

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

[CRIMINAL]

CASE NO. DOMHCR2013/0015

BETWEEN:

**THE STATE
and
CLARENCE LEWIS**

Appearances:

Ms. Evelina E-M. Baptiste for the State

Mr. Darius Jones for the Defendant

2015: March 11

Judgment on sentencing

- [1] **THOMAS, J. [Ag.]:** On 9th February 2015, Clarence Lewis, the prisoner pleaded guilty to burglary, being the first count on the indictment, whereupon the Learned Director of Public Prosecutions withdrew the other 3 counts on the indictment.
- [2] On the date of the guilty plea the court ordered a Social Inquiry Report which was prepared by Ms. Anestin Baron, Probation Officer and submitted to the court on 24th February, 2015.
- [3] The report addressed the prisoner's family history, education, his goals, the details of an interview with the prisoner and others, the prisoner's attitude towards the offence and general assessment.
- [4] The prisoner is no fool as he attended the St. Mary's Academy, obtained 9 CXC subjects and at the time of the offence was a student at the Dominica State College studying Sociology and Geography and was hoping to complete his final semester. Ultimately, the prisoner has the ambition of becoming a Criminologist.

- [5] However, the reality is that the prisoner has ended up on the other side of the law.
- [6] In the report the Probation Officer, Anestin Baron, gives the following as general assessment and conclusion:

"GENERAL ASSESSMENT"

Based on the assessment, the Honourable Court's attention is drawn to the following:

- **Clarence's Sentiments:** Clarence expressed remorse for his action for which he said that he has daily regrets. Furthermore, Clarence revealed that he has accepted responsibility for his actions. In his view, irrespective of his admission of guilty, he does not desire to receive a custodial sentence.
- **Family History and Sentiments:** Clarence was raised by his mother with assistance from his paternal grandmother. Revelations made are that he was not subjected to any form of abuse; however, there are instances when he witnesses his mother being physically abused by one of her former spouses. Clarence's mother and sister are of the view that he should not receive a custodial sentence. They described Clarence as a good individual with whom they share a good relationship. In the interviews it was said that Clarence is not known to engage in violent or delinquent behaviours, although it was purported that he has a temper problem that could be activated if he is provoked.
- **Public Sentiments:** Most individuals interviewed described Clarence as a good individual who sometimes has an aggressive temperament. It was generally felt that irrespective of Clarence's good characteristics, he has been found guilty of a very serious offence and as a result, needs to be held accountable for his actions.

CONCLUSION

Besides having to cope with financial loss, burglary victims often times endure long-lasting emotional, physical and psychological scars. Importantly, studies have shown that victims of burglaries often experience emotions similar to those of victims of assault and other types of violent crimes. Among the emotions experienced are anger, constant fear and grief over lost belongings and insecurity towards safety and peace of mind.

A victim impact statement was unable to be obtained given that the victim is deceased. As such, the impact of Clarence's action could not be established.

Clarence expressed remorse for the offence for which he stands charged. Through his admission, he has utilized his time on remand at the State Prison to reflect on his actions and to understand where he went wrong.

Clarence has recognized that his action against the victim was a betrayal of her trust in him.

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

The seriousness of such offences cannot be downplayed. Clarence admitted that he burglarized the house in question multiple times which raises the question of whether or not his expression of remorse is genuine. The offence for which Clarence stands charged before the Honourable Court, as well as his revelation that he engaged in the sale and use of illegal drugs further raises questions about his general behaviours.

It is reported that Clarence has received a sound academic foundation and rather than use his achievement to be an industrious individual in society, he has chosen to get involved in wrongdoings. The information presented above is reflective of the actions of a young and intelligent male who chose to engage in this behavior. Irrespective of his assertions, Clarence needs to get his act together and be held accountable for his actions.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Clarence Lewis.

Sgd. Anestin Baron

Probation Officer

24th February, 2015"

- [7] Before arriving at an appropriate sentence the court must give consideration to the following: the nature of the offence, the manner of execution, the maximum penalty for the offence, the age of the prisoner, the aims of sentencing, mitigating factors, the aggravating factors, the prevalence of the offence, the plea in mitigation and the prisoner's record.

Nature of the offence

- [8] The offence is burglary in the course of which jewelry and alcoholic beverages to a value of \$51,771.00 was stolen.

Manner of execution

- [9] The prisoner responded to the victim's advertisement for a Gardener and persuaded her that he loved agriculture and he needed a job badly. The prisoner

worked for about 5 months before he found a way to use a ladder to enter the woman's house.

Maximum penalty

[10] The maximum penalty under the law for burglary is 12 years under the **Theft Act**¹.

Age of the prisoner

[11] The prisoner is now 24 years old.

Aims of sentencing

[12] The well established aims of sentencing are: retribution, deterrence, reforming and protection.

It is said that retribution is aimed at showing public revulsion concerning the offence and to punish the wrongdoer.

Deterrence is aimed at sentences to deter, not only the actual offender for the present offence but also potential offenders.

Reforming has its aim at the alteration of the offender's attitude towards the crime.

Protection speaks to the well being of the entire society by which process, wrong doers are imprisoned depending on the law and the nature of the crime.

Mitigating factors on the part of the prisoner are that having realized his wrong doing he pleaded guilty and also spoke of his breach of trust.

Aggravating factors is that the prisoner with full knowledge of the victim's premises after working with her for 5 months, chose a day when she was not at home in the month of August when he told her he would not work to enter the victim's premises.

Prevalence of the offence. This is a common offence in the Commonwealth of Dominica.

¹ Chap. 10:33

[13] In learned counsel's plea in mitigation he asked the court to have regard to the assistance provided to the police in retrieving items stolen and to temper justice with mercy.

Sentencing guidelines

[14] In our Court of Appeal a number of appeals² were considered together in an attempt to provide sentencing guidelines for our lower courts. In one of these, being **Desmond Baptiste and The Queen**³ related to burglary and this is what Chief Justice Byron had to say in relation to the offence:

“**Desmond Baptiste**, aged 25 years, was sentenced in the High Court to 8 years for burglary. The precise circumstances of the burglary for which he was convicted are regrettably and inexplicably not reflected on the record before us. What we do know is that he readily pleaded guilty at the first available opportunity and the items stolen were recovered. Baptiste however has an extended criminal record involving many offences of a similar nature. In passing sentence on him, the learned Judge opined that:

“In view of the accused's previous convictions and propensity to this sort of crime and the prevalence of crime in this society at present, there is the need for punishment with a view to rehabilitation, away from society.”

In all the circumstances we cannot fault the exercise of the learned Judge's discretion given the record of the offender....”

[15] In this jurisdiction sentences ranging from 4 years to 9 years have been imposed for this offence.

Sentence

[16] In this circumstance the court considers that the sentencing principle of dictum is emphasized. Clarence Lewis for part of his young life was on the correct path which is educating himself in order to become a Criminologist. That is laudable and look at his age. But then he got into the fast buck's syndrome and sought employment with the victim with ulterior motives. As you yourself put it you were in breach of the trust placed in you.

² These are Criminal Appeals Nos. 8, 10, 16, 22, 25, 26, 29, 34, 35, 37, 41, 46 & 47 of 2003 based on appeals from the High Court of Saint Vincent and the Grenadines

³ Criminal Appeal No. 8 of 2003 (St. Vincent)

[17] With your guilty plea the sentence is two (2) years six (6) months. This is based on a nominal sentence of four (4) years. The reduction comes as a result of your guilty plea although it was late in coming.

[18] The court wishes to make it clear that a guilty plea should be entered the first opportunity in order that the 1/3 reduction may be applied.

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ERROL L. THOMAS
HIGH COURT JUDGE [Ag.]