

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2007/1462

BETWEEN:

THE QUEEN

Claimant

AND

SIMON EVANS

Defendant

Appearances:

**Mr. Michael St. Catherine Counsel for the Defendant
Ms. Tina Mensah Crown Counsel for the Crown**

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2012: April 18
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions on the 6th January 2012 for the offence of attempted burglary allegedly committed on the 13th December 2007 at Back Street in the village of Micoud. At his arraignment on the 16th January 2012 he pleaded guilty to the offence for which he was indicted.

[2] **THE FACTS**

Regis and Shana Casimir, (the Virtual Complainants) left their home at Back Street in Micoud to visit a place called "ON THE GRILL". They left their children and personal effects at their home and from time to time Regis Casimir returned to the home to check on matters therein. On one such occasion when he returned he found the defendant removing Louvre panes from a back window at his home and attempting to enter same. At that time the Virtual Complainant was in company with one Peter Joseph a Corporal of Police. The defendant was apprehended by the Virtual Complainant and Corporal Joseph and the matter was reported to the Police. The defendant at that time had a bag in his hand. He was arrested and taken into custody on that same night.

[3] **THE HEARING**

The court ordered a pre-sentence report and this report provided the court with valuable background information on the defendant. This report painted a bleak picture of the history of the defendant. The defendant at around age 20 became involved in the use of crack cocaine and to feed his habit engaged in acts of dishonesty, primarily stealing. He asserts that on the night in question he had just finished smoking cocaine when things got 'out of control' and he found himself in the Virtual Complainant's yard. He expressed remorse for the incident and insists that he never intended to do harm to anyone.

[4] The residents in his neighborhood in the words of the Probation Officer 'seemed ambivalent' when expressing their views about the defendant. He is widely respected for his skills as a footballer in his younger days but the general consensus seems to be that his drug addiction got the better of

him and he committed various acts of theft to support his habit. Reference was made to failed efforts by the defendant to turn his life around by attending church and playing recreational football.

[5] Counsel for the defendant in his written submissions states that the defendant who was addicted to illegal drugs as a result of which he turned to a life of crime did not receive enough help to rid him of his addiction. He commented that the defendant was well liked throughout the island for his prowess in the field of football and that he used his skills for the benefit of the Micoud community.

[6] Mr. St. Catherine submits that the defendant is desirous of turning his life around and being a father to his children particularly his four (4) year old twin sons who because of his incarceration do not know him. He urges the court to give him one last opportunity to do so.

[7] While conceding that his client has several previous convictions for acts of dishonesty and possession of narcotics, Mr. St. Catherine urged the court to apply the provisions of section 1101(1) of the criminal code which states:

“An offence shall not be regarded as more serious for the purposes of any provision of this code by reason of any previous convictions of the offender or any failure on the part of the offender to respond to previous sentences.”

[8] He concludes by contending that there are no aggravating circumstances surrounding the commission of this offence.

[9] Crown Counsel reminded the court of the checkered career of the defendant and his involvement in criminal conduct as is evidenced by his several previous convictions for offences of dishonesty.

[10] **THE LAW**

In considering the classical principles of sentencing, namely retribution, prevention, deterrence and rehabilitation as outlined by Lawson L.J. in *R V Sargent* 60 Cr. App. Rep. 74 - 77 and approved and adopted by Sir Dennis Byron in **Desmond Baptiste v R** No. 8 of 2003, the issues of prevention and deterrence immediately come to mind.

[11] It is common ground that the defendant is a victim of what has been termed the revolving door syndrome. In that regard it would be useful to repeat the dictum of Byron CJ in *Desmond Baptiste v R* supra;

Deterrence

*Deterrence is general as well as specific in nature. The former is intended to be a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addiction 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 (emphasis added)*

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 different 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.

[12] Though I hold the view that the aforesaid guidelines are that and no more and ought not to be slavishly followed, it is difficult to escape the startling applicability of these aforesaid principles to the case at bar. What makes the situation more egregious is the fact that the defendant's last conviction prior to the commission of this offence was for housebreaking in August 2002 and for

which he was sentenced to a period of four years imprisonment. Moreover the trigger of drug addiction is in my view still a live issue to be considered in this matter as the defendant is an admitted cocaine addict.

- [13] There are in the pre-sentence report positive signs for the rehabilitation of the defendant. In this regard the Probation Officer states thus:

“Information obtained from Prison Officials and Criminal Records Office mapped out a range of offences committed by Defendant who has spent four years and two months on remand at Bordelais Correctional Facility, where he is incarcerated presently. The Unit Manager on Gold Unit, where Defendant is presently housed informed writer that when he just came in at first, Defendant was a bit agitated. However, his behaviour has improved remarkably. It was noted that Defendant is a cleaner on his unit at the Bordelais Correctional Facility and he is doing very well regarding his behaviour. Defendant expressed concern about his incapability to provide for his four year old twin sons who live with their mother and is currently unemployed. He confessed that he feels shameful about his previous behaviour, including the way he lived his life and he wants to commit himself to work towards changing his negative behaviour, in order to start afresh in his life.”

- [14] In considering these remarks the court must bear in mind the fact that the defendant whilst on remand is confined within a controlled environment. It follows that he has very little opportunity to control his day to day activities and his exposure and ability to use and abuse illegal narcotic drugs is severely limited.

[15] The court however bemoans the absence of information of counseling received by the defendant whilst on remand for his cocaine addiction. Thus on the surface this still remains to be addressed.

[16] **FINDINGS**

I find that for reasons not attributable to him the defendant did not engage in any violence or use force and fear in the commission of this offence. The timely intervention by the Virtual Complainant obviously stymied the defendant's efforts to enter his home and to commit acts of stealing therein. Though he had a bag in his possession he was not armed with any weapon to be used in the commission of the substantive offence.

[17] I find that this offence was committed by the defendant whilst under the influence of cocaine. I do not consider it to be planned or premeditated. I accept that the defendant is genuinely remorseful for his conduct and has reached that stage in his life where he appreciates that a life of drug addiction and crime must of necessity come to an end.

[18] I am however concerned that there is a real likelihood of recidivism in the circumstances of this case. I am also concerned of the unexplained delay in indicting the defendant for this offence. Though the court is cognizant of the limitations and burdens on the criminal justice system of this jurisdiction, this is a simple matter involving four (4) witnesses whose statements were submitted by February 2008. On the 31st July 2009 the defendant was committed by Benjamin J. to stand trial in the High Court for the offence for which he was indicted. It was not until the 6th January 2012 that the defendant was indicted, to which indictment he entered a guilty plea at his arraignment. It is significant to note that from the time of his arrest the defendant was kept on remand. I find in the circumstances that the defendant's constitutional right to a fair hearing before an independent court within a reasonable time was breached.

[19] **SENTENCE**

The maximum sentence prescribed in section 207(1) of the Criminal Code for this offence is twenty (20) years imprisonment. I find that in the circumstances this not being within the category of the worst of the worst that a benchmark of fifteen (15) years imprisonment to be applicable. I will deduct five (5) years for the guilty plea at the first available opportunity and five (5) years for the breach of the defendant's constitutional rights.

[20] In the circumstances I find that a sentence of five (5) years to be appropriate. The defendant shall receive all necessary counseling for his cocaine addiction and upon his release shall be placed on a bond for two (2) years on his own recognizance to keep the peace and be of good behavior. In the event that the defendant breaches the said bond he shall be imprisoned for a further period of three (3) years. The defendant shall be credited for all time spent on remand whilst awaiting his trial for this offence.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE