

BRITISH VIRGIN ISLANDS

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

Criminal Case No. 5 of 2009

BETWEEN:

THE QUEEN

-vs-

(1) SEANTROY HANLEY
(2) SELROY HANLEY
(3) JOHN HARVEY

Appearances:

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

Ms. Asha Johnson for the Defendants, Seantroy Hanley and Selroy Hanley

Mr. Stephen Daniels for the Defendant, John Harvey

2009: April 01

2009: April 03

JUDGMENT ON SENTENCING

(Criminal Law – Defendants charged jointly on 3 counts – robbery, aggravated burglary and criminal damage to property– All defendants pleaded guilty at first available opportunity – previous similar convictions -youthful ages of defendants – one is a minor- sentencing guidelines –prevalence of crimes of violent nature- use of firearm which was never recovered –crime committed in broad daylight)

Introduction

[1] **HARIPRASHAD-CHARLES J:** On 16th January 2009, the Defendants, Seantroy Hanley, Selroy Hanley, John Harvey and another defendant, Jahnoy Walters were committed by a Magistrate to stand trial at the February 2009 Criminal Assizes. On their arraignment on 4th February 2009, the defendants, Seantroy Hanley, Selroy Hanley and John Harvey pleaded guilty to each of the three counts of robbery,

aggravated burglary and criminal damage to property. The defendant, Jahnoy Walters pleaded not guilty. That case against Jahnoy Walters has since been disposed of and is of interest to this Court. The defendants, Seanroy Hanley, Selroy Hanley and John Harvey are before me for sentencing.

The brief facts

- [2] The facts of the case, as outlined by the Crown, are wholly undisputed. On Monday, 15th September 2008, at about 10.00 a.m. Mr. Jeremy Cobb, the owner of BVI Communications left his store in the company of another gentleman for Road Town. At the time, the only sales attendant in the store was Diana Baret. At some point in time, she was having a dialogue with Mr. Cobb's wife and was about to hang up the phone when she saw three masked men with t-shirts covering their faces and at least one was armed with a gun, entered the store, pointed a gun at Ms. Baret and ordered her to the floor. The gun man demanded the cash from the register which she handed over. She said that she did so because she was fearful for her life. She remained on the floor with the gun man standing near her while the other two masked men carried out a robbery of the store. A quantity of items was taken away from the store during the robbery. The total value of the items is US\$7,054. Of these items, only an E-Tec DVD Player and an Asus mini lap-top computer were recovered. During the said robbery, a digital video recorder valued at \$400 was destroyed by the masked men.
- [3] After the robbery, the masked men fled the scene with the stolen items secured in back packs and black garbage bags. They were picked up some yards away from BVI Communications in a car driven by Jahnoy Walters and owned by Walters' mother. The robbers were taken to the Hanleys' residence at Belle Vue.
- [4] Shortly after the said robbery, the police arrived. Acting on information received, they proceeded immediately to investigate this matter. They obtained a search warrant and conducted a search of the Hanleys' residence. Due to their swift action, they recovered an E-Tec DVD Player and an Asus mini lap-top computer in the bedroom of Selroy Hanley. These items were shown to Mr. Cobb who positively identified them as items

taken from his store at the time of the robbery. Indeed, the police are deserving of praise for their swift action in this matter.

- [5] On 18th September 2008, the defendants were formally arrested and charged for the offences of robbery, aggravated burglary and criminal damage to property. In separate audio interviews, the defendants, under caution, confessed to the police their respective roles in the robbery. The defendant, Seanroy Hanley admitted that he was the gun man on the day in question and he was responsible for making sure that Ms. Baret stays in one place. He also admitted to taking the money from the cash register. The firearm used during the robbery was never recovered.
- [6] The defendant, Selroy Hanley admitted to the police that he took the DVD player and the mini lap-top computer. Actually, the police found these items in his bedroom.

Plea in mitigation

John Harvey

- [7] Learned Counsel for John Harvey made a fervent plea in mitigation relying substantially on (1) Harvey's tender age of 16; (2) his unblemished criminal record and (3) his plea of guilty at the earliest possible opportunity, imploring the Court to spare Harvey of a period of incarceration. Undoubtedly, these are very forceful mitigating factors. The Court must give credence to them.
- [8] Mr. Daniels emphasized that Harvey pleaded guilty at the first available opportunity and in England as well as in our courts, such guilty plea normally attracts a significant, approximately one-third reduction of sentence. Counsel added that although Harvey is a high school drop-out, he is desirous of continuing his education so that he could contribute meaningfully to society. Counsel alluded to Harvey's upbringing as a probable factor to his aberrant behaviour. He submitted that Harvey was raised by a single parent - his mother and that he is at a stage of life "searching for an identity." Accordingly, Counsel says, incarceration is not the solution.

[9] Harvey also spoke. He appears remorseful, apologizing to the court, the community at large, his mother and friends for his reprehensible conduct.

Seantroy and Selroy Hanley

[10] Ms. Asha Johnson, appearing as Counsel for Seantroy Hanley and Selroy Hanley had a more difficult task than Mr. Daniels in that the Hanley brothers are adults and both have previous criminal convictions. In the case of Seantroy, just a week ago he was sentenced by the Senior Magistrate to 9 months imprisonment for going equipped to steal and for criminal trespass. Prior to last week, in August 2007, he was convicted of criminal damage and had to compensate the virtual complainant. In November 2008, he was again before the Magistrate Court for possession of an offensive weapon and was sentenced to 30 days imprisonment.

[11] In the case of Selroy Hanley, he was convicted of common assault on 7th November 2008 and was fined \$2,000 or 3 months imprisonment by the Presiding Magistrate.

[12] Nonetheless, with some vigor, Ms. Johnson spoke to the ambition of these two young men. She submitted that Seantroy, age 21 graduated from the H. Lavity Stoutt Community College in 2008 and he aspires to be an electrician while his younger brother, Selroy wants to join the army. She urges the court to temper justice with mercy.

[13] Both Hanley brothers spoke. In a nutshell, they say that they are remorseful for their actions and they vowed to turn their respective lives around.

Submissions by the Crown

[14] In their usual efficient manner, the Crown has helpfully identified the aggravating as well as the mitigating factors in this case. The aggravating factors which were identified are:

1. the seriousness of the offences and their prevalence;
2. the defendants operated in a group;

3. the men were masked and at least, one was armed with a gun;
4. the value of the items stolen – US\$7,054
5. previous convictions of the defendants, Selroy Hanley (common assault) and in the case of Seantroy Hanley, 4 previous convictions; one of which is of a similar nature (criminal damage).

[15] The mitigating factors are that the defendants have all pleaded guilty at the first available opportunity and they are all very young. In the case of Harvey, he is a minor with no previous convictions.

[16] Learned Crown Counsel, Ms. Benjamin also alluded to a litany 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.

Sentencing guidelines

Robbery

[17] The maximum penalty for robbery in the British Virgin Islands and in the United Kingdom is life imprisonment. The guidelines cases in the UK for robbery are **R. v. Turner (B.J.)**¹, **R v Daly**², **R v Gould**³ and **R v Adams and Harding**.⁴ 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.

[18] 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;

¹ [1975] 61 Cr. App. R. 67, CA at p.91

² [1981] 3 Cr. App. R. (S) 340, CA.

³ [1983] 5 Cr. App. R. (S) 72, CA.

⁴ [2000] 2 Cr. App. R. 274.

- a previously clean record;
- the fact that the defendant had no companion when committing the offence;
- the fact that no-one was injured.

[19] 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;
- it was discharged (not applicable in this case);
- violence was used upon the victim;
- a number of men took part in the attack;
- careful reconnaissance and planning were involved;
- more than one offence was committed by the offender.

[20] 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.

[21] In **Allan Wilson v The Queen**⁵, 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 co-operated 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.

⁵ Criminal Appeal No. 10 of 2003 (St. Vincent & the Grenadines) [unreported].

- [22] In **R v Keno Allen**⁶, the defendant pleaded guilty to 1 count of robbery and 1 count of aggravated burglary. 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 her of an undetermined amount of cash. He was sentenced to 8 years imprisonment on both counts; sentences to run concurrently.
- [23] In **R v Damian Hodge**⁷, 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, 10 years for aggravated burglary and 3 years for occasioning actual bodily harm.
- [24] In **R v Stanley Bertie Jr**,⁸ 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.

⁶ Criminal Case No. 11 of 2005 (British Virgin Islands) [unreported].

⁷ Criminal Case No. 13 of 2001 (British Virgin Islands) [unreported].

⁸ Criminal Case No. 4 of 2006 (British Virgin Islands) – unreported – Judgment on sentencing delivered on 21 February 2006.

[25] In **R v Jason Leonard and Clifton Stoutt**⁹, the defendants were jointly and separately charged on 9 counts of robbery, burglary, theft, wounding, damaging property, and aggravated burglary. They both pleaded guilty at the first available opportunity. Leonard, who was under 30 years of age at the time of the conviction, was sentenced to 10 years for robbery. Stoutt was sentenced to 15 years for robbery.

Aggravated burglary

[26] For aggravated burglary, the maximum penalty is life imprisonment. In **R v Evans Joseph**¹⁰, the Defendant was found guilty of aggravated burglary. He was sentenced to 6 ½ years imprisonment.

[27] In **R v Jason Leonard and Clifton Stoutt**¹¹ [supra], the defendants were also charged with aggravated burglary. They both pleaded guilty at the first available opportunity. Leonard received 10 years for aggravated burglary and Stoutt received 15 years.

Criminal Damage

[28] Section 265 (4) of the Criminal Code 1997 specifies the penalty for the offence of criminal damage to be imprisonment for a term not exceeding 10 years. The Crown helpfully provided 3 local decisions on criminal damage. In **R v Luis Ambrose and Juan Rosario**¹², 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.

[29] In **R v Devon Dawson**¹³, the defendant pleaded guilty to damaging property. He was sentenced to 2 years imprisonment.

⁹ Criminal Case No. 10 of 2007 [unreported] – judgment on sentencing delivered on 31 May 2007.

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

¹¹ Criminal Case No. 10 of 2007 [unreported] – judgment on sentencing delivered on 31 May 2007.

¹² BVI Criminal Case No. 4 of 2007 - judgment on sentencing delivered on 13 March 2007 –per Joseph-Olivetti J [unreported].

¹³ BVI Criminal Case No. 2 of 2006 –Judgment on sentencing delivered on 7 December 2006 –per Hariprashad-Charles J [unreported].

[30] In **R v Jason Leonard and Clifton Stoutt**¹⁴ [supra], the defendant, Leonard was charged, amongst other things, with criminal damage of a vehicle. He stole the vehicle and went on a robbing spree damaging the said vehicle. He was sentenced to 5 years imprisonment.

Social Inquiry Reports

[31] I now turn to the Social Inquiry Reports. Some concerns were raised by Mr. Daniels with respect to the recommendations contained in Harvey's Report. It is therefore fitting that I say something about it to clarify any cynicism. A pre-sentence report or what is often termed a Social Inquiry Report is desired particularly, in cases dealing with young offenders, mainly to assist the court in determining the most suitable method of dealing with the offender. However, it is well established that the discretion as to a proper sentence resides solely with the sentencing judge.

[32] Back to the Reports. The gist of the Reports is that these defendants, in particular, Seanroy Hanley lack respect for their parents, siblings and teachers. At school, they were all disruptive and insubordinate.

[33] In the case of Harvey, whilst he attended the Elmore Stoutt High School for two brief years, he was reprimanded on 28 occasions for various infractions including uniform violation, disruptive behaviour, loitering, skipping class, disrespecting teacher and other deviant behaviour. On one occasion, when he was asked by a teacher "where his class was." He answered "in the sky". He also refused to give his name and left the Spanish class without permission. On another occasion, he was chewing in class and refused to remove the gum from his mouth. On yet another occasion, he skipped classes and when he was spoken to, he was very disrespectful referring to the teacher as "faggot" and other disrespectful names. Now, he wishes to continue his education after dropping out.

¹⁴ Criminal Case No. 10 of 2007 [unreported] – judgment on sentencing delivered on 31 May 2007.

- [34] Harvey's evaluative summary indicates that he has poor decision making skills and consequently, lacks good judgment. His mother claims that the defendant has made some effort to change his deviant behaviour but she believes that the inflexibility of her work schedule and the lack of supervision of the defendant may have contributed to the present state of affairs. She stated that these two factors may have increased the defendant's association with such peers that have an orientation to criminal behaviour.
- [35] In the case of Seantroy Hanley, he has affirmed to his mother who tries to discipline him that he "has his own way of doing things and it is different from hers." Mrs. Hanley reported that Seantroy is very unruly. She explained that whilst at high school, he was always getting into trouble. Mrs. Hanley asserted that his behaviour has caused the family much frustration. She gave an account of an instance where an argument between herself and Seantroy escalated to the extent that he broke the windows of their apartment and the police were called in. He was subsequently charged and convicted for criminal damage. Seantroy says that he enjoys a good relationship with his younger brother, Selroy and that he does not wish to see anything happen to him. At school, Seantroy performed poorly and got "F's" in most of the subjects. The comments by one of the teachers are that he was always talkative, disruptive and late for school.
- [36] An evaluative summary of Seantroy is that he lacks any form of respect for anyone within the family. He has great difficulty controlling his temper during conflict. His ability is further diminished when he engages in cannabis usage which inhibits his capacity to holistically deal with issues.
- [37] In the case of Selroy Hanley, he shares a good relationship with his mother and other siblings but "acts up when he goes out with his elder brother, Seantroy."
- [38] At the Elmore Stoutt High School, Selroy progressed according to the school calendar and graduated in June 2007 at the age of 18 years. Whilst attending high school, he

was reprimanded for a number of infractions including uniform violation, vandalism, inappropriate behaviour, drugs/alcohol and deviant behaviour.

[39] According to the evaluative summary, he is passive aggressive when dealing with his personal issues at home. It is believed that Selroy's father, Mr. Hanley had questioned the paternity of Selroy which, according to the Probation Officer, might have some residual emotional effect on him and his dealings with his father.

Court's considerations

[40] The defendants face maximum penalties ranging from 10 years in the case of criminal damage to property to life imprisonment on the robbery and aggravated burglary counts. Therefore, the maximum sentence which the Court can impose on these 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.

[41] The offences of robbery and aggravated burglary are serious offences and under normal circumstances, would attract custodial sentences. 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 aggravating and mitigating features of this case have already been identified¹⁵ The Courts also do take into consideration, the revulsion with which the public regard those who rob or burgle.

[42] It is also widely recognized that the aims of sentencing are that of retribution, deterrence, prevention and rehabilitation.¹⁶ These cardinal principles are well-established and need no further elucidation.

¹⁵ See paragraphs 7 and 15 of this judgment.

¹⁶ See paragraphs 20 – 25 of the judgment of the Court of Appeal in *Desmond Baptiste v The Queen* (supra).

[43] I have considered all of the judicial authorities cited and in particular, the Court of Appeal decision in **Allan Wilson v The Queen**¹⁷ and more recently, the case of **Desmond Baptiste et al v the Queen**.¹⁸

[44] In **Desmond Baptiste**, Sir Dennis provided some useful guidance as to the relevant legal principles that the court should apply in sentencing an offender. His Lordship dealt with three very significant mitigating factors which present themselves in the case at bar namely: the relevance of the guilty plea, age and prior criminal history. This is what he had to say:

“In England a plea of guilty normally attracts a significant, approximately a one third, reduction of the sentence. There are sound public reasons for this. The criminal justice system benefits from genuine pleas. Such pleas spare the Judge, the jury and witnesses the stress and rigours of a full trial. The state saves both time and money. It could be manifestly unfair to accord the identical sentence to co-defendants charged with the same offence where one has pleaded guilty at an early stage and the other has put the state through the ordeal of a long and demanding trial. The defendant who had pleaded guilty is entitled to a considerable discount.”

[45] Sir Dennis further stated:

“While suggesting a discount of the order of a one third however, Lord Taylor, CJ stressed in **Buffrey** 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 variance between one case and another”. In our view, 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.

[46] Sir Dennis continued:

“As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating circumstances of the offence. It must be stressed though that the more serious the

¹⁷ Criminal Appeal No. 10 of 2003 (Saint Vincent & the Grenadines)(unreported).

¹⁸ Criminal Appeal No. 8 of 2003 (Saint Vincent & the Grenadines) –judgment delivered on 6 December 2004 (unreported).

¹⁹ See paragraph 28 of the judgment.

offence, the less relevant will be this circumstance.”

[47] Sir Dennis said that:

“On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account....As with first time offenders, the more serious the offence, the less relevant will be these circumstances”.

[48] Having said all of that, Sir Dennis opined that **“robbery is an offence that should always warrant a custodial sentence.”**[emphasis added]

[49] In the present case, I have given due consideration to all that was said by the defendants in mitigation.

[50] As I have already alluded to, sentencing is always a matter of the Court’s discretion. The offences committed by the defendants are serious offences.

[51] As a general rule, the Court reduces the sentence imposed on a defendant who pleads guilty at the first available opportunity by one-third. Where, as in the case at bar, there are other strong mitigating factors, such as the youthfulness of the offender and the fact that it is a first offence, in the case of Harvey, there should be a further reduction.

[52] I have also taken into consideration that violent and serious crimes involving young men who are masked and armed have been plaguing this Territory and has risen dramatically over the years. Society continues to show its abhorrence for these crimes. The Court has to play its role in ensuring that the citizens are protected from criminals. BVI Communications was robbed in broad daylight during this planned attack. These defendants lay in ambush in nearby bushes waiting for the appropriate moment to strike. Ms. Baret was scared for her life. Mr. Cobb, a decent individual, was trying to

make an honest living when his business was robbed. Many of the stolen items are still not recovered. The firearm used in the robbery has never been recovered.

[53] I think that the only way that the court can play its important role in ensuring that the citizens are protected from criminals is by the 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 countenance such criminality.

[54] I must add that the Hanley brothers are no strangers to the Court particularly Seantroy who it appears, has commenced a criminal career. At his youthful age, he already has a criminal record. The Court and all associated institutions must assist him in bringing this to an end. He appears uncontrollable. It appears that he is also leading his younger brother, Selroy down that same criminal path.

[55] Having considered all the circumstances of the case, paying particular regard to the mitigating and aggravating circumstances, the sentencing guidelines and the circumstances in which the offence was committed together with the defendants' culpability, I am constrained to impose custodial sentences upon all of the defendants. No doubt, these sentences would dissuade would-be criminals. I do hope also that the time in prison would also serve to rehabilitate them.

The sentences

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

Seantroy Hanley

Count 1 - Robbery – 8 years imprisonment

Count 2 – aggravated burglary – 8 years imprisonment

Count 3 –criminal damage – 3 years imprisonment

Selroy Hanley

Count 1 –Robbery – 5 years imprisonment

Count 2 – aggravated burglary – 5 years imprisonment

Count 3 – criminal damage – 3 years imprisonment

John Harvey

Count 1 – Robbery – 3 years imprisonment

Count 2 – Aggravated burglary – 3 years imprisonment

Count 3- Criminal Damage - 3 years imprisonment

- [57] In respect of Seantroy Hanley, his sentences on Counts 1, 2 and 3 will run concurrently but consecutively with any other sentence (s) he is now serving. During his period of incarceration, he must undergo both substance abuse and anger management counseling; such period is to be determined by the counselor/counselors.
- [58] In respect of Selroy Hanley, his sentences on Counts 1, 2 and 3 will run concurrently. In addition, he is to receive family counseling during his period of incarceration; such period is to be determined by the counselor/counselors.
- [59] In respect of John Harvey, his sentences on Counts 1, 2 and 3 will run concurrently. The Court notes that when education was freely available to him, Harvey did not make use of it but since he has now shown that interest albeit somewhat late, that he should receive educational services through the Department of Education while he is incarcerated at Her Majesty's Prisons
- [60] Time spent on remand was taken into consideration in computing sentence.

**Indra Hariprashad-Charles
High Court Judge**