



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

**CICA (Crim) Appeal No. 0011 of 2022
IND No. 0012 of 2021
SC No. 00420 of 2021**

BETWEEN:

RICHARD EDWARD NASH

APPELLANT

-and-

HIS MAJESTY THE KING

RESPONDENT

Before:

**The Rt Hon Sir John Goldring (President)
The Rt Hon Sir Jack Beatson, JA
The Hon Sir Michael Birt, JA**

Appearances:

**Mr. Oliver Grimwood of Sampson Law for the Appellant
Appellant via Zoom**

**Mr. Neil Kumar of the Office of the Director of Public Prosecutions
for the Respondent**

Date of Hearing:

26th April 2024

JUDGMENT

**Transcript of oral judgment dated 26th April 2024
Approved for Release 23rd May 2024**

Beatson, JA

1. On 25 February 2022, following a judge alone trial before Her Honour Justice McDonald-Bishop, the applicant, Richard Edward Nash and his co-defendant Kasnique Patrice Austin-Cupid, were convicted of a robbery of a Tortuga liquor store on Lime Tree Bay Road in George Town. The robbery was committed on 7 February 2020 by the applicant then aged 24, Cupid, an employee at the store, and another male who was not apprehended. On 17 June 2022, the judge sentenced the applicant to 12 years' imprisonment for the robbery and activated a sentence of ten months which had been imposed in November 2019 for wounding. The total period of imprisonment was thus 12 years and 10 months.
2. The applicant seeks leave to appeal against his sentence. He was represented today by Mr. Oliver Grimwood who was recently instructed. Mr. Grimwood stated that he was ready to proceed and that we are able to consider the substance of the application today. We are grateful to him for his succinct and focused single submission.
3. We first deal with the factual background. The judge found that the applicant and the other male entered the liquor store at about 8:50 p.m. armed with knives and wearing facial covering, long sleeved clothing and gloves. Two female employees, Heigna Andrade and Beverly Ebanks, were preparing to close the store. The applicant demanded money. He held his knife towards Ms. Andrade, causing her to attempt to run away and fall. After she had fallen, he launched what the judge described as "an unwarranted and vicious attack involving deliberate and gratuitous violence over and above what is inherent in the commission of the offence by repeatedly kicking her in the face and dragging her by her hair in search of the safe". The men stole C\$2,361, and US\$181.
4. The judge stated that Cupid had orchestrated the robbery to satisfy an outstanding debt. She recruited the applicant who took on the role of the principal offender while she aided and abetted its commission with her inside knowledge of the operations and layout of the store. The judge found that Cupid's vehicle was used and she had purchased the gloves the men wore.
5. The grounds of appeal before us composed by the applicant states that the sentence is "too harsh and excessive, even to the fact that they found me guilty without any evidence". He also states that "the person they say is the mastermind got a lesser sentence than me". In view of this, we

have considered how the judge compared the applicant's position with Cupid's.

6. Mr. Grimwood's sole point was based on the case of *Levesconte*, [2011] EWCA Crim 2754. It concerned the judge activating the suspended sentence while also taking into account as an aggravating factor the fact that the index offence was committed during the operational period of the suspended sentence. We return to that.
7. The judge found that the applicant and Cupid were both on the same footing with regard to culpability and harm. She found the offence was within category A2 of the Robbery Commercial Premises Guidelines, with a starting period of between 7 and 14 years. Although Cupid had a lead role in the joint-enterprise, the applicant went further and launched the attack on Ms. Andrade.
8. The judge's initial starting point for both defendants was nine years. She stated that there were four aggravating factors that were common to both of them. These were premeditation and some planning, the attempt to conceal their identity, the fact that the robbery was at a locale and at a time at which members of the public were likely to be present and were in fact present, and the fact that the offence was carried out by a group, including two armed assailants. She considered those raised the starting point to 11 years' imprisonment.
9. As to separate aggravating factors, in the case of the applicant, these were the attack by him on Ms. Andrade, his previous convictions and what she stated was "his unfavourable response to the 2019 suspended sentence for wounding for which he did not accept responsibility". In the case of Cupid, the aggravating factors were abuse of her position as an employee and a lack of regard for the safety and well-being of her co-workers. The judge concluded that those factors raised the starting points of the sentences of both defendants to 12 years and 6 months.
10. The judge then considered the individual mitigating factors. Cupid was of previous good character and had caring responsibilities for two young children. The applicant had never lived with or been involved in the care of his child and so no allowance for caring responsibilities was made. The judge considered the applicant's age, stating that he was much younger than Cupid and that his high risk of re-offending and low literacy level made him easy prey to someone like her, who "presented as a relatively intelligent, shrewd and manipulative young woman". The judge concluded that the appropriate sentence for the applicant was 12 years' imprisonment, but then

activated the 10 month suspended sentence for the wounding.

11. We accept Mr. Grimwood's submission that in the light of *Levesconte*, the judge should not have both activated the suspended sentence and also considered that the fact that the index offence was committed during the operational period of that suspended sentence to be an aggravating factor for that offence. It was stated in *Levesconte* that “the sentence for the second offence should not have been increased as it was” because “precisely the same factor was carrying weight for two separate offences”.
12. This court is, however, concerned with whether the overall sentence is manifestly excessive. It might be said that, given the ferocity of the attack on Ms. Andrade, the judge was merciful in concluding that before mitigation the starting point for the sentence of this applicant was 12 years and six months. We have concluded that the total period of imprisonment, although arrived at in a way which was erroneous, is not arguably manifestly excessive. The judge had conducted the trial. It was open to her to reach the conclusion on culpability we have identified. She carefully considered the aggravating and mitigating factors applicable and, save in respect of the matter to which we have referred, did not err. She took account of the fact that the applicant's risk of re-offending and low literacy level made him easy prey to someone like Cupid, but she concluded that his conduct during the commission of the offence and its seriousness weighed heavily to the side of personal deterrence, rehabilitation and protection of society.
13. We do not consider that a total sentence of 12 years and 10 months is excessive, let alone manifestly excessive. Accordingly, we refuse leave to this applicant.