

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR2015/0009

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

AND

**VERNON ELLIOTT
JEROME CONNOR**

Appearances:

Mr. Valston Graham, Director of Public Prosecutions and Mr. Teshaun Vasquez,
Crown Counsel for the Crown.

Mr. Jason Hamilton for Defendants.

2017: September 29

JUDGMENT ON SENTENCE

Introduction

- [1] **WARD J.:** On 8th June, 2017 the defendants were convicted by a unanimous jury of Robbery. The matter was adjourned for sentencing pending the receipt of Social Inquiry Reports. These were filed with the court on 12th and 14th September, 2017. On 26th September, 2017 the court heard the plea in mitigation and oral submissions on sentencing.

The Facts

- [2] On the afternoon of 6th February, 2014 the Virtual Complainant (VC) was at his home having just ended work for the day. He placed his I-phone valued

EC\$2,022.30 and cash totaling EC\$1120.00 on a table near to his television. He proceeded outside to take some laundry off the line. Just then he saw the two defendants whom he knew by the aliases "Pest" and "Rome" in company with another man known to him only as "Marbo". They were approaching through the alley in front of his door.

- [3] Elliott asked him if he wanted some marijuana to buy. The VC told him he would be back. He proceeded inside and threw the clothes on the bed.
- [4] As he threw his clothes on the bed and turned around he came face to face with Elliott who was brandishing a firearm over his head. Elliott ordered him to "*pass everything*" he had. The VC hesitated for some seconds before attempting to wrestle the gun from Elliott. However, Elliott managed to retain the gun and struck him in the head with it. A struggle ensued.
- [5] While struggling with Elliott, Connor entered the house armed with a gun. Marbo entered the house behind him and closed the door.
- [6] Connor began to beat the VC in the head with his gun. The VC managed to get through the door and get outside where he and Connor continued to struggle while Elliott and Marbo remained in the house.
- [7] At some stage during the struggle with Connor, Elliott and Marbo exited the house and made their way up a side street. Connor then disengaged from the fight and followed his friends up the said street.
- [8] Upon checking his property, the VC discovered his I-phone and cash were missing. He subsequently discovered that the following items were also missing: an Acer Laptop valued at EC\$4,000.00; a Samsung Galaxy tablet valued at EC\$3,000.00; One Nokia N-Series cellular phone valued at EC\$1,620.00; One Nokia cell phone valued at EC\$1,080.00; and One Nokia cell phone valued at EC\$90.00. Altogether, the value of the property stolen was EC\$12,932.30. These items were never recovered.

- [9] The VC was subsequently conveyed to the hospital, where, upon examination, he required about 14 stitches to the head wounds that he had sustained during the brutal attack.
- [10] Upon conviction, the court ordered that Social Inquiry Reports be prepared for the adjourned sentence hearing.

The Pre-Sentence Report

- [11] Vernon Elliott is now 28 years old. The Social Inquiry Report documents his family composition and history and traces his early childhood, educational background, employment record, religious persuasion and attitude towards the offence amongst other matters. The consensus among relatives and former neighbours is that he was a respectful young man who showed great potential but was misled by bad company. His father's impassioned plea is that his son *"would find the strength to resist the calling of the undesirables who have plagued his life for some time."*
- [12] It is the Probation Officer's assessment that *"the information gathered does not suggest that Mr. Elliott is inherently bad however as a result of various circumstances and his association with the company he chose, he has found himself on the wrong side of the law..."* Mr. Elliott maintains that he is innocent of this crime, saying he went to purchase weed from the VC and got into an altercation over the quality of the weed supplied. He in effect says that the VC has falsely accused him of robbery.
- [13] Jerome Connor is 27 years old. The Social Inquiry Report prepared on his behalf explores, *inter alia*, his family composition and history, educational background, general conduct and explanation and attitude towards the offence. Mr. Connor expresses disappointment that he failed to grasp the educational opportunities afforded him in his youth. Nonetheless, he has made productive use of his time incarcerated to enroll in classes in Mathematics, English, Principles of Accounts, Principles of Business and Spanish. In terms of explanation and attitude towards the offence, he maintains his innocence.

Plea in Mitigation

- [14] Learned counsel for the prisoners, Mr. Jason Hamilton, advanced pleas in mitigation on behalf of both prisoners.
- [15] Mr. Hamilton submitted that the offenders are still relatively young. Elliott is 28 years old while Connor is 27. This factor, he submitted, suggests that both possess the potential for rehabilitation. Counsel asked the court to find that a recurring theme throughout the SIR prepared on behalf of Elliott was that he was viewed by those from his community as always helpful and respectful.
- [16] Mr. Hamilton submitted that the court should disregard the previous conviction of Elliott for possession of firearm and ammunition recorded on 27th October, 2007 because at the time of the offence he was a juvenile but he was convicted when an adult. The court was advised that the practice in this jurisdiction was that where a person commits an offence as a juvenile it does not form part of his record as an adult. Mr. Vasquez confirmed the practice. Neither counsel could assist with the specific provisions of the legislation governing this situation.
- [17] The court has therefore examined the Criminal Records (Rehabilitation of Offenders) Act 2014. Section 4 deals with spent convictions. On a proper construction of this section, so far as material, it provides that where a person was under the age of eighteen years at the time of conviction of an indictable offence and has not been convicted of any other offence between the time of his 18th and 23rd year then for the purposes of the Act he is treated as a rehabilitated person and the conviction shall be treated as spent.
- [18] In this case, section 4 does not apply because Mr. Elliott was not under the age of 18 at the time of his conviction. He was in fact 18 years and 8 months. Accordingly, his conviction is relevant and may be considered for the purpose of this sentencing exercise.
- [19] On behalf of Mr. Connor, learned counsel highlighted Mr. Connor's academic pursuits by enrolling to do CXC examinations since incarceration as demonstrative

of a high degree of potential and prospects of rehabilitation. Mr. Hamilton further submitted that up to the time of his conviction Mr. Connor was a productive member of society having been consistently gainfully employed. Mr. Connor has no previous convictions.

[20] In seeking to guide the court's thinking on an appropriate sentence in each case, learned counsel first conceded the matters advanced by the Crown as aggravating factors. It was counsel's submission, however, that when placed in the scale, the aggravating and mitigating factors were balanced. He sought to distinguish the sentencing authorities upon which the Crown relied. He suggested that the case of **Allan Wilson v The Queen**¹ held greater similarity and relevance to the circumstances of this case than the case of **Exavier Elliott v The Queen**². Accordingly, counsel was of the view that a starting point of between 7-8 years would be appropriate which would yield a sentence more in line with **Allan Wilson**.

[21] On behalf of the prosecution, Learned Crown Counsel, Mr. Teshaun Vasquez invited the court to consider the following matters as constituting aggravating factors:

- (i) The use of firearms in the commission of the offence;
- (ii) Multiple assailants;
- (iii) Serious injury inflicted on the VC;
- (iv) Significant value of property stolen;
- (v) Previous conviction for possession of firearm and ammunition (Elliott).

[22] In terms of mitigating features, the Crown submitted that the relatively young age of the prisoners at the time of the commission of the offence (25 and 24 years old respectively) is a common mitigating factor. In the Case of Mr. Connor, his clean record is recognized as a mitigating factor.

¹ Cr. App. No 10 of 2003.

²

Discussion

- [23] In the Federation of St. Christopher and Nevis, the maximum penalty prescribed for Robbery is 20 years imprisonment pursuant to section 31(1) of the Larceny Act, Cap 4:16.
- [24] In performing the sentencing exercise I have in mind the cardinal principles of sentencing:
- (a) **Punishment:** The objective here is to reflect society's abhorrence of criminal conduct especially of this type of offence;
 - (b) **Deterrence:** This is aimed at not only deterring the particular offender from committing further offences but also to deter like-minded people from engaging in similar deviant behavior;
 - (c) **Prevention:** This is aimed at protecting society from the particular offender from offending against the law by incarcerating him;
 - (d) **Rehabilitation:** Here, the court considers whether the offender is capable of rehabilitation and reintegration into society as a contributing member of society. The court is concerned to shape the sentence in a way that assists in achieving this objective.
- [25] All of these aims may not necessarily be met in any one case; the task of the court is to consider which of these will be best served by the sentence to be passed on an individual offender.
- [26] The first task, therefore, is to identify an appropriate starting point. I use this expression to refer to the sentence appropriate when aggravating and mitigating circumstances relating to the offence are taken into account, but excluding aggravating and mitigating features personal to the offender. These are the objective circumstances which relate to the gravity of the offence itself and which assist in gauging seriousness of the offence and, in particular, whether a custodial

sentence is presumptively appropriate. In other words, the starting point is the sentence considered appropriate for the particular offence after a contested trial.

[27] In setting the appropriate starting point I must conduct an assessment of a number of features which add to or reduce the seriousness of the conduct and the criminality involved. Having assessed the aggravating features of the offence, the second task will be to identify and assess those matters which may be seen as reducing the seriousness of the offence. The starting point is thus determined by taking into account this mix of aggravating and mitigating features and which together allows the court to gauge the seriousness of the offence.

[28] In this case, the aggravating features relative to the offence are:

- (a) The infliction of violence during the course of the robbery;
- (b) The degree of injury caused to the VC;
- (c) Presence and use of firearms in the commission of the offence ;
- (d) Multiple offenders involved in the commission of the offence;
- (e) Some element of planning and premeditation as evidenced by the possession of firearms and the fact that it was a group attack;
- (f) Significant value of the property stolen.
- (g) The fact that this was a home invasion.

[29] I am unable to discern any mitigating circumstances relative to the offence.

[30] In the UK, the sentencing range for robbery in the home involving physical violence is 13-16 years for a first time offender not pleading guilty. In this region, the Court of Appeal in **Allan Wilson** has said that armed robbery should always warrant a custodial sentence within a range of 10 -15 years, subject to the sentencer's discretion to go above or below this range depending on the circumstances of the particular case.

- [31] Accordingly, having assessed the gravity of the aggravating features, I have determined that a custodial sentence is presumptively appropriate with a starting point of 12 years.
- [32] This starting point is susceptible to upward or downward adjustment depending on the existence of aggravating or mitigating factors personal to the offender unless there is a cancelling out; in which case there will be no adjustment at all. These subjective circumstances of the offender inform the degree of culpability of the particular offender.
- [33] In the case of Elliott, there are aggravating factors personal to him. He has previous convictions for possession of firearms and ammunition and carrying abroad an offensive weapon. In his case, it is appropriate to adjust the starting point upwards to 14 years.
- [34] There are no aggravating features personal to Jerome Connor.
- [35] The mitigating features personal to both Mr. Elliott and Mr. Connor are their relative youth at the time of the offence. Mr. Connor gets additional credit for his previous clean record.
- [36] I have also given consideration to the contents of the Social Inquiry Reports. I am satisfied that both prisoners show potential for rehabilitation and I place this in the scale when I consider the appropriate sentence.
- [37] In the court's view, the mitigating factors, while purchasing some discount, cannot bear the same weight as the aggravating features. Indeed, they are far outweighed by the aggravating features.
- [38] In performing its sentencing task, the court must strive to achieve consistency with sentences imposed in similar circumstances. In this regard, I am grateful to Crown Counsel for the helpful authorities provided and to which I now turn.

- [39] In **Allan Wilson v The Queen** the defendant robbed a bus driver at gunpoint of two hundred and twenty dollars EC\$220.00. He was 18 years old at the time of the commission of the offence, had a clean record, pleaded guilty at the earliest opportunity and cooperated fully with the police by giving them a statement. On appeal, his sentence was reduced from 10 to 5 years imprisonment.
- [40] In **Keno Allen**³ the defendant was charged with aggravated burglary and robbery. He had entered the dwelling house of the VC, used a knife from her house to intimidate her, tied her up and robbed her of an undisclosed sum of money. He was sentenced to 8 years imprisonment.
- [41] **R v Stanley Bertie Jr**⁴. The defendant was charged with one count of robbery. Together with another person who was armed with a gun, he accosted the virtual complainant, who was in possession of his company's payroll, in the early hours of the morning. During the struggle for the money the defendant was knocked down by the complainant and held until the police arrived. The other robber fled the scene with the money. The defendant pleaded guilty at the first available opportunity and was sentenced to 7 years imprisonment. He had no previous convictions.
- [42] In **Exzavier Elliot**⁵ the defendant was convicted for a robbery that evinced a high degree of planning involving the use of firearms, masks, a rental car and fake number plates. He and two accomplices robbed a shop at which four persons were present of a total of \$2315.55 ECC. No violence was used. The defendant had no previous convictions. He was sentenced to 15 years imprisonment
- [43] The court turns now to a consideration of what is an appropriate sentence for each defendant in the circumstances of this case, having regard to the foregoing principles.

³ BVIHCR2005/0011

⁴ Cr. Case NO. 4 of 2006 (BVI).

⁵ SKBHCRAPP2011/0031-33

- [44] I have given due consideration to the degree of violence inflicted, the use of firearms, the value of the property taken and the degree of planning involved. Against this I have weighed the relevant mitigating factors of each defendant and their relative youth at the time this offence was committed. I have in mind the contents of the Social Inquiry Reports and the submissions of counsel.
- [45] The court has sought to arrive at a sentence that meets the aims of punishment and deterrence while leaving the door open for rehabilitation and eventual re-integration as productive members of society.
- [46] Accordingly, the sentence of the court is as follows:
- [47] Vernon Elliott is sentenced to 13 years imprisonment.
- [48] Jerome Connor is sentenced to 10 years imprisonment.
- [49] Time on remand is to be deducted from this sentence.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar