



# In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2015: No. 37

**KEINO LAMBERT**

**Appellant**

- and -

**THE QUEEN**

**Respondent**

**EX TEMPORE JUDGMENT**

(in Court)

*Attempted robbery-appeal against sentence- breach of probation order- whether social inquiry report needed-whether sentence of imprisonment should have been suspended*

Date of hearing: March 30, 2016

Mr. Arion Mapp, Christopher's, for the Appellant

Ms. Nicole Smith, for the Crown

## **Introductory**

1. The Appellant in this matter was convicted in the Magistrates' Court (the Worshipful Archibald Warner) on the 4<sup>th</sup> June 2015 of the offence of attempted robbery following a trial. He received a sentence of twelve months imprisonment. He appeals against his sentence on the grounds that the Learned Magistrate erred in failing to order a Social Inquiry Report and in failing to exercise his discretion in favour of suspending that sentence of imprisonment.
2. It is common ground between the Appellant and the Crown that for an offence of this nature an immediate custodial sentence was within the range of reasonable penalties that could have been imposed. The Learned Magistrate rejected the plea for a Social Inquiry Report and a suspension of the sentence it seems to me for two main reasons.

3. Firstly, the relevant offence was committed on the 15th January 2014 at a date when the Appellant was on probation for an earlier offence involving an unlawful assault on the mother of the Appellant's children. The second matter that the Learned Magistrate was clearly very influenced by was the seriousness of the offence and the need to impose a deterrent sentence because of the prevalence of the offence.

#### **Ground 1: Failure to Order a Social Inquiry Report**

4. The attempted robbery took the form of attempting to steal a black I-phone 4 while the victim was on board a bus. The question of a Social Inquiry Report was not it seems to me as strong a case as the Appellant's counsel Mr Mapp has sought to make it out to be for these reasons.
5. Firstly, the Appellant had received the benefit of non-custodial sentences before. He had, admittedly for different types of offences received, Community Service and Probation as well as Probation for the most recent offence which Probation period was still running when the attempted robbery occurred. This was not a first time offender for whom the Court would have a heightened need to scrutinize the non-custodial options. Instead, this was an admittedly young man who had been given chances in the past and had apparently not used them as well as he should.
6. And so, on balance, it seems to me that the Learned Magistrate cannot be criticized for failing to order a Social Inquiry Report and finding that an immediate custodial sentence was (potentially) appropriate.

#### **Ground 2: Failure to Suspend the Sentence of Imprisonment**

7. Ms Smith for the Prosecution attempted in response to the Appellant's submissions on appeal to suggest that this was case of where an immediate custodial sentence was the usual sentence and that only exceptional circumstances would have justified a suspended sentence.
8. That was not the way the case was put below and it seems to me that the Appellant should not be prejudiced by being met with a higher threshold. But, in the event, it makes no difference because the Crown rightly, it seems to me, submitted below that an immediate custodial sentence was not required but appropriate and the Learned Magistrate agreed.
9. The one matter that Mr Mapp argued quite passionately, before the Learned Magistrate and before this Court, was that the Social Inquiry Report would have been helpful because there had been a material change in the Appellant's circumstances between the date of the offence, January 15, 2014, and the date of sentence, June 4, 2015.

10. That submission was greatly undermined by the fact that the following week after he was sentenced for this offence he was convicted on his own plea on 12<sup>th</sup> June 2015 and sentenced to 6 months imprisonment consecutive to the sentence imposed in relation to this matter for assault occasioning bodily harm committed on Christmas day 2014. That matter is significant because it means that this Court cannot properly give credence to the idea that there would have been a powerful case for saying that the Appellant's circumstances had changed materially between the date of his offence in 2014 January and the date of his sentence, 18 months later. Because only seven months before his sentence he had committed yet another offence of violence.
11. And so in these circumstances it is impossible to say that the Learned Magistrate imposed a sentence which was wrong in principle or was in general terms harsh and excessive.
12. The other matter that is material for the Appellant to appreciate is that he has since his sentence for this matter been ordered to undergo a period of probation for 24 months following the completion of his two June 2015 sentences which are due to be completed with remission in early June. He will be on Probation for 24 months and what that demonstrates is that the Learned Magistrate while being firm was also being fair and is attempting to give the Appellant the support that will be important to him upon his release if, in fact, he wishes to move himself away from the criminal courts and into a positive life in which he is able to support his children.
13. Sometimes courts have to balance and blend punishment with rehabilitation and it seems to me the position, as it stands today, suggests that the right balance has been achieved. It is important for the Appellant to appreciate that as much as he wants to live a normal life and play a role in the lives of his children other citizens of Bermuda, law abiding citizens are entitled to enjoy a life in which they are not made victims of crime. Ms Smith referred the Court to my own judgment in *Lyndon Raynor-v-Stanley Eugene Davis* [2012] Bda Law Reports 36 (at paragraph 35) where I said this:

*“35. Where an individual is a persistent offender, threatens the ability of others to enjoy their property rights in their own private space and provides no credible basis for concluding that he will avail himself of rehabilitative options, justice requires a firm and purely punitive sentencing response....”*

14. That is the approach which the Learned Magistrate took in this case, but in the case that shortly followed it he ‘tempered justice with mercy’, it seems to me, by imposing a short sentence of imprisonment but also giving the Appellant support of a two year probation period upon his release. I can only hope that the Appellant will have the strength to be able to take advantage of the support he receives upon his release.

## **Conclusion**

15. For these reasons the appeal against sentence is dismissed.

Dated this 30<sup>th</sup> day of March, 2016 \_\_\_\_\_  
IAN R.C. KAWALEY CJ