

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CASE NO. GDAHCR2016/0062

BETWEEN:

REGINA

V

KEVON FRANK

Appearances:

Mr. Howard Pinnock for the State

Mr. Nigel Stewart for the accused

2017: March 14

SENTENCING REASONS

Criminal Law - Sentencing - Offences against the person - Robbery - Sentencing Guidelines - Aggravating & Mitigating Circumstances - Guilty Plea - Discount for Guilty Plea - Section 276(2) of the Criminal Code as enacted by Section 47 of the Criminal Code (Amendment) Act 2012

[1] **AZIZ, J.:** On the 30th December 2016 the learned Director of Public Prosecutions indicted the defendant Mr. Kevon Frank with two offences. Those offences are:

- (1) Assault with a purpose of committing a crime contrary to section 176(1) (d) of the Criminal Code as enacted by section 18 of the Criminal Code (Amendment) Act 2012,

(2) Robbery with an offensive weapon contrary to Section 276(2) of the Criminal Code as enacted by Section 47 of the Criminal Code (Amendment) Act 2012

Introduction

- [2] This offence of robbery with an offensive weapon took place on the 7th August 2015 against Jeanette Paul Dabreo for which the defendant now falls to be sentenced. The defendant being armed with a cutlass stole a number of items from Ms. Dabreo which were valued at \$5125.00. For completeness, it should be mentioned that the defendant entered a Not Guilty plea to the offence of Assault. The prosecution has offered no further evidence on that count and the plea to Robbery has been accepted.
- [3] Under the Laws of Grenada, the maximum sentence prescribed by S.276 (2) of the Criminal Code as enacted by section 47 of the Criminal Code (Amendment) Act 2012 is a term of imprisonment not exceeding thirty (30) years.

Facts

- [4] Mr. Pinnock, prosecution counsel indicated the circumstances surrounding the offence and also in doing so highlighted the aggravating features of the case. The robbery took place at approximately 8:30 p.m. whilst the Ms. Dabreo was walking alone after work; the defendant approached her with a weapon, that being a cutlass and he had also taken the time to disguise himself. The Court has found that this crime was planned by the defendant. It must have been terrifying for Ms. Dabreo and as a victim of such crime there will inevitably be some form of psychological harm. The defendant raised the cutlass in his hand and asked for her handbag, and he held onto Ms. Dabreo as she struggled to get free. Fortunately, Ms. Dabreo freed herself and later got to her home and eventually that night she reported the incident at St. David's police station.

[5] Mr. Stewart, defence counsel, submitted that the defendant now 25 years of age pleaded guilty at the 1st opportunity on the 31th January 2017. To his credit this meant that he did not waste the Court's time and also prevented the victim from having to relive the trauma experienced on the night of the incident by having to give evidence at a trial. Mr. Stewart also submits that this is out of character, and referred the Court to the Social Inquiry Report highlighting what Mr. Frank's family and other members of the community had to say about him, such as being helpful, quiet and also expressing shock about Mr. Frank being involved in this type of offence as it's out of character. Mr. Stewart submitted that the aggravating features were the fact that the offence took place with an offensive weapon and also that Mr. Frank had a previous conviction for a similar type offence.

[6] As is evident to the Court, this must have been a terrifying experience for Ms. Dabreo. The defendant did say he was sorry for his actions at the police station and this is evidence of some remorse. The five minutes or so that the offence took place over must have seemed much longer to the victim. The defendant also to his credit, made some arrangements via phone call to get some items returned that were hidden. These items were given to Police Officer Frank. The defendant therefore also cooperated with the police at an early stage. I have also considered what was said about the defendant by Mr. Benedict John Newton in his affidavit, and highlighted by defence counsel. It is for these reasons that the defendant will receive the maximum credit available to his sentence, that being a credit of one third. I have taken into consideration the aggravating and mitigating factors and do find that the aggravating factors outweigh the mitigating. I also bear in mind the principles of sentencing as per **Desmond Baptiste v R**.

Court Considerations

[7] This is an offence in which considering the UK sentencing guidelines as a reference point, the culpability falls within the lower/lesser culpability (threat of force, intimidation) and this offence would also fall within the category 3 bracket

(psychological harm). I have also taken into consideration and noted that the value of items taken were not high. Most of the items were recovered, it was not an extremely prolonged ordeal, opportunistic to an extent, the defendant is 25 years old, having one previous conviction for stealing from a person on the 14th February 2014, and for which he was sentenced to two years imprisonment. I have also taken into consideration that the defendant did not have a companion involved, and neither was there any group or gang activity, and any physical injury caused was not serious.

[8] A social inquiry report was ordered and helpfully prepared for the sentence hearing. The report confirmed that during the interview with the probation unit, the defendant Mr. Frank, was cooperative and respectful. He was able to answer and give detailed responses to the questions that were asked of him. The probation officers spoke to many persons in the community, most of whom spoke of Mr. Frank as a quiet individual who was never known to be deviant or a violent person, and furthermore that this incident was out of character. Mr. Frank was spoken of by many with warmth, respect and described as a helpful person. It is clear from the report that Mr. Frank has ambitions once back in the community to make positive contributions and also to have his own furniture shop.

[9] The Court has taken into consideration, the fact that Mr. Frank's previous employer spoke of him as a good worker, who was also like her son and as someone who got along with the other workers. She has indicated that she is aware that Mr. Frank is in prison but he would always have his job once back in the community.

[10] Mr. Frank has accepted responsibility for his actions and is truly sorry, also he wishes that he can take back all the pain and problems which he has brought into the victim's life according to the author of the report. This again is a demonstration of acceptance of offending not only to the victim but to the community at large, and

must be a useful step in rehabilitation. The report recommends some form of counselling to Mr. Frank.

[11] Within the report was also a victim impact statement which suggests that as part of the psychological harm as referred to earlier, Ms. Dabreo has trouble sleeping and staying at her home alone. As a result Ms. Dabreo has underwent counseling sessions, and would like justice done for the ordeal that she has suffered, along with her stolen items being returned.

[12] The offence of Robbery carries a very heavy penalty of 30 years imprisonment. This in itself underscores the gravity of the offence and places it in a category in which other serious and violent crimes are placed and are mostly inevitable lengthy custodial sentences. In **R v Tim Daley**¹ it was submitted to the learned trial judge that guidance could be had from the UK sentencing guidelines in respect of Robbery.

*“The Court is satisfied that these guidelines can appropriately be adopted not only because the maximum sentence for the offence is the same in the UK as in the BVI but because **they recognize and apply the same sentencing principles which govern this Court.** It is appropriate that any sentence recognize that in assessing the seriousness of an offence, there will be levels of seriousness. In the case of robbery, the element of violence, the use of weapons and firearms, the nature and duration of the threat and intimidation, the extant injury to victims; the value of property taken and the degree of planning, organization and sophistication involved are key factors which must be weighed”.*

[13] It was indicated that the Eastern Caribbean Court of Appeal have cited those guidelines and this court has made regular reference to them. The guidelines do

¹ BVIHCR2014/005

cover several offences ranging from bank robberies to street mugging. In cases where the value of financial gain was low and there was little to no injury suffered, or minor force and threats used to carry out the offending the sentence can range from 18 months to 5 years imprisonment. In the case of robbery of small business places which may be characteristically committed by a single offender using a weapon, whether real or imitation, and making threats of violence. It has been said that this is opportunistic as the security systems may be minimal and therefore the chance of taking large amounts of money and other items. The sentencing range for this category is between 9 and 12 years and 7 and 9 years after a guilty plea.²

[14] In **Allan Wilson v The Queen**³ – Sir Dennis Byron CJ was of the opinion that robbery is an offence that should always warrant a custodial sentence. He also opined that the sentencer should however reserve the right to go beyond or below this range (as above) in appropriate circumstances. In that case Mr. Wilson pleaded guilty to robbing a bus conductor of EC \$220.00 and was sentenced to 10 years imprisonment. On appeal that 10 year sentence was reduced to 5 years. The court considered in that case that defendant was (1) A young first time offender (18), (2) He cooperated with the police, and (3) He pleaded Guilty at 1st available opportunity. Other strong mitigating factors should account for at least a deduction of a few additional years.

[15] In the case of **Keno Allen**⁴ the defendant was charged with two offences, Aggravated Burglary and Robbery. The defendant entered the dwelling house of the virtual complainant; used a knife from her home to tie her up and intimidate

² The Queen v Tim Daley BVIHCR2014/005, in which reference was made to Attorney General's Reference (No 7 of 1992) Lord Taylor CJ stated that the type of offence which involves somebody committing robbery of a small shop or other premises would normally attract a sentence of at least 7 years imprisonment on a plea of guilty.

³ Criminal Appeal No 10 of 2003 (St Vincent & the Grenadines)[unreported]. This case was also referred to in the case of The Queen v Jason Leonard & Clifton Stoutt, Criminal Case No 10 of 2007 (British Virgin Islands)

⁴ BVIHCR2005/0011

her; robbed her of an undetermined sum of cash. The sentence was one of 8 years imprisonment.

[16] In the case of **Stanley Berte Jr.**⁵ in which the defendant was charged with Robbery. The defendant and another robber met the virtual complainant on the road early in the morning. One defendant had a gun and they both knew that the virtual complainant had the payroll, and fought for the money. The virtual complainant knocked down the defendant and held him until the police came, whilst the 2nd robber escaped. The defendant pleaded guilty and he was sentenced to 7 years imprisonment.

[17] In **R v Evans Joseph**⁶, the defendant was found guilty of aggravated burglary, and was sentenced to 6½ years imprisonment. I have also considered what was stated in the case of **R v Jahmari Lake** (SKBHCR2012/0027).

Conclusion

[18] The court has to do justice in each case and in my view consider reformative and rehabilitative forms of sentencing either on its own or in conjunction with custodial sentences where appropriate. In my view, the defendant has committed a serious offence, which leads to an inevitable custodial sentence. This Court has to send out a strong and clear message that offences like this have no place on the beautiful island of Grenada or within the region for that matter.

[19] Honest and hardworking citizens must be protected from those who are intent on committing crimes in society, and the only way to protect those persons are to ensure that a clear message is transmitted to all and sundry that there will be serious penalties for these serious offences, although all of the principles of

⁵ BVIHCR2006/004

⁶ BVIHCR2005/0010

sentencing are kept firmly in mind. This type of serious and violent offending undermines individuals, families, homes, communities and the island.

[20] I have considered all that has been said by both prosecution and defence counsel in their submissions, and also take into account the fact that the defendant has spent 553 days on remand, which shall be credited to the sentence this Court imposes.

[21] In this courts' estimation having assessed all of the circumstances, the notional starting point in the case at bar is one of 9 years imprisonment. As indicated earlier, the defendant is to receive the one third credit, so that will reduce the sentence to 6 years. There will be an added discount for personal mitigation of 6 months.

[22] The sentence is therefore a term of imprisonment of 5½ years of which the time on remand must be deducted.

[23] I thank Counsel for their submissions.

Shiraz Aziz
High Court Judge