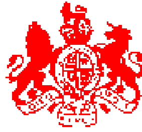

The Court of Appeal for Bermuda

CRIMINAL APPEAL No 12 of 2015

Between:

THE QUEEN

Appellant

-v-

UMDAE WOOLRIDGE

Respondent

Before: **Baker, President**
Bell, JA
Kawaley, AJA

Appearances: Mr. Loxley Ricketts, Department of Public Prosecutions, for the Appellant
Mr. C. Craig Attridge, for the Respondent

Date of Hearing & Judgment: **15 March 2016**

EX TEMPORE JUDGMENT

Sentence for simple burglary manifestly inadequate - 2 years 10 months increased to 4 years

PRESIDENT

1. This is an appeal by the prosecution. And we grant leave to appeal on the basis that a sentence of two years and ten months' imprisonment imposed by Justice Simmons on the 28 July of last year for simple burglary was manifestly inadequate. We should say at the outset, because we are told that the appellant was released from custody having served his sentence quite recently, that where these appeals are launched in respect of relatively short sentences, it is very important that they are brought before the Court of Appeal as quickly as possible. The reason is obvious because it is undesirable, if it can be avoided, to

have to send back into custody someone who has already been released from the sentence that was originally imposed.

2. The facts of the case can be described in summary as follows, and in doing so we are conscious of the fact that Justice Simmons heard the prosecution's case and the evidence in support of it and we have not had that advantage. What happened was that the appellant was originally charged with aggravated burglary and possession of a firearm with which to commit the offence. He was prepared to plead guilty to simple burglary, but that plea was not acceptable to the Crown and the case proceeded on the more serious charges. At the end of the prosecution's case, the learned judge accepted a defence submission but there was no case to go to the jury on aggravated burglary or the possession of the firearm offences and at that point the respondent pleaded guilty and was sentenced.

3. Turning to the facts of the offence, the respondent had lent money to a gentleman called Minks Cole and earlier in the day of the incident, he had gone to Mr. Minks Cole's property to collect the debt.

4. For reasons that are not entirely apparent, the appellant went again to the property later in the day and it is the respondent's case that by that time the debt had been paid. Whether the debt had been paid or not makes little difference in our judgment to the circumstances of the crime that was committed.

5. Later in the day, the respondent approached Taariq Clarkee and invited him to assist in carrying out a robbery of Minks Cole, and apparently told Clarkee that he was owed or had been owed some money by him. There is a dispute between the Crown and the Respondent as to whether at that point there was any discussion about whether Clarke should take a knife or some other weapon with him. In the event, Clarke did not take a knife or other weapon and we proceed with the appeal on the basis that nothing material was said in a discussion about taking any weapon. It has to be noted that the judge concluded that there was no

case against the respondent in respect of the firearm Clarkee agreed to take part in the enterprise and the respondent took him on the back of his motor cycle to the Minks Cole residence. In the parking area outside they met Smith and the three of them discussed what was to happen inside and it was agreed that the respondent would not go in as he would be easily recognized due to his familiarity with the residents. But that Smith and Clarkee would disguise themselves with helmets, gloves and hooded sweatshirts, and they would go in. In the event, Smith and Clarke entered the residence and made their way into a room where the victims were sitting. The intended victim, Mr. Minks Cole was not present at the time. There is no great clarity about what happened thereafter, but it appears that Smith was in possession of a gun and that he restrained the three victims while Clarke relieved them of their Cell phones which were valued together at a total of around $1,500. Again there is some dispute about precisely what happened but Smith hit one of the victims over the head, and the gun went off and the bullet injured Clarkee in his forearm. Clarkee ran from the room leaving a trail of blood to the outside of the property. The respondent was waiting outside and he took the injured Clarkee to the hospital and left him there. On the way to the hospital Clarkee dropped his sweatshirt and other clothing in the roadway; both items had blood, holes, and gunshot residue on them. CCTV analysis at the hospital recorded the arrival of Clarkee and the respondent. Clarkee was questioned by the police about his injury and in due course was taken into custody.

6. On the 17 March 2014, the respondent went himself to the police where he was arrested and interviewed. During interview he gave an account of meeting Clarkee on the road and Clarkee telling him that he had been shot. He told the police that he was simply a good Samaritan who helped by taking his friend to the hospital and that he knew nothing whatsoever of the burglary.

7. The respondent has a number of previous convictions. He's age 26 and on the 20th February 2009 he was placed on probation for robbery, and 4th June 2010 for burglary he was placed on probation and on the 28th October 2012 for

grievous bodily harm he was sentenced to six months' imprisonment and 12 months thereafter on probation.

8. The learned judge in passing sentence had this to say:

> "The Court accepts that among the aggravating factors in this case is the fact that the offence was committed in the night time and that there were occupants in the residence. The court also takes into consideration that you were involved in this offence with two others, at least one of which you did bring into the enterprise. These are aggravating features that place your offending above the lowest range of the appropriate sentence"

9. The judge concluded that the range of sentence for a burglary of this kind, simple burglary, was two –five years, and after taking into account the one feature of mitigation, namely, the respondent's guilty plea, she imposed a sentence of two years and ten months, which suggests that she had taken a starting point of in the region of four years if the appellant had pleaded not guilty.

10. We have been shown a number of authorities. We emphasize that each case has to be considered on its own facts and none of those cases do we consider to be of particular assistance. The Crown through Mr. Rickets referred us to several cases involving serious offences of aggravated burglary in which the Court imposed substantially greater sentences. We do not think that those are of much assistance. We were also referred to the well-known authority of Raynor and Davis, a decision of my Lord the Chief Justice where there is very helpful guidance but not such as in our judgment assists with the facts of the present case..

11. This is not an easy appeal for the Court to evaluate because we did not hear the evidence of the prosecution whereas the learned judge did. We must give due weight to that fact. We have been assisted by counsel and there are areas of disagreement between the Crown and the defence. We proceed on the basis of the

facts admitted by the respondent as advanced by Mr. Attridge on Mr. Woolridge's behalf. Nevertheless, it has to be born in mind that this was a serious offence of simple burglary committed with others. It was the responded who had been the primary instigator of it in that he recruited at least one of the others. And whilst he remained outside, he must bear responsibility for the simple burglary that occurred inside and the fact that it must have been clear to him that there was a possibility of some violence being used.

12. Mr. Attridge has made the point to us that if the respondent was being dealt with alone, this is a case that would have been heard in the Magistrates' Court because they have sufficient jurisdiction to do so. Mr. Ricketts says that's nothing really to the point because there were several defendants and the case wasn't dealt with in the Magistrates' Court.

13. We think that the appropriate starting point in this case if the respondent had pleaded not guilty, would have been five years' imprisonment. We think that he is entitled to a discount in respect of his plea of guilty bearing in mind that it was not a confession of guilt from the start but that it could never the less be described as an early plea.

14. We note the fact of double jeopardy and whilst that might have tipped the scales in respect of a more modest increase in sentence, we do not think that it is something which should prevent the sentence now being passed which is one of four years' imprisonment after taking into account the discount.

15. Accordingly, the respondent's appeal will be allowed to that extent and the sentence of the respondent will be increased from 2 years and ten months to four years.

Signed

Baker, P