

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
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4 INDICTMENT NO: 0047 + 104/2019  
5

6 THE QUEEN  
7

8 v.  
9

10 JJM  
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14 **Appearances:**

Mrs. Nicole Petit for the Crown

15  
16 Mr. Rupert Wheeler of Samson Law for the  
17 Defendant

18 **Before:**

Dame Linda Dobbs (Acting Judge)

19  
20 **Sentence Hearing:**

31<sup>st</sup> October, 29<sup>th</sup> November & 12<sup>th</sup> December  
21 2019  
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23 **Oral Delivery of Decision:**

18<sup>th</sup> December 2019  
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25  
26 **HEADNOTE**

27 *Criminal Law – Aggravated Burglary – Attempted Burglary – Guilty pleas –*  
28 *Aggravating Factors – Mitigating Factors – Sentencing Guidelines – Defendant’s*  
29 *age.*  
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33 **SENTENCE JUDGMENT**  
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1 INTRODUCTION

- 2 1. The Defendant falls to be sentenced for two offences as follows:
- 3 i. First Offence: Aggravated Burglary - contained in Indictment 47 of 2019 dated the  
4 20<sup>th</sup> day of June 2019; and
- 5 ii. Second Offence: Attempted Burglary – contained in Indictment 104 of 2019 dated  
6 the 27<sup>th</sup> day of November 2019.
- 7 2. The Defendant, who was 16 years of age at the time of the first offence, pleaded guilty  
8 on 16<sup>th</sup> July 2019 to the single count of Aggravated Burglary contrary to s.244(1) of  
9 the *Penal Code* (2019 Revision) contained on Indictment 47 of 2019.

10 *REPORTING RESTRICTIONS*

- 11 3. At the time of committing this offence of Aggravated Burglary on the 6<sup>th</sup> day of March  
12 2019 the Defendant, who was born in September 2002, was under the age of 17 years,  
13 and therefore is deemed to have committed the offence whilst a “young person”  
14 pursuant to s.2 of the *Youth Justice Law (2019 Revision)* which states:

15 “...“young person” means ... a person under the age of seventeen.”

16 Therefore, at that age, s.12 of the *Youth Justice Law* which deals with “Reporting  
17 Restrictions” for a “young person” would have wholly applied to this Defendant.

18 Section 12 states:

19 “12. (1) *In relation to any proceedings in any court, such court may direct*  
20 *that -*  
21 (a) *no published report of or comment on the proceedings*  
22 *shall reveal the name, address or school, or include any*  
23 *particulars calculated to lead to the identification, of any*  
24 *young person concerned in the proceedings, either as*



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*being the person by, against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and*

(b) *no picture shall be published as being or including a picture of any young person so concerned in the proceedings.*

(2) *Whoever publishes any matter in contravention of subsection (1), is guilty of an offence and liable on summary conviction, in respect of each such offence, to a fine of five thousand dollars or to imprisonment for six months.”*

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4. At the time of Sentencing today, the 18<sup>th</sup> day of December 2019, the defendant attained 17 years of age approximately three months prior to today’s date. Even though s.12 of the *Youth Justice Law* does not specifically extend the “Reporting Restrictions” to where the offender committed the offence whilst a young person but is being sentenced after the age of 17, the Court herein directs that Reporting Restrictions<sup>1</sup> be extended to this Defendant’s identity.

#### 19 **FACTS FOR THE OFFENCE OF AGGRAVATED BURGLARY**

20 5. The summary of the facts presented to the court can be shortly stated.

21 6. Armed with a gun on the night of 8<sup>th</sup> March 2018 – whether imitation or real it is not possible to say – together with one other, the Defendant broke into Mr Ebanks’, the Defendant’s uncle’s home, by kicking the door in. The Defendant pointed the gun at his uncle and demanded money. The uncle describes his nephew as being very aggressive and said that he feared for his life. A struggle ensued and Mr Ebanks armed himself with a machete. However, Mr Ebanks was hit on the arm and the intruders escaped.

28 7. On arrest the Defendant made no comment in interview.

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<sup>1</sup> On the 26<sup>th</sup> July 2019, when this Defendant was arraigned before Chapple J., (Actg.) the court also ordered no reporting of the identity of this Defendant.

1 8. At the hearing last week, the court discovered that the incident took place at the home  
2 of Mr Ebanks' 93-year-old mother whom he would visit nightly – a fact about which  
3 the defendant must have been aware. This casts a very different light on the offence.

#### 4 **DEFENDANT'S BACKGROUND**

5 9. A probation report (Social Inquiry Report (SIR)) from David Hunter dated 30<sup>th</sup>  
6 October 2019 sets out this defendant's background. He has lived in the past in a  
7 property where the wider family lived. The officer describes the family as  
8 dysfunctional. The Defendant has from an early age showed learning delay; has fitted  
9 the profile of a student with mood disorder and ADHD; has received counselling in  
10 2012, and, in 2015 was treated for anxiety and mood instability.

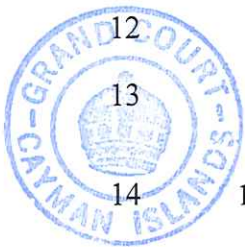
11 10. The Defendant has largely been looked after by his aunt and grandmother as his  
12 mother has been unfit to do so being a recovering drug addict. He has served 2 spells at  
13 the Bonaventure Boys Home due to his delinquent behaviour.

14 11. His schooling has been sporadic - with poor attendance and behavioural problems. He  
15 has poor social skills - leading to some students keeping out of his way.

16 12. He left school in April 2019 and had a couple of spells as a labourer on construction  
17 sites with a relative.

18 13. The Defendant has a history of ganja use from the age of 11 and he is well known to  
19 the Department of Children and Family Services (DCFS).

20 14. According to SIR, the Defendant has constantly breached his bail conditions and  
21 committed further offences whilst on bail. He has failed to attend any sessions  
22 arranged with his psychologist.



1        15.     The original recommendation from the Probation Officer was that the Defendant be  
2                   placed on a Youth Rehabilitation Order (YRO) with conditions regarding drugs  
3                   counselling, attending sessions with the psychologist and complying with the rules of  
4                   the Bonaventure Boys Home.

5        **FURTHER OFFENCES**

6        16.     Things have moved on however. First of all the defendant is not now eligible to be  
7                   accepted at the Boys Home.

8        17.     Secondly and importantly, he has committed further offences whilst on bail despite  
9                   being a given a chance on the 31<sup>st</sup> October to show that he could obtain and hold down  
10                  job and not get into trouble.

11       18.     There is now an updated report before the court dated 25<sup>th</sup> November 2019. It sets out  
12                  that the Defendant has pending matters in the Summary Court. He has pleaded guilty  
13                  to some of them. They include: possession of cocaine; possession with intent to supply  
14                  cocaine which was found on his arrest for the aggravated burglary; handling stolen  
15                  goods; possession and selling of ganja committed in September 2019 when he was on  
16                  bail.

17       **FACTS FOR THE OFFENCE OF ATTEMPTED BURGLARY**

18       19.     On 5<sup>th</sup> November 2019 the Defendant was arrested for the offence of Attempted  
19                  Burglary. He was remanded in custody following his arrest. He has now pleaded guilty  
20                  before this court to that offence which involved attempting to access the premises of a  
21                  cousin in order to steal some tobacco.

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1    **OPTIONS FOR ACCOMMODATION**

2       20.    The recommendation of the social worker at the hearing of 31<sup>st</sup> October was for a  
3               Suspended Sentence Supervision Order (SSSO). That was because a relative had  
4               originally said she would host the Defendant. Once she found out how many charges  
5               there were against him, she withdrew her offer.

6       21.    Probation services have been unable to find suitable accommodation and have pursued  
7               all options.

8       22.    A list, entitled “Chronology of Contacts” has been provided to the court. This list  
9               includes persons the Probation Officer, Mr. Hunter, has visited and spoken with  
10              relating to accommodations for the Defendant. It includes various members of the  
11              family who offered accommodations and then changed their minds.

12      23.    Today, yet again, there is another suggestion before the Court: It is that the defendant’s  
13              stepfather would be prepared to accommodate the Defendant but he (the stepfather)  
14              asks for time to make plans. Therefore the Defendant asks the Court to adjourn, yet  
15              again, to give him another chance to find accommodations. It is pertinent to note that  
16              this gentleman (the stepfather) was approached in the past and declined.

17      24.    There is a history of the family changing their minds, where they have said yes, then  
18              said no, then said yes, and then said no. Given the observations by the social worker as  
19              to the family, generally, it seems to me that placement with the family members is not  
20              appropriate for the Defendant. And, in any event, it seems that the social worker has  
21              come to the end of the road, because no recommendations are now made to the court.



1     **DEFENDANT'S ANTECEDENTS**

2           25.     This defendant has many previous convictions dating back to 2014 - mainly connected  
3                   with ganja, but also failing to surrender, theft handling and giving false particulars to  
4                   the police. He has been fined and has been subject to probation orders and SSSOs.

5     **DEFENCE SUBMISSIONS**

6           26.     In a very full and detailed defence sentencing note prepared by Mr Wheeler in  
7                   readiness for the hearing on 31<sup>st</sup> October, he submits that, despite the recent  
8                   developments, the Defendant should be sentenced to a Suspended Sentence  
9                   Supervision Order (SSSO) for the following reasons:

- 10           i.     Strong personal mitigation because of his upbringing and back ground;
- 11           ii.    The offending being on the lower scale of gravity by reference to the UK Children  
12                   guideline;
- 13           iii.   The inevitable negative impact of custody which is discouraged for someone of the  
14                   defendant's age;
- 15           iv.   The possibility of a suspended sentence in light of the guidelines when all the  
16                   mitigating factors are taken into account.

17           27.     Mr Wheeler submits, relying on the case of *Wright*<sup>2</sup> that because the defendant was 16  
18                   years of age at the time of the offence, but has now crossed the age barrier for  
19                   sentencing – the court should use the sentence it would have passed at the date of the  
20                   offence as the starting point for the sentence, because, in particular, considerations for

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1 sentencing young offenders would still apply – namely the emphasis on rehabilitation  
2 and the acceptance that youths are less responsible for their actions than adults.

3 28. So far as mitigation is concerned – Mr Wheeler relies on the Defendant’s difficult  
4 upbringing, including, a lack of stable or effective parenting; his significant learning  
5 delay; the fact that when afforded the opportunity of one to one learning he performed  
6 better and that he obtained some plumbing work.

7 29. Mr. Wheeler submitted that the mitigating factors as under the *Sentencing Children*  
8 *and Young People – Definitive Guideline*, are:

- 9 i. No previous relevant findings of guilt;
- 10 ii. Remorse;
- 11 iii. Unstable upbringing;
- 12 iv. Learning disabilities or mental health concerns;
- 13 v. Limited understanding of the effect on victims;
- 14 vi. Limited education and work.



15 **THE LAW ON SENTENCING**

16 30. The *Cayman Islands Sentencing Guidelines* whilst dealing with the substantive  
17 offences do not yet give guidance on the approach to the sentencing of young  
18 offenders.

1       31.     Recourse is to be had therefore to the Sentencing Council of England and Wales –  
2       *Sentencing Children and Young People – Definitive Guideline*. The following  
3       principles are pertinent:

4             i.     That the court should have regard to the aim of the youth justice system –  
5             prevention of youth offending and the welfare of the young person;

6             ii.    The seriousness of the offence will be the starting point but the approach should be  
7             individualistic and focussed on the child or young person as opposed to offence-  
8             focussed and consideration should be given to the effect of the sentence on the  
9             child or young person;

10            iii.   Custodial sentences should always be the last resort;

11            iv.    Encouraging young people to take responsibility for their actions and promotion of  
12            re-integration into society rather than punishment should be important;

13            v.     It is important to bear in mind factors which may diminish the culpability of the  
14            young person.

15            vi.    Young people should be given an opportunity if possible to address their behaviour

16            vii.   The court should be alert to mental health and vulnerabilities issues and the  
17            offence considered in light of them.



1 SENTENCE

2 32. The *Cayman Islands Sentencing Guidelines* provide the approach to sentencing in  
3 such cases.

4 33. They make clear that burglary will usually merit a custodial sentence unless there are  
5 exceptional circumstances.

6 34. This case involves burglary of a dwelling. There are three levels of seriousness.

7 35. Counsel on both sides agree that this case falls into the bracket of medium culpability –  
8 that is the threat of use of a firearm. So far as harm is concerned, again both parties  
9 agree that this in category 2.

10 36. The starting point is 4 years' custody, with a sentencing range of 2 to 6 years.  
11 However because this is an Aggravated Burglary, the guidelines state that the starting  
12 point should be higher in light of the increased maximum and to be considerable where  
13 significant physical or psychological injury or other significant trauma is inflicted  
14 within a home.

15 *Aggravating and mitigating circumstances*

16 37. The Crown did not suggest that there are any aggravating factors other than the recent  
17 offence of attempted burglary committed on 5<sup>th</sup> November.

18 38. However, as we now know there was an extremely elderly and vulnerable person at the  
19 home, her home, and the offence was committed at night.



1 39. So far as mitigation is concerned the most powerful one (not including the early plea of  
2 guilty) is the age of this defendant - 16 at the time of the offence, and now 17 years  
3 old.

4 40. He has some mental issues but, because he has not attended the offered support from  
5 the psychologist, the court has no in-depth insight into any condition he may have.

6 41. There is no doubt however that he has suffered from a very poor upbringing - living in  
7 what has been described as a dysfunctional family.

8 42. He has worked sporadically and Ray Doxey, the previous employer, states that he will  
9 give the Defendant work so long as he pulls his boot straps up and is reliable.

10 43. I have a letter from the Defendant dated 25<sup>th</sup> November 2019 setting out how his  
11 background had led him into trouble. Being remanded in custody has opened his eyes  
12 and led him to decide that he does not want to continue on his previous path. He  
13 apologises to the victims of his crimes and asks for forgiveness and one more chance. I  
14 have a further letter from the Defendant dated 9<sup>th</sup> December in which similar  
15 sentiments are expressed. I am urged to accept the sentiments as genuine remorse.

16 44. Finally there is his plea of guilty at the earliest opportunity for which full credit is due.

17 45. I have to sentence for two offences.

18 46. This means that there is now the aggravating factor of committing a similar offence on  
19 bail, full-well knowing that he was in peril of a custodial sentence on the Aggravated  
20 Burglary alone. Whilst on bail was his chance to prove to the court that the chance was  
21 worth taking.



- 1 47. I take a starting point of 4 years' custody, which needs to be increased to take into  
2 account the uplift for an aggravated night-time burglary, but, there is also the  
3 aggravating factor of the recent attempted burglary.
- 4 48. Given his age, the court has to make a reduction for the defendant's youth.
- 5 49. Having adjusted both upwards and downwards, the starting point will be five years.
- 6 50. A significant reduction is made for mitigation – reducing the figure to 3 ½ years. With  
7 full credit for the pleas of guilty, this results in a sentence of 2 years 4 months.
- 8 51. The court was informed today that the Defendant has spent 179 days on 12 hour  
9 electronic curfew. Credit will be given for 90 days which brings the sentence to just  
10 over 2 years and one month.
- 11 52. The court has thought long and hard about this case and whether the sentence should  
12 be further reduced to allow for consideration of a Suspended Sentence Supervision  
13 Order.
- 14 53. The defendant's offending history is at the lower end, connected to the use of drugs  
15 and he has been out of trouble for some time. But against the mitigation, is the fact that  
16 the defendant knew that he was in danger of a custodial sentence and needed to prove  
17 himself on bail. Sadly, he committed another offence only a few days after his court  
18 hearing when he was also on bail for other offences.
- 19 54. Importantly there is no support package offered by the Probation service - no doubt, in  
20 light of the previous failures.
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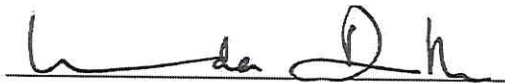
1        55.     The effect of an SSSO would be that the defendant would be released with no suitable  
2             place of residence and no support package. That is not in the interests of the Defendant  
3             and is certainly not in the public interest. It is not possible to justify such an order in  
4             the circumstances.

5        56.     The least sentence I can pass for the Aggravated Burglary, taking into account  
6             everything that has been said so ably on the defendant's behalf, is one of 2 years 4  
7             months' imprisonment, less the 90 days credit for the curfew, that is, 2 years' and one  
8             month imprisonment.

9        57.     For the Attempted Burglary, there will be a sentence of 9 months' imprisonment, to  
10            run concurrently. Time spent in custody will count towards the sentence.

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**Dated this the 18<sup>th</sup> December 2019**

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**Dame Linda Dobbs  
Acting Judge of the Grand Court**

