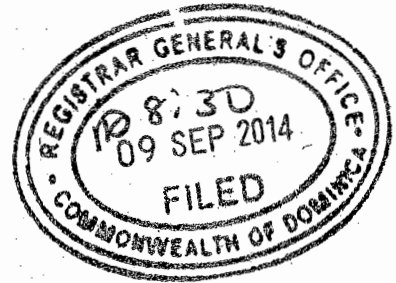


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA



DOM HCR2013/0015

BETWEEN

THE STATE

AND

TITUS WILLIAMS

2014: July 11th

July 25th

Appearances:

Miss Evelina Baptise Director of Public Prosecution with Miss Sherma Dalrymple
Arthlyn Nesty of Legal Aid *Amicus Curiae* for the defendant.

SENTENCING REMARKS

- [1] **STEPHENSON J:** On the 7th January 2014, the Learned Director of Public Prosecutions indicted the defendant Titus Williams and another for the offences of Burglary contrary to section 11(1)(b) of the Theft Act.¹ (Count 1) and Theft contrary to section 3(1) of the said Act.(Count 3)
- [2] On the 11th July 2014 Titus Williams pleaded guilty to the Theft whereupon the Learned DPP withdrew the charge for Burglary.

¹ Chapter 10:33 of the Dominica Revised Laws of 1990

THE FACTS:

- [3] On the 12th day of April 2011 the defendant was in a bus travelling to Eggleston when he met the co accused who invited him to go with him to a particular house to do something. He took the invitation and went to the house with Clarence Lewis and they were later found by the police in the house. Items belonging to owner/occupant of the house Miss Marvlyn Robinson was found in the back pack of Clarence Lewis to the total Value of EC\$494.32..

THE LAW

- [4] Section 9 of the Theft Act² provides that anyone who is found guilty of theft is liable on conviction on indictment to imprison for ten years.

THE PRINCIPLES OF SENTENCING:

- [5] In imposing the appropriate sentence on the defendant I must take the following factors into consideration:
- (i) The nature and gravity of the offence;
 - (ii) The facts and circumstances surrounding the commission of the offence including the factors that might have influenced the conduct that caused the defendant to commit the offence, the design and execution of the offence;
 - (iii) The character and record of the convicted person.
 - (iv) The aggravating and mitigating factors;
 - (v) The personal and individual circumstances of the defendant;
 - (vi) The possibility of reform and social re-adaptation of the convicted person.
- [6] I am also obliged to apply the established legal principles of sentencing which were adopted and applied by our Court of Appeal by Byron CJ in the **Desmond Baptiste –v- The Queen**³. It should be noted that this case was a consolidation of twelve magisterial appeals and one high court appeal, and that the Court of Appeal sought to give “an

² Op cit

³ No 8 of 2003 (St Vincent & The Grenadines)

indication as to appropriate sentencing levels for a range of criminal offences"⁴. These principles have been stated as follows:

"Retribution ...society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass." It is rather a reflection of society's intolerance for criminal conduct. ...

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behavior. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behavior that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However the success of

⁴ Ibid page 9 at para 1

this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform”⁵

- [7] Counsel on both sides agreed on the aggravating and mitigating factors. The sole aggravating factor has been identified as that the accused, invaded the privacy of the Virtual Complainant. The Mitigating factors were identified as, the age of the accused he was aged 21 at the time of the commission of the offence having been born on the 23 January 1990, he has no prior convictions, he has expressed remorse and regret at his actions. He sought out the Virtual Complainant and asked her forgiveness and was forgiven. He is viewed by members of his community to be a good individual who is promising and intelligent. The Defendant also pleaded guilty on the first day of trial and he has made a very well written and eloquent apology to the Court.

THE SOCIAL ENQUIRY REPORT

- [8] A Pre-sentence Report was prepared and filed as ordered by the Court. In preparing the report welfare Officer Mrs Delia Giddings-Stedman held interviews with the defendant, relatives and community members. The report shed some light on the defendant's family, educational and social background. The defendant's attitude towards the offence, and those of the persons in the immediate environment at Kennedy Avenue, Roseau.
- [9] The Defendant is from extremely humble beginnings coming from a single parent family his father having died when he was a toddler. He also grew up in what he considered “The ghetto”⁶. In his interview with the Probation Officer Titus spoke of the harsh and hard conditions that he and his family endured, however “love overshadowed their poverty stricken family”⁷. There is clear evidence of a strong family bond.

⁵ Ibid pages 19-20, Paras 23 to 25.

⁶ Social Enquiry Report

⁷ ibid

- [10] It is also noteworthy that Titus in spite of it all graduated from the Dominica Grammar School and obtained six CXC subjects. He has over the years worked at various places and is currently employed as a waiter and cook at the Coal Pot Café.
- [11] The members of his family, co-workers and community who were interviewed by the Probation Officer spoke well of Titus and expressed the view that his being involved in this matter is unusual given his good reputation and character and they all expressed the desire to see leniency and mercy extended to him.

COUNSEL'S SUBMISSIONS:

- [12] Learned Counsel Miss Nesty submitted local authorities to assist the Court in determining the proper starting point and sentencing ranges for offences in the case at bar. The authorities cited are:
- (a) The State –v- Brian Pete & Keran Gregoire⁸ (Both defendants pleaded guilty) and they were each fined \$2000 payable in 120 days or six months in prison and two years in prison suspended for two years during which time the defendants were to be of good behaviour, keep the peace and live an industrious life.
 - (b) The State –v- Kenrick Frantz⁹ he was fined \$2,000 in six months or in default imprisonment for 6 month plus 24 months in prison suspended for two years during which he was to live an honest and industrious life. The defendant was also ordered to pay compensation in the sum of \$800.00 in nine months and in default 12 months in prison.
 - (c) The State –v- Eshanette Joseph¹⁰ a suspended sentence was given and the defendant was fined \$2,400 in default nine months in prison. The defendant was also ordered to pay compensation.
 - (d) The State –v- Howard Ambrose¹¹ the defendant was fined \$20,000 to be paid in ten years in default one year in prison.

⁸ Domhcr2011/02

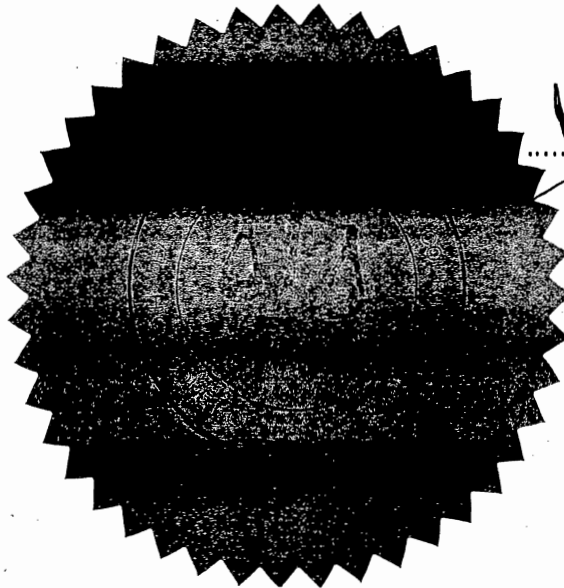
⁹ Domhcr2011/31

¹⁰ Domhcr2012/39

¹¹ Domhcr2008/22

THE SENTENCE:

- [13] I note that what happened was clearly regrettable and bad decision by the defendant for which he is remorseful. The defendant has shown signs that he has learned from his experience and has taken steps to redirect his life in a positive direction and has in the four years since his unfortunate action been gainfully employed.
- [14] Having considered the circumstances of the offence and the established starting point along with the guidelines that have been laid down which requires that the punishment of the offence must be commensurate with the seriousness of the offence.
- [15] Having also considered the facts of this case, the aggravated and mitigating circumstances, the contents of the Social Enquiry Report and also taking into consideration that the defendant has pleaded guilty on the first day of trial which has permitted him access to the 30% discount, Titus Williams on the offence of the theft you are hereby sentenced to one year in prison suspended for one year during which you shall be bound over to keep the peace and lead an honest and industrious life in default you will serve the 12 months in prison.



Handwritten signature of M E Birnie Stephenson in cursive script.

M E Birnie Stephenson
High Court Judge