



In the Supreme Court of Bermuda
CRIMINAL JURISDICTION
2019: No. 20

B E T W E E N:

THE QUEEN

- v -

KEVIN ROBINSON

Before: **Acting Chief Justice Charles-Etta Simmons**

Appearances: Charles Richardson, Legal Aid Department, for the Defendant;
Kenlyn Swan, Office of the Director of Public Prosecutions, for the Crown

Date of Sentence: **23rd December 2019**

Date of Reasons: **21st January 2020**

SENTENCE
(Reasons)

Robbery, contrary to section 338 of the Code – Possession of an offensive weapon, contrary to section 315 of the Code – consideration of drug addiction not a mitigating factor

SIMMONS A/CJ:

1. The Defendant is before the court on an indictment containing two counts. Count 1 charges Robbery contrary to section 338 of the Criminal Code 1907 (“the Code”) and Possession of an Offensive Weapon contrary to section 315 of the Code. Robbery is a serious offence carrying a sentence of imprisonment up to 20 years. The maximum sentence for possession of an offensive weapon is four years’ imprisonment.

The Facts

2. The facts in this case reveal that the Defendant entered Belvin's Variety Store in Flatt's and demanded that the assistant manager on duty open the cash register. At that time the Defendant were brandishing a knife. He thereafter put that blade of the knife against the assistant manager's neck and held his hand at the back of his head. He demanded cash and when the Assistant Manager did not produce any he uttered threats of harm to him.

3. The Assistant Manager became in fear for his life and opened the cash register. The defendant then took \$150 dollars from the register and left the shop with it. To their credit Belvin's had a working security camera that captured his image. Further, a concerned citizen who became the Defendant's unwitting getaway driver returned to Belvin's and upon hearing of the robbery reported the defendant's behaviour.

Sentencing Principles

4. Sentencing principles are contained in section 53 of the Criminal Code. The fundamental purpose of sentencing is to promote respect for the law and to maintain a just and peaceful society by imposing just sanctions that have numerous objectives. In your case the Crown has highlighted as relevant – protection of the community, denouncement of unlawful conduct, personal and general deterrence, rehabilitation and separation from society. Mr. Richardson has not disputed the relevance of these objectives.

5. The fundamental principles of sentencing are found in section 54 of the Code. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Imprisonment ought to be imposed only after consideration of the alternatives to be found in section 55 which provide:

“(1) A court shall apply the principle that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorized by law.”

6. In sentencing the Defendant the Court finds that appropriate regard must be paid to:

(a) the nature and seriousness of the offence, including any physical or emotional harm done to the victim;

- (b) the extent to which you are to blame for the offence;*
- (c) the need for the community to be protected from the you;*
- (d) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;*
- (e) the presence of any aggravating circumstances relating to the offence or to you the offender, including—*
- (f) the presence of any mitigating circumstances relating to the offence or you including—*

...

- iv) a plea of guilty and, in particular, the time at which you pleaded guilty or informed the police, the prosecutor or the court of your intention so to plead;*

...

- vii) (vii) a voluntary apology or reparation provided to the victim by you the offender.”*

Crown and Defence Submissions

7. Dealing with count 1 Robbery, the Crown’s position is that the community needs to be protected from offenders that behave as the defendant has. That our society is deeply affected by the level of criminality shown and that business owners need to have a sense of safety in relation to their property.
8. The BARC Report outlines the defendant’s extensive use of various narcotics throughout his adulthood. The Crown submits that drug abuse and addiction contribute to various social ills and criminality. It is their position that in sentencing the defendant the court must take into account a deterrent factor for likeminded individuals.
9. As to aggravating factors, it is the Crown’s position that holding the knife to the manager’s neck amounts to an aggravating feature of the case. Ms Swan for the Crown also submits that the defendant has had non-custodial sentences as well as sentences of imprisonment for previous offences. He has also had the benefit of drug treatment before, however he does not appear to have been assisted in his rehabilitation.
10. The defence has submitted that the defendant was under the influence of his addiction and committed this offence as a cry for help having been told that he would have to wait to be admitted

into Turning Point's rehabilitation programme. That the defendant was found at home shortly after the offence was committed, which demonstrates that he wanted to be arrested for the offence in order to get treatment sooner than he would otherwise.

11. The Crown submits that the appropriate sentence based on guideline cases should fall between 4 to 6 years. Mr Richardson for the defence submits that the appropriate sentence should be a sentence of imprisonment of two years followed by 2 years' probation.

The Authorities

12. In *Raynor v Stanley Davis* [2012] Bda LR 36 at page 3 the court stated:

“Where someone uses in breach of the criminal law an illegal substance which is widely known to be highly addictive, becomes addicted and then commits further offences to feed that addiction, the starting assumption must be that this is not a mitigating circumstance as a matter of law.”

13. Bearing that in mind, it would seem that for a defendant to rely on his or her addiction as a mitigating circumstance the circumstance would need to be so compelling that it would justify setting the assumption aside.
14. In the case of *Jamar Malik Dill v The Queen* [2014] Bda LR 111 the Court of Appeal approved a sentence of 8 years' imprisonment in a case where the defendant committed a robbery and caused multiple injuries to his victim. He pursued a trial, was found guilty and was sentenced to 8 years imprisonment.
15. In *Joeshun Russell v The Queen* [2016] Bda LR 26 the Defendant had lapsed into drug use by the time he had committed a series of offences. He committed a home burglary, the subject of appeal and was sentenced to 8 years imprisonment. The Court of Appeal reduced the sentence for the home burglary to 6 years' imprisonment.
16. In *Jamiko Kenneth Bean v The Queen* [2005 No 4 & 10] Bda LR 41 the defendant appealed against a sentence of 6 years' imprisonment for 4 counts of robbery. The Court of Appeal varied his

sentence to 2 years' imprisonment in case No 4, and 2.5 years in case No 10, to run consecutively with case No 4. The total sentence was 4.5 years' imprisonment. The higher sentence was imposed in case No 10 because the offence was committed in the company of an accomplice.

17. As further guidance, the Court of Appeal approved the comments made by the sentencing judge in the case of *Osbourne v Caisey* Crim App No. 8 of 1995 wherein it was said:

“the offence of robbery should attract a sentence of imprisonment directly. This offence is ... ‘serious’ and the public have to be protected from persons who would deign to attack and rob them of their money and goods. If the robbery is committed with a weapon...then these are aggravating factors to be considered by the sentencing judge, with a view to increasing the normal range of sentence.

In a case in this Court of Wilson (C.C.A. No. 32 1990), this court reduced a sentence of 4 years to one of 2 years imprisonment. The facts of that case were very similar to the facts of the instant case, and no doubt the learned Chief Justice had this case in mind when he imposed the sentence on the Respondent of 2 years imprisonment. That case was decided in 1990. Since that time the menace from drugs in our society has increased considerably, leading to an increase in the number of street muggings. Therefore the penalty for this type of offence should now attract a sentence in the range of three to six years. With further aggravating factors a sentence exceeding this range should be considered.”

18. Therefore in *Bean* (above) the Court of Appeal stated that sentences in the range of 3 to 6 years are appropriate for the facts of that case, personal robberies even without aggravating factors.
19. In *R v Woolridge* [2016] Bda LR 27 the Court of Appeal increased a sentence of imprisonment of 2 years 10 months to 4 years on a guilty plea of one count of simple burglary. The Court of Appeal observed that the sentencing judge had taken a starting point in the range of 4 years. The Court of Appeal determined that a factor to be taken into consideration was that the burglary had taken place in the company of accomplices. The Court of Appeal stated that the starting point for the burglary, on its facts, had there not been a not guilty plea would have been 5 years. They took his

guilty plea into account and stated that the appropriate sentence after discount was 4 years imprisonment.

20. In the vintage case of *Rex Osborne v Steven Caisey*, Criminal Appeal No. 8 of 1995, the court observed that on the facts, a personal robbery with some violence, that although it substituted a sentence of 2 years for a suspended sentence it would not have found a sentence of between 2 and 4 years inappropriate.

Sentence Range and Starting Point

21. Bearing the guiding authorities in mind and the facts of the case the court finds that the appropriate sentence range is 3 to 6 years imprisonment. The court takes into consideration the aggravating feature of the use of the knife accompanied with threats and determines that the starting point is 4 years imprisonment. The appropriate sentence therefore is one of 4.5 years imprisonment in respect to count 1.

Mitigating Factors

22. There are mitigating factors to be considered. The court however does not find that there are any compelling reasons for holding that his drug addiction is a mitigating circumstance. The defendant pleaded guilty at an early point in the proceedings. It may not be obvious from the record at first glance however both defence and Crown counsel confirm that discussions on amending the indictment with a view to a guilty plea had begun shortly after the arraignment. The indictment was subsequently amended from Aggravated Burglary to the lesser offence of Robbery contrary to section 338 of the Code.
23. The defendant has shown contrition and has apologised to the victim as well as the proprietor of Belvin's in court. In the court's opinion the defendant is entitled to the full discount of 30%.

Conclusion

24. The sentence of this court is 3 years and 3 months imprisonment with respect to count 1, and 2 imprisonment in respect to count 2. These sentences are to run concurrently. Any time spent in custody is to be taken into account. Additionally the defendant is sentenced to 2 years' probation

following his release from custody. The court has already explained the terms of a probation order that the court finds will assist the defendant in rehabilitation and in addressing his drug addiction.

25. In open court the defendant indicated that he is willing to abide by those conditions. The terms will be set out in writing in his probation order.
26. The court orders the defendant to pay reparation in the sum of \$150 to Belvin's under the direction of his probation officer once he commence probation.

SIMMONS ACJ