have to be calculated carefully by the prison. He has been in custody on the armed robbery from 07.04.15 to 07.09.16, and from 16.04.18 to present, and on the rape allegation from 04.01.17 to present, (but it should be noted that it appears the period from 04.01.17 to 15.04.18 while in custody for the rape will not count toward his armed robbery sentence as he remained technically on bail for it, and the period from 07.04.15 to 07.09.16 while in custody for the armed robbery will not count toward any sentence for unlawful sexual intercourse as he remained technically on bail for it).
- 16 Concerning King, now 31, he has a daughter aged 7 by a stable relationship of 12 years. I am told he has been in custody from 07.04.15 to present, for which time spent on remand shall count toward the sentence, as calculated by the prison. He has one relevant previous conviction for robbery on 13.10.11 for which he received 21 months in prison. In his pre-sentence report dated 27.04.17, by Denfield Phillip, he is said to have been disrespectful in prison, which I ignore, particularly as his cooperation post-dates the report.
- 17 Sentence has been delayed as against Henry and King since 01.02.17 awaiting the resolution of both cases against Bright, which finally occurred on 16.04.18.

Constructing the sentences

- 18 The offence of robbery armed with a firearm is peculiar on Antigua & Barbuda. It is governed by the **s6 Law Revision (miscellaneous provisions) Act no. 2 of Act no. 9 of 2000**⁴. This specifies a minimum term of 25 years for robbery with a firearm, but no maximum term, where

⁴ This section inserts into the **Larceny Act cap 241**:

33A(1) Every person who, being armed with a firearm, commits any of the crimes mentioned under sections 29,30, 31 or 33 shall be liable on conviction to a term of not less than twenty-five years.

robbery with violence or any other offensive weapon is otherwise limited to 15 years, under **s33 Larceny Act cap 241**⁵.

- 19 However, within the jurisdiction of the Eastern Caribbean Supreme Court, minimum terms for offences were struck down as *'inhuman and degrading punishment'*, being not capable of allowing for mitigation of sentence and defendant personal circumstance, and therefore being in breach of article 5 of the Constitution of St Lucia, notwithstanding the theoretical sovereignty of parliament, in a strong judgment of Gordon JA, supported directly by Rawlins JA, in the Court of Appeal in **Thelbert Edwards v Regina Criminal Appeal no. 3 of 2006**, at paras 16-37 and 75.
- 20 On Antigua & Barbuda, article 7 of the Constitution here has the same clause as article 5 on St Lucia, namely that *'no person shall be subjected to...inhuman or degrading punishment...'*, meaning the judgment of Gordon JA is equally applicable here, so that I will not proceed automatically to pass a minimum term of 25 years on each defendant.
- 21 There is very real uncertainty on Antigua as to the maximum sentence available for robbery with a firearm and this court urges the legislature to address the problem. Anecdotally, counsel at the Bar report that the 25 years is being used as a maximum, which seems wrong if constructed to be a minimum. In the UK it is well known the maximum for robbery is life imprisonment.
- 22 By analysis, if on Antigua & Barbuda there is a notional minimum of 25 years, it must be right that the maximum is at least 25 years, and this court cannot be wrong to work within that parameter.

⁵ Where **s33 Larceny Act cap 241** (which originally came into force in 1944) reads:

(1) Every person who (a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or (b) robs any person and, at the time of or immediately before or immediately after such robbery, uses any personal violence to any person, shall be guilty of felony, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding fifteen years.

(2) Every person who robs any person shall be guilty of felony, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding seven years.

(3) Every person who assaults any person with intent to rob shall be guilty of felony, and on conviction thereof liable to imprisonment with hard labour for any term not exceeding five years.

The starting point

- 23 In assessing a sentence for aggravated robbery, I have chosen to be assisted by the UK sentencing guidelines, and in particular for commercial armed robbery, where I would place the offending in category 1A⁶. Moreover I am influenced by the aspiration of local legislation that the minimum term for robbery with a firearm should be 25 years, given the prevalence of firearms offences locally, suggesting a slightly higher starting point than in the UK. As such, I assess the starting point for any planned armed robbery on Antigua & Barbuda to be 20 years.

Aggravation

- 24 Concerning the offence of 25.07.14, the offence is aggravated by how a round was discharged, increasing it by two years, and also:
- a. Regarding Henry, the offence is aggravated by the earlier armed robbery on 03.01.14, and while on bail for it, so that I increase the sentence by 3 years to 25 years, and not higher as I dare not, given the uncertainty in the law as to the maximum.
 - b. Regarding Bright, the offence is aggravated by the earlier unlawful sexual intercourse of 22.08.13, while on bail for it, so that I increase the sentence by 2 years to 24 years.
 - c. Regarding King, the offence is not further aggravated, so that the sentence remains 22 years.
- 25 Concerning the offence of 03.01.14, as against Henry, the offence is aggravated by how a round was discharged and by the assault on Midaht, so that I increase it against Henry by 3 years to 23 years.
- 26 Concerning the offence of inflicting sexual intercourse on KS, I consider it difficult to imagine a worse example of committing this offence, it being an offence of intimate sexual violence, by a family friend, on a girl aged 14, though not a conviction for rape, so that I assess the starting point approaches the maximum and therefore to be 7.5 years in prison.

Mitigation

⁶ See **Blackstones 2017** supplement, para SG 48, p349.

- 27 Concerning mitigation for Henry, I note he has no relevant convictions, and mindful of his overall circumstance will reduce his sentence from 25 years to 24 years on the robbery of 25.07.14. Concerning the robbery of 03.01.14, I note he confessed when there was little evidence, and in combination with his having no relevant convictions, I reduce his sentence by 3 years from 23 years to 20 years on that offence.
- 28 Concerning mitigation for Bright, I note he has two relevant convictions, connected to firearms, and was not of good character at the time of the sexual offence, so that I do not consider there is further mitigation, nothing more of his personal circumstance being helpful. His sentence remains at 24 years for the robbery and 7.5 years for the sexual offence.
- 29 Concerning mitigation for King, I note he has a relevant conviction, for robbery. However, there is separate mitigation, in that his role in the robbery was lesser, being on his basis of plea a look out, and not responsible for the firearm, accepted by the prosecution, so that I can reduce his sentence further by 3 years from 22 years to 19 years.

Credit for plea and cooperation

- 30 Turning now to credit for plea:
- a. Henry receives a discount of 25%, reducing his sentence from 24 years to 18 years on the robbery of 25.07.14 and from 20 years to 15 years on the robbery of 03.01.14.
 - b. Bright receives a discount of 25% on the robbery of 25.07.14, reducing his sentence from 24 years to 18 years on the robbery of 25.07.14, and a discount of 20% on the sexual offence, reducing his sentence by 18 months from 7.5 years, which is 90 months, to 72 months, being 6 years.
 - c. Henry receives a discount totalling 50 %, reducing his sentence from 19 years to 9.5 years.

Totality

- 31 Concerning Henry, he faces 18 years and 15 years. I have already aggravated the former by the latter and so will not pass consecutive sentences, totalling 33 years, which in theory I could as one was on bail for the other, though I assess the totality would be too great. Instead the sentences will run concurrently, being in total 18 years.

- 32 Similarly concerning Bright, he faces 18 years and 8 years. I have already aggravated the former by the latter and so will not pass consecutive sentences, totalling 26 years, which in theory I could as one was on bail for the other, though I assess the totality would be too great. Instead the sentences will run concurrently, being in total 18 years.

Dangerousness

- 33 I have carefully assessed each defendant and find none dangerous, meriting an elongated sentence for public protection, this finding being narrowly so concerning Henry and Bright.

Finally

- 34 *Deandre Henry, please stand up.* For the reasons I have explained, for the offence of aggravated robbery on 03.01.14, to which you pleaded, there will be a sentence of 15 years imprisonment, and for the aggravated robbery of 25.07.14, to which you pleaded, aggravated by being on bail for the first offence, there will be 18 years, to run concurrently. The total sentence is one of 18 years. Time spent on remand will count toward your sentence, to be calculated by the prison, and you may be eligible for remission after serving two-thirds. You may go down.
- 35 *Katamwa Bright, please stand up.* For the reasons I have explained, for the offence of unlawful sexual intercourse with a girl aged 14, to which you pleaded, there will be a sentence of 6 years imprisonment, and for the aggravated robbery on 25.07.14, to which you pleaded, aggravated by being on bail for the first offence, there will be 18 years, to run concurrently. The total sentence is one of 18 years. Time spent on remand will count toward your sentence, to be calculated by the prison, and you may be eligible for remission after serving two-thirds. You may go down.
- 36 *Julian King, please stand up.* For the reasons I have explained, for the offence of aggravated robbery on 25.07.14, to which you pleaded guilty, and later offered to give Queen's evidence against Katamwa Bright, having signed a statement on 11.04.18 for the prosecution, accepted as the truth of your involvement, there will be a sentence of 9.5 years imprisonment. Time

spent on remand will count toward your sentence, to be calculated by the prison, and you may be eligible for remission after serving two-thirds. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

9 May 2018