

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HIGH COURT CRIMINAL APPEAL NO.8 OF 2003

BETWEEN:

DESMOND BAPTISTE

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HIGH COURT CRIMINAL APPEAL NO.10 OF 2003

BETWEEN:

ALLAN WILSON

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.16 OF 2003

BETWEEN:

CURT JACOBS

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir. Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.22 OF 2003

BETWEEN:

COSMUS BASCOMBE

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Richard Williams for the Appellant
Mr. Colin Williams, DPP [Ag.] for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.25 OF 2003

BETWEEN:

LEON McALLISTER

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 26 OF 2003

BETWEEN:

FRANKLYN MARTIN

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Ms. Samantha Robertson for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.29 OF 2003

BETWEEN:

RENRIK BASCOMBE

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ronald Marks for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.34 OF 2003

BETWEEN:

MICHAEL BOWENS

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ronald Marks for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.35 OF 2003

BETWEEN:

JULIAN JOHN

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.37 OF 2003

BETWEEN:

KENTON ROBERTS

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The Appellant in person
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.41 OF 2003

BETWEEN:

KENRICK MARKSMAN

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Mc Caulay Peters for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.46 OF 2003

BETWEEN:

FABIAN ROCK

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Ronald Marks for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.47 OF 2003

BETWEEN:

DWIGHT BIBBY

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Adrian Saunders
The Hon. Mr. Michael Gordon, QC

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Richard Williams for the Appellant
Mr. Colin Williams, DPP [Ag.] with Ms. Sandra Robertson for the Respondent

2003: November 25;
2004: December 6.

JUDGMENT

Introduction

- [1] **BYRON, C.J.:** We reserved twelve Magisterial appeals and one High Court criminal appeal against sentence so that we could give some indication as to appropriate sentencing levels for a range of criminal offences. The offences are all of a very serious nature and they come before our Courts with alarming regularity. What is of even graver concern to us is that the vast discretion left to judicial officers when sentencing offenders for these offences has resulted in widespread inconsistencies in the sentences meted out.

- [2] Ideally, devising comprehensive sentencing guidelines for these offences should be informed by consultations with various interest groups including the law enforcement agencies, judicial officers, the executive and parliament as well as the public who are most affected by the consequences of any sentencing policy. In the absence of such consultations the force of this judgment must necessarily be limited. We do not endeavour to outline a system of tariffs for sentencing for the various offences appealed against. Instead, we propose briefly to examine sentencing objectives and the factors and other matters that should inform a sentencer in fulfilling his or her task before indicating an appropriate approach in respect of the subject offences.
- [3] We emphasise that the advice that we are about to give must be read subject to the need to have regard to the particular circumstances of the offence committed, its effect upon the victim and the record of the offender. In other words, a sentencing range should not obviate the need for the sentencer fully to consider the host of aggravating or mitigating factors that might accompany any particular crime. The sentencing of an offender who has been found or who has pleaded guilty to an offence is a duty of the presiding judicial officer having regard to the principles and rules provided by statute and the common law.

The offences being considered

- [4] The offences and the statutory provisions to which these appeals relate are as follows:
- [1] Robbery contrary to section 216 of the Criminal Code, the maximum penalty for which is life imprisonment;
 - [2] Possession of a firearm and ammunition contrary to section 43 of the Firearms Act the maximum penalty for which is a fine of \$5,000.00 or imprisonment for a term of twelve months;

- [3] Discharge of a weapon in a public place contrary to section 17 of the Firearms Act the maximum penalty for which is a fine of \$5,000.00 or imprisonment for a term of twelve months;
- [4] Possession of Cannabis and possession of Cannabis with intent to supply contrary to sections 7(2) and (3) of the Drugs Act the maximum penalty on summary conviction being three years imprisonment or a fine of \$100,000.00 ;
- [5] Grievous bodily harm or wounding contrary to section 174 of the Criminal Code, the maximum penalty being imprisonment for five years;
- [6] Burglary contrary to section 217 of the Criminal Code, the maximum penalty being imprisonment for fourteen years;
- [7] Obtaining property by deception contrary to section 223 of the Criminal Code the maximum penalty being imprisonment for two years upon summary conviction and imprisonment for ten years on conviction on indictment.

The factual backgrounds

Allan Wilson

- [5] On 3rd June 2003 Mr. Wilson pleaded guilty to robbing a bus conductor of \$220.00 and was sentenced to ten years imprisonment. The facts can be summarized as follows. On the early evening of 12th September 2002 Mr. Wilson boarded a bus at Little Tokyo. A police constable boarded the bus at the same time as Mr. Wilson. The bus then proceeded to Vermont where Mr. Wilson disembarked at the Chauncey Cemetery gap. As he disembarked the bus he placed a gun at the conductor's head and ordered him to hand over the black purse slung over the conductor's shoulder in which the passengers' fares were kept. He then fled with the purse. The police constable aboard the bus gave chase but to no avail. Mr. Wilson was later arrested and charged. A firearm and two rounds of ammunition were retrieved from his home and \$124. 00 was found on his person. He gave the police a caution statement in which he confessed to having robbed the bus

conductor. Wilson, 18 years old, was a first offender. He cooperated fully with the police and pleaded guilty at the first available opportunity.

Kenrick Marksman

- [6] Mr. Marksman pleaded guilty to discharging a firearm in a public place and was sentenced to six months imprisonment. The facts can be summarized as follows:

“On 21st May 2003 Mr. Marksman went over to a shop in Rockies to purchase cigarettes. He encountered some men playing cards at the shop and interrupted the game to admonish one of the participants about gambling. An altercation ensued. Mr. Marksman alleged that he was slapped and thrown out of the shop. He left the shop for his home some 50 yards away. He returned shortly afterwards with an unlicensed firearm which he discharged into the air while on the public road outside of the shop. Mr. Marksman pleaded guilty at the first available opportunity. He was 49 years old at the time. He only came before the court previously for minor traffic offences. After he discharged the firearm the men ran after him, beat him up quite severely and took away the gun from him. He reported the matter to the police and it is on this report that he was charged.”

Dwight Bibby

- [7] Mr. Bibby, a mechanic aged 27 years, pleaded guilty to being in possession of an unlicensed firearm, possession of six rounds of ammunition without a license and escaping lawful custody. He committed the offences during the currency of being placed on a bond to be of good behaviour. The Magistrate recorded that he had previous convictions but his record was not placed before us. He was sentenced respectively to ten months imprisonment and to two 2 month terms of imprisonment (to run concurrently). For breach of the prior bond the recognizance in the sum of \$500.00 was forfeited. The facts of the case can be summarized as follows: Mr. Bibby on the early morning of 12th May 2003 was attempting to enter a discothèque when he was subjected to a bodily search with the use of a metal detector. The firearm and six rounds of ammunition were found on his person. He was apprehended by a police officer. En route to the police station, Mr. Bibby with

the assistance of another man freed himself from the policeman and fled. He was later apprehended.

Michael Bowens

- [8] Mr. Bowens pleaded guilty to possession of a .357 Magnum unlicensed firearm and three rounds of ammunition for which he was sentenced to six months imprisonment and one-month imprisonment respectively. The facts of the case can be summarized as follows: In the early hours of the morning of 24th May 2003 officers of the Rapid Response Unit while on a mobile patrol of Calliaqua spotted Mr. Bowens' car parked alongside the road. The officers pulled alongside the vehicle and conducted a bodily search of Mr. Bowen. A firearm with ammunition was found. When cautioned about the firearm, Mr. Bowen stated that he had found the weapon and did not know what to do with it. He was arrested and charged for the offences. Mr. Bowens is 24 years old and this was his first conviction.

Curt Jacobs

- [9] Mr. Jacobs pleaded guilty to unlawfully and maliciously inflicting grievous bodily harm upon Grantley Thomas and was sentenced to one-year imprisonment. The facts of the case can be summarized as follows: Mr. Jacobs and the virtual complainant were acquaintances. On 16th March 2003 the virtual complainant was accosted by Mr. Jacobs. A tussle ensued between the two. Jacobs then struck the virtual complainant several severe blows with his bare hand. The virtual complainant was rendered unconscious and sustained swelling to his eyelid, bleeding from his nostrils and a headache. Mr. Jacobs pleaded guilty and offered an explanation in which he alleged that the virtual complainant had pushed him and threatened to shoot him. It must be said that Mr. Jacobs' explanation for his conduct raises a prima facie issue of self-defence and it would have been

preferable for the magistrate to have entered a not guilty plea and set the matter for trial¹. At any rate, this was Jacobs' first offence. He is 25 years old.

Fabian Rock

- [10] Mr. Rock pleaded guilty to the possession of 25,420 grammes of cannabis resin and was sentenced to two and a half years imprisonment. The facts of the case can be summarized as follows: On the morning of 19th June 2003 Mr. Rock, a Grenadian national, checked in at the ET Joshua Airport for a flight to Barbados. The immigration police, acting on information received, searched and found a quantity of wrapped packages in Mr. Rock's luggage. The packages were opened and cannabis resin of a street value of \$44,800.00 was discovered inside of the packages. Mr. Rock was arrested and charged for the offence. He is 29 years old. It appears that this was his first offence.

Julian John

- [11] Mr. John was convicted of obtaining by deception. He faced three such charges. His modus operandi in respect of each matter was similar. He would represent himself as an agent for a foreign company that was recruiting female workers and then request from his victims funds to defray airfare costs. He collected \$1500.00 from Fitzroy Dabreo and \$800.00 from Corstina Lampkin. He was sentenced to 18 months imprisonment to run concurrently in respect of two of the three offences and then a further 15 months to run consecutive to the 18 month sentence for the third offence.

[1] Commonwealth Caribbean Criminal Practice and Procedure (Dana S Seetahal) pg.118 paragraph 1. See also **Lewis v The Commissioner of Police** (1969) 13 WIR 186

- [12] None of the money was recovered and Mr. John admitted that he had spent the same on purchases of clothing items. He pleaded guilty at the first available opportunity and cooperated fully with the police.

Renrick Bascombe

- [13] Mr. Bascombe pleaded guilty to maliciously wounding Randy Durrant for which he was sentenced to one-year imprisonment. The facts of the case can be summarized as follows: On the morning of 26th April 2003 while Mr. Durrant was seated on a wall at the front of his home, a passenger van pulled up alongside him. Mr. Bascombe and his brother emerged from the van and proceeded towards Mr. Durrant. Mr. Bascombe had a cutlass in his hand. Mr. Bascombe and his brother then attacked Mr. Durrant. Mr. Durrant sustained injury to his forearm and the third finger of his right hand in the scuffle. The evidence reveals that the two had had a dispute prior to the incident.
- [14] Mr. Bascombe was later arrested and charged for the offence. Mr. Bascombe was charged summarily and pleaded guilty at the first available opportunity. He is 19 years old. This was his first offence.

Kenton Roberts

- [15] Mr. Roberts was convicted of possession of 537 grammes of cannabis with intent to supply it to another. He was fined \$2000.00 to be paid forthwith in default 6 months imprisonment. The facts of the case are that in the early morning of Wednesday 17th November, 1999 officers of the drug squad executed a search warrant on the premises of one Margaret Douglas, where Mr. Roberts was at the time, and recovered a black plastic bag under a mattress in a bedroom. The plastic bag was searched in the presence of Mr. Roberts and was found to contain cannabis which Mr. Roberts claimed to be his. Mr. Roberts subsequently gave a

statement to the police in which he admitted that the drugs belonged to him. He had two previous convictions for possession of cannabis.

Franklyn Martin

- [16] Mr. Martin was convicted of possession of 17,252 grammes of cannabis of a street value of \$27,000.00 EC in Saint Vincent and the Grenadines (or \$17 000.00 USD in St. Martin) with intent to supply to another. He was sentenced to two and a half years imprisonment. The facts of the case are that on the evening of 10th May 2003, officers of the drug squad executed a search of the MV Little Deranie in Mr. Martin's presence. The officers found taped packages wrapped in coconut shells containing cannabis resin. The cannabis was destined for St. Martin. Mr. Martin when confronted by the officers admitted that the parcels belonged to him and that he had shipped the drugs in an effort to sustain his family, as he had no income or employment. He has no previous convictions and he pleaded guilty at the first available opportunity.

Leon Mc Allister

- [17] Mr. Mc Allister pleaded guilty to the possession of 3,065 grammes of cannabis of a street value of \$4,800.00 EC in Saint Vincent and the Grenadines with intent to supply it to another. He was sentenced to a fine of \$12,000.00 forthwith or fourteen months imprisonment. He was also placed on a two year bond for good behavior in the sum of \$1,000.00 or nine months imprisonment in default. On the evening of 22nd February 2002 officers of the drug squad executed a search of the MV Faith II in Mr. Mc Allister's presence as well as that of two workers of the boat. The officers found taped packages containing cannabis resin in the hatch of the boat. The cannabis was destined for St. Maarten. Mr. Mc Allister when confronted by the officers admitted that the parcels belonged to him and stated that they had been given to him to sell in St. Maarten. Mr. Mc Allister was arrested and charged for the offence. Mc Allister is 42 years old and has no previous conviction.

Cosmus Bascombe

- [18] Mr. Bascombe was convicted for the possession of 18,160 grammes of cannabis of a street value of \$32,000.00 EC in Saint Vincent and the Grenadines with intent to supply it to another. He was sentenced to two and a half years imprisonment. The facts were that in the early evening of 19th July 2002, Mr. Bascombe and approximately five others were met by members of the narcotics unit in the backyard of a house in Sion Hill. Mr. Bascombe and another person were seen removing plant material resembling cannabis resin from a plastic bag into a locally constructed cannabis press. A member of the narcotics unit identified himself to Mr. Bascombe and the others with him, at which time Mr. Bascombe grabbed a suitcase and ran into the house. He was pursued and apprehended and the contents of the suitcase were examined. Several taped packages were discovered inside the suitcase. Upon being cautioned Mr. Bascombe indicated that the cannabis was brought to him for pressing. Mr. Bascombe was charged for the offence. He is a young man in his early twenties. This was his first offence.

Desmond Baptiste

- [19] Mr. Baptiste was sentenced to eight years for burglary. He had a long record of previous convictions spanning a period of ten years involving theft, entering dwelling houses as a trespasser and stealing, unlawful possession and possession of controlled drugs. He had pleaded guilty at the first available opportunity.

Sentencing Objectives

- [20] Perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed. The St. Vincent and the Grenadines legislature has not, in any of the legislation affecting the subject crimes, or indeed

in any other legislation set out the purpose(s) of sentencing. A comparative study of the Saint Vincent legislation with that of other member states of the Eastern Caribbean States has revealed little in the way of gleaning the purpose of sentencing. On the contrary, in some other countries this is done. For example, a Sentencing Act in Australia² espouses comprehensive and useful goals that sentencing is supposed to fulfill. Section 5(1) of that Act states:

“The only purposes for which may be imposed are-

- [a] to punish the offender to an extent and in a manner which is just in all the circumstances; or
- [b] to deter the offender or other persons from committing offences of the same or a similar character; or
- [c] to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or
- [d] to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or
- [e] to protect the community from the offender, or
- [f] a combination of two or more of those purposes.”

[21] The legislative provision appears to be an amplification of the dictum of Lawton LJ in **R v Sargeant**³ where he identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. It would be instructive to comment upon each of the heads referred to by Lawton LJ.

[2] Northern Territory of Australia Sentencing Act as in force at 17th March, 2004

[3] 60 Cr. App. R. 74 at page 77

Retribution

- [22] Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in the law⁴. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:

“...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.”

Deterrence

- [23] 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

- [24] 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.

[4] **R v Sargeant** (Supra)

Rehabilitation

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

Fixed Penalties

- [26] Increasingly, perhaps to curb inconsistency and disparities in sentencing and also to demonstrate toughness on crime, Parliaments have resorted to prescribing mandatory penalties or statutory minimum penalties. This approach has been criticized on the grounds firstly that it poses serious questions regarding the separation of powers since sentencing is regarded as essentially a judicial function. Secondly, such sentences are often too harsh and, in individual cases, because of their inflexibility, they invariably result in punishments being imposed that are wholly disproportionate to the crimes committed. The experience of some countries is that in response to tough fixed penalties, criminal justice officials seek ways of avoiding the operation of such penalties⁵. Yet, all Judges would agree that sentencing is perhaps the most difficult area of their work in the criminal Courts and this difficulty is not made any easier when Judges have a wide discretion available to them.

Relevance of age and/or prior criminal history

[5] See: "Consistency and Fairness in Sentencing – The Splendor of Fixed Penalties" by Mirko Bagaric

- [27] A remarkable feature of several of the subject crimes is that they were committed by young offenders with no prior criminal record and that the convictions were recorded after pleas of Guilty. How relevant are these circumstances? How far should the sentencer go in taking them into account?
- [28] In England a plea of Guilty normally attracts a significant, approximately a one third, reduction of the sentence⁶. 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 co-defendants 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**⁷ 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 possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea.
- [29] As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating

[6] See: **R v Paul Edward Buffrey** (1993) 14 Cr. App. R. (S)

[7] Ibid

circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance. In **Turner v The Queen**⁸, a case of armed robbery, Lord Lane, CJ stated that “the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity”. Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature.

- [30] On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first time offenders, the more serious the offence, the less relevant will be these circumstances.

The subject offences

Robbery (Alan Wilson)

- [31] As indicated previously, Alan Wilson, an 18 year old first offender had pleaded guilty to the armed robbery of a bus conductor. He was sentenced to ten years. His offence was a very serious one and this is underlined by the fact that the St. Vincent and the Grenadines Parliament has given the Court the widest possible discretion in fixing an appropriate sentence. The fact therefore that prior to committing the offence Mr. Wilson had a clean criminal record is of little importance. It must be said for Wilson that the firearm was recovered and he

[8] (1975) 61 Crim. App. Rep.67 at page 91

confessed his crime at the time he was arrested. This circumstance should have entitled him to a significant reduction in the sentence imposed but equally it must be said that, placing a gun to the head of the conductor, was an aggravating factor of tremendous proportions. In **Turner**, the English Court of Appeal took the view that the normal sentence for anyone taking part in a single offence of armed robbery was 15 years but in **R v Adams and Harding**⁹ it was said that **Turner** only provided a starting point and that in today's sentencing climate the guidelines should be revised upwards. In our view robbery is an offence that should always warrant a custodial sentence. Armed robbery should normally attract a sentence in a range between 10 and 15 years. The sentencer should however reserve the right to go beyond or below this range in appropriate circumstances. Wilson was a young man of 18 years old, and a first offender. He cooperated fully with the police and pleaded guilty at the first available opportunity. These are substantial mitigating factors. The early guilty plea would account for a one third reduction of the sentence and the other strong mitigating circumstances should account for at least a deduction of a few additional years. In all the circumstances we think his sentence should be reduced to five (5) years imprisonment.

The Firearm offences (Kenrick Marksman, Dwight Bibby, Michael Bowens)

- [32] The concern of the public for the alarming incidence of firearm related crime is not reflected in the penalties imposed by the St. Vincent and the Grenadines legislature. The current set of penalties prescribed by the legislature in St. Vincent and the Grenadines appears to strike a somewhat lenient note. The maximum penalty in St. Vincent and the Grenadines for discharging a firearm is, on summary conviction, a fine not exceeding \$2,000.00 or imprisonment for a term not exceeding 12 months. In Saint Lucia for example the penalty for possession of a restricted weapon is, on summary conviction, a fine of not less than \$10,000.00 or imprisonment for a term of not less than three years.

[9] (2000) 2 Cr. App. Rep.274

- [33] While sentences for firearm related offences must therefore reflect concern for the views of society the Courts must perforce pay regard to the penalties prescribed by Parliament.
- [34] **Kenrick Marksman's** case is one that evokes some sympathy in light of the facts recounted earlier. Firearm offences are on the rise in these states however and it would be rare for a Magistrate not to impose a custodial sentence for an offence involving the use of an unlicensed firearm as was the case here. In light of Mr. Marksman's guilty plea, his age and his cooperation with the police and taking into account that his only previous convictions were traffic offences of a minor nature, we would allow his appeal to the extent of reducing the sentence imposed on him from 6 months to one month. We regard it as important that it be clearly understood that in general, anyone convicted of possession of a firearm is very likely to serve prison time. The peculiar circumstances of Mr. Marksman's case, including the fact that he had absolutely no intention to harm anyone, are such however that only a very brief period of incarceration is deserving.
- [35] **Dwight Bibby** also pleaded guilty but unlike Marksman's case, Bibby's does have a number of important aggravating factors. Bibby committed his offence while he was on a bond to be of good behaviour. He was carrying an unlicensed 9 mm weapon and six rounds of ammunition into a disco and the Court must necessarily take a very serious view of this. A person does not carry a loaded firearm into a place of amusement with the intention of having fun. This is a profound aggravating circumstance. Finally, by his own admission Mr. Bibby was under the influence of alcohol. He resisted arrest and ran away from the police. The sentence of 10 months has to be considered as being high only because the maximum penalty is 12 months and Bibby pleaded guilty. In another jurisdiction where the penalties for gun possession are much stiffer, Bibby would easily have found himself serving some years in custody. As it is, he must be given a discount

for his plea of Guilty and so we would reduce the sentence from ten to eight months.

- [36] **Michael Bowens**, 24 years old and gainfully employed as a baker, pleaded guilty to possession of a .357 Magnum revolver and three rounds of ammunition. Bowens is in poor health. His left hand is severely and permanently injured and he has a growth in his throat which is suspected to be cancerous. The firearm was found in a vehicle of which he was the sole occupant. Bowens is relatively young and had no previous convictions. The Magistrate imposed a sentence of six months for the firearm and one month for the ammunition. This offence had no specially aggravating factors and the early plea of guilty and other mitigating circumstances would serve to reduce the sentence to be imposed. In the circumstances, and because of the leniency with which the St. Vincent and the Grenadines Parliament currently views this offence, we are of the view that a sentence of 3 months is appropriate. Accordingly, the appeal of Mr. Bowens is allowed to the extent that his sentence is reduced from six to three months.

Unlawful and malicious wounding (Curt Jacobs and Renrick Bascombe)

- [37] **Curt Jacobs** inflicted a very severe beating on the virtual complainant knocking the latter unconscious in the process. Earlier we expressed the view that Mr. Jacobs' explanation for his conduct raised a prima facie issue of self-defence and the magistrate should therefore have entered a not guilty plea and set the matter for trial. We would therefore allow the appeal and remit the matter to be tried on the merits before a different Magistrate.
- [38] **Renrick Bascombe** was sent to prison for one year after inflicting wounds on Randy Durrant. We don't know his age save that he is described in the record of appeal as being "a young man of the same age as the virtual complainant". Unfortunately, the record before us does not indicate the seriousness of the injuries sustained but Counsel has stated that the injuries sustained were minor.

Mr. Bascombe pleaded guilty at the earliest available opportunity and has no previous convictions. In those circumstances, and given the insignificance of the injury we are of the view that a custodial sentence was not appropriate here. Instead we would allow the appeal and order that Bascombe should pay a fine of \$1,500.00 within 3 months or in default suffer a term of imprisonment of six months. Further, Bascombe is to compensate the virtual complainant by paying him the sum of \$1,000.00 within 6 months or in default suffer a term of imprisonment of one month.

Possession of Cannabis (Kenton Roberts, Cosmus Bascombe, Leon McAllister, Fabian Rock and Franklyn Martin)

[39] **Kenton Roberts** was found guilty after a trial and was sentenced to pay a fine of \$2,000.00 forthwith or in default suffer a six month term of imprisonment for possession of 537 grammes of cannabis. His main complaint on appeal is that he was given no time to pay the fine.

[40] It seems to us that, when about to sentence an offender, a judicial officer should first approach the matter from the standpoint of determining whether a custodial or non custodial sentence is appropriate. The learned Magistrate here must have carried out that exercise and determined that a non custodial sentence was appropriate. Having so determined, the Magistrate erred in then sentencing the offender to pay the fine forthwith without carrying out any investigation as to the ability of the offender to pay the fine imposed forthwith. The original exercise carried out by the Magistrate was thereby rendered nugatory. It is plainly wrong to impose a fine if a defendant is unable to pay it. See: **R v Garner et al**¹⁰. In the circumstances we would allow the appeal. Given the length of time that has elapsed since the imposition of the sentence by the Magistrate, the Appellant, whatever his means are, cannot now reasonably expect a long period of time to

[10] (1986) 82 Cr. App. Rep.27 at page 38

pay the fine imposed. We would therefore vary the sentence by giving him one month from the date of this judgment to pay the fine of \$2,000.00 or in default suffer a term of imprisonment of six months.

[41] **Cosmus Bascombe** was found guilty after trial for possession of 40 pounds or 18,160 grammes of cannabis. He was sentenced to two and a half years in prison. The maximum sentence is three years imprisonment.

[42] The mitigating circumstances here are that Bascombe is a youth in his early twenties and this was his first offence. However, Bascombe was clearly part of an operation that was engaged in the marketing of the cannabis. We think that persons found in possession of such large quantities of drugs should receive a custodial sentence. The length of the sentence will depend on the amount of drugs involved, whether there is a plea of guilty at the first available opportunity and the personal circumstances of the offender e.g. whether the defendant has previous convictions for a like offence. For the quantity of cannabis with which Bascombe was found, we consider that a custodial sentence ranging upwards from 12 months is appropriate. In this case, the Court considers that the maximum penalty is three years and that any benefits of his plea of guilty should be based on the maximum sentence and that Bascombe cannot obtain the benefits of a plea of guilty. In all the circumstances we would dismiss the appeal but vary the sentence imposed to a term of imprisonment for a period of twenty four months.

[43] **Leon McAllister** pleaded guilty to the possession of 3,065 grammes of cannabis. He was sentenced to a fine of \$12,000.00 forthwith or fourteen months imprisonment. He was also placed on a two year bond for good behavior in the sum of \$1,000.00 or nine months imprisonment in default. Given the guilty plea, we consider that the alternative to the fine imposed was excessive. We would however repeat here the comments made with respect to Kenton Roberts and the order for payment of the fine forthwith. We would therefore allow the appeal to the extent that we vary the sentence by giving Mr. McAllister a period of three months

within which to pay the fine in default of which he would serve a term of imprisonment for a period of twelve months.

[44] **Fabian Rock** pleaded guilty to the possession of 25,420 grammes of cannabis. He was actually caught at the airport attempting to export the drugs. He was sentenced to two and a half years imprisonment. Given his plea of guilty at the first available opportunity and comparing his sentence with the previous ones we have examined, we agree that the sentence is excessive. We would therefore allow the appeal and vary the sentence to a term of imprisonment of eighteen months.

[45] **Franklyn Martin's** case is not very different from Fabian Rock's. He was caught attempting to export 17,252 grammes of cannabis to Sint Maarten. He pleaded guilty at the first available opportunity and was given a 2 ½ year term of imprisonment. We would allow his appeal and vary the sentence to a term of imprisonment of eighteen months.

Obtaining property by deception (Julian John)

[46] **Julian John** was convicted of three offences of obtaining property by deception. The record of appeal before us is deficient and does not disclose the particulars of one of the offences. He received two concurrent 18 month sentences and a further 15 month sentence to run consecutive to the two 18 month sentences. The three offences took place during July and August, 2002. Mr. John pleaded guilty to all three offences and cooperated with the police. There is no suggestion that he had previous convictions. Before the Magistrate, he offered to repay the victims. The maximum for each offence was two years.

[47] We consider that, in the first place, if the Magistrate was disposed to impose a custodial sentence he ought to have made the sentences run concurrently. However, given the non violent, non threatening, non sexual nature of this offence; the early plea of guilt; and the offer to make restitution to the victims, the

Magistrate may well have considered as a more fitting punishment, a suspended sentence coupled with an order to make full restitution to the victims. Accordingly, we would allow the appeal and vary the sentence. Mr. John is ordered within six months to repay each of the victims the sums obtained by him from each of them. In default Mr. John will serve a term of imprisonment of six months. Mr. John is also sentenced to a term of six months in prison but this sentence shall not take effect unless within a period of one year from the date of this order he commits another offence punishable with imprisonment for a period exceeding six months. During the one year period Mr. John is to hand in his travel documents and report to the Kingstown Police Station once per fortnight.

Burglary (Desmond Baptiste)

- [48] **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.”

- [49] In all the circumstances we cannot fault the exercise of the learned Judge’s discretion given the record of the offender. Accordingly we would dismiss this appeal.

Conclusion

- [50] There is only one final matter that I would wish to address. It did not arise in any of these appeals but it frequently does. It has to do with time spent on remand. As a

general rule we believe that the sentencer should give the accused credit for time spent on remand since effectively the accused has already been deprived of his liberty in relation to that offence. This is by no means an inflexible rule but sentencing Judges would do well to bear it in mind.

- [51] We trust that the foregoing will assist both Judges and Magistrates in this very difficult area of the law and in due course the Court shall endeavour to provide guidance with respect to offences not covered in this judgment.

[Sgd.]

Sir Dennis Byron
Chief Justice

I concur.

Adrian Saunders
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal