

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

**CICA (Crim) Appeal 011/2022
IND#0012/2021
SC#00420/2021**

BETWEEN:

KASNIQUE PATRICE AUSTIN-CUPID

APPELLANT

-and-

HIS MAJESTY THE KING

RESPONDENT

Before:

**The Rt Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Alan Moses, Justice of Appeal**

Appearances:

**Mr. Jonathan Hughes of Sampson Law for the Appellant
Mr. Orrett Brown for the ODPP for the Respondent**

Date of Hearing:

10 November 2023

JUDGMENT

**Transcript of oral judgment dated 10 November 2023
Approved for Release 17 January 2024**

MOSES, JA:

1. This is an application for permission to appeal from a sentence passed by Her Honour Justice McDonald-Bishop on the 17th of June 2022, of ten years and six months in respect of a robbery to which this Applicant -- pleaded not guilty following a judge alone

trial on the 25th of February, 2022. The sentence of ten-and-a-half years was in respect of the robbery that the judge found, in effect, this Applicant had master minded in premises in which she had been working; a liquor store at the Tortuga Rum Company in George Town. The robbery was committed by two men, one of whom remains unidentified, the other was a man called Nash who was also convicted.

2. The judge found that as a result of this Applicant's knowledge of the store; the existence of the cash registers and the fact that the daily sales were secured in a safe, was known to this Applicant and led to her recruiting at least one of the robbers, the man Nash, while she waited outside in the getaway car. At 8:50 in the evening the 7th of February, the man she recruited and the other unidentified robber, entered the store with masks, long-sleeved clothing and gloves and of particular significance, wielding knives for the purposes of threatening this Applicant's former colleagues as they worked in the store. They got away with cash and the money from the daily sales secured in the safe; but during the course of the robbery, the defendant Nash carried out a particularly serious assault on one of the employees, Ms. Andrade, who had tried to escape. He attacked her after the other robber placed her on the ground.
3. The judge found as to the part played by this Applicant, that she had a leading role in the planning and execution of the offence. She was there, as she put it, from the inception and, it would not be unfair to describe her as the mastermind, given her knowledge of the layout and operations in the store. She knew that there was going to be a threat of violence in order to carry out the robbery. She knew the robbers had knives and had the intention that they should be used in the robbery. Although the attack on the member of

staff, Ms. Andrade, went further than she might have foreseen, this was reflected by the fact that the judge sentenced Nash to a higher sentence. This was, we observe, just the sort of consequence that ought to be in the contemplation foreseen by those who plan a robbery with knives of the sort that took place here.

4. The judge, in sentencing her to ten-and-a-half years, found that the culpability - and harm was such as to justify the sentence being -- falling within A2 of the Robbery, Commercial Premises Guidelines; in other words, with a starting point between seven and fourteen years. There was substantial mitigation as the judge recognised in this case. She was a lady of good character. She had 3 children, one of whom was a 9-year-old boy with special needs and therefore the impact of the substantial sentence is going to be particularly severe. However, as the judge observed, the aggravating feature of the fact that this was a breach of trust in which, knowingly, this Applicant was prepared to let her fellow workers and colleagues suffer the fear that an attack at night with knives was bound to cause, and justifies a substantial sentence. The submissions advanced that the Applicant should have been distinguished from the co-defendant Nash, seems to us unarguable in light of the fact that Nash was sentenced to a higher term of twelve years.
5. The judge, conducted the trial, and it was perfectly open to her to reach the conclusion as to culpability, which we have identified. The personal mitigation was taken into account. We can see nothing excessive, let alone manifestly excessive in the total sentence of ten-and-a-half years and in those circumstances we refuse leave.