

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

3  
4 **INDICTMENT NO: 65/11**

5  
6 **THE QUEEN**

7  
8 **V**

9  
10 **PAUL MILLER**



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12  
13 **Appearances:**

**Ms. Marilyn Brandt for the Crown**

14  
15 **Ms. Fiona Robertson of Samson and**  
16 **McGrath for the Defendant**

17  
18 **Before:**

**The Hon. Mr. Justice Charles Quin**

19 **Heard:**

20 **16<sup>th</sup> March 2012 (Sentencing**  
**submissions heard)**

21  
22 **SENTENCE RULING**  
23

24 1. On the 16<sup>th</sup> March 2012 the Defendant pleaded guilty to handling stolen  
25 goods contrary to s.260(1) of the Penal Code. The particulars of the offence  
26 are that the Defendant, on the 15<sup>th</sup> May 2011, handled stolen goods, namely,  
27 a Blackberry Bold cell phone, knowing it to be stolen.

28 2. On the 14<sup>th</sup> May 2011 the Complainant, with other friends, went out  
29 drinking. After spending a few hours with these friends the Complainant  
30 drove one home, and then was driving along Esterly Tibbetts highway when  
31 he crashed the car.

32 3. It is accepted by the Crown that the Complainant and his passenger fell  
33 asleep in the car after it had crashed.

1       4.     The Defendant and his friend, called Mr. Randy, came upon the car in which  
2             the Complainant and his friend were asleep. Against the Defendant's  
3             protestations Mr. Randy took the Complainant's Blackberry cell phone and  
4             they left the car.

5       5.     Some days after that Mr. Randy gave the cell phone to the Defendant, who  
6             used it for a couple of days.

7       6.     Some days after he received the cell phone the Defendant was arrested and  
8             he admitted to the police that he had the Blackberry, which he knew to be  
9             stolen. The Defendant also admitted that he was present at the time the phone  
10            was stolen.

11      7.     Counsel on behalf of the Defendant asked the Court to take into  
12            consideration that the Defendant had pleaded guilty at the earliest  
13            opportunity. Defence counsel submitted that Randy stole the phone and the  
14            Defendant tried in vain to persuade Randy not to take it out of the car.

15      8.     Defence counsel candidly accepts that when Randy gave the phone to the  
16            Defendant, the Defendant was happy enough to take it and use it.

17      9.     Defence counsel relies on the guidelines set down by the English Court of  
18            Appeal in *R v. Webb, Andrew, Andrew, Moore and White* [2002] 1 Cr. App.  
19            R. (S)22 and the judgment of the Vice President Lord Justice Rose. In that  
20            case Lord Justice Rose reviews the English case law and the guidelines from  
21            the Sentencing Advisory Panel. Accordingly at paragraph 20 Lord Justice  
22            Rose states:

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*“The sentencing panel goes on to identify nine factors which may be regarded as aggravating the offence. With each of these factors we agree. They are as follows:*

- 1. The closeness of the handler to the primary offence. We add that closeness may be geographical, arising from presence at or near the primary offence when it was committed, or temporal, where the handler instigated or encouraged the primary offence beforehand, or, soon after, provided a safe haven or route for disposal.*
- 2. Particular seriousness in the primary offence.*
- 3. High value of the goods to the loser, including sentimental value.*
- 4. The fact that the goods were the proceeds of a domestic burglary.*
- 5. Sophistication in relation to the handling.*
- 6. A high level of profit made or expected by the handler.*
- 7. The provision by the handler of a regular outlet for stolen goods.*
- 8. Threats of violence or abuse of power by the handler over others, for example, an adult commissioning criminal activity by children, or a drug dealer pressurizing addicts to steal in order to pay for their habit.*
- 9. The commission of an offence whilst on bail.”*

10. In addition Lord Justice Rose agreed with the mitigating factors identified by the Sentencing Panel namely,

*“Low monetary value of the goods, the fact that the offence was a one-off offence, committed by an otherwise honest defendant, the fact there is little or no benefit to the Defendant, and the fact of voluntary restitution to the victim.”*

1           11.     Lord Justice Rose went on to state at paragraph 22,

2                           *“We also agree with the panel that other factors to be taken into account*  
3                           *include personal mitigation, ready cooperation with the police, previous*  
4                           *convictions, especially for offences of dishonesty, and a timely plea of*  
5                           *guilty.”*

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7           12.     Defence counsel highlights the fact that the Defendant has two convictions  
8                           for burglary for which he was sentenced on the 17<sup>th</sup> August 2011 to 6  
9                           months, and a further 18 months, consecutive, with an order for  
10                          compensation.

11          13.     The offence to which the Defendant has now pleaded guilty occurred on or  
12                          about the same time as he committed the burglary, and Defence counsel  
13                          asked the Court to consider the possibility of dealing with these offences on  
14                          the totality principle, namely, that they were all part of a series of similar  
15                          offences occurring within the same timeframe.

16          14.     I have reviewed the SIR prepared by Trisha Smith and dated the 23<sup>rd</sup> March  
17                          2011 for the purposes of the burglary offences. It is clear from the SIR that  
18                          the Defendant has come from a good home and up until late 2010 and early  
19                          2011 had no previous convictions and was of good character. His  
20                          deterioration into the life of crime started with an increase of the use of  
21                          alcohol and ganja, together with associating with a bad group of persons who  
22                          had a very harmful influence on the Defendant. Ms. Smith states that for

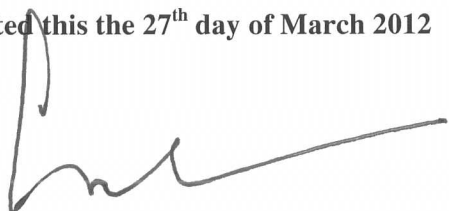
23                               *“the defendant to avoid recidivism and become a productive member of*  
24                               *society, he will need to rid himself of his dependency on the use of drugs*  
25                               *and alcohol and start making pro-social choices, which includes*  
26                               *changing his peer association.”*

- 1       15.     I note that it is the Defendant's avowed intention to return to Technical  
2             College, with a view to qualifying as a mechanic. This is a very admirable  
3             aim and one I sincerely hope the Defendant will attain.
- 4       16.     I take into account the fact that the Defendant cooperated immediately with  
5             the police.
- 6       17.     The stolen item which the Defendant handled was not of a high value, it was  
7             not sentimental and, most importantly, it was recovered and returned to the  
8             owner.
- 9       18.     There is no evidence before me that the Defendant harboured stolen goods or  
10            could be described as being a "fence" for stolen goods.
- 11      19.     I also take into account that the item handled was not obtained as a result of a  
12            domestic burglary. Also, there was no high level, or any level, of profit  
13            made. In addition there is no evidence that there was any threat of violence or  
14            abuse of power by the Defendant.
- 15      20.     I also take into account the submission made by Defence counsel that this  
16            incident occurred around the time the Defendant committed the burglaries for  
17            which he served a 2-year term of imprisonment.
- 18      21.     Accordingly, I impose a sentence of 6 months imprisonment to run  
19            concurrent with the current 2-year sentence of imprisonment. I also order that  
20            Count 1 be made to lie on the file.
- 21      22.     Mr. Miller: I have listened very carefully to what your counsel, Ms.  
22            Robertson, and your Probation Officer, Trisha Smith, have said on your

1           behalf. Your honesty is admirable. However, as Ms. Smith stated, your self-  
2           reported usage of alcohol and drugs is alarming. For you to avoid recidivism  
3           you must rid yourself of your drugs and alcohol usage. I urge you to put all  
4           illegal drugs and your past criminal conduct behind you. You now have an  
5           opportunity to train as a mechanic and have a productive and highly regarded  
6           occupation. Well trained mechanics are always going to be needed, so you  
7           have the opportunity to be in fulltime employment with a regular income.  
8           That is important for you, your family and your self esteem.

9           23.       There is one final aspect of this case which troubles me, and about which I  
10          feel I must comment. The Defendant's Royal Cayman Islands Police Service  
11          (RCIPS) criminal record has itemized seven (7) convictions for offences,  
12          including robbery, theft, GBH and consumption of cocaine and ganja, for  
13          which this Defendant has never been convicted. I am very concerned that a  
14          formal RCIPS record of antecedents lists wholly inaccurate convictions. This  
15          is a very serious error. If this document with these inaccurate convictions  
16          were to be circulated, it could have disastrous consequences for the  
17          Defendant, Mr. Miller, and his future career. I would be grateful if counsel  
18          from the DPP would contact the RCIPS to ensure that this error is corrected  
19          forthwith, and that proper safeguards are put in place to ensure that this does  
20          not happen again.

21       **Dated this the 27<sup>th</sup> day of March 2012**

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24       **Honourable Mr. Justice Charles Quin**  
25       **Judge of the Grand Court**

