

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

3
4 **INDICTMENT NO: #0007/2021**
5

6
7 **THE QUEEN**

8
9 v.
10



11 **KJ**
12

13 **Appearances:**

Mr. Jacob Taylor for the Prosecution

14 **Ms. Amelia Fosuhene of Brady Attorneys for**
15 **the Defendant**

16 **Before:**

Justice Cheryll Richards Q.C.

17 **Submissions on Sentencing:**

17th August 2021

18
19 **Sentence Judgment:**

27th August 2021
20
21

22 **HEADNOTE**

23 *Criminal Law – Theft – Section 235(1) of the Penal Code*
24 *– Young Offender*
25
26
27

28 **SENTENCE JUDGMENT**
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1 4. The Prosecution summarises the facts as follows: On Saturday the 15th August 2020 at
2 about 9:20 p.m., in the vicinity of Camana Bay, the Complainant, DR, a young person,
3 was present with another person in the area of Scotiabank. He was approached by three
4 young male persons, one of whom, was the Defendant. The Defendant told the
5 Complainant to take off his gold necklace chain which he was wearing around his neck.
6 The Defendant held on to it and a struggle ensued between the two of them during which
7 the Defendant broke the chain from around the Complainant's neck and walked away
8 with it.

9
10 5. The Police were called and investigations revealed that sometime thereafter, at an
11 unknown date, an unknown individual attended the home of the Defendant and collected
12 and returned the chain to the Complainant.

13
14 6. The Defendant was arrested at his home on the 11th November 2020 - about three months
15 after the incident.

16
17 7. Upon being cautioned the Defendant said "*I done give him back his chain.*" The
18 Defendant was interviewed on the 21st November 2020.

19
20 8. During the interview he accepted that he took the chain and said that he had been arguing
21 with the Complainant and had grabbed his shirt and accidentally broke the chain. He
22 said that he had returned the chain to a friend of the Complainant's family. He said that
23 he went home with the chain in order to teach the Complainant a lesson.

24
25 9. The basis of plea which is acceptable to the Prosecution and agreed is as follows:

- 26
27 i. The Defendant's case is that he was with [other male persons] in Camana
28 Bay.

- 1 ii. The [other male persons] got into an argument with the Complainant.
- 2
- 3 iii. The Defendant intervened in order to stop the argument. Due to the
- 4 interaction between the Defendant and the Complainant the Defendant held
- 5 onto the Complainant’s chain and took it.
- 6
- 7 iv. The Defendant accepts that in doing so he assumed the rights of the owner
- 8 and deprived the owner of the chain, even though he did have an intention
- 9 to give it back to the owner at a later date.
- 10
- 11 v. The Defendant gave the chain to a third party to be returned to the owner
- 12 shortly after it was taken.



13 **SOCIAL INQUIRY REPORT**

- 14
- 15 10. The Department of Children and Family Services (“DCFS”) has provided a Social
- 16 Inquiry Report (“SIR”) dated 12th July 2021. The Defendant is 16 years old.
- 17
- 18 11. The Report states that he has a history of delinquent activity in relation to the possession
- 19 and smoking of ganja and of poor behaviour at school. The poor behaviour manifested
- 20 itself in a refusal to attend classes, verbal aggression, threatening behaviour and a refusal
- 21 to accept responsibility for his actions.
- 22
- 23 12. He was before the Youth Court for drug charges in 2018 where he was made the subject
- 24 of a Youth Rehabilitation Order (“YRO”) on the 6th March 2018 and placed in the
- 25 Bonaventure Boys’ Home. He had earlier been diagnosed with Attention Deficit
- 26 Hyperactivity Disorder and Oppositional Defiant Disorder. While at the Boys’ Home,
- 27 he was placed in one year of psychological therapy. This was completed in July 2019.

1 13. After leaving the Home, he was enrolled in a local school in September 2019 but left the
2 school in April 2021 after finding it difficult to cope academically. The plan is for him
3 to be transferred to a skills training programme for the 2021/2022 academic year.

4
5 14. In addition to previous mental health issues, the Report states that academically, he has
6 low functioning skills which led to him being frustrated when he compares himself to
7 his peers.

8
9 15. Since the expiration of the YRO, there have been no adverse reports about him and his
10 grandmother, in whose care he is placed, has not observed any recent ganja smoking
11 activity.

12
13 16. The Probation Officer notes that it is unclear whether the offence of Theft to which he
14 has pleaded guilty may have been done by him in order to create an impression among
15 his peers. The Officer states that nevertheless, a message needs to be sent to him that
16 what he did is a crime, is 'not cool' and is not acceptable.

17
18 17. A one-year probation order is recommended with conditions.
19

20 **VICTIM IMPACT REPORT**

21
22 18. The DCFS made attempts to obtain a victim impact report, however, the mother of the
23 Complainant declined to allow her son to participate, citing the traumatic nature of the
24 incident.





1 **SENTENCING GUIDELINES**

2
3 19. In the absence of offence-specific guidelines in the Cayman Islands for the offence of
4 Theft, Counsel have referred the Court to the *United Kingdom Sentencing Council*
5 *Guidelines*. Both are agreed that the offence falls into the lowest category of those
6 *Guidelines*, being one of lesser Culpability – category ‘C, due to little or no planning -
7 and of category 4 Harm, due to the low value of goods stolen and no evidence of
8 significant additional harm to the victim or to others. The sentence range for such an
9 offence is a starting point of a Band B fine, with a sentence range of a discharge to a
10 Band C fine.

11
12 20. The maximum sentence in the United Kingdom is 7 years’ imprisonment and in the
13 Cayman Islands it is 10 years¹. The Defence submit that there should be no uplift
14 because had the plea to Theft been accepted in the Summary Court, the maximum
15 sentence in the Summary Court would have been 7 years’ imprisonment.

16
17 21. It is agreed by both Counsel that there are no aggravating factors and it is also agreed
18 that the plea was offered at the earliest available opportunity – this given that before the
19 plea could be entered there were ongoing discussions between the Prosecutions and the
20 Defence in respect of the two co-Defendants against whom the charge of Robbery was
21 eventually discontinued.

22
23 22. In mitigation on behalf of the Defendant, Counsel submits that he is a young man who
24 has been before the Youth Court on only one previous occasion. The following factors
25 are also submitted:

¹ Pursuant to s.241 of the *Penal Code* (2021 Revision)

- 1 i. His plea was entered at the earliest available opportunity;
- 2
- 3 ii. He returned the item even before the Police contacted him;
- 4
- 5 iii. In the course of the interview with the police he accepted that he had taken
- 6 it;
- 7
- 8 iv. He was trying to protect others in taking the item;
- 9
- 10 v. He is remorseful in respect of his actions; and
- 11
- 12 vi. There has been delay in dealing with this case because of issues with the co-
- 13 Defendants.

14

15 23. It is further submitted on his behalf that the Court considers ordering that no conviction

16 be recorded, pursuant to s.41 of the *Penal Code*, in respect of the offence if the

17 recommended course of probation is completed successfully. Counsel urges that he is a

18 young man who has promise and that he ought to be afforded the opportunity to have a

19 clean record as he enters adulthood. This is his first time before the Grand Court and he

20 is very young.



21

22 **SENTENCE**

23 24. This is a case where the Defendant is a young offender and unemployed and therefore,

24 a starting point of a fine, as suggested by the *Guidelines*, would be inappropriate.

25

26 25. The Court has referred to the *Youth Justice Act*, (2021 Revision) in particular, s.20

27 thereof. Section 20(5) states:

1 “(5) Where a young person has been found guilty of an offence before — (a) a
2 court of summary jurisdiction other than a youth court; or (b) the Grand
3 Court, the court may, in addition to or in lieu of any other sentence it has
4 power to impose on the young person for the offence, make any of the orders
5 which a youth court has power to make under this Act.”
6

7
8 26. These orders include a Probation Order. This case is approached with these provisions
9 in mind rather than the **Guidelines**.

10
11 27. This is a relatively serious offence, which occurred at night in public while the Defendant
12 was in the presence of others. By its very nature, it must have caused some trauma to the
13 Complainant. There is, on the facts, no excuse for such behaviour. It is criminal and
14 must be strongly condemned.

15
16 28. The Defendant must understand that this kind of behaviour is deserving of punishment
17 and must not be repeated.

18
19 29. He is clearly remorseful as evidenced by his return of the chain. However, this Court
20 notes that there is still an element of deflection of responsibility in his statement to the
21 Police, that is, that he was trying to teach the Complainant a lesson. No circumstance
22 justifies taking another’s property and the Defendant must understand this if he is to
23 ensure that he does not offend again.

24
25 30. Given his very young age, the fact that since the YRO was completed he has not
26 otherwise reoffended, the report of his grandmother about him, all the details provided
27 in the SIR and all the mitigating circumstances as outlined by his Counsel, the Court will
28 adopt the recommendations of the Probation Officer.



1 31. The Defendant is sentenced as a young offender to a Probation Order of 12 months with
2 the following conditions:

3 i. That he attends skills training at Aspire Cayman Training School regularly
4 and obeys all the rules that are set by the teachers.
5

6 ii. That he attends all psychological sessions in accordance with the
7 instructions of his psychologist.
8

9
10 32. The Court also accepts the submission of his Counsel that the circumstances of the
11 offending and the offender are such that he ought to be given an opportunity to
12 commence life as an adult with a clean slate subject to his good behaviour over the next
13 12 months.

14
15 33. Consequently no conviction will be recorded if he successfully completes this course of
16 probation.

17
18 34. It is now up to him to make sure that he complies with the terms of his probation and
19 follows all instructions.
20

21 **Dated this 27th August 2021**



22
23 **Honourable Justice Cheryll Richards Q.C.**
24 **Judge of the Grand Court**
25