

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CRIMINAL

CASE NO. 11 OF 2015

BETWEEN:

THE STATE

V

JOHAN CHARLES

Appearances:

Ms Sherma Dalrymple for the State

Mr Wayne Norde for the Defendant

2015: November 13

JUDGMENT ON SENTENCING

[1] **THOMAS J.** (Ag), On October 23rd, 2015 the Defendant, Johan Charles, pleaded guilty to theft contrary to section 3 of the **Theft Act, Chap 10:33** of The Revised Law of Dominica.

Relevant considerations

[2] In order to arrive at a sentence that is fair and just; the court must consider the following: the nature of the offence, background to the offence, manner of execution, maximum penalty under the law, previous convictions, if any, the defendant's age, the principles of sentencing in context, mitigating factors, aggravating factors, the Social Inquiry Report and the plea in mitigation.

Nature of the offence

- [3] The offence is theft which under the **Theft Act** means to appropriate property belonging to another with the intention to permanently deprive the owner thereof.

Background to the offence

- [4] There is no background to the offence. Rather, it is a simple case of theft in high afternoon close to the end of the working day.

Manner of execution

- [5] The evidence is that at the time of the theft; the defendant entered the victim's house.

Maximum penalty for the offence

- [6] By virtue of section of the **Theft Act**, the maximum penalty for theft is 10 years imprisonment.

Previous convictions

- [7] The defendant's convictions started in September 1999 with his first convictions, and other convictions followed. Theft dominates the previous convictions of which there are 4, one for resisting arrest and one for being armed with an offensive weapon.

Defendant's age

- [8] The defendant is 37 years old.

Principles of sentencing in context

- [9] The principles of sentencing are retribution, deterrence, rehabilitation and protection. These principles have, since incorporated guidelines laid down in **Desmond Brown v R**¹ by our Court of Appeal, been applied by our court in the sentencing process.

¹ Criminal Appeal No 8/2003

[10] Society's retribution for the offence committed is always relevant; likewise it is always necessary to protect society against the subject offender as well as potential offenders. And it may be said that when the two foregoing principles are applied in the sentencing process, the sentence imposed serves to protect society against that offender. Finally, the principle of rehabilitation arises depending on the context of the defendant, including whether or not he or she is to be given a custodial sentence or being very going. However, the application of this principle is contingent on the availability of appropriate facilities and the suitability of the defendant.

[11] Theft can cause devastation to individuals and as such the sentencing principles of retribution, deterrence and protection must be reflected in the sentence to be imposed.

Mitigating factor

[12] The mitigating factor is the guilty plea entered by the defendant. He has also made a number of educational advances to improve his skills.

Aggravating factor

[13] The aggravating factor rests on the fact that the defendant entered his victim's house sometime after 3:15 pm.

Social Inquiry Report

[14] At the time of the guilty plea the court ordered that a Social Inquiry Report be prepared by a Probation Officer, Welfare Department on the defendant. Such a report was prepared by Ms. Anestin Baron, Probation officer.

[15] The report is very comprehensive and incisive dealing with the defendant's upbringing after being abandoned by his mother and cared by an abusive father and grandmother. The conclusion reads as follows:

"In summary, Johan Charles' act of theft has affected the life of Nigel Mcpherson and his family. Nigel has stated that he is still traumatized over the incident.

Although Johan has accepted responsibility for the offence, his action needs to be deplored. Based on the inquiries conducted, Johan has found himself in conflict with the Law on several occasions for theft related offences and those of a similar nature. Interestingly, it appears that this behaviour commenced when Johan was a teenager and fully responsible for providing towards his overall welfare. As explained by Johan, he ran away from home at the age of sixteen years, was unemployed and destitute and as such, started stealing as a means of survival.

It is reflected that Johan was allegedly subjected to various forms of abuse from his father who was his primary caregiver. Also, he lacked a close personal relationship with both parents; having been abandoned by his mother and abused by his father. There are questions about the reasons Johan chose to engage in a life of criminal behaviors rather than seeking to be an industrious individual within society. One of these questions centers on the level of instability that existed within his family setting and the negative impact it may have had on Johan and his feelings towards others and their property.

Johan Charles is presently serving a six years prison sentence for burglary. During the interview he noted that it was because of that sentence he felt motivated to change his negative behaviors and focus on his future. Johan holds the view that he is a changed individual and should be given a second chance to prove himself to society.

Having been incarcerated for the past couple years, interviews were held with two Prison Officers who interact with Johan on a daily basis. Based on the interviews, Johan was described as having matured and continue to demonstrate the willingness to change. It was also said that Johan took it upon himself to speak to incarcerated juvenile offenders about his life choices, the impact it have had on him and the possible repercussions of continuing to lead a life of criminal behaviors.

Taking into consideration the information derived from the investigation, it appears that Johan's criminal history may taint the view which society holds of him. However, mention must be made that he has seemingly demonstrated the willingness to change through his participation in various skills training programmes during his incarceration period as well as his enrollment in the Caribbean Vocational Qualification programme where he intends to complete CXC certificate courses in Mathematics and English.

The offence for which Johan Charles stands charged is a serious one that needs to be deplored. Such offences often times have serious effects on the victims as well as the wider society. The impact of such offences on the victims of these crimes includes financial burdens and psychological and social consequences. Based on the sentiments of the victim, he continues to be affected by the action of Johan Charles.

It is my hope that the contents of this report will assist the Court in handing down the appropriate sentence to Johan Charles."

[16] The Social Inquiry Report presents an individual with an abnormal upbringing and who cries out for help. It is the reverse of Elsa Govera's sociological analysis of the Caribbean family wherein the mother becomes the father in terms of upbringing of the children. In other words, it is not a case of my mother who fathered but a case of a mother who abandoned me and my father abused me. However this cannot be condoned or accepted by the Court as an inevitable path for crime.

Plea in mitigation

[17] Learned counsel for the defendant in his plea in mitigation focused on the efforts made by the defendant to turn a new leaf as evidenced by the skills acquired in prison in relation to auto mechanic and plumbing. Also

the fact that he speaks to younger inmates about crime. In the end, Mr. Norde “begged” the court to his client a suspended sentence.

Sentencing matrix

[18] The court faced with a defendant who has four prior convictions for theft. And now he has pleaded guilty to theft again. At the same time in the Social Inquiry Report there are indications that the defendant has made efforts to make himself employable and earn a living rather than continuing on the path of crime. Two prison officers have indicated to the Probation Officer what the defendant says concerning his education quest.

[19] It has been noted that the principles of sentencing being retribution, deterrence and protection are aimed at the society at large based on the sentences imposed.

[20] The other principle is rehabilitation which is aimed at the person before the court. It is applicable to this defendant.

[21] The defendant is now 37 years and is a stranger to continuous work given his path of crime from an early age.

[22] The indication in the Social Inquiry Report that the defendant has gained skills in auto mechanics, plumbing and woodwork. Further that he has enrolled in the Caribbean Vocational Qualification (CVQ)

[23] The court has no reason to doubt what has been said and has considered the matter of rehabilitation which arises as a consequence of the defendant's own initiative, alterable to his remorse and what he has done on his own initiative to increase his formal education and technical skills.

Sentence

[24] For the avoidance of doubt, the court wishes to explain to you and all concerned that your efforts at rehabilitation on your own initiative is commendable and shows truthful signs of a new path in your life. This brings section 6(1) of the **Criminal Justice (Reform) Act** into focus.

[25] Section 6(1) of that Act empowers the court to suspend a sentence of not more than 3 years; but section 6 (2) (b) says that the power to suspend cannot arise in certain circumstances. Fortunately, for you the charge of theft does not contain such an allegation.

[26] Having regard to the relevant considerations outlined above, the Social Inquiry Report, your path to rehabilitation, plus your guilty plea the court fixes a notional sentence of 4 years which is reduced by 1/3 or 1 year and 4 months. The residue is 2 years and 8 months which is suspended for 1 year on the condition you do not commit another offence which carries a sentence exceeding 6 months during operational period being the one year suspension. If you do your sentence is 2 years and 8 months which will commence on the day after your release from your present sentence.

[27] To the court's delight and surprise the victim was present in court and upon the defendant seeking the court's permission to offer an apology, which was granted, the victim indicated that he accepted the apology.

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Errol L. Thomas

High Court Judge (Ag)