

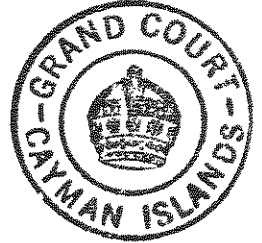
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **INDICTMENT NOS: 0007/13; 24/13; 24/13 A; 24/13B**

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8 **THE QUEEN**

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10 **V**

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12 **GARFIELD SILBURN JR.**



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15 **Appearances:** **Ms. Tricia Hutchinson for the Crown**

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17 **Mr. John Furniss for the Defendant**

18
19 **Before:** **The Hon. Mr. Justice Charles Quin**

20 **Submissions heard:** **16th August 2013**

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22 **SENTENCE RULING**
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- 24 1. The Defendant has pleaded guilty to the charges of Handling Stolen Goods
25 (Indictment 7/13), Robbery (Indictment 24/13), Theft (Indictment 24/13A),
26 and, Attempted Theft (Indictment 24/13B) and the Court will proceed to
27 address these charges in the order in which the offences occurred.

28 **HANDLING STOLEN GOODS**

- 29 2. The Defendant pleaded guilty to Handling Stolen Goods contrary to s.260(1)
30 of the Penal Code (2010 Revision).
- 31 3. The particulars of the offence are that on the 26th January 2013 on Shedden
32 Road, George Town, Grand Cayman, the Defendant dishonestly received

1 certain stolen goods, namely a Blackberry cell phone belonging to Lennie
2 Bush, knowing or believing the same to be stolen goods.

3 4. On the afternoon of the 26th January 2013 the Complainant was approached
4 by two men, both wearing ski masks. The men threatened to stab the
5 Complainant if he did not empty his pockets. The Complainant provided the
6 two men with a sum of cash and a Blackberry and then reported the matter to
7 the police.

8 5. The police then BBM'd the Blackberry and then the Defendant returned the
9 BBM with a photo of himself. The Defendant was shortly thereafter
10 apprehended.

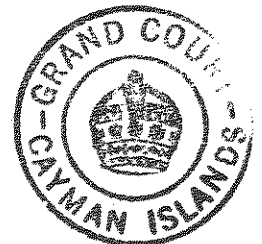
11 6. The Defendant admitted that he had purchased the stolen Blackberry,
12 knowing it to be stolen. The Defendant was fully cooperative with the police
13 and gave the names of the persons from whom he purchased the Blackberry.

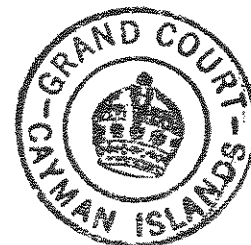
14 7. The Crown accepts that the Defendant was not part of the robbery and was
15 not a known regular outlet for stolen goods. There were no particular
16 aggravating circumstances, the Blackberry was recovered, and, the
17 Defendant admitted his guilt.

18 8. There are significant mitigating circumstances:

19 i. The Defendant admitted his guilt at the very earliest stage and was fully
20 cooperative with the police.

21 ii. The Defendant at this stage was a young man of good character.





1 iii. The Defendant took no part in the robbery and was not a regular fence
2 for stolen goods.

3 iv. The Defendant made no profit from the item.

4 v. In January 2013 this was considered to be a one-off offence on the part
5 of the Defendant.

6 9. The Court applies the guidelines set down by the English Court of Appeal in
7 *R v. Webb, Andrew, Andrew, Moore and White* [2002] 1 Cr. App. R. (S)22,
8 and the judgment of the Vice President Lord Justice Rose, which have since
9 been adopted by the Grand Court. In that case Lord Justice Rose reviewed
10 the English case law and the guidelines from the Sentencing Advisory Panel.
11 Accordingly at paragraph 20 Lord Justice Rose states:

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

- 15 1. *The closeness of the handler to the primary offence. We*
16 *add that closeness may be geographical, arising from*
17 *presence at or near the primary offence when it was*
18 *committed, or temporal, where the handler instigated or*
19 *encouraged the primary offence beforehand, or, soon*
20 *after, provided a safe haven or route for disposal.*
- 21 2. *Particular seriousness in the primary offence.*
- 22 3. *High value of the goods to the loser, including*
23 *sentimental value.*
- 24 4. *The fact that the goods were the proceeds of a domestic*
25 *burglary.*
- 26 5. *Sophistication in relation to the handling.*
- 27 6. *A high level of profit made or expected by the handler.*
- 28 7. *The provision by the handler of a regular outlet for*
29 *stolen goods.*

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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.”

Lord Justice Rose went on to state at paragraph 22,

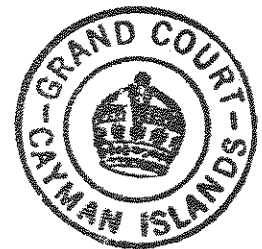
“We also agree with the panel that other factors to be taken into account include personal mitigation, ready cooperation with the police, previous convictions, especially for offences of dishonesty, and a timely plea of guilty.”

11. In ***R v. Trent Bodden*** Indictment No. 7 of 2009 dated the 15th January 2010 the Defendant pleaded guilty to two counts of Handling Stolen Goods. The Court followed the guidelines in ***R v. Webb*** and accepted that the Defendant had taken no part in the robbery and that it was a one-off offence committed by an otherwise honest character. Accordingly, the Court in ***R v. Trent Bodden*** ordered one year of probation on each count, with a requirement to undertake 100 hundred hours of community service, and to attend counselling to address his substance abuse problems.



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12. In *R v. Paul Miller* Indictment Number 65/11 dated the 27th March 2012, the Court again applied the guidelines set down and ordered a sentence of imprisonment of six (6) months for a very similar offence to this case. However, in light of the acceptance by the prosecution that the Defendant took no part in the robbery, I impose, in this case, a sentence of three (3) months' imprisonment.



ROBBERY

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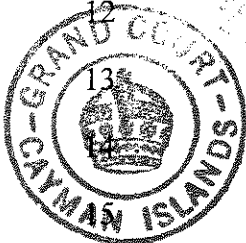
13. On Indictment Number 24 of 2013, the Defendant pleaded guilty to one count of Robbery contrary to s.242 of the Penal Code.

14. The particulars of the offence are that the Defendant, on the 23rd March 2013 at Dr. Roys Drive, Grand Cayman, stole a lady's handbag, the property of Alison Shirlaw and at the time of doing so and in order to do so used force against Alison Shirlaw.

15. On the afternoon of Saturday the 23rd March 2013 the Complainant exited a hair dressing salon on Dr. Roys Drive. She went around the rear of the premises to get into her Jeep Wrangler in the car park. She started up the vehicle and then she heard a man shout. She looked around and saw a young male who grabbed her handbag with such force that she was pulled from her seat. The Complainant was terrified and tried to get away. The Defendant continued to pull at her bag, causing the Complainant to lose control of her vehicle and collide into the wall close to where her vehicle had been parked. The Complainant eventually threw the bag at the Defendant, who ran off.

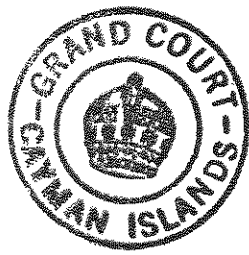
16. The Complainant reported the crime to the police. The Defendant's sunglasses were found in the Complainant's car. The Defendant was shortly arrested as, by that time, he was on bail and was wearing an electronic monitor (EMDT).

17. Upon arrest the Defendant immediately admitted to committing the offence. The Complainant's handbag was recovered but cash and some other items are still missing.



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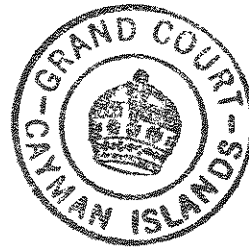
18. The aggravating features of this offence are:
- i. This was an unprovoked attack on the Complainant who became a vulnerable victim of an attack, robbery and a collision, after she was simply leaving a salon in broad daylight.
 - ii. The Defendant's use of violence is the most serious part of this offence.
 - iii. Although the Complainant was not injured, the Defendant's use of force caused her to hit the car against the wall, thereby damaging her property. Moreover, it is only by good fortune that she was not seriously injured.
19. The UK Sentencing Guidelines have been adopted by the Court of Appeal and the Grand Court. Under the Sentencing Guidelines produced by the Sentencing Guidelines Council in 2006 the sentencing range is up to 3 years' in custody, but the starting point is 12 months' custody for a person of hitherto good character.
20. The Court recognises the Defendant's early guilty plea by a reduction of 33 1/3 % and therefore imposes a sentence of 8 months' imprisonment.

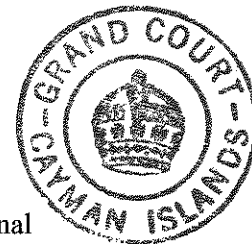


THEFT

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21. On Indictment Number 24 of 13A the Defendant pleaded guilty to one charge of theft contrary to s.241 of the Penal Code.
22. The particulars of the offence are that, on the 4th April 2013, outside the Brasserie Restaurant, Cricket Square, Elgin Avenue, stole a Jamis XR pedal cycle valued at CI\$250.00, the property of Fernando Alfredo Borrego Villa.
23. In this case, this was an opportunistic offence. The owner of the bicycle had left it outside the restaurant. The bicycle was not locked and the Defendant came along and just stole it in broad daylight. This must have caused the owner of the bicycle considerable anxiety and upset.
24. To the Defendant's credit he admitted to committing the offence and the bicycle was recovered.
25. The sentence imposed for this charge is 3 months' imprisonment.





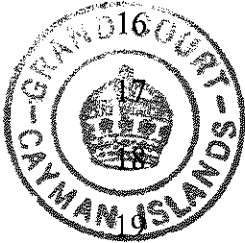
ATTEMPTED THEFT

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- 2 26. Having been charged with Attempted Robbery contrary to s.242 of the Penal
3 Code, the Defendant pleaded guilty to one count of Attempted Theft in
4 relation to Indictment 24 of 13B.
- 5 27. The particulars of the offence are that the Defendant, also on the 4th April
6 2013, at Cay-Courts Newport Avenue, Grand Cayman attempted to steal a
7 ladies handbag, the property of Kousalya Rozrio and at the time of doing so
8 and in order to do so used force against Kousalya Rozrio.
- 9 28. In this case the Complainant was a young lady who had left her home to go
10 to work at the Chrissie Tomlinson hospital, on foot, because it was not far
11 from where she lived.
- 12 29. The Court considers the Complainant in this case to be a vulnerable victim.
13 The Defendant rode up on the stolen bicycle and tried to grab her bag from
14 her. The Complainant held on to the bag and eventually the struggle caused
15 the Complainant to fall. The Defendant also fell off the stolen bicycle.
16 Fortunately, a passerby witnessed the incident and got out of his vehicle and
17 apprehended the Defendant. The Court commends this passerby for his
18 alertness and courage.
- 19 30. The Defendant was arrested by the police. Again, the Defendant gave a full
20 admission and was cooperative. Fortunately the items the Defendant
21 attempted to take were recovered in this case.
- 22 31. The sentence imposed for this charge is six (6) months' imprisonment.

ANALYSIS AND CONCLUSION

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32. I now consider the Defendant's total sentence.
33. The Court has been provided with a very helpful probation report dated the 16th August 2013 from Ms. Carla Court. Ms. Court highlights the complete absence of parental involvement in the Defendant's upbringing and that this has had a direct and consequentially detrimental impact on him. The Defendant's father is currently serving a sentence in HMPS Northward – having been convicted of several counts of possession of cocaine with intent to supply. The report reveals that the Defendant's father played little or no part in the Defendant's upbringing and his father's criminal activity was deeply disturbing to him. The report goes on to confirm that the Defendant's mother also played little or no part in the Defendant's upbringing.
34. Ms. Court said the Defendant is an intelligent young man who is very good with mechanics and automobile body repair work. However, the lack of community resources and the blatant neglect by his parents have robbed the Defendant of the necessary guidance and encouragement for him to succeed academically and or socially. Ms. Court states that the Defendant clearly needs help as he has been "tossed around" from institution to institution and has had no love or support from either of his parents.
35. Again, this is a very sad case in light of the Defendant's regrettable past.
36. Again, fortunately, the items stolen were recovered in the cases of Theft and Attempted Theft.



1 37. However, the aggravating features are:

2 *i.* Three of these offences were committed whilst the Defendant was on
3 bail;

4 *ii.* Two of these offences were unprovoked attacks on innocent third parties;

5 *iii.* The Complainant in the Attempted Theft offence suffered superficial
6 injuries;

7 *iv.* The Court must also take into account the very upsetting and unnerving
8 experience that these victims endured.

9 38. Accordingly, I now state the sentences being imposed by this Court:

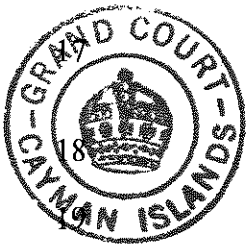
10 *i.* On Indictment No: 7/13, the charge of Handling Stolen Goods – 3
11 months.

12 *ii.* On Indictment No: 24/13, the charge of Robbery – 8 months to run
13 concurrent.

14 *iii.* On Indictment No: 24/13A, the charge of Theft – 3 months to run
15 concurrent.

16 *iv.* On Indictment No: 24/13B, the Charge of Attempted Theft – 6 months to
 run consecutive.

v. On the totality principle I make that a total of 14 months his is a total of
 14 months' imprisonment, with time spent in custody to be deducted.



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1 39. I hope that whilst this young Defendant is in custody he will think of the fear
2 he caused, and the physical and emotional harm endured by those he
3 attacked. Moreover, I hope he understands that any type of criminal activity
4 on his part will have serious consequences.

5 40. Mr. Silburn: Ms. Court confirms that you have had no parental guidance and
6 you have had an unhappy childhood. The Court accepts that things have not
7 been easy for you. However, Mr. Silburn, a criminal record is serious.

8 Mr. Silburn, you are young. You had the good sense to admit these offences
9 and cooperate with the police and you now can bring your criminal activity
10 to an end and change the course of your life by focussing now on your
11 excellent skills in the field of mechanics and automobile body repair.

12 At the end of your period of incarceration you must put your skills to use and
13 concentrate on obtaining a job, or jobs, in the field, and never resort to
14 criminal activity again. You are the only one who can ensure that you lead a
15 crime-free and productive life and you have the necessary ability and skills to
16 do so.

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18 **Dated this the 3rd day of September 2013**

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21 **Honourable Mr. Justice Charles Quin**
22 **Judge of the Grand Court**

