



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

**CRIMINAL APPEAL NO. 016 of 2023
IND#0068 of 2022
SC#01221 of 2022**

BETWEEN:

NICHOLAS RAMEISH NUGENT

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. Crister Brady of Brady Law for Appellant
Mr. Scott Wainwright for the DPP for the Respondent**

Heard:

15 November 2023

JUDGMENT

**Transcript of Oral Judgment dated 15 November 2023 and Approved for Release 29 May
2024**

MOSES, JA:

1. This is an appeal against a sentence passed by her Honour Justice Richards on the 30th of September, 2022, for an offence of burglary following a trial at which this appellant was convicted. He was sentenced for burglary to a sentence of 20 months. The facts, as his counsel Mr. Brady

submits, were unusual in that the gravamen of the offence was the violence and injury that this appellant caused to the victim, leaving her with lasting injuries but those injuries were caused during the course of a burglary.

2. The facts show why this was an unusual burglary. The Appellant had -- the Applicant had had a relationship of sorts with the victim, the day before and the following day, in the morning was determined to renew the relationship. It is plain he did so despite her obvious rejection of him. She did not wish to see him. When she learned that he was there - because he threw something at her bedroom window - she came downstairs, opened the kitchen window and repeatedly told him to leave. He would not listen and in the end tried to get into the house. That was the trespass that forms the offence of burglary. He pushed himself through the open window, although he was still standing outside and then forced his way through the mesh grill, still only partially in the house. So frightened was she that she grabbed a knife. He still would not leave and, as the judge noted, he had been given multiple opportunities to do so.
3. He then wrestled with her as she held the knife and, unfortunately, during the course of fighting with her, not only was he cut but she suffered really serious injury to her left hand. The victim impact statement speaks of her emotional distress as a result of this injury and the physical consequences of it. She suffered permanent injury, despite numerous surgical interventions to her master hand, her left hand, which will affect her future employment work prospects. The Applicant did himself no favours by pleading not guilty and he was convicted as we have said, after trial.
4. He is a man of 34. He received a favorable social inquiry report pointing out that he had never

been in trouble before either on the island or in Jamaica where he came from. He was an overstayer, although he had been in employment as a security guard on the island and it was hoped to regularise his employment so that he could be here legitimately.

5. The gravamen of the argument in support of not sentencing him to an immediate custodial sentence was, that he had never been in trouble before, that he was a low risk of offending and that this was an unusual burglary in which there was no intention to take anything. Arguably, however, the fact that he was trying to force his way in, contrary to the wishes of the occupant of the house and despite her obvious fear, makes the offence a more serious type of burglary than the normal type where someone was trying to get into a house to steal.
6. The judge carefully considered whether it was appropriate to make some form of community service order and rejected it because of the gravity of the offence. In our view, she was right to do so. This violence, even if originally unintended and unplanned, with its very serious consequences merited and immediate custodial sentence. The judge was entitled to take the view that it was not possible, in the light of the gravity of the offence, to suspend it.
7. In our view, it is not arguable to the contrary and in those circumstances, we refuse leave. There is nothing further to be said.