IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF THE CO-OPERATIVE REPUBLIC OF GUYANA

CCJ Appeal No CR 002 of 2013
GY Criminal Appeal No 3 of 2012

BETWEEN

PAUL LASHLEY
JOHN CAMPAYNE **APPELLANTS**

AND

DET. CPL. 17995 WINSTON SINGH **RESPONDENT**

Before The Honourables **Mr Justice R Nelson**
Mr. Justice A Saunders
Mr Justice J Wit
Mr Justice D Hayton
Mr Justice W Anderson

Appearances

Mr Sanjeev J Datadin and Mr Charles S Ramson for the Appellants

Sir Fenton Ramsahoye SC and Ms Sonia Joseph for the Respondent

JUDGMENT
of
Justices Nelson, Saunders and Hayton
Delivered by
The Honourable Mr Justice Nelson
on the 9th day of June 2014
and
JUDGMENT
of The Honourable Justices Wit and Anderson

JUDGMENT OF THE HONOURABLE JUSTICES NELSON, SAUNDERS AND HAYTON

[1] After a trial before the Chief Magistrate, Mrs. P.S. Beharry, at Georgetown Magistrates' Court on December 28, 2012 the Appellants. Paul Lashley and John Campayne ('Lashley' and 'Campayne') were convicted of breaking and entering and larceny contrary to section 229(a) of the Criminal Law (Offences) Act Cap 8:01 ("the Act") and sentenced to four years' imprisonment. Section 229(a) provides that any person who breaks and enters, *inter alia*, any dwelling house, school house, store, shop, warehouse or other building is guilty of a felony and liable to fourteen years imprisonment.

[2] An appeal to the Court of Appeal (Singh, Acting Chancellor, B.S. Roy and Cummings-Edwards JJ.A) was dismissed on July 16, 2013. The Appellants now appeal to this Court, having obtained special leave by way of order dated November 30, 2013. They contend, as they did in the Court of Appeal, that the decision of the learned Chief Magistrate was wrong in law on two distinct bases. First, the flagrant incompetence of their retained counsel was such as to render the trial unfair and unjust and secondly the sentence of four years imprisonment was unduly severe.

The factual background

[3] Between June 10 and June 11, 2012 there was a break-in at the business premises of Hemant Narine. Upon his arrival at his business on June 11, 2012, Mr Narine discovered that the wrought iron grille which secured an extractor fan set in the eastern wall of the premises was cut and the extractor fan dismantled. He also noticed that the inner wooden door leading to the office was smashed open. He discovered that two laptops and two safes containing his Guyana passport, Visa credit card and cash were missing. The drawers of the desk were broken into and all the cash secured therein had disappeared.

[4] Mr Narine made a report of the break-in to the Alberttown Police Station. A police investigation into the matter resulted in the arrest of Lashley, a former employee of Mr Narine. Upon arrest, Lashley took Mr Narine, Constable Gouveia and the other investigating police officers to Campayne's residence. The police searched the house and recovered two laptops which Mr Narine identified as his along with a quantity of cash in a safe.

[5] Lashley and Campayne later took the police officers and Mr Narine to a manhole in the pavement on Church Street from which the police retrieved two other safes. The party then returned to the police station where it found Lashley's mother and a female friend who had brought in a small amount of U.S. and Guyana dollars. When the safes were opened, Campayne then handed over Mr Narine's passport. Corporal Singh and Sgt. (now Inspector) Gravesande took written statements under caution from both Lashley and Campayne wherein they indicated their involvement in the break-in. They were subsequently charged for breaking and entering and larceny contrary to section 229(a) as set out above.

[6] The charges were laid indictably but tried summarily in the Magistrates' Court pursuant to the Administration of Justice Act 1978. At the trial, however, the Appellants denied any involvement in the offences charged and claimed they were beaten to give the statements. The Chief Magistrate held a *voir dire* at which both accused men gave unsworn evidence. The Chief Magistrate ruled that the statements were free and voluntary and admitted them into evidence. At the main trial, the Appellants again challenged the voluntariness of their statements, and again gave unsworn evidence. However no witnesses were called in their defence. The learned Chief Magistrate convicted both men and sentenced them each to four years' imprisonment.

The Court of Appeal judgment

[7] Only two of the grounds of appeal relied on in the Court of Appeal are now relevant: the incompetence of counsel and the severity of sentence. In relation to the first ground, the Court of Appeal correctly determined that it had to assess whether any ineptitude on counsel's part had an effect on the fairness of the trial. It concluded that it could find no evidence pointing to the incompetence of counsel. Having regard to the cogency of the evidence, it could not be said that any weakness in the defence's case at the trial was due either to lack of preparation or to a dearth of instructions by counsel. The Court of Appeal noted that the defence counsel's questioning did not suggest unfocused conduct or impermissible questioning.

[8] In arriving at its conclusion on this issue the Court of Appeal relied on dictum of de la Bastide CJ in *Bethel v The State (No. 2)*[1] where the learned Chief Justice observed that it "is conceivable that counsel's misconduct may have become so extreme as to result in a denial of due process to his client." These observations support the principle that a high threshold must be met to set aside a criminal conviction on the basis of the incompetence of counsel. Applying that dictum, the learned judges of the Court of Appeal did not consider that "the volume of evidence and the nature of counsel's conduct" had any qualitative effect on the Appellant's right to a fair trial. Ultimately, the court considered that having regard to all the evidence, particularly the fact that the stolen articles were recovered from the possession of the Appellants as well as the incriminating statements made under caution, the convictions of both Lashley and Campayne should stand.

[9] As regards the severity of the sentence, the Court of Appeal reminded itself that an appellate court would only interfere with a magistrate's exercise of his or her sentencing discretion, if it was based on wrong principles of law. In the appeal

[1] (2000) 59 WIR 451, 459. The reference to *Boodram v The State* in the judgment is incorrect, and probably stems from a similar error by the Privy Council in *Balson v The State* [2005] UKPC 2 at [36].

before it, there was no evidence to suggest that the sentence was passed on a wrong factual basis, was manifestly excessive or wrong in principle. Therefore there was no basis for disturbing the sentence imposed by the Magistrate. Thus the Court of Appeal rejected this ground of appeal and affirmed the sentence of four years imprisonment. Lashley and Campayne have appealed both aspects of the decision of the Court of Appeal.

Incompetence of Counsel

[10] At the outset it must be stated that in magisterial appeals the permissible grounds of appeal are restricted to those prescribed by section 9 of the Summary Jurisdiction (Appeals) Act. The present grounds of appeal before the Court are premised on sections 9(j) and 9(k) of that Act, namely that a specific illegality occurred in the form of an unfair trial and that an unduly harsh sentence was imposed.

[11] In resolving both issues raised, the proper approach does not depend on any assessment of the quality or degree of incompetence of counsel. Rather this Court is guided by the principles of fairness and due process. There is no need for any sliding scale of pejoratives to describe counsel's errors: see *Nudd v R.*[2] This Court is therefore concerned with assessing the impact of what the Appellants' retained counsel did or did not do and its impact on the fairness of the trial. In arriving at this assessment, the Court will consider as one of the factors to be taken into account the impact of any errors of counsel on the outcome of the trial. Even if counsel's ineptitude would not have affected the outcome of the trial, an appellate court may yet consider, in the words of de la Bastide CJ in *Bethel* that the ineptitude or misconduct may have become so extreme as to result in a denial of due process. As this Court said in *Cadogan v The Queen*[3] the Court will evaluate counsel's management of the case "with a reasonable degree of

[2] [2006] 4 LRC 278 at [65]-[66].
[3] [2006] CCJ 4 (AJ) at [14].

objectivity." If counsel's management of the case results in a denial of due process, the conviction will be quashed regardless of the guilt or innocence of the accused. See also *Teeluck and John v The State.*[4]

[12] An appellate court, in adjudicating on an allegation of the incompetence of counsel which resulted in an unfair trial, has to bear in mind that the trial process is an adversarial one. Thus all counsel, including in this case the police prosecutor and retained counsel for the Appellants, are entitled to the utmost latitude in matters such as strategy, which issue he or she would contest, the evidence to be called, and the questions to be put in chief or in cross-examination subject to the rules of evidence. The judge is an umpire, who takes no part in that forensic contest. Therefore, in an appeal such as the instant one where no error of the magistrate prior to sentencing is alleged, the trial does not become unfair simply because the Appellants or their counsel chose not to call evidence, or not to put the accused in the witness-box and to rely on their unsworn evidence.

[13] A conviction can only be set aside on appeal if in assessing counsel's handling of the case, the court concludes that there has not been a fair trial or the appearance of a fair trial: see *Boodram v The State.*[5] Hypothetical examples of such incompetence were given by the Privy Council in *Bethel v The State (No. 2* [6] as follows:

> "It is not difficult to give hypothetical examples of how such a situation might occur. An obvious example would be if the accused had the misfortune to be represented by counsel whose judgment was proved to have been impaired by senility, drugs or some mental disease. Another example … is if counsel conducted the defence without having taken his client's instructions."

[14] The aforementioned propositions represent the core principles relating to the incompetence of counsel as a ground of appeal.

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[4] [2005] 4 LRC 259, 273-4; (2005) 66 WIR 319 at [39]
[5] [2002] 1 Cr. App. R 12, 19.
[6] (2000) 59 WIR 451, 460.

Application of the core principles to this appeal

[15] In light of the foregoing, the Court must now turn to consider whether it could be said that the conduct of the Appellants' counsel deprived the Appellants of a fair trial.

[16] In relation to the confession statements, there is no sworn evidence to suggest that these were improperly obtained thereby rendering them inadmissible evidence. Furthermore defence counsel never put to the prosecution witnesses in cross-examination that the Appellants were beaten, by whom or where or the nature of injuries, if any, sustained at the hands of the police, or led any evidence in chief to support allegations of beatings. Although defence counsel initially objected to the written confession statements being admitted into evidence on the ground that they were extorted through threats and actual beatings, he challenged those statements in cross-examination of the prosecution witnesses merely on the basis that a contemporaneous record of what the Appellants said was never made. At trial counsel submitted that there was no contemporaneous record of the statements "Officer, I gon tell u the truth"; "I gon tell u what happen" or "Officer, write I am going to sign" in the station diary, which merely recorded a summary of what the Appellants said.

[17] Defence counsel further contended that Sergeant Gravesande was not present when Corporal Singh took Lashley's statement. Corporal Singh's certificate refers to Gouveia as the witness to the statement but the certificate was signed by Gravesande. Lashley, however, in his unsworn statement did not refute the presence of Gravesande when the statement was taken.

[18] Campayne in his unsworn statement at the main trial alleged that he was taken to the police vehicle and beaten and then transported to the Alberttown Police Station where he was forced to give a statement. He alleged that he was never given an opportunity to read over the statement. However it was never asserted

that the content of the statement did not accurately reflect what he told Sergeant Gravesande. There is no mention in the unsworn statement of any threat made to him by Sergeant Gravesande. Nor was it put to the prosecution witnesses in cross-examination that Campayne was taken to his bedroom, punched in his belly and dragged to a police vehicle. No evidence was led to support the alleged beating of Campayne by the police or Campayne's alibi. Nor was any evidence forthcoming as to Lashley's alibi.

[19] The learned Chief Magistrate rejected all the Appellants' arguments set out above. It is to be noted that there is no appeal from the Chief Magistrate's decision in respect of the admissibility of the Appellants' statements or his findings in relation to the inconsistencies and lack of credibility of the Appellants' cases. The only issues now extant are the incompetence of defence counsel at trial and the severity of sentence.

[20] In any event the unsworn statements at the *voir dire* and at the main trial were inconsistent and they were also at variance with the caution statements. The Chief Magistrate adverted to the fact that the unsworn statements could not be tested by cross-examination. Issues could be raised from the box without the risk of cross-examination. The Magistrate noted that the proper practice where suggestions of impropriety were made to prosecution witnesses, was that the defence should call witnesses to support those suggestions: *Sutherland v The State*;[7] *Henry v The State.*[8]

[21] Counsel for Lashley and Campayne after he chose not to lead any sworn evidence had the tactical advantage of depriving the prosecution of a closing address. This decision was a tactical move to enable him to have the last word. This move, like other strategic moves of counsel, did not achieve the desired result. However,

[7] (1970) 16 WIR 342.
[8] (1986) 40 WIR 312.

what the preceding paragraphs demonstrate is that the Appellants were granted the full panoply of their rights at trial.

[22] Even if it could be assumed, as advanced by the Appellants, that the statements were inadmissible, it is well established that any real evidence discovered, even from an inadmissible confession, can properly be admitted into evidence, once no part of the inadmissible confessions was relied on: *Warrickshall;*[9] *Gould;*[10] and *Leatham*[11]. This principle has been modified in *Kuruma v R,*[12] where Lord Goddard envisaged that the rule would not apply where it would operate unfairly against the accused. However given that admission of the real evidence, namely the laptops, money and passport, was never challenged this qualification does not apply.

[23] It seems therefore that the evidence that two laptops and a quantity of money claimed by Mr. Narine were discovered at Campayne's home would operate to incriminate him unless he could give a satisfactory explanation of his possession of those recently stolen articles. Trial counsel put to the prosecution's witness Constable Gouveia that the articles discovered were there because Campayne repaired laptops. However Campayne gave unsworn evidence at the main trial that he was keeping the articles for one Kieron though he produced no receipts to support this and he never called Kieron to testify at the trial. These were inconsistent explanations. Further, Lashley and Campayne led the police to a manhole in the pavement at Church Street where they recovered two safes. This evidence does not appear to have been challenged either in cross-examination by the Defence or in the unsworn statements at the *voir dire* at the main trial.

[24] Given that the real evidence was uncontested it would inevitably have led to the same outcome even if the confession statements were excluded as inadmissible.

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[9] (1783) 1 Leach 263.
[10] (1840) 9 C&P 364.
[11] (1861) 8 Cox C.C 498.
[12] [1955] 1 All ER 236, 239.

Thus the allegation of incompetence on the part of defence counsel is in fact premised on the failure of counsel's strategy rather than any denial of due process. The forensic strategy adopted by defence counsel was to put the prosecution to proof of its case, to take advantage of the hallowed principle that a defendant does not have to prove anything and that the prosecution must prove its case beyond reasonable doubt: *Woolmington v DPP*.[13]

[25] In the instant appeal it is clear that the real complaint of the Appellants centres on their disappointment in the outcome of their trial counsel's strategy. It cannot be said that on the evidence competent counsel would have succeeded in achieving a different outcome. In any event, nothing in the trial suggests that the Appellants were denied their fair trial rights or due process.

Sentencing

[26] The main sentencing submission of Mr. Datadin, counsel for the Appellants is that the learned Chief Magistrate failed to conduct a meaningful sentencing hearing. He submits that the matters listed in her reasons for sentence were irrelevant. He cites by way of example, the fact that Lashley attended the Cathedral of Faith Church or that Campayne played cricket for the Ghandi Youth Organisation or attended the Catholic Church. Counsel for the Appellants further criticized the statement in the learned Chief Magistrate's reasons in which she said: "being cognizant that the penalty for this offence is 14 years imprisonment, then 4 years must be reasonable in the circumstances."

[27] Section 229(a) of the Act is a useful reminder that Parliament considered these offences to be very serious. Section 229(a) gives a judge a discretion to impose any sentence up to fourteen years' imprisonment. Since the magistrate's jurisdiction was restricted by statute to a maximum of five (5) years'

[13] [1935] AC 462 (H.L.).

imprisonment, she might properly have considered the starting point for the offences charged as falling within the higher end of her range of five years.

[28] Mr Datadin also challenged the sentence imposed on the basis that the Chief Magistrate gave no credit to the Appellants for the time spent on remand in accordance with the main judgment in *Romeo da Costa Hall v The Queen.*[14] He argued that on a proper application of that decision, the learned magistrate should have given credit for the four days spent on remand before the trial. This submission appears to be correct, and did not appear to be resisted by the State.

[29] Counsel for the Respondent Sir Fenton Ramsahoye S.C., emphasized the public interest in a criminal justice system that provides for the conviction and sentencing of offenders. The criminal justice system should respond to the threat to the peace and security of society as the prevalence of serious crime increases. Magistrates, who deal with the bulk of criminal litigation, are best positioned to judge an appropriate sentence that reflects that response. In this respect, in the context of an approximate increase in crime of 62% between 2010 and 2012, the sentence of four (4) years could not be faulted.

The role of a final appellate court in sentencing

[30] The principles on which appellate courts will interfere with a sentence are well settled.[15] This Court will not interfere with a sentence unless it is manifestly excessive or wrong in principle. It matters not that individual members of an appellate court would themselves have imposed a different sentence. The matter of sentencing involves an exercise of discretion. The matters to be taken into account for the purposes of sentencing (circumstances of the offence[16],

[14] [2011] CCJ 6 (AJ).
[15] 92 Halsbury's Laws (5th edn.) at para. 50.
[16] Ibid, para. 617.

aggravating factors[17] and mitigation)[18] are well established and apply to the sentencing decision in this case.

[31] In the Caribbean the objects of sentencing were laid down in *Benjamin v R*[19] by Sir Hugh Wooding. The learned Chief Justice accepted and adopted five principal objects of sentencing:

> "(1) the retributive or denunciatory, which is the same as the punitive; (2) the deterrent vis-à-vis potential offenders; (3) the deterrent vis-à-vis the particular offender then being sentenced; (4) the preventative, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and (5) the rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society."

[32] In *Benjamin (supra)* and in the earlier decision of *Ramphul v Thomas*[20] (a magisterial appeal) both courts relied on *R v Kenneth John Ball*[21] in which Hilbery J stated:

> "The first and foremost [sc. principle] is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it."

Hilbery J went on to refer to the deterrent effect of a sentence on the potential offender and the particular offender and emphasized that:

> "our law does not, therefore fix the maximum sentence, for the particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case."

[33] In this appeal, the learned Chief Magistrate in explaining the sentence she arrived at set out the aggravating and mitigating circumstances in relation to the offences

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[17] Ibid, para. 619.
[18] Ibid, para. 624.
[19] (1964) 7 WIR 459.
[20] [1955] LRBG 234.
[21] (1951) 35 Cr. App. R 164.

charged and each convicted accused. She also took into consideration the prevalence of the offence, the seriousness of the offence, the increase in the commission of crimes by young people, the substantial value of the stolen items and the deliberation and planning involved in the commission of the offence.

[34] Counsel for the Appellants sought to persuade this Court that the learned Chief Magistrate failed to give any or any sufficient discount for the good character of the Appellants in the sense of their lack of previous convictions. The implicit reference was to the fact that the Appellants were first offenders. We must emphasise that the sentencing phase is untrammelled by the strict rules of evidence applicable to the main trial. Thus evidence of good character (and bad character) may be considered by the trial judge. The judge is entitled to invite defence counsel to place before him or her every circumstance (by submission, by evidence, unsworn statements, probation reports or medical evidence) which might persuade the judge in arriving at the proper sentence.

[35] In the instant case, it is clear that counsel addressed the Magistrate on the fact of the Appellants' participation in public worship and in sport. It was the duty of counsel, to seek leave to bring any additional facts, such as probation reports, to the attention of the Chief Magistrate. We consider the dicta of Cummings JA in *The State v Sydney*[22] to be a sufficient answer to counsel's complaint: "If in her view, considering the matters before her in mitigation as well as other factors, the offence was grave enough to justify the sentence imposed, one cannot complain … sometimes an offence is so serious that good character and mitigation can have only a minimal or marginal effect, or even no effect." The learned Chief Magistrate was entitled to treat the steep rise in serious crime in Guyana referred to by Sir Fenton Ramsahoye S.C. as outweighing the fact that the Appellants were first offenders.

[22] (2008) 74 WIR 290, 296.

[36] In the final analysis, it cannot be said that the learned Chief Magistrate did not bring to bear on her decision the proper principles applicable to sentencing or failed to apply such principles properly or at all. Having regard to the public interest she gave great weight to the prevalence and seriousness of the offences charged and the apparent lack of remorse on the part of the Appellants. There is no proper basis upon which an appellate court should interfere with the exercise of the learned Chief Magistrate's discretion save as to varying her order by crediting the Appellants with the four days spent on remand.

JUDGMENT OF THE HONOURABLE JUSTICES WIT AND ANDERSON

[37] We are afraid we have to disagree with the majority judgment, in particular on the sentencing point.

[38] Although we concede that it is problematic, generally, for an appellate court and certainly for a final Court of Appeal to interfere with the sentencing of a lower court, we do think this Court should not accept a sentencing decision which does not reveal a proper reasoning especially where it results in imposing a sentence, on first offenders, of 4 years imprisonment which is clearly disproportionate and, given all the relevant factors, much too severe.

[39] Our objections to the decision of the Chief Magistrate are the following:

[40] The Chief Magistrate states on the one hand that the legislation allows for "the maximum imprisonment to be 5 years." On the other hand she states that "being cognizant that the penalty for this offence indictably is 14 years imprisonment, *then* 4 years must be reasonable in the circumstances." In our view this reasoning is wrong and cannot be explained away, as the majority appears to do, by stating that she probably tried to say that "Parliament considered these offences to be very serious." That they are serious is not in dispute but that is beside the point.

[41] In her memorandum of reasons the Chief Magistrate has merely listed a number of factors which according to her (must) have an aggravating or mitigating impact on the sentencing of 22 years old Lashley and Campayne. In this listing of factors no distinction can be found between those that are relevant and those that are not. Some of these factors, such as “asking for leniency” do not even make sense.

[42] The most relevant factors in our view are that this particular offence was an ordinary and rather "unsophisticated" breaking and entering; We do not see any "considerable planning, organization and execution" as mentioned by the Chief Magistrate. The offence took place in a business place, not a dwelling house, without anyone present and therefore without violence, the threat of violence or a violation of privacy nor was there exceptional (other than the usual) damage. Most of the stolen objects (laptops, safes and passport) and some of the money were retrieved. Particularly significant is also, and this must be emphasized, that both accused are young adults without previous convictions ("first offenders").

[43] It is a well known principle of sentencing that young first offenders should, as far as possible, be kept out of prison. They should, at least, as a rule, not be given a long custodial sentence, lest they receive a thorough and professional training to become hardened criminals in the "University of Crime" (the overcrowded Georgetown prison where Lashley and Campayne are currently detained may very well qualify as such and is, despite the efforts of those Prison Officers who are trying to make the best of it, one of the most dehumanizing places we have seen in our region). We have not discovered anything in the Chief Magistrate’s memorandum of reasons that shows some basic understanding of this in our view crucial principle of sentencing.

[44] To be clear, the above mentioned sentencing principle has nothing to do to with soft heartedness, mercy, forgiveness or anything of the sort. It is merely the expression of a sound and rational sentencing policy which acknowledges that it is not always in the public interest to lock up offenders indiscriminately (even if

they deserve it) but rather to make good citizens of them, if we can. In the case of young first offenders the mind-set of the sentencing judge or magistrate must therefore be focused not on sending them to jail but instead on keeping them out of it and finding a non-custodial sentencing approach that may result in the offender mending his ways, unless, of course, the crime and the circumstances surrounding it are so serious that the interests of, for example, deterrence clearly outweigh the initial approach. A statement like "Yes, I committed a murder but I am young and it was only the first time, so, please, do not send me to prison" would of course be ludicrous. However, the starting point of the sentencing court in the case of young offenders without previous convictions must always be to find a correctional approach without incarcerating them. Once, after a proper balancing of relevant factors, the onus shifts, it will be the duty of the sentencing court to impose a custodial sentence. Even then, however, it should be kept as short as possible.

[45] In the matter at hand, it is arguable that there would have been sufficient reason for the Chief Magistrate to impose a custodial sentence especially given the failure of the state to provide sufficient probation officers and consequently sufficient guidance to young offenders, the almost non-existent possibilities of community service in Guyana and, what the Chief Magistrate has called, "the prevalence of the offence" and "the increase of the commission of crimes by young persons." Under these circumstances, it would be difficult if not impossible for a sentencing judicial officer to let the offender "of the hook" as a practically toothless non-custodial sentence, not without reason, would be perceived by the general public. In the circumstances of the case before us, the proper sentencing approach would in our view therefore have been to use the short sharp shock method of imposing a sentence of six month with the warning that if there is to be a next time, the court will react with the full force of the law.

[46] Theoretically, this view would have led us to allowing the appeal and to sending the case back to the Chief Magistrate for a re-sentencing. In practical terms,

however, this would not result in a just decision given the very slow pace of the judicial system in Guyana. In such a case then, the best thing a final court can do is to replace the original sentence with a sentence of its own.

[47] We would allow the appeal on the ground that the sentence was too severe. Given the length of time the appellants have already spent in prison (by now one year and 3 months and one year and five months respectively), it would not make sense anymore to replace the sentence of four years with one of six months. Instead, the sentence now should be such that both appellants would be released as quickly as possible, keeping in mind, however, that in the end both should have spent the same time in prison. For these reasons, we would have replaced the sentences of four years with a sentence of two years imprisonment for each of the appellants while crediting each of them with four days for time spent on remand.

ORDER OF THE COURT

The Court accordingly orders that:

(1) The Appellants' appeal against conviction is dismissed.

(2) The sentence of four years of the learned Chief Magistrate is affirmed save that the Appellants should be credited with four days each for time spent on remand.

The Hon Mr Justice Nelson

The Hon Mr Justice Saunders

The Hon Mr Justice Wit

The Hon Mr Justice Hayton

The Hon Mr Justice Anderson