

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CASE NO: SLUCRD2013/1111

THE QUEEN

Claimant

vs.

RANDY CHARLES ALIAS "SMALLBOY"

Defendant

Appearances:

Mrs. Jenin Samuel-Kisna for the Claimant

Mr. Ferguson John for the Defendant

2017: October 31.

JUDGMENT ON SENTENCING

[1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecutions for the offence of burglary for that he on the 22nd day of March 2013 at Herelle Estate Banse in the Quarter of Laborie did enter the dwelling house of Ulric Alphonse ('the Virtual Complainant') as a trespasser and stole therefrom a quantity of toiletries and jewelry to the value of \$6,171.50 contrary to Section 207(1) of the Criminal Code 2004.

[2] At his arraignment the Defendant pleaded not guilty to the indictment, however at the commencement of his jury trial he requested to be re-arraigned whereupon he entered a plea of guilty to the indictment aforesaid.

THE FACTS

[3] On Tuesday the 10th July, 2012 Ulric Alphonse, the Virtual Complainant secured his home by locking the windows and door sometime around 10:00 a.m. He left his home. When he returned to his home on about 2 p.m. that day he realized that his house was broken into. He observed that this door was open and his window glass was broken. Upon his entry and observation he noted that his Sony digital camera, his wedding band, his wife's jewelry, a Nintendo Os, and toiletries were missing. He immediately made a report to the police.

[4] The police conducted investigation at the burgled premises where officer 308 Lucien carried out finger print dusting. The prints were later tested and found to be those of the Defendant.

THE PRE-SENTENCE REPORT

[5] The Defendant was raised in a single parent household with his mother as the head of the home. She describes him as a loving and helpful person who did not exhibit any behavioral issues during his childhood years. Some community residents echo similar sentiments of the Defendant whilst others revealed that they are aware of his reputation as a burglar outside of their communitiy.

[6] The Defendant stated that on the day in question he had nothing to eat and had no money. Hence he broke and entered the Virtual Complainant's premises and stole therefrom toiletries. He however attributes his conduct to an 'unseen force' which took control of him and compelled him to commit the act. He further disclosed that his girlfriend at the time influenced him to engage in illegal activities because he feels obligated to please her.

[7] The Defendant has expressed remorse and a willingness to change. However he states that he feels unable to effect a change in his life without help which he is seeking. He also requests the court's leniency. I shall refer to other passages in this report later in this judgment.

[8] Having considered the facts and circumstances of this case I find the following to be the aggravating and mitigating factors.

AGGRAVATING FACTORS

1. The seriousness of the offence of burglary,
2. The financial and sentimental value of articles stolen none of which has been recovered,
3. The offence was planned and premeditated,
4. The fact that the Defendant has committed another similar offence of burglary whilst on bail for the offence herein,
5. The psychological effect of the burglary on the Victim Complainant and his family.

MITIGATING FACTORS

1. The Defendant's guilty plea thereby obviating the need for a fully contested trial,
2. The remorse expressed.

[9] I will proceed to consider and apply the classical principles of sentencing as enunciated by Sir Dennis Byron CJ in the well-known decision of **Desmond Baptiste et al v Regina** .

RETRIBUTION

[10] This offence involves the invasion of one's privacy in the worst manner possible. The physical and psychological trauma suffered by the victim of this offence is made that much more egregious by the financial and personal loss suffered. The case at bar is no different as disclosed in the victim impact statement of the Pre-Sentence Report to wit:

" Mr. Alphonse said the incident had severe financial implications for him and his family. He disclosed that as a result of the incident , t he had to install burglar bars and a security system to the amount of approximately seven thousand dollars ; that is , in addition to the loss he suffered as a result of the burglary. Mr. Alphonse revealed that the incident has had serious psychological effects on his daughter ; r he said his daughter cannot remain in any part of the house alone . He said his daughter had nightmares after the incident and is still trying to deal with it . Mr . Alphonse disclosed that this incident did not only affect him and his family , but the community at large . He stated that he was working on a community project which received external funding and as a result of the loss of a camera with photos during the burglary , the funding was withdrawn. He said the camera contained photos of the project which had to be presented to the funding agency in the form of a status report and he was unable to do so ."

[11] The Court is aware of the prevalence of this offence within the jurisdiction hence it must by the sentence it imposes demonstrate its abhorrence therefor.

DETERRENCE

[12] Prior to the commission of this offence the Defendant found himself on the wrong side of the law for traffic offences and the offence of possession of a firearm for which he was sentenced to a period of imprisonment. Whilst the traffic offences may be of no relevance to the offence herein the Court takes a dim view of persons convicted for unlawful possession of firearms more so when that person is involved in the offence of burglary.

[13] The Court is also aware that this Defendant has been convicted for another offence of burglary committed on the ... whilst he was on bail for the offence herein. The facts of that matter disclose that the Defendant once again targeted an unoccupied dwelling house and stole therefrom three TV sets and a DVD player none of which was recovered.

[14] I find in the circumstances that this Defendant falls within that category of offenders for whom an appropriate sentence must be imposed to avoid recidivist conduct.

PREVENTION

[15] I find that there is every possibility that this Defendant will reoffend if the appropriate steps are not taken to ensure that he benefits from rehabilitation. Thus to avoid him becoming a danger to the society his sentence must be tailored to make his stated intentions to change his life a reality.

REHABILITATION

[16] There is no doubt that the Defendant must be placed on suitable programs to nullify the risk factors stated in the Pre-Sentence Report such as unemployment, teasily influenced negatively, previous convictions and poor decision making skills. Thus his rehabilitation must be robustly pursued. I find that this should be done within the confines of a correctional institution.

SENTENCE

[17] The evidence discloses that the Virtual Complainant secured his premises and went *off* to work. On his return he found his home broken into. He noted that his Sony digital camera, toiletrie, his wife's jewelry, his wedding band and a Nintendo set missing. Nothing was recovered but through the use of forensic science the Defendant's fingerprints were found at the scene.

[18] I find the dictum of Bingham LJ in **R v Brewster** to be most instructive on the sentencer's functions in matters of burglary to wit:

" Domestic burglary is , and always has been , regarded as a very serious offence . It may involve considerable loss to the victimi . Eve n where it does not , th e victim may lose possessions of particular value to him or her . To those who are insured , the receipt of financial compensation

does not replace what is lost . But many victims are uninsured ; because they may have fewer possessions , they are the more seriously injured by the loss of those they do have.

..

The loss of material possession is , however , only part (and often a minor part) of the reason why domestic burglary is a serious offence . Most people, perfectly legitimately , attach importance to the privacy and security of their own homes . That an intruder should break in or enter, for his own dishonest purposes , leaves the victim with a sense of violation and insecurity Generally speaking , it is more frightening if the victim is in the house when the burglary takes place , and if the intrusion takes place at night: but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled ... " (underscoring mine)

[19] I am not convinced that this offence was not planned and premeditated nor am I persuaded that the Defendant was controlled by an unseen force to commit this offence. The fact that he on the 3rd September 2015 committed another offence of a similar nature whilst on bail is compelling evidence thereof. Moreover his admission that his girlfriend encourages him to participate in illegal activities for her benefit is another compelling factor herein.

[20] Section 207 (1) provides a maximum sentence of 20 years imprisonment for anyone found guilty of committing same. I find that a benchmark of 10 years to be appropriate from which I shall deduct 4 years for the guilty plea and remorse expressed. The Defendant shall serve a period of imprisonment of 6 years. He shall be credited for all time spent on remand whilst awaiting his trial. He shall be placed on suitable rehabilitation programs to equip him with an employable skill and counsel him on decision making choices to ensure his smooth re-entry to the society on his release from prison.

[21] His sentence shall run concurrently with the sentence of 5 years imprisonment delivered by Justice Taylor-Alexander in case no. 625/2015.

FRANCIS M. CUMBERBATCH

HIGH COURT JUDGE

BY THE COURT

REGISTRAR