

EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE

[CRIMINAL]

CASE NO. DOMHCR2014/0042

BETWEEN:

THE STATE
and
MARTIN JNO. BAPTISTE

Appearances:

Ms. Evelina E-M. Baptiste for the State

The Defendant Pro Se

2015: March 20

Judgment on sentencing

[1] **THOMAS, J.** [Ag.]: When a young boy goes to the premier boys' school in Dominica, the Dominica Grammar School, in the normal course of things it is unlikely that such a person would be in court to answer a criminal charge. In school the teacher and students are of such a mix that apart from the academic learning the question of morality and self-esteem are taught either directly or indirectly.

[2] Martin Jno. Baptiste is one of the exceptions since, according to him, he reached fourth form at the Dominica Grammar School; but today is his day in the High Court as he pleaded guilty to burglary, contrary to the provisions of section 11 (1) (b) of the **Theft Act**.¹ The offence relates to a number of items and cash. The items include: 2 Nokia cell phones, 1 bottle of Puncha Kuba, Casio cash register, 1 Night Owl Security Camera and 4 packets of cigarette.

¹ Chap. 10:33 of the Revised Laws of Dominica 1990

The cash totaled EC\$5697.08. And the total value of cash and items is EC\$7719.00.

[3] In the usual manner a Social Inquiry Report was ordered on the prisoner. It was prepared by Ms. Anestin Baron and this is the conclusion reached:

"CONCLUSION

Based on my assessment I wish to draw the attention of the Honourable Court to the following:

- Martin's Sentiments: Martin expressed remorse for his action and claims that his behaviours were as a result of his friends influence on him. This being said, it should be noted that Martin clearly stated that he acted alone in this offence of burglary. Martin does not wish to receive a custodial sentence but rather, to be ordered to pay compensation to the victim.
- Family History and Sentiments: Martin was raised by his parents and then alternated care to his maternal aunt after allegations of physical abuse. Martin claims that he shares a good relationship with his parents and siblings.
Martin's parents are of the view that he should not receive a custodial sentence. His mother described him as a nice child while his father stated that Martin has not learned from his past experiences.
- Public Sentiments: Community persons involved generally felt that Martin has not learned from his past experiences. It was felt that he needs to receive a custodial sentence for his action given that he has not shown improvements in his behaviours.
- Sentiments of Victim: Decima Sharplis is of the view that Martin needs to be held accountable for his actions. She believes that Martin needs to be held away from society for a period of time to provide a level of safety to her and the wider community. Based on her assertions, she has been a victim of Martin's actions on numerous occasions, actions which was costly to her to replace what was lost as well as the financial burden of installing an upgrading security system. Ms. Sharplis also spoke of the emotional stress experienced by herself and her daughter and their state of paranoia in always ensuring that the doors are locked in an attempt to feel safe.

In trying to gain understanding of recidivism in offenders, there are contributing factors that could be explored to include, the family dynamics which makes reference to the socioeconomic status as well as history of abuse, the lack of rehabilitative services for prior offences and social exclusion which could result in recidivism.

The offence committed by Martin Jno. Baptiste needs to be deterred in the strongest way possible. The impact which offences of burglary can have on its victims is well known. Besides the financial loss experienced, victims of burglary are most times left with long-lasting emotional, physical and psychological scars. Also, burglary is an offence which exposes

victims to experiences of emotions that are associated with other types of violent crimes. As observed from the interview with the victim, the emotions of fear and anger that were expressed are in keeping with the general emotions experienced by victims of burglary which includes, anger, fear, anxiety, depression, obsessive/compulsive behaviours, and grief over lost belongings and insecurity towards safety and peace of mind. The impact of Martin's action against the victim was clearly received and emphasized in her statement that he should receive a custodial sentence.

Martin expressed remorse for the offence for which he stands charged. Although he pleaded guilty to the offence, Martin maintains that his behaviours were influenced by his friends, mindful of the fact that he claims to have acted alone.

Martin is known for his involvement in activities which brings him before the Honourable Court. Through his admission, he was a juvenile offender and continued into the life of criminal activities, into his adult life. Based on the discussion with his father, Martin has not learned from his mistakes of the past as he continues to engage in such delinquency. Furthermore, the community based assessment did not present a positive image of Martin. It was generally expressed that Martin needs to be held accountable for his action in an attempt to refrain from engaging in such behaviours in the future.

In putting forward a recommendation in dealing with the matter of Martin Jno. Baptiste, consideration has been given to the information emanating from the interviews. All views with the exception of Martin and his parents are that he should receive a custodial sentence, bearing in mind the offence for which he stands charged.

Burglary is a serious offence and its occurrence needs to be deterred in the strongest possible way. The victim of Martin's actions has clearly been affected by what happened. Although the financial loss occasioned by Martin's action can be mended, the emotional impact of the incident will forever be etched in her mind. In her view, she has become paranoid with the security of her business, herself and her daughter.

The sentiments expressed about Martin by those interviewed raises questions about his general behaviours. Although Martin's secondary education was disrupted for behaviour related reasons, he revealed that he is skilled in the area of Carpentry and can be an industrious individual in society. The onus is therefore on Martin to ensure that he takes responsibility for his future and refrain from engaging in behaviours that could get him before the Honourable Court in the future. Also, having pleaded guilty to the offence of burglary, Martin has accepted responsibility for his action. However, he maintains that his actions were influenced by his friends although he acted alone. I believe that Martin needs to own up to his actions as the first step towards rehabilitating from his negative behaviours.

My hope is that the contents of this report will assist the Court in issuing the appropriate sentence to Martin Jno. Baptiste."

Factors impacting on the sentence of the court.

- [4] The factors impacting on an appropriate sentence to be imposed on the prisoner are the following: the nature of the offence, manner of execution, maximum penalty under the law, the prisoner's crime record, if any, aims of sentencing, mitigating factors, the prisoner's age, aggravating factors, prevalence of the offence, the plea in mitigation and the conclusions of the Probation Officer.

Nature of the offence

- [5] Burglary involves entering a person's building and stealing items. This is the actual wording of section 11 (1) (b) of the **Theft Act**²: "A person is guilty of burglary if (b) having entered any building as a trespasser he steals anything in the building and section 11 (4) goes on to fix a maximum penalty of 12 years.
- [6] In view of the guilty plea it means that the prisoner accepted the State's case against him. One witness for the State is Decima Sharplis of Citronier who gave evidence in the Magistrate's Court.

Manner of execution

- [7] The following is a part of her evidence:

"Sometime in December I think it was the 28th, Constable Damier came to the bar where I was and told me something, Martin Jno. Baptiste was with him. Constable Damier told me that he was carrying out investigations into my case and he asked me if I know Martin Jno. Baptiste? I told him that is the first time I am seeing him. Martin Jno. Baptiste then told me "Maam is me that go in your place, I go in your place three times and I take your money." I asked him "where is the cash register?" he said "I can show you where I put it." I asked him "where is the vault?" he told me "I mash it up and throw it in the sea." He also "look there I pass, the gate was open so I jump on the side, then I pushed up the window and came inside".

² Supra

On Sunday 27th November 2011 I stayed in the bar late because there was a show at Crazy coconuts. I stayed in the bar till 2:30 in the morning. After I closed, I took the money and brought it to my room. I forgot my bag with all my other monies under the counter. It was a total value of \$9550 EC comprising of United States Dollars, Euros and Eastern Caribbean Currency. When I woke up in the morning at about 6 o'clock, I went to the bar as there is a door that leads from my room at the bar. I realised the place was broken into. I saw the window on the southern side was opened and the frame of the window was bent. Also, a lot of my papers were all over the place. The security camera was broken and a few drink items were missing. I made a report to the police. Constable Damier took my report and spoke with me.

I never invited the defendant to my premises. I never had any property belonging to the defendant on my property.

On the 2nd December I close the bar about 1 o'clock in the morning; I secured my money in my room. At 1:30 in the morning, I heard a loud noise that came from the basement. I left my room and walk towards the basement. I said 'is anybody there?' I heard nothing, I went back to my office and turned on my security camera and someone had entered the premises.

Mr Damier recorded what Martin Jno Baptiste was saying. Later that afternoon I went to the CID to give a report.

The same day that Constable Damier brought Martin Jno Baptiste to the scene, he told Constable Damier 'let's go get the cash register, I put it in an old van down the road.' Constable Damier, Martin Jno Baptiste and myself walked 15 feet away to the old van and recovered the cash register under a tarpaulin in the van. Constable Damier asked me if it was my cash register and I said 'yes'. Then he took it to the CID office. Martin Jno Baptiste told me that he used some of the money to buy a motor bike. At the CID office I was able to put my initials on the cash register and also the phone that I spoke of. I am able to identify the phones by the 'M' tht I scratched on both of them. I also put my initials on the phones. Not all the items and the money was recovered. Only the cell phones and the cash register were recovered. The alcoholic beverages were not recovered..."

Maximum sentence under the law.

Under the **Theft Act** this is 12 year's imprisonment.

- [8] The prisoner's criminal record, if any. The prisoner has confessed that he does have a criminal record from early in his life. The Probation Officer has correctly described the prisoner as a recidivist. The record is made up of the following: vagrancy and malicious damage. This means that the prisoner has graduated to a higher level of crime.

The prisoner's age.

[9] The prisoner is now 22 years. This is simply shocking

The purpose or aims of sentencing.

[10] It is well established that the aims or purposes of sentencing are retribution, deterrence, reforming and protection.

Retribution is aimed at showing public revulsion concerning the offence and to punish the wrongdoer.

Deterrence is centered on the sentence to be imposed in order to deter not only the actual offender' for the present offence but also for potential offenders.

Reforming is self explanatory. It is aimed at alteration of the offender's attitude towards crime. This is a complex matter involving more than one discipline and as a consequence it impacts on resources.

Protection must, without a doubt; be a central aim of sentencing. It speaks to society as a whole. This is where the nature of the crime and the manner of execution become even more important.

Mitigating factors

[11] The mitigating factors are the prisoner's guilty plea and his acknowledgment of his involvement in crime and who caused his involvement in crime. The prisoner is only 22 but the court would hesitate to classify this factor as mitigating.

Aggravating factors

[12] The burglary took place at a guest house with 15 rooms and apartments. This is not aimed at Dominicans but visitors to Dominica and the wider tourism sector. Imagine the sentiments of a person who wakes up to find that this small building was burglarized while they were asleep. This would not be new but it is alarming when it is that close to home and you are in the midst of it.

This cannot speak well for Dominica period. That apart, the evidence is that the prisoner used some of the money to buy a motor scooter. This is shocking!

[13] On the narrower and personal level, this is how the Probation Officer records the sentiments of the victim in the matter as:

“Decima Sharplis is of the view that Martin needs to be held accountable for his actions. She believes that Martin needs to be held away from society for a period of time to provide a level of safety to her and the wider community. Based on her assertions, she has been a victim of Martin’s actions on numerous occasions, actions which [were] costly to her to replace what was lost as well as the financial burden of installing an upgraded security system.

Ms. Sharplis also spoke of the emotional stress experienced by herself and her daughter and their state of paranoia in always ensuring that the doors are locked in an attempt to feel safe.”

Prevalence of the crime.

[14] Without a doubt, burglary is a prevalent offence which is perpetrated by those who don’t want to work or to work hard. They want the finer things in life at their stage without working for them honestly. In this case, the prisoner purchased a motor scooter from his ill-gotten gains.

[15] The record shows that the prisoner has previous convictions.

[16] The court finds nothing in the Social Inquiry Report in the prisoner’s social context to warrant special consideration or which identifies a mitigating factor.

Sentence

[17] The evidence is stacked heavily against the prisoner; and he even told the proprietor how he entered the property. As you are aware, the maximum sentence under the Act is 12 years. This court has imposed sentences ranging from 4 years to 9 years for this offence. But there is a maxim that each person deserves a second chance. Indeed, the prisoner is seeking it and the court will give it to him.

[18] The sentence is that in accordance with section 73 of the **Criminal Law and Procedure Act**, Cap. 20:01 you must pay Decima Sharplis compensation in

the amount of \$5,000.00 on or before 1st October, 2015 or serve 8 months imprisonment.

[19] The money must be paid into the High Court for Decima Sharplis. The Court orders that the prisoner be released on Monday 23rd March, 2015.

[20] A Police Officer in uniform is hereby authorized by this Order to arrest the prisoner if he has not paid the compensation by 1st October, 2015 and to deliver him to the State Prison to serve his sentence.

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ERROL L. THOMAS
HIGH COURT JUDGE [Ag.]