

BRITISH VIRGIN ISLANDS

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

Criminal Case No. 10 of 2007

BETWEEN:

THE QUEEN

and

**JASON LEONARD
CLIFTON STOUTT**

Appearances:

Mrs. Grace Henry-McKenzie, Senior Crown Counsel and Ms. Christilyn Benjamin, Crown Counsel for the Crown
Both Defendants in person

2007: May 25, 29

2007: May 31

JUDGMENT ON SENTENCING

(Criminal Law – Defendants charged separately and jointly on 9 counts - burglary, theft, wounding, robbery, damaging property and aggravated burglary – Defendants pleaded guilty at first available opportunity – previous similar convictions –young age of one Defendant – sentencing guidelines – Sentenced to 10 years and 15 years respectively)

Introduction

- [1] **HARIPRASHAD-CHARLES J:** On 30 April 2007, the Defendants, Jason Leonard and Clifton Stoutt were committed by the Senior Magistrate to stand trial at the next sitting of the High Court in its Criminal Jurisdiction. When they appeared at the May Criminal Assizes, their deposition was not ready but both Defendants indicated that the preparation of the deposition was unnecessary since they intended to plead guilty. However, the deposition did arrive in time for their arraignment on 25 May 2007.

- [2] The Defendants were charged separately as well as jointly on 9 counts. The Defendant, Jason Leonard pleaded guilty to the following 5 counts of (i) burglary; (ii) theft; (iii) damaging property; (iv) robbery and (v) wounding. The Defendant, Clifton Stoutt pleaded guilty to 2 counts of burglary and 1 count of theft. He was also jointly charged with Mr. Leonard for aggravated burglary to which count they both pleaded guilty.

The facts

- [3] The facts of the case as outlined by the Crown are wholly undisputed. On Tuesday, 9 May 2006, at about 6.00 p.m., Mr. Clinton Durant, Manager of Nibbs Auto Sales and Parts locked and secured the building that houses Avis Car Rental, a franchise of Nibbs Rental. He returned the following morning and found that the glass on a door was broken and there were visible signs of forced entry. Inside, he noticed papers scattered about. The police were informed. Subsequently, an employee discovered that a key for the gold Hyundai Terracan jeep, Registration No. RT 0634 was missing from the cabinet in the office where it was kept. Further checks were made and it was discovered that the said jeep was missing. The police began their investigation of this matter.
- [4] On the night of 10 May 2006, Mr. Juanito Rubaine who operates a mobile food van called "Nitos" was at his place of business at the Market Place. The following morning at about 3.30 a.m., Mr. Sebastien Liegard was purchasing food at Nitos when a motor vehicle which both Mr. Rubaine and Mr. Liegard observed bore the Registration No. RT 0634 pulled up alongside the mobile food van. Two masked men alighted. Both were armed with firearms. One went inside the food van while the other remained outside. The one inside the van attacked and robbed Mr. Rubaine of about \$51.00 cash. The one outside hit Mr. Liegard on his head with the firearm causing a wound for which he received medical attention at the hospital. The police were summoned to the scene. They started their investigations without delay and embarked on an island wide search for motor jeep RT 0634.

- [5] On Saturday, 14 May 2006, the police discovered the said jeep in an isolated area at the western end of the island. It was damaged. The police took possession of the vehicle. Swabs were taken of different parts of the vehicle for forensic analysis. The vehicle was later identified by an employee of Nibbs as being the same vehicle that was missing from Avis Car Rental.
- [6] On 15 May 2006, at about 10.00 p.m., Mr. Charles Bercow of Kingston had retired to bed. He awoke the following morning at around 6.30 a.m. to find that his apartment was broken into and his shorts pockets containing cash and other items were gone. He was also unable to find his back pack, a calculator and the key to his Grand Vitara jeep, registration no. CM 2655. He checked his driveway and found the said jeep missing. He reported the matter to the police.
- [7] On the same night of 15 May 2006, Mr. Granville Freeman, who was then residing at Butu Mountain retired to bed. The following morning at about 3.00 a.m. he awoke to find three masked men inside his house. One was armed with a firearm. One man tied him up. They proceeded to search the house. Mr. Freeman managed to escape, scared the men off and they ran away leaving behind a pair of "Fila" slippers.
- [8] Upon checking his house, Mr. Freeman discovered that a quantity of jewelry, cellular phones and other items were missing. He also observed a Grand Vitara jeep in his driveway which did not belong to him. A window to his house was also damaged. The police were called. They conducted examination of the scene and retained the pair of slippers for forensic analysis. They took possession of the jeep and carried out forensic tests on it. The Grand Vitara jeep was later identified by Mr. Bercow to be his. He confirmed that it was the same vehicle that was stolen from his driveway.
- [9] On the morning of 16 May 2006, Mr. Michael Helm went to his office which was located at the top floor of Mr. Bercow's apartment. He discovered that his IBM laptop computer was missing. Items belonging to Mr. Bercow were found in Mr. Helm's office.

The laptop computer was discovered in the Grand Vitara and was returned to Mr. Helm.

- [10] Further to their investigations into the matters, the police visited the home of Mr. Stoutt at about 5.15 a.m. on 16 May 2006. Whilst there, they saw the Defendant, Mr. Leonard approached from the front of the building. The police interrogated him and he was taken to Road Town Police station for further questioning.
- [11] Mr. Stoutt, who was at his residence, was also taken into police custody that same morning. At the police station, Mr. Leonard was searched by the police and a quantity of jewelry and cellular telephones were among items taken from his pants pocket. A vehicle key belonging to Avis Car Rental was also taken from his pocket. It was later identified to be the key for the Hyundai motor vehicle which was missing from Nibbs Rental. Mr. Freeman identified the jewelry and other items to be his property that was stolen from his house on 16 May 2006.
- [12] On 17 May 2006, the Defendants were taken to Road Town Clinic where they voluntarily gave samples for DNA investigations. These samples along with swabs taken from the Hyundai motor vehicle RT 0634 and the Grand Vitara motor vehicle CM 2655, the pair of "Fila" slippers, a pair of jean shorts found in motor vehicle CM 2655 were among some of the items which were sent to Florida for DNA testing.
- [13] On 6 June 2006, the police received a Certificate of Analysis in relation to the items that were sent for DNA testing. Mr. Stoutt's DNA profile was found on the left foot of the "Fila" slipper and from the jean shorts found in motor vehicle CM 2655. Mr. Leonard's profile was found on the steering wheel and on the light switch of RT 0634. Subsequently, the Defendants were formally arrested and charged for the offences.
- [14] Both Defendants are before the Court for sentencing having pleaded guilty to diverse offences. Both are unrepresented.

Plea in mitigation

[15] The Defendant, Mr. Leonard said that he was very sorry for what he had done but he had been pressured to do so. However, he did not disclose the name(s) of person (s) who pressured him into committing these crimes. He stated that he had made a big mistake and called on the Court to temper justice with mercy. He fortified his call for clemency in a letter that he wrote to the Court. In that letter, he thanked the Almighty Father for the breath of life to cope with whatever sentence will be meted out to him.

[16] The Defendant, Mr. Stoutt also sought compassion of the Court. He stated that he is a family man with an infant child and he has four other children, some of whom are living abroad. In seeking leniency, he implored the Court to impose concurrent sentences, no doubt, to overlap with the sentences which he is presently serving.

Submissions by the Crown

[17] Ms. Benjamin, appearing as one of the Crown's Attorneys helpfully distilled the aggravating as well as the mitigating factors in this case. The aggravating factors which were identified are:

1. seriousness of the offences and their prevalence;
2. a number of men took part in these crimes;
3. the men were masked and armed with guns;
4. the attack was on multiple victims;
5. the high value of property taken and
6. previous similar convictions of both Defendants particularly in the case of Mr. Stoutt.

[18] The mitigating features are that both Defendants pleaded guilty at the first available opportunity. In England, a plea of guilty attracts a one-third reduction of the sentence.¹ Lord Taylor CJ in **Buffrey** however emphasised 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

¹ See R v Edward Buffrey (1993) 14 Cr. App. R (S).

variance between one case and another.” Byron CJ in **Desmond Baptiste v the Queen et al** ² opined that “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.”

[19] With respect to the youthful age of Mr. Leonard, it is a factor to be borne in mind.

[20] Ms. Benjamin also alluded to a compendium of judicial authorities from this jurisdiction, the Caribbean and England which are aimed at assisting the Court in determining the appropriate sentences to be imposed on the Defendants.

The offences being considered

[21] The offences and the statutory provisions to which the 9 counts relate are as follows:

1. Count 1 (Leonard) - Burglary contrary to section 211 (1) (b) of the Criminal Code – the maximum penalty is 14 years imprisonment.
2. Count 2 (Leonard) - Theft contrary to section 209 (b) of the Criminal Code – the maximum penalty is 10 years imprisonment.
3. Count 3 (Leonard) - Damaging Property contrary to section 205 of the Criminal Code – the maximum penalty is 10 years imprisonment.
4. Count 4 (Leonard) - Robbery contrary to section 210 of the Criminal Code –the maximum penalty is life imprisonment.
5. Count 5 (Leonard) - Wounding contrary to section 164 of the Criminal Code –the maximum penalty is 5 years imprisonment.

² Criminal Appeal No. 8 of 2003 (Saint Vincent & the Grenadines) –judgment delivered on 6 December 2004. (unreported). –see paragraph 28 of the judgment.

6. Count 6 (Stoutt) - Burglary contrary to section 211 (1) (b) of the Criminal Code – the maximum penalty is 14 years imprisonment.
7. Count 7 (Stoutt) – Theft contrary to section 209 (b) of the Criminal Code – maximum penalty is 10 years imprisonment.
8. Count 8 (Stoutt) – Burglary contrary to section 211 (1) (b) of the Criminal Code – maximum penalty is 14 years imprisonment.
9. Count 9 (Leonard & Stoutt) -Aggravated Burglary contrary to section 212 of the Criminal Code –maximum penalty is life imprisonment.

Age and criminal record of Defendants

Jason Leonard

- [22] Mr. Leonard is 20 years old, having been born on 17 December 1986 in Tortola, British Virgin Islands. He attended the Francis Lettsome Primary School. In 1999, he migrated to Anguilla where he attended school there. In 2000, he returned to the BVI and continued his high school education at the BVI High School (now the Elmore Stoutt High School) and later on, the Bregardo Flax Educational Center.
- [23] Prior to being on remand at Her Majesty's Prisons, Mr. Leonard had been unemployed. According to the Criminal Records & Statistics Office of the Royal Virgin Islands Police Force, he had been convicted on 5 occasions for possession of dangerous drugs. On 27 May 2005, he was sentenced to 8 months imprisonment and placed on probation for 2 years. The Magistrate ordered that Mr. Leonard attend the Sandy Lane Center to undergo drug rehabilitation. It was not disclosed to the Court whether he did attend. For present purposes, it is significant to note that Mr. Leonard was on probation when he committed these offences.
- [24] The record also revealed that on 12 March 2003, Mr. Leonard, then aged 18, pleaded guilty to burglary and theft and he was placed on 12 months probation. The Court also

ordered restitution of the items recovered and payment of \$500.00 for the items not recovered.

Clifton Stoutt

[25] The Defendant, Mr. Stoutt is no stranger to the Courts. In fact, during the May 2006 Criminal Assizes, Mr. Stoutt was tried and found guilty of 3 counts of robbery. On 4 July 2006, Joseph-Olivetti J. sentenced him to 15 years imprisonment on each of the 3 counts; sentences were concurrent. It appears that Mr. Stoutt escaped lawful custody on two occasions whilst being an inmate at Her Majesty's Prisons. The record reveals that on 16 June 2006, he was sentenced to 18 months imprisonment for escaping lawful custody and on 12 December 2006, he was sentenced to another 12 months for the same offence.

[26] Prior to these convictions, Mr. Stoutt had been imprisoned on numerous occasions for diverse crimes. Indeed, he has been a regular visitor to Her Majesty's Prisons since he was 15 years old. He started his criminal career in 1984 at the tender age of 14. He attributed his criminal behaviour and aberrant life style to the abuse he suffered as a child.

[27] A count of Mr. Stoutt's criminal convictions is demoralizing. If my arithmetic is correct, it aggregates 64. Many of them are traffic offences and spent. Some of the traffic offences are by no account minor, for example taking of vehicle without the consent of the owner and driving without licence and insurance. In addition, he has been convicted for 22 similar offences extending over a 22-year period.

Sentencing guidelines

Burglary

[28] Ms. Benjamin alluded to several local cases and one from the Eastern Caribbean where the offence of burglary and the applicable sentencing guidelines were considered. These authorities are undeniably helpful and I commend Ms. Benjamin for her invaluable assistance to the Court. Some of the authorities are:

- **R v Ambrose & Rosario**³ – the Defendants pleaded guilty to burglary of the Magistrate Court. Ambrose was sentenced to 2 ½ years and Rosario to 3 years.
- **R. v Akim Donastorg**⁴ – the Defendant pleaded guilty to burglary of Little Denmark Jewelry Store from which a quantity of jewelry was stolen. He was sentenced to 3 years imprisonment.
- **R v William Penn**⁵ – the Defendant was convicted on 3 counts of burglary in relation to villas at Virgin Gorda. He was sentenced to 8 years imprisonment on each count, sentences to run concurrently.⁶
- **R v Keenan Kendell Bethelmy**⁷, the Defendant was charged with 2 counts of burglary. He was sentenced to 10 years and 5 years respectively on each count; sentences to run concurrently.

[29] In the Vincentian case of **Desmond Baptiste v The Queen**⁸, Mr. Baptiste, aged 25 years was sentenced to 8 years for burglary. He had a long record of previous convictions spanning a period of 10 years involving theft, entering dwelling houses as a trespasser and stealing, unlawful possession and possession of controlled drugs. On appeal to the Court of Appeal, that Court was at a disadvantage because the record before them was deficient in relation to the precise circumstances of the burglary for which Mr. Baptiste was convicted. Nonetheless, the Court dismissed his appeal even though he had pleaded guilty at the first available opportunity and the stolen items were recovered. His extended criminal record involving many offences of a similar nature was an aggravating feature in the case.

³ BVI Criminal Case No. 4 of 2007 –judgment delivered on 13 March 2007 –per Joseph-Olivetti J.

⁴ BVI Criminal Case No. 13 of 2006 –judgment delivered on 29 June 2006 –per Joseph-Olivetti J.

⁵ BVI Criminal Case No. 1 of 2006 –judgment delivered on 21 March 2006 –per Hariprashad-Charles J.

⁶ The Judgment is currently on appeal.

⁷ BVI Criminal Case No. 11 of 2007- Judgment on sentencing delivered on 29 May 2007[unreported].

⁸ Criminal Appeal No. 8 of 2003 (St, Vincent & the Grenadines) [unreported].

Robbery

[30] The guidelines cases in the UK for robbery are **R. v. Turner (B.J.)**⁹, **R v Daly**¹⁰, **R v Gould**¹¹ and **R v Adams and Harding**¹². In **Turner**, a bank robbery case, Lawton LJ said that the normal starting-point for sentence for anyone taking part in a bank robbery or in a hold-up of a security should be 15 years, if firearms were carried and no serious injury done.

[31] In **Daly**, Lord Lane CJ indicated that in a bank robbery type of case, the most serious features calling for heavy sentences are:

"...detailed planning; use of loaded firearms or ammonia; where a number of men execute a planned attack on a bank or a similar target in the hope of stealing substantial sums of money; where the participants are masked and armed either with guns, handguns or sawn-off shotguns, or sometimes with ammonia, and squirt ammonia into the faces of clients or staff of the bank in order to overpower a resistance. In such cases, as Lawton LJ in **Turner** has rightly said that a starting point of 15 years is correct. It may be, and no doubt will in nearly every case where there has been a plea of guilty, possible to reduce that term in the light of the plea and in the light of the assistance given to the police and other mitigating factors. It may be necessary on the other hand in some cases to increase the starting number of years because of the number of offences which the particular Defendant has committed during the course of his depredation."

[32] In **Gould**, Lord Lane CJ confirmed that the **Turner** guidelines remained the basis for sentencing in armed robbery offences. He also added that some of the features likely to mitigate an offence are:

- a plea of guilty;
- the youth of the offender;
- a previously clean record;
- the fact that the Defendant had no companion when committing the offence;
- the fact that no-one was injured.

⁹ [1975] 61 Cr. App. R. 67, CA at p.91

¹⁰ [1981] 3 Cr. App. R. (S) 340, CA.

¹¹ [1983] 5 Cr. App. R. (S) 72, CA.

¹² [2000] 2 Cr. App. R. 274.

[33] Lord Lane CJ also opined that the following were matters which the court must put into the balance on the other side of the scale when determining the correct sentence for any particular offender:

- the fact that a real rather than an imitation weapon was used;
- that it was discharged;
- that violence was used upon the victim;
- that a number of men took part in the attack;
- that careful reconnaissance and planning were involved;
- that there was more than one offence committed by the offender.

[34] More recently, in **Adams and Harding**, it was said that **Turner** only provided a starting point and that in today's sentencing climate the guidelines should be revised upwards.

[35] In **Allan Wilson v The Queen**¹³, Sir Dennis Byron, CJ opined that "robbery is an offence that should always warrant a custodial sentence." He declared that the sentencer should however reserve the right to go beyond or below this range in appropriate circumstances. In that case, Mr. Wilson pleaded guilty to robbing a bus conductor of EC\$220.00 and was sentenced to 10 years imprisonment. On appeal against sentence, the Court of Appeal reduced the sentence to 5 years. The Court of Appeal found that there were substantial mitigating factors namely that Mr. 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. The Court opined that 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.

[36] In **R v Keno Allen**¹⁴, the Defendant pleaded guilty to 1 count of aggravated burglary and 1 count of robbery. He had entered the dwelling house of the virtual complainant. He used a knife from her home to intimidate her and tie her up. Thereafter, he robbed

¹³ Criminal Appeal No. 10 of 2003 (St. Vincent & the Grenadines) [unreported].

¹⁴ Criminal Case No. 11 of 2005 (British Virgin Islands) [unreported].

her of an undetermined amount of cash. He was sentenced to 8 years imprisonment on both counts; sentences to run concurrently.

[37] In **R v Damian Hodge**¹⁵, the Defendant was found guilty of 1 count of aggravated burglary, 1 count of robbery and 1 count of assault occasioning actual bodily harm. The Defendant and another man armed with a gun shouted "armed robbery, armed robbery" before they kicked down the door of the hotel/restaurant around 10.00 p.m. The owner and a patron were the only persons inside at the time. The Defendant robbed the owner of his wrist watch, hand bracelet and \$92.00 cash from his pockets and the cash pan. Before leaving, he assaulted the patron with the gun. He was sentenced to 10 years imprisonment for the robbery.

[38] In **R v Stanley Bertie Jr**,¹⁶ the Defendant was charged with 1 count of robbery. He along with another robber met the complainant on the road in the early hours of the morning. They knew that the complainant had in his possession the payroll for employees at Guana Island as the Defendant had worked there before. He along with the other robber (who had a gun) came upon the complainant and fought with him for the money. The Defendant was knocked down by the complainant and held until the police came. The other robber fled the scene with the money. The Defendant pleaded guilty at the first available opportunity and was sentenced to 7 years imprisonment. He had no previous convictions.

[39] In **R v Philomen Miller and Mirouts Milton**¹⁷, the Defendant, Mr. Miller, the security guard at Cable & Wireless was convicted by a unanimous jury of robbery of a large sum of money, the property of Cable & Wireless. He was sentenced to 14 years imprisonment.¹⁸

¹⁵ Criminal Case No. 13 of 2001 (British Virgin Islands) [unreported].

¹⁶ Criminal Case No. 4 of 2006 (British Virgin Islands) – unreported – Judgment on sentencing delivered on 21 February 2006.

¹⁷ Criminal Case No. 26 of 2006 [British Virgin Islands] [unreported] – judgment on sentencing delivered on 1 December 2006.

¹⁸ This decision is presently under appeal.

[40] Last but by no means least, is the case involving this very Defendant – **R v Clifton Stoutt**¹⁹. Mr. Stoutt was tried and convicted of 3 counts of robbery. He was sentenced to 15 years imprisonment on each count to run concurrently.

Aggravated burglary

[41] For aggravated burglary, the maximum penalty is life imprisonment. In **R v Evans Joseph**²⁰, the Defendant was found guilty of aggravated burglary. He was sentenced to 6 ½ years imprisonment.

Wounding

[42] The maximum penalty for wounding is 5 years. In **R v Chevron Russell**²¹, the Defendant pleaded guilty to Unlawful and Malicious Wounding. He was sentenced to 4 years imprisonment.

Criminal Damage

[43] The Defendant, Mr. Leonard was also charged with damaging property contrary to section 265 (1) of the Criminal Code 1997. Section 265 (4) specifies the penalty for that offence to be imprisonment for a term not exceeding 10 years. The Crown provided a litany of local decisions on criminal damage. In **R v Luis Ambrose and Juan Rosario**²², the Defendants pleaded guilty to burglary and criminal damage of the Magistrate Court. They were ordered to pay compensation to the Crown in the sum of \$6,714.16 to be paid within 6 months or in default, 6 months imprisonment.

[44] In **R v Devon Dawson**²³, the Defendant pleaded guilty to damaging property. He was sentenced to 2 years imprisonment.

¹⁹ Criminal Case No. 14 of 2006 [British Virgin Islands] [unreported] – judgment on sentencing delivered on 4 July 2006.

²⁰ BVI Criminal Case No. 10 of 2005 per Hariprashad-Charles J. [unreported]

²¹ BVI Criminal Case No. 10 of 2006 –judgment on sentencing delivered on 6 October 2006 - per Hariprashad-Charles J.

²² BVI Criminal Case No. 4 of 2007 - judgment on sentencing delivered on 13 March 2007 –per Joseph-Olivetti J [unreported].

²³ BVI Criminal Case No. 2 of 2006 –Judgment on sentencing delivered on 7 December 2006 –per Hariprashad-Charles J [unreported].

Court's considerations

- [45] The Defendant, Mr. Leonard faces maximum penalties ranging from 5 years as in the case of wounding to life imprisonment on the robbery and aggravated burglary counts. He is also charged separately for theft, burglary and damaging property. In addition, he has pleaded guilty on the aggravated burglary count with which he is jointly charged with Mr. Stoutt. Mr. Stoutt pleaded guilty to charges of theft, burglary and aggravated burglary; the maximum penalty for the latter being life imprisonment.
- [46] As can be seen, the maximum sentence which the Court can impose on both Defendants is life imprisonment. However, the Court has a wide discretion in sentencing both at common law and under the laws of this Territory (see sections 22 and 23 of the Criminal Code) to enable it to do justice having regard to the particular facts of each case.
- [47] It is manifest that Parliament considered the offences for which the Defendants have been indicted and to which, they have pleaded guilty, specifically robbery and aggravated burglary as extremely serious offences, hence, the penalty of life imprisonment. But, the decision whether a custodial sentence is required, and if so, the length of such sentence, is heavily dependent on the aggravating and mitigating features and, usually to a lesser extent, the personal circumstances of the offender. The Courts also do take into consideration, the abhorrence with which the public regard those who rob or burgle.
- [48] The aggravating and mitigating features of this case have already been identified.²⁴ There is no doubt that all of the offences are serious and warrant custodial sentences. In the present case, I have given due consideration to all that was said by the Defendants in mitigation. The criminal records of the Defendants are appalling, particularly in the case of Mr. Stoutt. He is presently serving 3 concurrent 15 years sentences.

²⁴ See paragraphs 17 and 18 of this judgment.

- [49] It is also widely recognized that the aims of sentencing are that of retribution, deterrence, prevention and rehabilitation.²⁵ In the case of Mr. Stoutt, he has been incarcerated on myriad occasions and the prison system has not rehabilitated him at all. He is a fairly intelligent young man and the reason why he has chosen a criminal career eludes me particularly since he is from a decent and church-going family.
- [50] In the case of young Leonard, he seemed to be starting a criminal career. The Court and all associated institutions must assist him in bringing this to an end. His criminal proclivity surfaced from the tender age of 15 when he was fined the sum of \$800 for possession of drugs. Three months later, he appeared before the same magistrate for burglary and theft and was placed on 12 months probation. Thereafter, on another drug charge, he was sent to the Sandy Lane Center with the hope of rehabilitation. Mr. Leonard is now before this Court having pleaded guilty to burglary, theft of a motor vehicle, damaging the said motor vehicle, robbery, wounding and aggravated burglary. The aggravated burglary count is a particularly serious charge. Mr. Freeman was fast asleep when he was awakened at 3 o'clock in the morning by three masked men (including Mr. Leonard and Mr. Stoutt). One of the men was armed with a firearm. Mr. Freeman was tied up and \$3,500 worth of items was stolen. Fortunately, he was not physically injured but it must have been a nightmare for him.
- [51] The first 3 counts of burglary, theft of a motor car and damaging property are related but are serious offences. Mr. Leonard stole the vehicle and went on a crime spree. To rub salt to the wound, he damaged the vehicle and then abandoned it in a desolate area at the western end of the island.
- [52] I have also taken into consideration that violent and serious crimes involving masked men, often armed with firearms, are escalating in this Territory. Society continues to show its repugnance for these crimes. The Court has to play its role in ensuring that the citizens are protected from criminals. I think that the only way to do this is by the

²⁵ See paragraphs 20 – 25 of the judgment of the Court of Appeal in *Desmond Baptiste v The Queen* (supra).

sentences which are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential criminals get the message that society will not condone or tolerate such criminality.

[53] Having considered all the circumstances of the case, I am constrained to impose lengthy custodial sentences. No doubt, these sentences would dissuade would-be criminals. In the case of Mr. Leonard, I do hope that the punishment will also serve to rehabilitate him. In the case of Mr. Stoutt, he has already received the full brunt of the law but he has not mended his criminal behaviour. In short, he poses a grave threat to society.

The sentences

[54] Taking all matters into consideration, I hereby sentence the Defendants as follows:

Count 1 involving Jason Leonard - 7 years

Count 2 involving Jason Leonard – 7 years

Count 3 involving Jason Leonard –5 years

Count 4 involving Jason Leonard -10 years

Count 5 involving Jason Leonard - 2 years

Count 6 involving Clifton Stoutt - 7 years

Count 7 involving Clifton Stoutt - 5 years

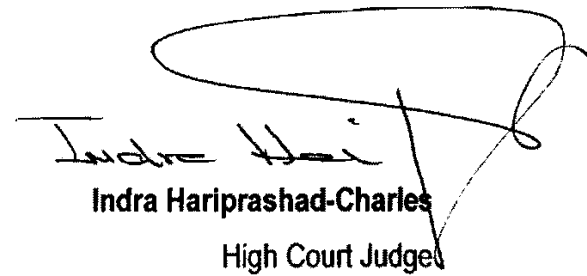
Count 8 involving Clifton Stoutt -7 years

Count 9 involving Jason Leonard and Clifton Stoutt – 10 years for Leonard and 15 years for Stoutt.

[55] In respect of Mr. Leonard, his sentences on Counts 1, 2, 3, 4, 5 and 9 are to run concurrently. Time spent on remand was taken was consideration in computing sentence.

[56] In respect of Mr. Stoutt, his sentences on Counts 6, 7, 8 and 9 will run concurrently but consecutively with any other sentence (s) he is now serving.

[57] For the avoidance of any doubt, Mr. Leonard is sentenced to 10 years imprisonment and Mr. Stoutt to 15 years imprisonment to run consecutively with any other sentence(s) he is now serving. His sentence will be reconsidered during the course of this Assizes should he provide the information requested by the Court on the date that he was sentenced.²⁶



Indra Hariprashad-Charles
High Court Judge

²⁶ See R v Daly [supra] where it was held that assistance to the police is a mitigating factor which goes towards a reduction in sentence.