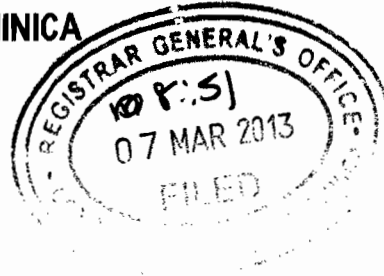


IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(CRIMINAL)



DOMHCR2011/ 043

THE STATE

V

STEVEN WYKE

JOHAN CHARLES

GERSHON BARON

Before: Justice Birnie Stephenson

Appearances:

Mr Gene Pestaina Director of Public Prosecution
and Mr Clement Joseph and Miss Arthlyn Nesty for the State
Mrs Dawn Yearwood-Stewart for Steven Wyke
Miss Bernadette Lambert for Johan Charles

18th February 2013

SENTENCING REMARKS

- [1] **Stephenson J:** The three defendants were indicted for the offence of Burglary. The first and second defendants, Steven Wyke and Johan Charles, pleaded guilty and are before the Court for sentencing. The third named defendant pleaded not guilty and his trial date has been set.

The Facts:

- [2] On Thursday 8th June 2010, Mr Patrick Simeon left for work at the Melville Hall Airport. Before doing so he secured his home at Sultan Estate, Layou Park. Upon his return home he observed his kitchen door was broken into and a number of items were missing from his house including two red tool kits, a 28 inch computer monitor, 42 inch Panasonic television and a 26 Inch Panasonic television, a router, a cell phone charger, a remote control, shoes, radio/cd/cassette player, a folding knife, jewelry, handcuffs, bullet proof vest and a fan.
- [3] A report was made to the St Joseph Police Station and following investigations the defendants were arrested and charged with the offence of Burglary and to this offence they have pleaded guilty. Most of the stolen items have been recovered.

Sentencing Considerations

- [4] What should the Courts seek to achieve in their sentencing? The Courts seek to punish the offenders to an extent and in a manner which is just in all the circumstances. To deter the offender or other persons from committing offences of the same or a similar character. To provide opportunities for rehabilitation of the offender. The Court also seeks to denounce the type of conduct in which the offenders are engaged in. The Court also seeks to protect the community from the offenders. Lawton LG identified these to be the cardinal factors of sentencing namely "retribution, deterrence, prevention and rehabilitation" which principles have been applied in our Courts.
- [5] Both of the defendants before the Court for sentencing are no strangers to the Courts as they both have previous convictions for similar offences and have in the past served several sentences for like offences.
- [6] There was a submission by Defence Counsel on behalf of Mr Wyke to wit that he apparently suffers from some mental or psychological disability based on injuries sustained in a motor vehicle accident some years ago. As a result of this being drawn to the Court's attention a Psychiatric Evaluation was ordered and done and a report received. Dr Griffin Benjamin Consultant Psychiatrist said "Mr Wyke was not diagnosed as suffering with any major psychiatric illness. He seemed to be fully in touch with the reality of his life situation. He showed no signs of acute psychosis, no hallucination or delusion. His behavior and thoughts are well organised ... he presented with no signs of neurological, psychological or cognitive deficit affecting his

memory, judgment or level of consciousness.” I therefore conclude that Mr Wyke is not suffering from any defect to be properly taken into account by the Court.

The Offence of Burglary

[7] Section 11 (1) states that the “ *a person found guilty of the offence of burglary upon indictment is liable to be sentenced to 12 years in prison.*”

[8] “ *... Burglary is often not simply a crime against property but may have a serious impact on people whose houses or businesses are invaded. Those who burgle people's houses will normally go to prison.*”¹

[9] In issuing sentencing guidelines in matters such as the case at bar Lord Bingham CJ the **Brewster Case**² has this to say:

“Domestic burglary is, and always has been, regarded as a very serious . It may involve considerable loss to the victim. Even where it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity....Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled....”

[10] As the sentencing Judge I am required to hand down a sentence to the defendants which fits the crime. It is acknowledged that this is probably the most difficult aspect of my job.

¹Lord Hughes – Deputy Chairman of the Sentencing Council -UK

² [1998] 1 Cr. Ap-p. R. 220.

[11] Chief Justice Sir Dennis Byron as he then was in his judgment in the often quoted case of **Desmond Baptiste –v- The Queen**³ set down sentencing guidelines to guide the Judges in our jurisdiction when embarking upon this task and to establish sentencing levels for various criminal offences including Burglary and theft.

[12] A court must also take into consideration the aggravating and mitigating factors.

[13] The Sentencing guidelines which have been developed are meant to assist the sentencing Judge in arriving at a suitable sentence - one that fits the crime and one that is deserved. The sentencing Judge should aim to that which is fair both to the person being convicted and to the community, including the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality is to be served. The objective of consistency has led to the emergence of ranges of sentences.

[14] In this case **Desmond Baptiste** ⁴was a recidivist having multiple convictions for the offences and after he pleaded guilty he was sentenced to eight years for burglary.

[15] Likewise in the **The Queen –v- Gairy Flemming**⁵ the defendant who pleaded guilty and who also had previous convictions for a similar offence to the case at bar was sentenced to three years and six years.

[16] In the **Queen v Keenan Kendell Bethelmy** ⁶the defendant who was a young man of 24 years and who had pleaded guilty to two offences of burglary was sentenced to 10 years and 3 years to run concurrently.

³³ Criminal Appeal No.10/2008 Court of Appeal (SVG)

⁴⁴ Op cit

⁵ 0025/2011 Anguilla

⁶ Criminal Case No. 11 of 2007

- [17] In **Denzil Sam v The Queen**⁷ the appellant was convicted of burglary. The Court of Appeal affirmed the sentence of 5 years in prison.

The Guilty plea

- [18] The Courts of the Eastern Caribbean which includes Dominica have accepted the practice of how to address the guilty plea. Where the offender pleads guilty the court shall take into account the plea and the stage of the proceedings at which the offender indicated an intention of doing so. In the case at bar, the defendants have pleaded guilty upon being arraigned at the last assizes, I am of the view that the defendants are entitled to receive a discount, in the case of **Desmond Baptiste** Chief Justice Byron as he then was said:

"In England a plea of Guilty normally attracts a significant, approximately a one third, reduction of the sentence, there are sound public policy reasons for this. The criminal justice system benefits from genuine guilty pleas, such pleas spare the judge, the jury and witnesses the stress and rigours of a full trial. The state saves both time and money.

It could be manifestly unfair to accord the identical sentence to codefendants charged with the same offence where one has pleaded guilty at an early stage and the other has put the state through the ordeal of a long and demanding trial. The defendant who has pleaded guilty is entitled to a considerable discount. While suggesting a discount of the order of one third however, Lord Taylor, CJ stressed in Buffrey that "it would be quite wrong to suggest that there was an absolute rule as to what the discount should be. Each case must be assessed by the trial judge on its own facts and there will be considerable variance between one case and another." In our view our courts should adopt; a similar approach. Clearly, the earlier the defendant pleads guilty, the greater the likelihood that he will receive the full discount permissible. Conversely, a plea of guilty late in the proceedings may not yield much of a discount. The discount should be applied not to the maximum sentence

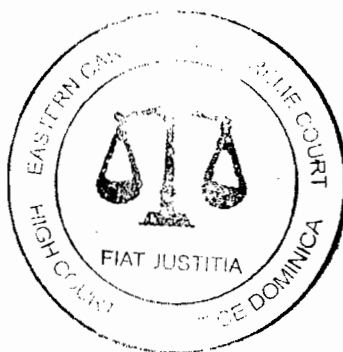
⁷ St. Vincent and the Grenadines Criminal Appeal No. 3 of 2006,

possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea."

[19] The offence of Burglary is a serious one and in sentencing these two defendants I am the view that a serious message must be sent out that the Court will not tolerate this kind of activity. I have taken into account the assistance given to me in the Pre Sentence report, I have taken into consideration the aggravating and mitigating factors in this case also the pleas in mitigation made by Defence Counsel and the submissions made by the Prosecution.

[20] While the Court will give the defendants the discount for the fact that they have pleaded guilty, I must nevertheless bear in mind the facts in this case. I must take into consideration the totality of circumstances including the need to ensure that the sentence that is imposed serves to deter both Mr. Wyke and Mr Charles from similar deviant conduct while at the same time providing them both with the opportunity for rehabilitation. The sentence that I will hand down must reflect the society's abhorrence of crimes of this nature while serving to deter other like-minded persons from committing similar offences. There is a need to deal severely with these two accused.

[21] In view of the principles of sentencing, the circumstances of the case, the contents of the pre-sentence the appropriate sentence to be imposed on the accused for the offence which they have been charged is 6 years commencing today's date.



Birnie Stephenson
.....
Birnie Stephenson
High Court Judge