

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CRIMINAL CASE NO. SLUCRD2012/0964

BETWEEN:

THE QUEEN

Claimant

and

KIRBY JAMES

Defendant

Appearances:

Mrs. Jenin Samuel-Kisna for the Claimant

The Defendant in person

2017: October 10.

JUDGMENT ON SENTENCING

[1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecutions for the offence of Handling Stolen Goods for that he on Monday 7th May at Ti Colon, Quarter of Castries did dishonestly receive certain stolen goods, to wit one cassette deck, two speakers and

one blender knowing or believing same to be stolen goods contrary to Section 224 (1) of the Criminal Code 2004. At his arraignment the Defendant entered a plea of not guilty; however on the 21st July 2017 he changed his plea to guilty. After the Allocutus the Court ordered a Pre-Sentence Report be produced.

THE FACTS

[2] Hodge Cadette states that his mother's house is located next to his home in the community of Ti Colon, Quarter of Castries. He further states that she presently resides in England and he is responsible for taking care of her house. She left Saint Lucia in October 2011 and the house has been vacant ever since. On Monday 7th May 2012 at about 7:20 a.m. Mr. Cadette left his home for work. As he was leaving he looked at his mother's house and observed that everything was in place. Mr. Cadette then left and went to work. Whilst at work he received a telephone call from an aunt. After the telephone call, Mr. Cadette left work and proceed to his mother's house. Upon his arrival, he observed that the door was unlocked and saw numerous items scattered all over the floor in all the rooms. Mr. Cadette observed that some items were missing including a Daewoo television, a sony radio with two speakers, a music set, a blender, a cutlery set and some curling irons.

[3] On Tuesday 8th May 2012 a search warrant was executed on the home of the Defendant, Kirby James. WPC Samuel and other officers searched the home of Kirby James but nothing was found. The Defendant, Kirby James then took the officers to his mother's home which about 200 feet away from his home. Upon arrival, the Defendant went beneath his mother's house and he retrieved a cassette deck wrapped in a blue bed sheet and two speakers. He handed this item over to WPC Samuel. WPC Samuel asked the Defendant where he got the item from and cautioned him. The Defendant responded that a partner had given it to him. WPC Samuel asked the Defendant about the rest of the items and he responded that he had sold the television, he gave the blender to his brother and the radio to his cousin. Mr. Hodge subsequently identified the items retrieved from the Defendant as the property of his mother.

THE PRE-SENTENCE REPORT

[4] The Defendant is an admitted alcoholic. He further states that when under the influence of alcohol he is known to be troublesome. Those views are echoed by his mother, siblings and community residents. He has been advised to curb his consumption of alcohol for medical reasons as he has in the past suffered from hallucinations when drunk.

[5] The Defendant has been in and out of prison since age eighteen either on remand or serving a sentence. He admits to three previous convictions for stealing, causing a wound and for resisting arrest. He has expressed a desire to depart from a life of crime and has sought help to curb his alcoholism. His mother and siblings have indicated a willingness to support him in his efforts to reform himself.

AGGRAVATING AND MITIGATING FACTORS

[6] I consider the following to be the aggravating and mitigating factors herein:

Aggravating Factors

1. The prevalence of this offence,
2. The offence arose from a home invasion,
3. The manner in which the Defendant concealed the articles received by him,
4. The seriousness of the primary offence of burglary,
5. The Defendant is not a first offender of offences of dishonesty.

Mitigating Factors

1. The Defendant's guilty plea,
2. The assistance the Defendant provided to aid the recovery of items stolen in the primary offence,
3. The remorse expressed.

[7] Crown Counsel in her written submissions made reference to the high value of the items stolen as an aggravating factor. I do not accept this as an aggravating factor for the following reasons. First of all there is no evidence before the Court of the value of the articles found in the Defendant's possession being the subject of the sole count of the indictment here. Secondly the Court cannot consider evidence of articles stolen in the primary offence which have not been found in the Defendant's possession and which are not included in the indictment aforesaid. That apart I have balanced the aggravating and mitigating factors in the circumstances of the facts of this case and find that the aggravating factors outweigh the mitigating ones.

RETRIBUTION

[8] It is common ground that this offence arose from a primary offence of burglary. Both offences are prevalent within this jurisdiction. Apart from the loss of personal effects and the cost of replacing same there is also the psychological effect of this type of offence on the victim. The violation of the privacy of the victim's home usually has a traumatic effect on him/her. The Court must and will show its abhorrence for this type of offence committed by those who are for filthy lucre prepared to turn a blind eye to the real origin of valuables which come into their possession.

DETERRENCE

[9] This principle is of both general and specific application and having regard to the Defendant's previous convictions for theft is applicable to him. Thus the Court must impose a suitable sentence to deter this Defendant from further recidivist conduct.

PREVENTION

[10] The Defendant's conduct especially when he is under the influence of alcohol is regarded as disgusting and offensive. Notwithstanding this however I am not convinced that this Defendant is a danger to the society from which he must be put away for an extended period of time.

REHABILITATION

[11] The purpose of this principle is to reform the Defendant to ensure his smooth reintegration to the society upon his release from prison. In this regard I have taken note of the findings and recommendations of the probation officer in the Pre-Sentence under the heading 'CONCLUSION' to wit:

" This young man admitted to his previous convictions and to his social deviance during his interview with Writer. Although his mother and siblings were not open about his criminality , he on the other hand displayed a level of honesty. He admitted that he has challenges in reforming, and highlighted alcohol as one of his weaknesses, and or threats to his change. However, there may be other circumstances impeding his rehabilitation. He has a level of support in his mother and brother, but this may not be sufficiently coercive or potent to stimulate the necessary social behavior for positive change for him. At this point his risk factors such as previous convictions , alcoholism , unemployment , low educational attainment etc. outweigh his protective factors such as ; a place of abode and love ones. This predicts reoffending more than reform. Despite the aforementioned, Writer, is of the view that a period on probation with focus on his specific needs areas, may assist this young man."

[12] I am encouraged by the Defendant's desire to reform himself and be cured from his alcoholism. He needs to acquire a skill to enable him to earn a legitimate income upon his release from prison.

SENTENCE

[13] Section 224 (2) of the Criminal Code provides a maximum sentence of 14 years imprisonment for anyone found guilty of handling stolen goods contrary to Section 224 (1) of the Code. In the absence of sentencing guidelines within the jurisdiction the Court will apply the UK Guidelines as set out in the decision of **R v Webbe et al (2001) EWCA 1217**. This decision formed part of the written submissions of Crown Counsel for which the Court is grateful. At paras 20-22 and 26 Rose LJ opined thus:

"The sentencing panel, in paragraph 14, go on to identify nine factors, which may be

regarded as aggravating the offence. With each of those factors we agree. They are as follows:

1. The closeness of the handler to the primary offence. (We add that closeness may be geographical, arising from presence at or near the primary offence when it was committed, or temporal, where the handler instigated or encouraged the primary offence beforehand, or, soon after, provided a safe haven or route for disposal.)

2. Particular seriousness in the primary offence.
3. High value of the goods to the loser, including sentimental value.
4. The fact that the goods were the proceeds of a domestic burglary.
5. Sophistication in relation to the handling.
6. A high level of profit made or expected by the handler.
7. The provision by the handler of a regular outlet for stolen goods.
8. Threats of violence or abuse of power by the handler over others, for example, an adult commissioning criminal activity by children, or a drug dealer pressurizing addicts to steal in order to pay for their habit.

[14] The Court takes notice of the fact that the Defendant is not a first offender and one of his convictions is for dishonesty. Thus I have no doubt that his criminal experience is advanced. The value of the goods received forming the subject matter of this indictment remains unknown. Suffice it to say however he co-operated fully with the police even in respect of the recovery of items which are not mentioned in the indictment.

[15] I must now turn to consider the matter of delay. The Defendant has been in custody for 5 calendar years awaiting trial for an offence which is bereft of any complicated issues of law and evidence. Indeed there are just four (4) witnesses named on the indictment. The Crown has failed and or neglected to proffer any or any reasonable explanation for this inordinate delay in bringing this matter to a stage of finality. Thus the Defendant will benefit from a reduction in sentence for the delay.

[16] I find in all the circumstances of this case a starting point of 10 years imprisonment is appropriate. I will deduct therefrom 4 years of the guilty plea and the Defendant's assistance to the police in the recovery of articles stolen in the burglary aforesaid. I will deduct a further 2 years for the delay in bringing this case to a stage of finality.

[17] Accordingly the Defendant is sentenced to 4 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial.

FRANCIS M. CUMBERBATCH

HIGH COURT JUDGE

BY THE COURT

REGISTRAR

REGISTRAR