

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 0003 of 2020**
5

6
7 **THE QUEEN**



8
9 **v.**
10

11 **DEAN ANTHONY (DeANTHONY) RUSSELL**

12 **Appearances:**

Ms. Kerri-Ann Gilles for the Crown

13
14 **Mr. Crister Brady of Brady Attorneys at Law**
15 **for the Defendant**

16
17 **Before:**

Justice Cheryll Richards Q.C.

18
19
20 **Submissions on Sentencing:**

5th June 2020

21
22
23 **Sentence Judgment:**

10th June 2020
24
25

26 **HEADNOTE**

27 ***Criminal Law – Robbery – Principles on Sentencing - United Kingdom Sentencing***
28 ***Guidelines – Category of Offence - Use of Machete.***
29
30
31

32
33 **SENTENCE JUDGMENT**
34
35
36
37

- 1 1. The Defendant Dean Anthony Russell is before the Court for sentencing on Indictment
2 3 of 2020. This charges him with a single count of Robbery committed on the 29th
3 October 2015.
- 4
- 5 2. The particulars are that on the said day in the jurisdiction of the Cayman Islands, he stole
6 a handbag, mobile telephone and other personal effects from Elsa Francis and
7 immediately at the time of doing so and in order to do so used force towards her or put
8 her in fear of being then and there subjected to force.
- 9
- 10 3. The Indictment was filed on the 21st January 2020. The Defendant was arraigned and
11 pleaded guilty on the 21st February 2020. It is agreed that his plea was entered at the
12 earliest opportunity.
- 13
- 14 4. The Prosecution has provided a summary of facts which is not disputed by the Defence.
- 15
- 16 5. At about 9:20 p.m. on the 29th of October 2015, the Complainant Elsa Francis was
17 walking with her sister – each heading to their respective homes. The Complainant was
18 wearing the uniform of a local cleaning company. In the vicinity of Mary Street, George
19 Town, her sister parted from her and the Complainant continued walking alone along
20 Mary Street on her way towards McField Lane. As she walked, she felt a tap on her
21 shoulder. She turned to see who it was and observed a tall, masked man with a machete
22 in his hand. He demanded her bag and threatened to chop her if she did not hand it over.
23 Out of fear, the Complainant immediately handed over her bag along with her phone
24 which had been in her hand. The Assailant then ran off. She could not identify the
25 Assailant. An eye witness, a Mr. Lowelyn Brown was also unable to identify the
26 Assailant.
- 27



1 6. The Complainant’s bag was a black Fossil branded bag valued at US\$75.00 which had
2 contained a purse along with her identification cards, family photos, passport, health
3 card, debit card, work keys, and other personal items. Her mobile phone a white
4 Samsung Galaxy S4 was valued at approximately CI\$260.00.

5
6 7. The crime remained unsolved and was closed by the Police for lack of evidence. About
7 four years later on the 6th of August, 2019, the Defendant entered the George Town
8 Police Station and asked to speak with the Police. He identified himself as Dean
9 Anthony Russell and indicated that he had committed a robbery a couple years ago along
10 Mary Street in George Town and that he wanted to confess to it as he had been having
11 sleepless nights and wanted to clear his conscience.



12
13 8. PC Corbin who took his initial report then alerted DI Adeniyi Collins Oremule and
14 subsequently escorted the Defendant to him. The Defendant identified himself to DI
15 Oremule, admitted that he had carried out a robbery some years ago. He gave details of
16 the incident along Mary Street, which matched the incident – including the description
17 of the Complainant, that she was wearing the specific uniform of a cleaning company,
18 the items which he took from her, the description of his clothing that he was wearing at
19 the time and how his face was covered as well as that he had been armed with a machete.
20 He also accounted for what he had done with the stolen property.

21
22 9. DI Oremule recalled the report that had been made some years before which had been
23 closed due to insufficiency of evidence. He informed the Defendant of the report and
24 then cautioned him. He arrested the Defendant for robbery and, on being cautioned, the
25 Defendant admitted to committing the offence of robbery by snatching the victim’s
26 handbag and using a machete to scare her. His words were recorded after he was advised

1 of the right to free, independent legal advice at any stage and he signed the Officer's
2 notebook after the notes were read over to him.

3
4 10. The incident which had been reported on the 29th of October, 2015 was re-opened by the
5 Police and an audio-visual interview was later conducted with the Defendant on the 7th
6 of August, 2019. He was cautioned at the commencement and told of his continuing
7 right to free and independent legal advice. He indicated that he did not need an attorney
8 and he then made full admissions in relation to the robbery and stated that he was wanted
9 for three years and that he had turned himself in because, in his words, *inter alia*, he was
10 “supposed to be in court long time, long long ago.”

11
12 11. The Police indicate that during the course of the interview it was established that the
13 Defendant had a history of mental illness and had been undergoing treatment. At some
14 stage during the interview, they asked the Defendant if he had ever suffered any sickness/
15 illness. He denied having any illness but then spoke of having to take injections. Through
16 further questioning it was ascertained that he did appear to be receiving treatment. The
17 Defendant said that the ‘people at the hospital’ had told him that he was mental, that he
18 had to go to the ward and has been getting injections for the last 6 or 7 years and that he
19 took his injection last week.

20
21 12. Travel history records indicate that the Complainant departed the Cayman Islands on
22 December 20, 2016 and there is no indication that she has returned to the Island since
23 that time.



1 **ANTECEDENT HISTORY**

2 13. The Defendant has a record of 16 previous convictions all beginning in July 2015.

3
4 14. On the 22nd of July 2015, he was sentenced to a suspended term of imprisonment of 3
5 months and a fine for offences of going equipped for stealing and theft. On the 16th of
6 November, 2016 he received community service orders for offences of failing to
7 surrender to custody, criminal trespass, consumption of ganja, damage to property and
8 consumption and possession of ganja, a second set of offences. On the 31st of
9 January 2017, he received community service orders for an offence of failing to
10 surrender to custody. On the 22nd of May 2018, he received community service orders
11 for intentional harassment, alarm and distress and consumption and possession of ganja.
12 Finally on the 29th of January 2019 he was sentenced to a term of imprisonment of 4
13 months for consumption and possession of ganja.



14
15 **CASE STATUS REPORTS (CSRs)**

16
17 15. The Court has been provided with three case status reports (“CSRs”) from the
18 Department of Community Rehabilitation (DCR). These provide helpful information
19 about the personal circumstances of the Defendant. He is 22 years old with a date of
20 birth of the 20th September 1997. He would have been only 18 years old at the time of
21 the incident.

22
23 16. The first CSR is dated the 23rd March 2020. It states, *inter alia*, that completion of a full
24 Social Inquiry Report (SIR) was hindered by the mental issues facing the Defendant and
25 that in an effort to fully understand these challenges, the assigned Probation Officer
26 conducted a lengthy telephone conference with Community Psychiatric Nurse Green on



1 the 20th March 2020. A number of topics were discussed in depth including the
2 Defendant's mental health history, his compliance with treatment and future treatment
3 recommendations that may be considered in order to prevent further recidivism and
4 improve his mental health status.

5
6 17. The Probation Officer also states that according to records from the Health Services
7 Authority, the Defendant went into hospital on the 29th March 2014 after being involved
8 in a car accident. He received treatment only for pain and abrasions before being
9 released. He was brought back into the Emergency Department of the Hospital on the
10 5th April 2014 for "*strange and aggressive behaviour and hallucinations.*" He was seen
11 by a psychiatrist and a CT scan was ordered. He failed to attend for this scan on the 14th
12 April 2014.

13
14 18. On the 25th November 2015, he had his first admission to the Mental Health Ward after
15 he was brought in by the Police when he complained of having strange feelings.

16
17 19. He was admitted for five days and following examination by multiple psychiatrists he
18 was diagnosed as having psychosis and a psychotic disorder. He was prescribed an oral
19 treatment and was instructed to return on the 16th December 2015 for follow up. He
20 returned on the 11th December 2015 and reported that persons wanted to kill him. He
21 was re-admitted to the ward and discharged on the 14th December but refused to take
22 medication home with him.

23
24 20. The Officer also records that from that time through to February 2017, the Defendant
25 made several visits to the hospital, reporting delusional thoughts and homelessness. On
26 other occasions he was brought in by the Police for aggressive or bizarre behaviour. He
27 was re-admitted to the Mental Health Ward on numerous occasions.

1 21. On the 26th December 2016 he was diagnosed with Schizophrenia and placed on an
2 Assisted Outpatient Treatment Order under the *Mental Health Law*. Under this Order
3 he receives monthly injections administered by the Community Nurse. He is treated with
4 150 mg of the drug Invega Sustenna. He has also been prescribed oral treatments but is
5 not compliant in taking these. The Probation Officer states that his mental health status
6 does not seem to have improved.

7
8 22. The best option for assisting him is considered to be institutionalization at a treatment
9 facility for at least a year where he will be in a controlled environment with access to
10 psychotherapy, will receive consistent treatment and be able to learn new social skills
11 for effective functioning in society.

12
13 23. The Probation Officer expressed the view that community supervision will be difficult
14 as the Defendant maintains active drug use and is not fully compliant with treatments.
15 Additionally it appears that he is subjected to individuals in the community who are not
16 supportive of his mental illness needs. He has never been complaint with taking oral
17 medications which are part of his treatment.

18
19 24. On the 12th March 2020 his mother reported to the Probation Officer that the Defendant
20 has no control over his impulsive aggressive behaviour. She stated that he has not been
21 the same since his car accident and has been on mental health treatments for a significant
22 period of time. She also reported to the Officer that his current environment may not be
23 the most conducive for him.



1 25. In the second CSR dated 5th June 2020, the Probation Officer states that the Defendant
2 last received his injection on 28th April 2020 and was then overdue because the Mental
3 Health Unit had been unable to locate him at his residence since 28th May 2020. The
4 information from the Mental Health Unit (MHU) is that he continues to use illicit
5 substances and that his continued drug use is impacting the effectiveness of his mental
6 health treatment.

7
8 26. His Assisted Outpatient Order will expire on the 21st January 2021 when his
9 circumstances will be reviewed.

10
11 27. The MHU says that the Defendant is not being adequately treated for his mental health
12 challenges because of his illicit substance use. His family is in poor financial
13 circumstances and cannot afford treatment for him without assistance.

14
15 28. On the 1st June 2020, his mother reported that he had packed up all his belongings and
16 left the home and that he had been drinking that day.

17
18 29. The Officer states that there is an urgency for him to have access to alternative treatment
19 that may not be offered through the MHU. Two options are being considered. One option
20 is treatment at Caribbean Haven Residential Treatment Center but there is a long waiting
21 list and he would not be able to access treatment for another two months. The next option
22 ~~resort~~ would be to secure placement for him at an overseas treatment facility. Both
23 options would assist him to gain some insight into his chronic drug use.

24
25 30. A suspended sentence supervision order is recommended which would allow the DCR
26 to continue to work with him



1 31. The third CSR is dated 10th June 2020 and suggests conditions to be attached to any such
2 order.

3

4 **PSYCHIATRIC REPORT**

5 32. The Court has been provided with a psychiatric report which is dated the 27th of
6 February 2018 and it is signed by Dr. Arlene McGill of the Psychiatry and Behaviour
7 Health Services Division at the Health Services Authority. She conducted a Mental
8 Status Examination of the Defendant. She found his thought processes to be
9 goal-directed, narcissistic and mildly paranoid. She noticed that he answered
10 irrelevantly at times, especially when it involved abstract thinking. His reasoning for
11 everyday problems indicated impulsive decision making and snap judgements. She
12 concluded that he is a young man who is a chronic substance abuser with a
13 schizo-affected disorder who, at the time of interview, was hypomanic. She further
14 stated:

15 *"In spite of that he can make decisions which are in his best interest if carefully*
16 *guided by his attorney and will be able to follow the court process as indicated by*
17 *his mental status examination."*

18

19 33. Before this Court no issue has been raised as to his fitness to plead and, from this
20 Psychiatric Report, he is capable of understanding these proceedings and has the ability
21 to take responsibility for his actions.

22

23 **PENAL CODE AND SENTENCING GUIDELINES**



24

25 34. By s.242 of the **Penal Code**, the maximum sentence for the offence of Robbery is life
26 imprisonment.

1 35. The Crown submits that under the *Cayman Islands Sentencing Guidelines* the instant
2 offence falls into the Category of Street robbery or ‘mugging’. According to these
3 Guidelines:-

4
5 *“Street robberies will usually involve some physical force (or threat) to steal modest*
6 *sums, although in some cases there is significant intimidation or violence. The victim*
7 *may or may not be physically injured.”*
8

9
10 36. There is disagreement between the Crown and the Defence as to the applicable portion
11 of these Guidelines. The Crown submits that the offence falls within Culpability A that,
12 being High culpability – because of the factor of the production of a bladed article or
13 firearm or imitation firearm to threaten violence and, Category 3 Harm because factors
14 in Categories 1 and 2 are not present.

15
16 37. The starting point for Culpability A and Category 3 Harm is 4 years’ custody with a
17 Category Range of 2 – 5 years’ custody.

18
19 38. The Crown submits that three aggravating features are present. These are:

- 20
21 i. Previous Convictions: The Defendant has relevant previous convictions for
22 the offences of Theft and Going Equipped to steal;
- 23
24 ii. The timing and location of the offence: The offence occurred at night – at
25 around 9:20 p.m. - and was carried out in what could be described as a
26 relatively lonely area – in the vicinity of a lane; and
- 27
28 iii. The attempt to conceal identity: The Defendant was masked at the time of
29 the incident.



1 39. Counsel on behalf of the Defendant, while accepting that this falls into the category of
2 street robbery or mugging, submitted that it is what would be described in the United
3 Kingdom Sentencing guidelines, as an ‘unsophisticated street robbery’. It involved the
4 use of threat of force to intimidate the victim during which time a relatively modest sum
5 or value was stolen. The combined value of the items taken is less than \$330.00.

6
7 40. Defence Counsel also submitted that this offence ought properly to fall within the
8 medium rather than high-level of culpability. Counsel accepts that a bladed article was
9 used to threaten violence but urged that there was little planning from the fact that the
10 victim had only just entered the street and was unlikely to have been observed previously
11 given the route taken to the location where the incident occurred and where the
12 Defendant was. Counsel says that from all indications this was no more than a “*clumsy,*
13 *opportunistic and desperate act*”.

14
15 41. It is accepted by Counsel that this is properly one of Category 3 Harm. Counsel
16 submitted that while the victim must have suffered some psychological harm from the
17 experience of being robbed, it does not appear to be significantly over and above the
18 harm inherent in the offence itself. It is accepted that while the value of the items robbed
19 is perhaps not very significant in the context of value as per the Guidelines, the contents
20 may have been of more personal value to the victim than their mere physical value might
21 indicate. Counsel submitted that the physical and psychological harm caused from being
22 robbed by a masked person wielding a machete would perhaps place this offending at
23 the higher end of category 3.



1 42. In submissions in mitigation Defence Counsel stated that the Defendant is remorseful
2 for his actions and would wish to offer apologies to the victim. Counsel submitted that
3 apart from the use of a mask, the offending showed little planning and seemed to have
4 been opportunistic. It lacked any degree of sophistication and showed a low level of
5 logical thinking; Counsel urged that this is consistent with the fact that the Defendant
6 was young and immature in his thought pattern, having been only one month past his
7 18th birthday at the time of offending.

8
9 43. Counsel asked the Court to note that in addition to pleading guilty at the first opportunity,
10 the Defendant had, through his attendance at the Police Station, provided his unsolicited
11 confession. Counsel highlighted the fact that the Defendant has suffered from and
12 struggled with mental problems for several years ~~now~~ and referred to the details provided
13 in the CSRs as to his difficulties and his home situation. The Reports, said Counsel,
14 provide evidence that a long term mental health program is necessary for the Defendant's
15 functioning.

16
17 44. Counsel said that on a personal level, the Defendant sometimes feels helpless because
18 of his condition and that this is worsened by the medication which he is presently taking.
19 The Defendant is willing to be subject to the mental health authorities should a
20 suspended sentence be imposed. Such a sentence would afford him the opportunity to
21 access the mental health services for the care he needs, but still serve to register the
22 Court's disapproval of his conduct.





1 **ASSESSMENT AND CONCLUSIONS**

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

45. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims of sentencing, assessing the seriousness of an offence, the custody threshold and the principle of proportionality. The Court reminds itself of this guidance including that in sentencing an offender, the Court has to balance a number of competing interests and objectives and also has to tailor the punishment to the individual circumstances of the offender while ensuring that it is in line with the seriousness of the offence.

46. The Court should consider which of the aims which govern the sentencing process will be best served by the sentence to be passed. The aims which are set out in the *Alternative Sentencing Law* 2008 include deterrence, punishment, rehabilitation and restitution. The Guidelines also provide that a custodial sentence should not be passed unless the offence is so serious that no other sentence can be justified for the offence. Custody should be reserved for the most serious offences. Even where the custody threshold is passed, custody can still be avoided in light of personal mitigation or if there is a suitable community intervention programme which would meet the aims of punishment and rehabilitation.

47. Although there is no information as to the effect upon the Complainant, this must have been a terrifying ordeal for her - walking alone at night to be confronted by a masked man with a machete. While this may well have been an opportunistic offence as Defence Counsel urges, there must have been some planning however minimal. The Defendant armed himself with a machete and had the foresight of mind to conceal his identity. Given the serious nature of this offence, the custody threshold has clearly been passed.

1 48. Applying the *Cayman Islands Guidelines* which apply to street robberies, a bladed
2 article, the machete, was produced and used to threaten violence. The Court accepts the
3 submissions of the Crown that this is therefore an offence of High culpability. There is
4 no victim impact report so no determination can be made as to the level of harm caused.
5 The Court accepts the submissions of both the Crown and the Defence that this a
6 category 3 harm. Thus the starting point on sentence is 4 years' custody,

7
8 49. There are four aggravating factors:

9
10 i. The offence was committed on a relatively deserted street - although this
11 must be of limited weight given the presence of at least one eye witness;

12
13 ii. The offence was committed at night. This would have added to the fear felt
14 by the Complainant;

15
16 iii. The Defendant was masked at the time thus, he was successful in concealing
17 his identity.



18
19 iv. The Defendant has previous conditions for offences of dishonesty.

20
21 50. Consequently the sentence is increased from the 4 years or 48 months starting point to
22 one of 57 months.

23
24 51. In mitigation, account is taken of the detailed information as to his circumstances which
25 is contained in the Case Status Reports and of all the submissions made by Counsel on
26 his behalf. This offence was committed when he was at a relatively young age.
27 Additionally significant factors in mitigation include the extensive nature of his remorse,
28 as evidenced by his confession to an unsolved crime, the detailed reports as to his mental

1 health challenges, and, his personal circumstances including the challenges being faced
2 at home as recounted by his mother. As a result of all these factors in mitigation the
3 sentence of 57 months is reduced to 33 months.

4
5 52. The Defendant is entitled to full credit for his guilty plea. With a reduction of one-third
6 the applicable sentence is one of 22 months' imprisonment.

7
8 53. Further consideration has been given to the personal circumstances of the Defendant and
9 to whether there is a suitable community intervention which would provide sufficient
10 restriction by way of punishment and deterrence while addressing rehabilitation issues.
11 Given his mental health issues, an important aim of sentencing in this case, must be one
12 of rehabilitation.

13
14 54. The Probation Officer has stated very clearly that if he remains in the community,
15 community intervention will be challenging. He could not be found last month in order
16 for the Community Nurse to give him his monthly injection. He is not compliant with
17 taking his oral medication. He is continuing to use illicit drugs and alcohol. There are
18 concerns as to his community associates. His mother reports that the environment in
19 which he lives is not conducive to his recovery.

20
21 55. There are concerns as to the best way to assist him. In relation to the suggestion of
22 residence at Caribbean Haven Drug Treatment Facility, he himself stated to this Court
23 last week during the sentencing hearing that he will not go there, and that he would rather
24 go to Northward than be treated there. He is clearly not open to this treatment. The DCR
25 may need to focus on the second option of trying to identify an overseas facility where
26 he can receive this much needed treatment.



1 56. Having considered all the circumstances, including the serious nature of the offence and
2 the Defendant’s personal circumstances, the Court imposes the following sentence:

3
4 i. A sentence of imprisonment of 22 months. This is to be served by way of a
5 6-month term of immediate imprisonment. Any time previously served is to
6 be deducted.

7
8 ii. In addition to the sentencing aims of deterrence and punishment, during this
9 (6-month) period of time there can be scheduled rehabilitation and
10 intervention programmes. He will be able to receive on going scheduled
11 treatments while he is there and there will be no issues of not being able to
12 find him to give him his monthly injection. More importantly, this interval
13 of time will not only keep him safe but will allow the DCR to make any
14 necessary arrangements for his treatment in a residential facility whether on
15 Island or overseas.

16
17 iii. The balance of 16 months is to be suspended for a period of 2 years with a
18 supervision order on the following conditions:

19
20 a. Upon release from custody he is to reside with his mother
21 at her address in George Town unless he is enrolled by the
22 DCR or MHU in a residential treatment facility whether on
23 Island or overseas, whereupon he is to reside at such facility
24 or if he is admitted or re-admitted to the mental health ward.

25
26 b. He must follow through with any treatment
27 recommendations made by the mental health practitioner,



1 including but not exclusive to taking any medications and
2 participation in psychotherapy or other treatment
3 programmes.

4
5 c. Attend all appointments at the MHU on the last Tuesday of
6 every month at 2pm or at any other scheduled time.

7
8 ~~e.~~ Maintain weekly contact with his Probation Officer and
9 attend the offices of the DCR as instructed by the Officer.


10
11 e. Submit to random drug testing at the discretion of the
12 Probation Officer.

13
14 f. Produce negative screens for drug use, two months post
15 release date.

16
17 g. The Defendant is not to use illicit substances.

18
19 h. The Defendant is not to enter any Liquor licensed premises.
20
21

22 **Dated this the 10th day of June 2020**

23 

24 **Honourable Justice Cheryll Richards Q.C.**
25 **Judge of the Grand Court**
26