

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

SAINT LUCIA
CASE NO. SLUHRD2010/0051

BETWEEN

THE QUEEN

vs.

[1] SHANE CLEMENT

[2] DEVON OCTAVE

[3] BRIAN PLACIDE

Appearances:

Mr. Alfred Alcide for the Defendants

Mr. Leon France Crown Counsel for the Crown

2015: December 9, February 16, 19, March 10, 27, 31,
April 30, May 8, 22, June 12, July 14

Criminal Law - Sentencing - Robbery – Guilty Plea - Regional Guidelines for Robbery – Relevance of UK Guidelines - Categorizing Various Types of Robbery – Seriousness and Level of Culpability – Aggravating Features – Use of Firearm – Several Robbers – Use of Force – Mitigating Features – First Time Offender – Positive Good Character – Young Offender - Separate Treatment for Each Offender – Personal Mitigation Justifying Different Sentence – Plea of Guilty – Separate Issue to be considered After Nominal Determinate or Benchmark Sentence Arrived At – Delay – Effect on Final Sentence.

DECISION ON SENTENCING

[1] **RAMDHANI J. (Ag.)** Police responding to a report of robbery allegedly committed by three men, one being armed with a flare gun just before midnight on Tuesday the 20th November 2007, were speeding to the scene at Odsan, Castries, when they saw three men at Cul De Sac, who appeared very suspicious having regard to the manner of their behaviour, the

time of the night and the place they were seen. The officers felt that the presence of these three men in that area at that time could hardly be coincidental and they stopped and after a brief conversation PC 162 Ansel Edole searched the men. He found EC\$360 in Devon Octave's palm and a flare gun wrapped in black electrical tape underneath his shirt. On Brian Placide, he found a grey pouch containing the sum of \$78.40 in coins, US\$27. On the person of Shane Clement, he found two switch knives and EC\$50. The men were detained and placed in police transport.

[2] The officers continued to Odsan and met with the bus driver Benjamin Bucher, the victim who had robbed and who had called in the robbery report. It was as he was talking to them about the robbery, he looked into the police vehicle and exclaimed to the police, "look the fellas that rob me a while ago'.

[3] The victim of the robbery is one Benjamin Butcher a bus driver who was making a late run when he got to Odsan to drop off his last passenger. He said that at that point three men came up to him and one of them pointed a gun to his head. He said that he was scared for his life and that at that point he thought he was going to die. That man started to take off his rings and chain. One of the men then dragged him about 17 feet from the mini bus whilst the others searched his pockets. At some point in this ordeal, he shouted out, 'look police' as a ploy and the men ran off. They had robbed him of two gold rings, a chain and medal, a bangle, EC4400.00 and US\$100.00, and grey pouch. He then called for his cousin who was a police officer and made a report of the robbery. He waited the arrival of the police and was when they got there he was in the process of telling them about the robbery when he saw the three men sitting in the police transport. He immediately identified them. At the station, he identified the rings and the grey pouch that had been taken from the men as his property.

[4] The capture and arrest of the defendants was the fastest event that occurred in this matter since the report of robbery was made. The men were arrested and charged immediately but it was not until the 6th August 2008 that the preliminary inquiry into the charge began.

This inquiry continued until the 6th January 2009 when all three men were committed to stand trial for the offence of robbery.

[5] It was not until the 9th December 2010 that they were actually indicted for the offence of robbery contrary to section 206(1) of the Criminal code of the Laws of St. Lucia. Matters dragged on. When they were first arraigned each man pleaded not guilty. The depositions were not served until about four months later. Six Trial dates were fixed between May 2013 and September 2014, but the trial could not proceed because other matters were being tried by the single Criminal High Court in the jurisdiction. After September 2014, there were a number of adjourned dates attributable to the absence of defence counsel. Finally, on the 9th December 2014, the defendants requested through counsel that the one-count indictment for the offence of robbery was read again to them. On this occasion they pleaded guilty to robbery as charged.

[6] A pre sentence report was ordered for each defendant and the matter was adjourned for a sentencing hearing.

The Mitigation Hearing

[7] On the 30th April 2015, Mr. Alcide called a number of witnesses for the defendants Devon Octave and Brian Placide to testify as to their character. These all had good things to say about each man.

[8] By way of mitigation Mr. Alcide was hard pressed to find any mitigation for Shane Clement and hardly anything much about Devon Octave but chose instead to rely on the delay and the guilty plea. With regards to Brian Placide he asked to court to find that he had turned his life around and that the community had many glowing things to say about him. He asked that this defendant be treated differently from the others.

The Victim Impact Statement

- [9] The victim who had never been robbed before had told the police that he had believed he would die that night when he had been held up at gunpoint. He had been beaten and had suffered a wound to his head that was painful for several weeks after. Today he states that he is still affected by the robbery and he is cautious when he plies the route. He is grateful to be alive.

The Pre Sentence Report - Shane Clement

- [10] At the date of sentencing, the defendant Shane Clement is presented to the court as a 32 years old single man whose listed occupation is that of a 'Landscaper'. He is a school drop out who grew up mostly in a single parent home with his life being 'generally good'. Family members describe him as someone who has been affected by peer pressure possibly he did not have a proper male role model in his life. Community members see him differently speaking to a reputation for stealing and a tendency to being disrespectful. He is variously described as 'hyper and overly aggressive', as well as calm, quiet and non-violent.

- [11] His working life has been somewhat mundane filled earlier on with a few non-skilled positions until he finally decided to become a landscaper; he has held this last job for a period of three years before he was sent on remand.

- [12] Since the present offence, he has committed two other offences for stealing (convicted in 2010) and has recently pleaded guilty of another offence which he asks be taken into consideration in this sentencing exercise. He has expressed remorse over what has happened.

The Pre Sentence Report - Devon Octave

- [13] At the date of sentencing the defendant Devon Octave as a 30 years old single unemployed man who grew up in a single parent home with his mother and other siblings. He was a victim of his brother's bullying. From early years he began to drift away from the home and from the age of 12 he began using marijuana and became part of a gang. His

bad relationship with his brother led to him eventually fatally stabbing his brother when he was seventeen. He spent five years on remand for this offence for manslaughter. He had been released from that charge and was out for a period of seven months living by himself when this offence was committed.

[14] The officials at Bordelais Correctional Facility state that he is quiet, short tempered and is lacking in discipline. Whilst being employed He has cursed and threatened an officer.

[15] A number of risk factors have been identified in relation to this defendant. These factors include a history of the use of cannabis, gang involvement, history of sibling rivalry, unemployment and a lack of skill to obtain and sustain employment. He has expressed remorse for this offence.

The Pre Sentence Report - Brian Placide

[16] At the date of sentencing this defendant has been presented as 26 years old man whose occupation is a vendor/chef. He grew up with both his parents until he was 14 years old and his parents separated. After this break up, he became very troublesome at home and the family's turn to prayers and church leaders for divine intervention did not assist. His is a story of much peer pressure when he was young and became in negative influences.

[17] He was out on bail for this offence during which time together with Shane Clement, he committed the offence of possession of a firearm for which he was sentenced to \$3,000.00 or three months. He also committed two acts of stealing for which he received a two-year sentence on each to be served concurrently. He was released for these offences in January 2012.

[18] Since he has been out community members have many positive things to say about him. He is described as a sharing and caring person and the life of the area where he lives. Many state that he appears a changed person in recent times and lends to the development of his environment.

[19] His common law partner sees him as a living person and he is not seen as a threat to the community. He has worked in the hotel industry from 2003 to 2013 as a chef.

[20] The probation officer opines that this defendant has sustained a renewal of character, and he is considered a peasant compliment to his environment.

Maximum Penalty for the Offence

[21] Pursuant to section 206(1) of the Criminal Code Chapter 3.01 of the Revised Laws of St. Lucia, the maximum penalty that may be imposed on conviction for this indictable offence is twenty years imprisonment.

Relevant Principles to be Applied

[22] The court in the context of the maximum sentence has a wide discretion in deciding on the appropriate sentence in any given case. Several statutory prescriptions guide the court in fixing this sentence. These stipulate *inter alia* that the court must bear in mind that the rehabilitation of the offender is one of the aims of sentencing. The legislation also remind the court that the gravity of the punishment must be commensurate with the gravity of the offence, and that further a custodial sentence must not be imposed unless in all the circumstances one is warranted.

[23] The underlying jurisprudential basis of criminal punishment is to protect society and to ensure that societal norms are respected and followed. Our Court of Appeal's in **Desmond Baptiste et al** accepted that every sentencing court must bear in mind the classic principles of sentencing, namely retribution, deterrence, prevention and rehabilitation. To this I would also add that reparation is also a relevant and dominant principle. To my mind a proper application or consideration of these principles requires every sentencing court to

have regard to the offence, the manner of its commission and the personal characteristics of the offender and ask itself a number of question¹

[24] **Retribution – The Denunciatory Aspect** - The principles at work requires a court to ask itself whether the offence is one which the punishment should contain an element of retribution, not in the sense of the biblical ‘eye for an eye’ but in the in the sense that the sentence reflect society’s abhorrence and distaste for this kind of offence, and this particular offence. Put another way, the offence may require that the court express a public mark of disapproval for anti-social conduct.²

[25] **Deterrence** - The court is also to ask itself whether the punishment must also contain an element of deterrence both in the specific and general sense. The question should be whether the particular offence is so prevalent in society or is the kind that requires that the court impose punishment with a view of deterring the offender and ell as other likeminded persons. A court must assess this element carefully in context of the offender and the offence as it has been shown that custodial sentences may well have the opposite end in some cases. As was noted by Lawton L.J. in R v Sergeant (James Henry):³

“Experience has shown over the years that deterrence of the offender is not a very useful approach, because those who have their wits about them usually find the closing of prison gates an experience which they do not want again. If they do not learn that lesson, there is likely to be a high degree of recidivism anyway. So far as deterrence of others is concerned, it is the experience of the courts that deterrent sentences are of little value in respect of offences which are committed on the spur of the moment, either in hot blood or in drink or both. Deterrent sentences may very well be of considerable value where crime is premeditated. Burglars, robbers and users of firearms and weapons may very well be put off by deterrent sentences.”

¹ R. v. Harris 1988 Carswell Ont 3692 where the court stated: It is trite to say that aims of sentencing involve the protection of the public, the element of punishment, not in the sense of retribution, but in the sense of a public mark of disapproval of anti-social conduct: that deterrence, both specific deterrence of the individual and general deterrence of others who might be disposed to commit like offences, are proper matters for consideration, as is the reformation and rehabilitation of the accused person. These are the classic considerations which should be present to the mind of the sentencing Judge. It is my view that the protection of the public is of paramount importance in this case. Notwithstanding the unsworn remarks addressed to the Court by the accused, which I heard with much sympathy, I cannot disregard the record as it exists, nor can I disregard the evidence of Doctor McDevitt as to the mental disabilities under which the accused suffers.

² R. v. Harris 1988 Carswell Ont 3692

³ (1974) 60 Cr. App. R. 74 at page 78

[26] **Preventative** - Regard must also be had the preventative aim of sentencing and the court is to ask itself whether there is good reason to believe that this offender poses a danger to society and a custodial sentence is necessary to keep him locked away for a long period so that he does not have the opportunity, at least for that period, to commit future crime.

[27] **Rehabilitation** - The court must also always consider the rehabilitation of the offender and ask itself what measure of punishment or kind of sentence could operate to rehabilitate an offender who is capable of being rehabilitated. There will always be tension between the various aims of sentencing, as the circumstances in any given case may require that greater emphasis be placed one or more than the others. As was noted by Lawton LJ in *R v Sargeant*:

“Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance to the case in which he is dealing.”

[28] An application of these principles requires the court to examine the offence and offender and identify those aggravating and general mitigating features in the offence itself as well as the personal mitigating features of the instant offender. This is to be an evaluative exercise that is to guide the court on the selection of the appropriate punishment.

[29] To my mind it would be useful for a court to consider first the offence, its aggravating and general mitigating features, and decide first whether a custodial sentence is presumptively appropriate. Having decided this, the court should then, with the aggravating and mitigating of the offence itself, look to the established or notional range of sentences for this kind of offence and consider whether the sentence should remain in this range or at the notional starting point and if not, fix a notional appropriate sentence for the offence.⁴ It makes sense for me then with this presumptively appropriate sentence in mind to turn to the personal mitigating features of the particular offender to determine whether these, if any exists, should vary this presumptive sentence downwards or in the rare case, upwards. Having fixed the notional determinative sentence or benchmark, the court should then as a separate issue consider in the relevant case, whether the plea of guilty might

⁴ *R v Cornick* [2014] EWHC 3623 (QB)

operate to further reduce the sentence. Finally, the court should also consider whether there are any other matters of mitigation, outside of the offence and the offender such a delay or the manner in which the case was conducted, by either the prosecution or the defendant, that might operate to vary the ultimate sentence. It is this journey that brings the court to the proper and appropriate sentence in any given case.

Ranges of Sentence and Starting Point

[30] As indicated earlier, my approach requires me now to fix a notional sentence with reference to the recommended range or starting point by having regard to the aggravating and mitigating features of the offence itself. The Crown's Guidelines directed me to consider that the range within which a sentence for robbery should fall was well stated by the OECS Court of Appeal in **Desmond Baptiste and Others**, as well as English decisions.

[31] When the Court of Appeal in **Desmond Baptiste** and the English cases suggested that a suitable range for robbery would be between 10 and 15 years with the court moving beyond or below as might be appropriate in a given case, this was in context of the maximum in the relevant jurisdictions for the offence; both St. Vincent and the Grenadines and the United Kingdom has a maximum sentence of life imprisonment for this offence. Here in St. Lucia, as noted earlier, the maximum is 20 years imprisonment. This has been parliament's expression of the seriousness with which robbery has been treated in this jurisdiction.

[32] What then should be the range or starting point, in the absence of formal sentencing guidelines in place for this offence? What does the experience of the courts in this jurisdiction suggest that the range should be? Are the courts in St. Lucia following the **Desmond Baptiste's** range notwithstanding?

[33] I now turn to examine a number of recent decisions on sentencing for this offence of robbery in this jurisdiction.

[34] In **R v Jason Duncan** Criminal Case No. 993 of 2009, the defendant a 16 year old was arrested and charged for robbing one Rendell Thompson on the 22nd March 2009. The virtual complainant whilst at a friend's home was attacked by the defendant who swung a cutlass at him and demanded all he had. The virtual complainant removed three gold chains and three finger rings from his person and handed them over. The defendant then search the victim and took away his Sony Ericson Walkman cell phone and left. The approximate value of the articles stolen was EC\$3,500.00. The defendant was found guilty by a jury in September 2010, and was initially placed on two years probation having regard to his youth. He breached this and was returned to court in January 2013 for sentencing. Considerable weight was given to the court's view that the defendant was 'to some extent a victim of unstable socio-economic circumstances in which he lived.' Regard was also had to the fact that his associations with criminal peers 'helped to accelerate his slide into the abyss of criminality.' The court considered that weight should be given to his age at the time of offending and imposed a sentence of 6 years imprisonment to run from the date of the conviction.⁵

[35] In **R v Miguel St. Rose** Criminal Case No. 517, 1231 of 2011, the defendant was also a 16 year-old young man who was considered a social menace. On the 16th March 2011 at about 3 p.m. he entered a shop and at gunpoint, demanded money from the elderly lady, the owner of the shop. Holding the gun on her, he leaned over the counter and removed money from a drawer and made good his escape. This offender was regarded as 'confused and misguided'. The court considered that he 'was clearly a teenager who found comfort and satisfaction in his unbridled pursuit of legally and morally unacceptable conduct no doubt encouraged by the undesirable company he kept and his own unsupervised youthful exuberance.' He was considered at risk of reoffending; he was in dire need of rehabilitation and the court felt that his 'soul was crying out for guidance and relief'. Considerable emphasis was given to his age, and the court sentenced him to 3

⁵ The court went on to order the defendant was to 'benefit from all relevant educational programme available for inmates at the Bordelais Correctional Facility and shall be taught a skill of his choice to enable him to be lawfully employed upon his release from prison.' The court did not indicate what reduction was made for the various mitigating features of the case, but one can reasonably conclude that had it not been for his youth and troubled past his sentence may have been closer to 8 to 9 years.

years imprisonment and on his release directed that he serve two years probation being involved in programmes to 'assist his rehabilitation in society'.⁶ It would seem that the court considered a five year sentence an appropriate sentence by giving serious emphasis to his age, his checkered past, his rehabilitation and his reintegration into society. It is to be noted that although he was armed, he did not use any more threat or violence than the pointing of the gun and demanding money. It would also have been relevant that only a small amount of money was stolen.

[36] The circumstances in those cases and the sentences imposed provided some limited assistance to the court in this matter.

[37] It was thus important for this court to examine the jurisprudential basis for fixing a notional sentence and to find a range within which to fix the final sentence, and in this regard I found the UK guidelines and cases on sentences for robbery instructive for the categorization of various kinds of robberies and the degree of seriousness with which each category may be viewed, and the scaling of the sentence in established ranges owing to the presence of one or more additional aggravating or mitigating features.

[38] The UK guidelines state that robbery in that jurisdiction was identified as falling into five categories, namely:

1. *Street robbery or "mugging";*
2. *Robberies of small businesses;*
3. *Less sophisticated commercial robberies;*
4. *Violent personal robberies in the home;*
5. *Professionally planned commercial robberies.*

[39] The first three categories were viewed even by the case law as generally less serious robberies unless there were additional aggravating factors. The ranges suggested by the guidelines for the first three categories ranged from 1 to 12 years for adults depending on the aggravating factors associated with the individual offence; for juveniles, the range was

⁶ It was also ordered that he should benefit from '1. Counselling to correct psychological behaviour; and 2. Lifeskill program/sewing classes to acquire a skill to make him more employable upon his release from prison.'

probation order to 10 years imprisonment again depending on the aggravating feature of the case.

[40] In the first three categories in the UK, there has been ranges suggested and starting points for each range, with movement being allowed upwards and downwards for aggravating and general and personal mitigating factors.

[41] In the UK, robbery referred to as level one robbery involves threats of minimal force and the removal of property, even though the maximum is life imprisonment, the starting point for adult is 12 months with a range of 1 and 3 years.⁷ For young offenders, the starting point is a community order with a range of a community order on one end of the scale to 12 months detention and a training order at the other end.

[42] Where a weapon is produced and used to threaten, and/or force is used which results in injury to the victim, the starting point for adults is 4 years imprisonment with a range of 2 to 7 years. For young offenders the starting point is 3 years detention with a range of 1 to 6 years detention.

[43] Where the victim is caused serious physical injury by the use of significant force and/or use of a weapon, the starting point for the adult offender is 8 years with a range of 7 to 12 years in custody. For young offender, the starting point is 7 years detention with a range of 6 to 10 years detention.

[44] These starting points relate to the first time offender who pleads not guilty.⁸

[45] The aggravating features which would instruct where in the range the particular sentence would fall would include:

⁷ In *R. v Seque (Jair)* 2015 WL 2370177 the English Court of Appeal held that a level one robbery with a number of aggravating factors should carry a starting sentence of three years for the 18 year old offender. The aggravating features were: 'these were group attacks, they were pre-planned and there were two vulnerable victims who were targeted'. The sentence was reduced to two years for his guilty plea.

⁸ *R. v Elbeshir (Abdalla Ala)*, 2015 WL 1916250, [2015] EWCA Crim 739

1. *More than one offender involved.*
2. *Being the ringleader of a group of offenders.*
3. *Restraint, detention or additional degradation, of the victim.*
4. *Offence was pre-planned.*
5. *Wearing a disguise.*
6. *Offence committed at night.*
7. *Vulnerable victim targeted.*
8. *Targeting of large sums of money or valuable goods.*
9. *Possession of a weapon that was not used.*

[46] Those general mitigating factors which would equally inform where in the range the sentence should fall would include:

1. *Unplanned/opportunistic.*
2. *Peripheral involvement.*
3. *Voluntary return of property taken.*
4. *Clear evidence of remorse.*
5. *Ready co-operation with the police.*

[47] Where the robbery is committed by a young person, additional mitigating features would include the actual age of the offender, his maturity or rather immaturity and whether he subjected to peer pressure or in a peer pressure group.

[48] Additional and or serious aggravating features such as where the offence is committed by an offender who is out on bail for another offence may merit the court going outside of the range.⁹

[49] The UK sentencing guidelines recognizes two additional categories of robberies, namely: 1. Violent personal robberies in the home, and 2. Professionally planned commercial robberies. The court has a really wide discretion here in the UK, but has seemingly set a range of 13 to 16 years for the first of these for the first time offender who pleads not guilty. Robberies involving a firearm usually have a starting point of 15 years.¹⁰ With professionally planned commercial robberies the court has imposed in the UK sentences ranging between 15 and 18 years imprisonment all of this in the context of life

⁹ R. v Gilling (Dwayne) [2015] Crim 685

¹⁰ R v Quasim (Asad Mohammed) [2015] EWCA Crim 738

imprisonment being the maximum. Very serious commercial robberies have also attracted sentences of 20 to 30 years imprisonment.

- [50] The Court of Appeal in Northern Ireland has accepted that as regards robbery of householders where violence is used the starting point should 10 years and in an appropriate case 15 years in not regarded as excessive.¹¹ In **R v Cambridge** [2015] NICA 4, the Northern Ireland Court of Appeal restated the principles said that a court would move upwards from the starting point on a number of factors including the age, vulnerability, or infirmity of the occupiers, any previous history for offences of violence. The court also noted that these offences are often carried out by young people and so whilst the relative youth of the offender will be a factor will not weigh heavily where the offence is 'extremely serious'.
- [51] I know that I am not saying anything new when I say the that ranges suggested in the UK are not suitable for wholesale application to this region. Comprehensive studies were undertaken when these ranges were established and not least consultation was a major part of assessing what punishment society saw as fitting in any general factual setting surrounding an offence.
- [52] The crafting of sentencing guidelines is best done if such a process is undertaken relevant professional body with the involvement of all the relevant stakeholders. When such a process might be undertaken here in St. Lucia, it is expected that our society's unique features that would be taken into consideration. Such an undertaking would also be expected to take on board society's response to crime and assess the impact that various kinds of robberies has on our communities; this is necessary as it would help identify additional aggravating (such as the need to protect the tourist and the tourist industry from the adverse impact of robberies – it is matter which could have an adverse effect on the economy) and mitigating features.

¹¹ See *R v Cambridge*, [2015] NICA 4, *R v Skelton and Dale Mooney* (1992) 3 NIJB 26, *R v Ferguson* (unreported 21 April 1989 per O'Donnell LJ, and Attorney General's Reference (No. 6 of 2006), *McGonigle* [2007] NICA 16

- [53] Sentencing guidelines are also best done if our Court of Appeals crafts these with reference maximum penalties (including any statutory changes to these within recent times) and to the decided cases of the various courts in any given jurisdiction.¹² This has been done in relation to at least the offences of sexual offences in the St. Lucia context and robbery in the context of St. Vincent and the Grenadines' maximum of life imprisonment. No sentencing guidelines have been fixed as regards robbery where the maximum is 20 years.
- [54] Until that is done, we are left with only the depth of the experience of our judges and of our courts to fashion on a daily basis what should be the appropriate sentence in any given case. A judge who sits long enough in a jurisdiction and in the region develops a sense of what is fitting in a given case. New judges must draw on this experience. It would be extremely useful if the current system of record-keeping ensured that records were made not only of the sentencing imposed for any given offence, but also documented for easy reference those aggravating and mitigating features that must have informed the sentence.
- [55] The Crown's guidelines should also fulfill this purpose, but very often this contains a summary of a few sentences; only on occasion some of the aggravating and mitigating features that informed the sentence would be identified. I have noted that different Crown Counsel have presented this court with summaries each omitting one or the other of the aggravating features in the actual case. Perhaps, the Crown should prepare a bundle of authorities on sentencing for each offence and submit it to the court, and request that the court consider such a bundle when considering sentence for an offender in due course.
- [56] Turning to other jurisdictions within the region to find precedent will always assist, but the court must be cognizant whether the precedent comes from a jurisdiction where the statutory maximum is greater than St. Lucia. If St. Lucia's maximum is less, then one might intuitively consider a natural lowering of the notional ranges set in other jurisdictions, unless there is some good reason that the same range should apply to St. Lucia.

¹² The mandate given by section 1103 of the Criminal Code in St. Lucia.

[57] For my part, I consider that the UK sentencing guidelines presents a useful reference tool, especially when I note that the sentences for this offence in this jurisdiction has ranged from 2 years to 15 years over the last five years. Whilst our courts were not mandated to take these sentencing guidelines into consideration, it is clear that our courts have drawn on the experience and recognition that the usual cases of robbery can only be so varied; this is the experience that allows our courts to draw upon the UK cases when considering appropriate sentences and in assistance in identifying aggravating and mitigating features. This makes good sense, since robbery is robbery wherever it is committed. No doubt robbery may be committed with simply threats or minimal force at one end of the scale to the use of weapons and serious injury and death at the other end of the scale. A robber may act alone or with others. It may a spontaneous robbery or it may be pre-mediated. It may involve a single victim in public somewhere or a small business. It may involve the invasion of the sanctity of one's home. It may involve many victims or even large commercial entities. Each of these given situations would have to be viewed presumptively differently.

[58] In fact, notwithstanding the fact that we have a lesser maximum penalty, I am of the view robbery being an offence of violence against person and property, affects the people of St. Lucia in generally the same way as it does in St. Vincent and the Grenadines.

[59] In St. Lucia, like in St. Vincent and the Grenadines, there is a real need to ensure that our tourism sector (which would include all hotel belts and all areas of public entertainment where the tourist are likely to go) and our small business section be protected. These sectors are fragile especially in the context of the state of today's economies. Where robberies are committed in these areas, and or has an element that could affect these areas, then this would likely be an aggravating feature of the offence.

[60] Further, a court should have considerable regard to the fact this is an offence generally committed by the younger generation. The young are a particularly vulnerable group in our regional societies being easy prey to peer pressure. When they fall prey to these influences, the harm reverberates throughout their communities with consequences for

even the greater social structure and economy. The court has a real function in playing its part, in ensuring that likeminded persons get the message that robbers will be dealt with severely. The court must act to protect the society. The **Desmond Baptiste** starting point should surely be relevant.

[61] All of this being said, I am of the view that the UK guidelines and the cases of this jurisdiction and region makes the valid point that each robbery must be viewed on its own and it should be assessed having regards to the degree of harm it causes to the victim and society. These sources make the point that the first-time barehanded mugger cannot be viewed in the same manner as the gun-toting violent repeat offender. The law and experience has shown that some robbers may have greater culpability than others. With regards to young offenders, the emphasis must be placed on rehabilitation to ensure that punishment is not overly based in denunciation or retribution as it is referred by the English cases. Wherever possible, punishment in any event should be aimed at creating an atmosphere which allows the offender a chance to be rehabilitated, and allows society the opportunity to embrace the deviant once again to its fold as a productive member.

[62] For my purposes therefore, as stated earlier, I am prepared to look at the UK guidelines and cases as a useful reference point. I underscore the good sense in the categories established by their Sentencing Council. I am grateful to draw on the experience of our own courts in this jurisdiction and this region that reflects this good sense approach to differentiating between robberies involving greater and lesser degrees of culpability, and greater and lesser seriousness of the individual offence. It is useful tool to approach every sentencing exercise to use these differences to categorize the levels of robbery. I see no reason why this sentencing court should not approach this offence from the standpoint of the categorization given by the UK Sentencing Council. As I noted, I will treat the UK starting points and ranges as a useful reference point. That said, this court really feels having regard to the possible impact these offences can have on our small societies, that even the lowest level of robbery in St. Lucia should have a notional starting point of 2 years with a range of up to 4 years. In short, sentencing can never be an exact science

and each sentencing court must retain its flexibility to do justice to the case before it having regard to all of its circumstances.¹³

[63] With all these considerations in mind, I now turn to look at the instant offence, and in context of the aims of sentencing, to identify and evaluate the aggravating and mitigating features in the offence itself. This done, I will then turn to the actual offender and those other matters which might go towards mitigating the punishment.

The Court's Considerations on The Sentence

Starting Point – Aggravating and Mitigating Features – Appropriate Sentence

[64] In St. Lucia, robbery is a prevalent offence. In fixing a maximum penalty of 20 years, parliament has given expression to society's strong views of this crime. This is an offence, which is usually committed by the younger generation. It offends against the social and economic fabric of society and creates fear. People expect to be protected by the State against such crimes, and anyone who commits these crimes must know that they face the almost inevitable consequence of being imprisoned. There is a real need to ensure that any particular offender is given a strong message that society will not tolerate such crimes. Every court should be ready to publicly denounce these crimes.

[65] The offender is to be dealt with in a manner that seeks to ensure that he does not offend again and that any would-be robbers would think long and hard before they commit these acts.

[66] The cases show that custodial sentences are invariably considered for every offender. Whether the ultimate sentence is ultimately a custodial one would of course depend on other mitigating factors.

¹³ R. v. Z. (S.) 2011 CarswellOnt 15804

- [67] With the UK Sentencing Guidelines as a reference, this would have been considered a category three robbery.
- [68] There were four aggravating features in this case.
- [69] In this case, one of the robbers, the defendant Devon Octave, was armed with a flare gun that he used during the robbery to carry out the robbery. He placed the gun against the head of the victim as he was sitting in the mini bus. The flare gun was found to be carrying one flare. This was a serious aggravating feature in this case. These types of guns have been known to cause serious and even fatal injuries.
- [70] It is also aggravating that Shane Clement had two switch knives on him even though they were not used in the robbery. There was considerable potential here that he may have resorted to their use. These men appeared to have been prepared to use violence and to call in aid their weapons.
- [71] Some unnecessary violence was used by one of the men by dragging the victim about 17 feet from his vehicle. There the others searched his pockets and removed personal belongings and some cash. They also took off a grey pouch he was carrying.
- [72] What is further aggravating in this case is that the offence took place close to midnight, at an almost deserted location. People need feel safe in Castries, and when these offences take place it drives fear in the community and gives the city a terrible name. This is one of the reasons why certain places in almost all of Caribbean territories have these bad reputation; even locals would warn other locals and visitors not to visit certain areas, so unsafe these places are regarded.
- [73] It is also an aggravating feature that this a robbery committed against a working mini bus driver performing as it were a public service. These are persons especially targeted by criminal in the night. This group of the working population needs protection since if bus and

taxi drivers were all to switch off their engines at nightfall there would hardly be transportation available for the average late working citizen.¹⁴

[74] It is also aggravating that this was a group activity. These three men acted together in this robbery. It was urged on me that some should be viewed differently seeing that only one had the gun. I can hardly see how I can do that, as they all played leading roles in the robbery. One of them had two switch knives on him. No one appeared to have played a secondary role or appeared to have been following the orders of any other.

[75] All of the aggravating features would have operated to take this offence well along and upward on the notional scale of between 7 to 12 years.

[76] The general mitigating feature of this offence is that insofar as this victim was concerned this must have been an opportunistic robbery, as there is no evidence that they planned to rob him. Notwithstanding, this goes both ways as having regard to the weapons they carried it is very likely, and I believe that they were up to no good.

[77] It is also to their benefit that they ran off as soon as they heard that the 'police' was nearby. This shows that at least at that time, they were not prepared to engage the police in any confrontation even though they were three in number. When they are in the presence of the law they demonstrate their fearful respect.

[78] To my mind, the fact that a gun was used coupled with all the other aggravating features and the general mitigating factors related to the offence itself, and without regard to any personal mitigating factor, the notional sentence would be a sentence of 12 years for each of the offender.

[79] I now turn to consider the personal mitigating features as regards each offender.

¹⁴ R v Khalif (Ahmed Hassan) (2014) [2014] EWCA Crim 2092

- [80] There are some troubling matters for some of these men. With regards Shane Clement, while out on bail, he committed two other offences of stealing and received a two year sentence on each in 2010 to be served concurrently. When he was released he committed another offence of stealing during which he was in possession of a handgun. He is presently before this court for sentencing on that matter with regards to which he has pleaded guilty. He can hardly be regarded as having positive good character. He cannot stop himself it seems. The sentence stays at 12 years for him.
- [81] With regards to Devon Octave, this court is informed that he had pleaded guilty years ago to manslaughter for killing his brother. Devon Octave was only 17 years old then. The court placed him on a bond to keep the peace. This offence was committed during the period of that bond. I will address this later on in this decision. It would seem that this defendant has a number of risk factors as well. The significant matter in relation to him is that he has been on remand since his arrest in 2007 for this offence. I will address his sentence shortly.
- [82] With regards to Brian Placide there are different considerations. He was a young man at the age of 19 year old at the time of this offence.¹⁵ It is true that he too committed further offences whilst out on bail, but this was in the company of Shane Clement, who seems to be the driving force in a number of crimes. He spent the same time as Shane Clement for those offences. It is the pre sentence report that makes a good case, and I am prepared to accept, that this man's wild days are over. Several matters work in his favour is that at the date of this offence he was only 19 years old. Today, there are a number of positive things to be said about him since he was released in 2012 for offences committed in 2010. Community members give glowing reports about him. Even police officers are willing to speak to his positive qualities today. All things considered having regard to his youth and the fact that when he committed this offence it was his first offence and that the reports today show him living a positive and productive life, the benchmark sentence for him will

¹⁵ Note *R. v. Hall* 2002 CarswellOnt 8679 where the court considered that if the accused is between the ages of 18 and 21 in the adult court or if he is of advanced age, these are strong mitigating factors which work in his favour. See also *R. v. Turner* (1970), 1 C.C.C. (2d) 293 (Ont. C.A.).

be a sentence of 8 years imprisonment. This is in keeping with the rehabilitative aim of sentencing.

The Guilty Plea by Each Offender

[83] The authorities show a plea of guilty will often have the effect of mitigating the sentence. The point has been made that a guilty plea should be encouraged since it promotes a 'sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.'¹⁶

[84] The UK 'Reduction in Sentence for Guilty Pleas' published on the 10th January 2005 made it clear that a:

"A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence."

[85] The point was well made that pleas of guilty should be treated as a separate issue from the general aggravation and mitigation factors considered by the court. In fact, it is crucial that the court separates the issue of remorse from guilty pleas; the question of remorse together with other mitigating features such as admissions to the police¹⁷ must be factored in before calculating the reduction for the guilty plea.¹⁸ It makes logical sense for me to set the final to notional determinate or benchmark sentence after consideration of all the aggravating and mitigating features before going on to factor in any reduction for the guilty plea.¹⁹

¹⁶ R. v. Hall 2002 Carswell Ont 8679

¹⁷ R v Taylor (Peter George) [2015] EWCA Crim 29

¹⁸ See the UK Definitive Guidelines, "Reduction in Sentence for a Guilty Plea", where it is said that: "When deciding the most appropriate length of sentence, the sentencer should address separately the issue of remorse, together with any other mitigating features, before calculating the reduction for the guilty plea."; see also Attorney General's References (Nos 14 and 15 of 2006); R v French and another - [2006] EWCA Crim 1335; R. v Delucca (Rahuel) [2011] 1 W.L.R. 1148

¹⁹ Applying the UK Guidelines, the court in R. v Kluk (Daryl Robert) [2005] EWCA Crim 1331 stated: "4. ...The guidelines make clear that giving credit for a plea of guilty is a separate issue from the aggravating and mitigating factors which will be applied to the starting point for fixing the minimum term. 5. The recent case of R v Peters [2005] EWCA Crim 605 makes it clear that it is not a matter of precise arithmetical calculation and that this court will not normally view with favour appeals which attempt to calculate with precise figures the aggravating features, the

[86] Where the court considers that a reduction is appropriate, the calculation of the reduction must be proportionate to the stage of the proceedings at which the plea is given. The guidelines states:

“...the level of the reduction will be gauged on a sliding scale ranging from a maximum of one-third (where the guilty plea was entered at the first reasonable opportunity in relation to the offence for which sentence is being imposed), reducing to a maximum of one-quarter (where a trial date has been set) and to a maximum of one-tenth (for a guilty plea entered at the “door of the court” or after the trial has begun).

[87] Where a defendant pleads guilty but then disputes a factual matter requiring a Newton Hearing, this may have the effect of reducing the discount.

[88] The point has also been made by the UK Guidelines and authorities that if the not guilty plea was initially maintained so that the defendant could gain a tactical advantage such as maintaining his privileges on remand a late guilty plea should attract little of any reduction.²⁰

[89] There is also no reason why the fact that the defendant was caught red handed should mean that he should not be entitled to his discount. The point of giving a discount is to encourage early guilty pleas. As the English and Wales Court of Appeal stated, ‘the principle expressed by this provision applies to any situation in which the case against a defendant is so strong that acquittal is virtually inconceivable.’²¹

mitigating features and even the plea of guilty. The approach of the Court of Appeal will in essence be to see whether the minimum term ultimately fixed is manifestly excessive or not. But those guidelines show that a defendant when being sentenced needs to know that he or she is receiving proper credit for a plea of guilty, and it is understandable if in this instance this appellant, particularly after publication of these guidelines, may have a sense of grievance that proper credit was not given. It obviously makes sense, as the guidelines indicate, that the appropriate process for the court to go through is to fix the starting point, then calculate the aggravating and mitigating features, and then apply the discount for the guilty plea so that a defendant can see that he is receiving a proper discount for that plea. That process, as the guidelines indicate, will encourage others to plead in cases where they should plead.”

²⁰ See also Attorney General's References (Nos 14 and 15 of 2006) - [2007] 1 All ER 718

²¹ per LORD PHILLIPS OF WORTH MATRAVERS CJ. Attorney General's References (Nos 14 and 15 of 2006) - [2007] 1 All ER 718 at para 49 reversing R v Greenland [2002] EWCA Crim 1748, [2003] 1 Cr App R (S) 375 which established a contrary view on guilty pleas in cases where the defendant had been caught red handed.

[90] These defendants did not plead at the earliest opportunity. This matter was fixed for trial on a number of occasions. Nonetheless, in a jurisdiction where there are so many matters listed for trial, they have saved this court much time and resources. I am prepared to give these defendants a full discount on their guilty plea having regards to the circumstance of this case.

[91] For Shane Clement that would lower his sentence to one of 8 years imprisonment.

[92] For Brian Placide that will lower his sentence to one of five years imprisonment.

[93] I will address Devon Octave later on in this judgment.

The Issue of Delay

[94] The defendants in this case have waited over eight years to have their matter tried. The offence was committed on the 20th November 2007. The preliminary inquiry lasted some 3 years and they were committed to stand trial on the 6th January 2009. It was not until December 2010, nearly two years later that they were indicted. The depositions were not served on them until May 2011. No defence statement was ever filed and this was the cause of a number of adjournments. There were six trial dates fixed between May 2013 and September 3014, but because of other trials this matter was left in the queue without being tried. During the latter part of 2014, there were attempts to fix the matter for trial but for one reason or the other due the fault of the defence, the matter could not be tried. Finally in December 2014, the defendants indicated that they were all willing to take a plea. They were re-arraigned on the 9th December 2014 and they each pleaded guilty to the charge.

[95] There is no doubt that there had been a considerable delay in the matter. Much of it can be laid at the feet of the Administrative arm of the State though the defendants are not completely without blame.

[96] This is a matter I must consider in relation to the sentence. Where there has been a substantial delay in any trial it may have the effect the disposition of the case. Speaking on behalf of the Board in the context of a breach of the Constitutional right to be tried within a reasonable time, Lord Kerr of Tonaghmore JSC in the Privy Council decision in **Rummun v State of Mauritius** [2013] 1 WLR 598 stated:

“...it is the duty of the sentencing court, whether or not the matter has been raised on behalf of a defendant or appellant, to examine the possibility of a breach of that person’s constitutional rights in order to decide whether any such breach should have an effect on the disposal of the case.”

[97] The point has been well made that even if there is no breach of the reasonable time component of the fair trial provision a delay may still have an effect on the sentence. A delay not due to the fault of the defendant may have the effect of creating anxiety and it often changes the life of a defendant who waits for his day in court; his life often changes with this wait. Our own Court of Appeal in **Winston Joseph v R** recognizing the adverse effects of delay on proceedings gave an almost 75 per cent reduction in a sentence imposed on a defendant by the trial court.

[98] The defendants each had some part to play in the delay. A court has to be ever cognizant that a defendant may be prepared to spend some time on remand – as Devon Octave has in this matter – so that he can secure a more relaxed custodial environment and then at the brink of his trial, he pleads guilty so that his sentence will be a short one. The court must also be cognizant that others who are released on bail may also, knowing that they are guilty of the offence, take advantage of the system and wait it out. That should not weigh normally against the man waiting for his trial when it is the fault of the State that he cannot be tried and he uses the time lives a good life in the meantime. It will however, not be in his favour if he commits further offences during this time. Both Shane Clement and Brian Placide committed further offences during the eight years wait.

[99] Notwithstanding, all things therefore considered, the delay has been substantial. Much of it is at the feet of the administrative arm of the State. Therefore, in the exercise of the court’s discretion, the sentence is to be reduced by two years.

The Sentence of the Court

- [100] Shane Clement is hereby sentenced to five years imprisonment on this charge. He has asked me to consider another matter of stealing in which he has also pleaded guilty. He and another man broke into a parked vehicle at night and stole the stereo set from it. That other man has also pleaded guilty and is to be sentenced. During the commission of that offence this defendant had a firearm in his possession. It must have been by sheer luck that he was not charged for robbery as he brandished the firearm when the householder came out, and he and the other man escaped. He is also sentenced to five years on that charge. These two sentences shall run consecutively. I have considered the principle of totality and am of the view that ten years is a bit excessive for these two offences in all the circumstances.²² I will reduce the five years sentence for stealing by two years. He shall serve a total of eight years for both the offences. He shall be given credit for the time spent on remand for one offence only. He shall received the benefits of all programmes which might assist in his rehabilitation so that when he is released he may be less likely to reoffend and turn from his dishonest ways.
- [101] Devon Octave has been on remand for nearly 6 calender years - almost 9 prison years. His sentence shall be 'time spent'. I will remand him to prison however, for as earlier noted, when he committed this offence, he was out on a bond to keep the peace having pleaded guilty to manslaughter with regards an incident when he was 17 years old. That order states that if he committed another offence during the period of probation he would be returned to the court to be dealt with. He will be so dealt with after the court is seized of the facts and all relevant circumstances.
- [102] Brian Placide shall serve a sentence of three years having regard to all the circumstances and in particular the delay in this matter. I have again reminded myself of the glowing reports about him from the probation officer and members of the community. This court is of the view that this man may be a productive member of society as it seems he has gone past his wild years. He seems to have been able to draw himself away from the bad

²² See Director of Public Prosecutions v Dickson 219 A Crim R 16

influences of life. (This is unlike Shane Clement who it seems cannot stop committing these kinds of crimes.) This being the case, I am of the view that he is a suitable candidate for a suspended sentence and his three years sentence of imprisonment will accordingly be so suspended. The sentence will begin to run from today. If he commits another offence within that period, he shall be brought back to this court for a consideration as to whether the whole of the three years sentence shall be triggered or a part thereof.

[103] The court will make it clear that this was a serious offence of robbery. People who commit robbery will go to jail. Had it not been for the delay and the guilty pleas, the sentences would have been closer to ten years imprisonment for each man.

Darshan Ramdhani
High Court Judge (Ag.)