

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CRIMINAL CASE NO. SLUCRD 2011/2136

BETWEEN:

THE QUEEN

Claimant

AND

WENDEL WILLIAMS

Defendant

Appearances:

Mr. Leslie Mondesir Counsel for the Defendant
Mr. Leon France Crown Counsel for the Crown

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2012: December 3
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** On November 5, 2011, Persha Paul, an employee of Sand & Aggregate (the virtual complainant) secured the premises of that place of business and engaged the alarm system. Later that day the security service provider received a signal indicating that the alarm at the virtual complainant's premises had been triggered. Mr. Paul Montrose arrived at the virtual complainant's premises and discovered that a bathroom window was damaged, its burglar bars removed and he heard a loud noise from inside the building. The defendant was detained by the security service provider when he attempted to exit the building and was later handed over to the

police. On entering the business premises it was discovered that a dark blue Jansport bag was on the secretary's desk with a flat screen computer monitor, camera and alarm system in it. The computer was disconnected and a crow bar was found in the bathroom. Whilst in custody the defendant told the police "officer I don't know what made me do that"

[2]. On the 26th October, 2012 the defendant was indicted by the Director of Public Prosecution for the offence of burglary and at his arraignment on the 14th September, 2012 he pleaded guilty as indicted.

[3]. **THE HEARING**

At the defendant's sentencing hearing the court benefitted from a pre-sentence report and written submissions from counsel on both sides. Crown counsel, Mr. France, considered the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. Willful and deliberate damage to the property resulting in financial loss-alarm;
2. Pre-meditation of the act.

MITIGATING FACTORS

1. Plea of guilty at the first reasonable opportunity;
2. Co-operate with the police;
3. First time offender;
4. The positive pre-sentence report.

[4]. Mr. France invited the court to consider and apply the classical principles of sentencing as enunciated in *R v James Henry Sargeant* 1974 60 CR. App. R. 74 namely retribution, deterrence,

prevention and rehabilitation. Counsel invited the court to take judicial notice of the prevalence of this offence and that the court, in sentencing the defendant, ought to send a clear message to would be offenders of the court's zero tolerance for this offence.

[5]. Crown counsel further submitted that he considered in the circumstances that the mitigating factors outweighed the aggravating ones but nevertheless invited the court to show its abhorrence for this type of offence and to avoid sending a message to the society that the court is tolerant of crime as a means of meeting one's socio-economic difficulties.

[6]. Mr. Mondesir for the defendant rather boldly submits that there are no aggravating factors herein and contends that the following are the mitigating factors;

MITIGATING FACTORS

1. The defendant has pleaded guilty at arraignment ;
2. The defendant is genuinely remorseful and co-operated with the police from the onset and expressed that remorse to the probation officer;
3. The youthful age of the defendant. It is acknowledge that the defendant is an adult by virtue of his age, albeit a young adult;
4. This offence was out of character for the defendant;
5. The defendant has no previous convictions;
6. The positive pre-sentence report about the defendant and the truly heartbreaking revelations contained therein;
7. No resistance or violence was used by the defendant when he was apprehended;
8. The offence was not committed at night, but between the hours of 12:00 noon and 5.30 p.m.;

9. The premises were a business place and not a dwelling house;
10. The premises were unoccupied;
11. The victim is willing to accept compensation from the defendant;
12. All items were recovered.

- [7]. Counsel addressed the court on the favourable comments from persons in the community in which the defendant resides and that he had encountered severe loss in his preferred means of a livelihood, namely fishing when one fishing boat was destroyed by Hurricane Tomas and the other by a relative. Mr. Mondesir goes on to contend that the defendant has continued to fish and earns an income therefrom. The defendant has also enrolled himself in the National Enrichment Learning Program (NELP) which has resulted in an improvement in his spelling and writing abilities.
- [8]. Mr. Mondesir also referred the court to the classical principles of sentencing of retribution, deterrence, prevention and rehabilitation. He further contends that the mitigating factors outweigh the aggravating ones.

THE LAW

The court concurs with counsel on both sides that the classical principles of sentencing ought to be applied herein.

RETRIBUTION

The defendant brazenly committed this offence in bright daylight. In the pre-sentence report the defendant told the probation officer that he was on his way to Ciceron Beach some three (3) hours prior to his usual schedule ostensibly to catch fish to sell when he entered the virtual complainant's

premises and committed this offence. He further contends that his unlawful actions that day were not premeditated.

The court finds however that the presence of a crowbar and Jansport bag in the virtual complainant's premises the latter containing booty from the breakage to be compelling evidence that the defendant planned and premeditated the commission of this offence. The court takes judicial notice of the notorious fact that a crowbar is not required by a fisherman plying his trade and that it can be inferred that same was used by the defendant to effect entry into the virtual complainant's premises.

DETERRENCE

It is common ground that the prevalence of this offence both on the virtual complainant's premises and nationwide is indeed a matter for concern. Whilst it seems unlikely that the defendant would re-offend in a similar manner the court must of necessity impose a suitable sentence to deter would be offenders from committing this offence.

PREVENTION

I find this principle inapplicable to this defendant who is a first offender and is unlikely to re-offend.

REHABILITATION

The defendant is a prime candidate for rehabilitation. The court has noted with approval the defendant's efforts to improve his literacy and his various efforts to engage himself in legitimate employment. In the circumstances, the court does not find that a period of imprisonment is necessary to ensure the defendant's participation in any prescribed course of rehabilitation.

[9]. The court finds the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. This offence was planned and premeditated by the defendant;
2. The prevalence of the offence.

MITIGATING FACTORS

1. The defendant's co-operation with the police;
2. The defendant's guilty plea at the earliest possible opportunity;
3. The defendant's hitherto clean criminal record;
4. The defendant's offer to compensate the virtual complainant.

I have carried out a balancing exercise of the aggravating and mitigating factors in the circumstances of this case and find that the aggravating factors do not outweigh the mitigating ones.

[10]. **SENTENCE**

I have considered the defendant's stated remorse for his actions. I do not however consider his difficult socio-economic conditions to be a mitigating factor, nor can it be used as an excuse for his participation in his brazen criminal conduct in daylight hours. I have also taken into account the prevalence of this offence which carries a maximum penalty of twenty (20) years imprisonment.

[11]. The defendant is first offender and has demonstrated in the past his willingness to involve himself in legitimate employment of one type or another. The residents from the community in which he resides have spoken positively about him and as stated aforesaid the court does not consider the

defendant to be in that class of offenders for whom imprisonment is a necessity for the protection of the society or to ensure their rehabilitation.

[12]. Accordingly, the court makes the following orders:

- The defendant shall compensate the virtual complainant in the sum of two thousand, five hundred (\$2500.00) dollars to be paid in five (5) monthly installments of five hundred (\$500.00 EC) dollars commencing on the 3rd day of January, 2013 and continuing on the first day of each and every month until payment in full;
- The defendant is placed on probation for two (2) years under the supervision of the Department of Probation and Parole and shall participate in the following:
 - Continue his participation in NELP until successful completion;
 - Obtain assistance from the James Belgrave Fund, St. Lucia Development Fund or any other legitimate source to assist in the reconstruction of defendant's fishing boat;
 - Any other program considered necessary for the defendant's rehabilitation by the probation officer to successful completion.
- The defendant during his probationary period shall comply with all directions and instructions given by his probation officer;
- The defendant shall enter into a bond without surety to keep the peace for a period of two (2) years. If the defendant breaches this bond he shall be sentenced therefore by the High Court;
- Upon the defendant's failure to pay compensation in the manner herein before set out he shall serve a period of imprisonment of three (3) years.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE

