



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**  
3

4 **INDICTMENT NO: 25 of 2024**  
5  
6

7  
8 **R**  
9

10 **V.**  
11

12 **JASIER MATTHEW MCLEAN**  
13  
14  
15

16 **Appearances: Mr. Orrett Brown, Crown Counsel for the Prosecution**  
17

18 **Mr. John Furniss for the Defence**  
19  
20

21 **Before: The Hon. Justice Cheryll Richards KC**  
22

23 **Submissions Heard: 30<sup>th</sup> August 2024**  
24

25 **Sentence Judgment: 6<sup>th</sup> September 2024**  
26  
27

28  
29 ***Criminal Law** – Sentencing, Robbery contrary to s.242 (1) of the Penal Code (2024 Revision).*  
30 *Application of the Cayman Islands Sentencing Guidelines, Possession of an Imitation Firearm with*  
31 *Intent to Commit an Offence contrary to s.18 (6) of the Firearms Act (2008 Revision).*  
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1  
2 **SENTENCE JUDGMENT**  
3

- 4 1. The defendant is before the Court for sentencing following his guilty plea to two  
5 offences on the Indictment.  
6
- 7 2. Count 1 charges him with the offence of Robbery contrary to s.242 (1) of the Penal  
8 Code (2024 Revision). The particulars are that he on the 9<sup>th</sup> day of March 2024 at the  
9 Mostyn's Gas Station, Bodden Town, Grand Cayman, Cayman Islands, stole  
10 approximately CI\$40.00 in cash, the property of Mostyn's Gas Station, and at the time  
11 of doing so, sought to put Limuel Augeles Reyes in fear of being then and there  
12 subjected to force.  
13
- 14 3. The maximum sentence is life imprisonment.  
15
- 16 4. Count 2 charges him with the offence of Possession of an Imitation Firearm with intent  
17 to Commit an Offence contrary to s.18 (6) of the *Firearms Act* (2008 Revision). The  
18 particulars are that he on the 9<sup>th</sup> day of March 2024 at Mostyn's Gas Station, Bodden  
19 Town, Grand Cayman, Cayman Islands had in his possession an imitation firearm with  
20 intent to commit an offence, namely robbery.  
21
- 22 5. The maximum sentence is 20 years imprisonment and or a fine.  
23
- 24 6. The defendant first appeared in the Grand Court on the 27<sup>th</sup> March 2024. He was  
25 unrepresented. He advised the Court that he had been seeing a psychiatrist. A  
26 psychiatric report was ordered. The defendant was advised by the Court to await the  
27 appearance of his attorney and to consult with him. On the mention of the case on the  
28 26<sup>th</sup> April 2024, the defendant in the presence of his attorney insisted on reading out a  
29 letter of apology. Time was afforded for the defendant to meet with his attorney. On the  
30 third mention of the case, the defendant again accepted responsibility for his actions

1 and said that he was wrong to have done what he did and that he wanted to plead guilty  
2 to the charges. The Court delayed arraignment to allow the defendant time to meet with  
3 his Attorney. On the 21<sup>st</sup> June 2024, the defendant entered pleas to the two counts on  
4 the Indictment and reports were ordered. It is agreed that his plea was offered at the  
5 first reasonable opportunity and that he is entitled to full credit.



6  
7 **THE FACTS**  
8

- 9 7. The prosecution has provided a summary of facts which is not disputed by the defence.  
10  
11 8. On the 9<sup>th</sup> March 2024 sometime after 8pm, the defendant entered the gas station where  
12 the complainant Limuel Reyes was working as a cashier. The defendant had on a hoodie  
13 and had his right hand in the pocket of it. In his left hand he had a bottle of beer.  
14  
15 9. He asked the cashier to open the cash drawer, the victim replied that he could not do  
16 this and refused. The defendant smashed the bottle of beer on the ground, walked  
17 around the counter and confronted the victim. The victim did not open the cash drawer.  
18 The victim had placed on the counter, cash of \$40.00 from two previous sales. The  
19 defendant took up this money and walked towards the exit which was controlled by a  
20 buzzer. The victim refused to let him out and signaled to persons nearby to call the  
21 police. The defendant walked back from the exit to the victim and took up the victim's  
22 phone. He returned it to the victim when the victim asked him for it. The defendant  
23 then took up packs of condoms from the shelf and left the store through a side door.  
24  
25 10. Closed Circuit Television ("CCTV") footage from the gas station recorded the incident.  
26  
27 11. The police arrived shortly thereafter and received the report which pointed them in the  
28 direction in which the defendant had gone to the nearby beach. On the approach of the  
29 officers the defendant removed a jacket that he was wearing and placed it on the ground.  
30 He told the officer that the jacket belonged to his uncle and pointed to a person nearby.

1 That person when asked denied knowing the defendant. When the defendant was  
2 searched, he had five packets of condoms in his pocket, CI \$36.00 and a black mask.  
3

4 12. When it was searched, the jacket which he had placed on the ground had an object  
5 which looked like an imitation handgun. It had orange tape around the grip, blue tape  
6 around the slide and the cover of a notebook around the muzzle area.  
7

8 13. The defendant was interviewed under caution and admitted to the offence. He said that  
9 he committed the offence because he was desperate. He identified himself from the  
10 CCTV footage. When shown a picture of the firearm, he said that it was a firearm  
11 because it fired. He said that he had found it on the beach when he was a child. He had  
12 intended to throw it away but kept it after he was threatened by an unknown man. He  
13 said that it was a drill with tape around the handle and that he had put the tape around  
14 it. He said that he had only taken \$15.00 from the store as he had \$20.00 when he  
15 entered the store.  
16

17 14. A bundle of photographs was received as an exhibit for the purpose of this sentence  
18 hearing.  
19

20 **VICTIM IMPACT REPORT**  
21



22 15. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact  
23 Report dated 23<sup>rd</sup> August 2024. The victim stated that because the defendant had his  
24 hand in his pocket, he believed that the defendant had a firearm. He said that the offence  
25 has had a prolonged impact on his emotional wellbeing. It caused him trauma and stress  
26 which affected his ability to sleep for one month. He said that he is constantly vigilant  
27 at work and on his personal time as he fears being re-victimised. The store was also  
28 robbed approximately two months later on the 26<sup>th</sup> May 2024. He is disappointed that

1 he relocated to Grand Cayman for work opportunities and was victimised by the  
2 defendant one year later.

- 3  
4 16. The Probation Officer concludes that the offence has had a significant emotional impact  
5 on the victim. The fact that he was traumatised is evidenced by his sleep difficulties  
6 and prolonged hypervigilance. Protective measures are sought for him and are  
7 recommended by the Probation Officer.



8  
9 **ANTECEDENT HISTORY**

- 10  
11 17. The defendant has no previous convictions recorded against him.

12  
13 **SOCIAL INQUIRY REPORT**

- 14  
15 18. The DCR has provided a Social Inquiry Report in respect of the defendant dated 28<sup>th</sup>  
16 August 2024, ("SIR"). The Court has read the report in its entirety and takes into  
17 account everything said therein in favour of the defendant. The defendant is twenty-  
18 one years old. He had a difficult childhood. He had serious medical issues and  
19 difficulties in his home life where he was without his father from a very young age.  
20 There were also difficulties at school. He graduated high school but did not complete  
21 further education due to financial difficulties. He began and has continued using ganja  
22 and other drugs. He has held various jobs and reported that loss of jobs triggered him  
23 to use more drugs. He lost his two most recent jobs because of conflicts with another  
24 worker and a supervisor. He is currently employed at the prison.

- 25  
26 19. The defendant reported drinking a bottle of Disaronno alcohol throughout the day of  
27 the offence and taking medication.

1 20. Members of his family describe him as emotionally immature when things go wrong.  
2 In October 2023 he was hospitalised with a mental health diagnosis following which  
3 he was prescribed anti-psychotic medication and medication to treat anxiety.  
4

5 21. The information provided is that he had been unable to obtain his medication for about  
6 one month before the incident as he had missed a doctors' appointment three weeks  
7 prior to the offending, there was a noticeable change in his behaviour.  
8

9 22. Since being on remand, and back on his medication his attitude and behaviour has  
10 changed for the better.  
11

12 23. The defendant was assessed as being at medium risk of re-offending with one factor in  
13 the Very High category, alcohol /drug pattern. This is on the basis of what appears to  
14 be binge drinking and a dependency on ganja and use of other illicit substances which  
15 appear to have impacted his mental health.  
16

17 24. Under recommendations the Probation Officer states:  
18



19 “ Given the serious nature of the offences, the Court may wish to impose a custodial  
20 sentence to act as a strong deterrent against future offending. However, given Mr.  
21 McLean’s age, level of maturity, mental health difficulties, and lack of previous  
22 offending behaviour, there are concerns that an immediate custodial sentence could  
23 serve to have an adverse impact on his rehabilitation.”  
24

25 **PSYCHIATRIC REPORT**  
26

27 25. Dr. Arline McGill has provided a Psychiatry report dated 26<sup>th</sup> July 2024. The defendant  
28 is found fit to plead but suffers from Bipolar Disorder with mixed features. The doctor’s  
29 opinion is that some of these are linked to substance use and possibly neurological

1 deficits related to the medical treatment which he received in his early childhood for  
2 his serious illness. As to his behaviour at the time of the offending the Doctor said this:

3  
4 “At the time of the alleged offence, he appears to have been in the early stages of a  
5 manic episode modified by substance use resulting in psychosis and with depressed  
6 mood. Despite this, he was aware of what he was doing in the offence and from his  
7 statement to the on call psychiatrist, “I did something to secure his future, and I got  
8 caught”, recognised that it was against the law.” However, based on his poor  
9 reasoning and judgement as expressed to... it appears that he had reduced control  
10 over his behaviour at that time.

11  
12 ... Therefore, there is the overwhelming probability that he was acting in a state of  
13 diminished judgment generated by substance use and Bipolar Disorder.”

14  
15 **LETTER OF APOLOGY**



16  
17 26. The defendant read a letter of apology to the Court which states as follows:

18  
19 “Good day Your Honor,

20 Firstly, I would like to apologise.

21 My sincerest of apologies to you, my family, as well as all of the victim(s) involved.

22 When I was informed of my actions after my psychosis, I was deeply sadden[ed] and  
23 remorseful.

24 Everything seemed so surreal because of how out of character my actions were on the  
25 night of the incident.

26 I was not on any of the seven prescribed medications needed to mitigate the risk of  
27 having a mental breakdown. I take full responsibility in this regard because prevention is  
28 always better than cure.

29  
30 After I lost someone dear to me (my aunt).

1 A selfless woman who gave up her life, to nurture and help raise me while I battled  
2 Leukemia (cancer).

3 Since her passing, I must admit. It has been extremely difficult to find normalcy, both  
4 mentally and physically.

5 However, it will never stop me from trying to change my circumstances in the most  
6 positive and effective way. I owe it to myself and to my family.

7 I am a son, a grandson, a brother, a cousin and a nephew.

8 Before this incident occurred, I had full time employment.

9 I am a musician, photographer and foreign exchange trader.

10 I share this with information with you to reflect my positive and ambitious character, with  
11 the drive to create a successful and healthy environment for myself and those around me.

12  
13 There is not a day, which goes by that I do not regret and wish I could change my actions  
14 that night.

15 I was crying out for help, but I did it in a reckless way and I am and will continue to be  
16 apologetic and remorseful because I truly am.

17 I know I have messed up tremendously and I can only ask for mercy in regard to the  
18 charges against me.

19 The offence(s) I am being charged with, no weapons were drawn to indicate I was being  
20 aggressive,

21 No victims were physically injured, nor did I damage any property.

22 The disinterest to flee after the incident occurred indicates how badly the psychosis  
23 affected me.

24 I beg for leniency and for all parties to take my health history into consideration, as well  
25 as my remorse for my actions.

26 I would like [the chance to prove to everyone that I can do better and that I will.

27 I am not a bad person your Honor; I am just a traumatised young man trying to find a  
28 better solution to the pain and agony.”





1     **THE SUBMISSIONS**

2  
3         27.     Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for the  
4             offence of Robbery. Counsel for the prosecution submitted that this is an offence of  
5             lesser Culpability C because the defendant threatened or used minimal force and there  
6             was little or no planning. The harm is said to be Category 3, because the items taken  
7             were of little monetary value. There was limited impact on the business and the victim  
8             said that he continued to work after the incident.

9  
10        28.     For an offence of Lesser Culpability, Category 3 Harm the starting point is one year  
11            custody with a range of sentence of a community sentence to 3 years custody.

12  
13        29.     Counsel referenced four local cases of *R v Johnathon (Jonathan) Samuel Welcome*<sup>1</sup> ,  
14            *R v Tyree Jaden Welcome*<sup>2</sup>, *R v Alvin Shaquille Ebanks*<sup>3</sup> and *R v Kevin Kumar*  
15            *Walters*<sup>4</sup>.

16  
17     **AGGRAVATING FACTORS**

18  
19        30.     Counsel for the prosecution submits that there are five aggravating factors in this case:  
20                i.     The offences were committed at night;  
21                ii.    The offences were committed at a gas station and the beach, both places  
22                frequented by the public;  
23                iii.   The CCTV footage showed that other persons were within the precincts of  
24                the gas station at the time the robbery unfolded;

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<sup>1</sup> Grand Court Ind. 57 /16 - Unreported Judgment Coram: Dobbs J. (Actg.) dated December 15, 2016

<sup>2</sup> Grand Court Ind. 60 & 74/21- Unreported Judgment Coram Richards, J KC dated August 26, 2022

<sup>3</sup> Grand Court Ind. 102/22 -Unreported Judgment Coram Carter, J. dated May 31, 2023

<sup>4</sup> Grand Court Ind. 91 of 2023 -Unreported Judgment Coram Richards J, KC dated May 24, 2024

- 1                   iv. The defendant unsuccessfully attempted to conceal his connection to the  
2                   imitation firearm by telling the police that the jacket containing it belonged  
3                   to a man fishing on the beach; and  
4                   v. The defendant possessed the imitation firearm whilst he committed the  
5                   robbery.



7 **SUBMISSIONS IN MITIGATION**

- 8
- 9           31. Defence Counsel submitted that at the time of the offending the defendant was suffering  
10           from a mental health challenge. He had been consuming liquor and taken illegal drugs  
11           and had not been taking his prescribed medication for weeks. Counsel said that the  
12           defendant now stands before this Court medicated, much more clear headed, and  
13           remorseful.
- 14
- 15           32. Counsel submitted that a clear distinction can be drawn with the cases cited by the  
16           prosecution and the cases of *R v Duffy*<sup>5</sup>, and *Fabian Thompson v The Queen*<sup>6</sup>
- 17
- 18           33. Counsel said that the instant case deals with an article that resembled a pistol which  
19           was a drill covered in coloured tape. It is therefore an imitation firearm. The imitation  
20           firearm was not put to the usual associated use by the defendant that often accompanies  
21           the use of firearms. There is no allegation of any direct threats of violence to the victim.  
22           It was actually only found when the defendant was arrested on the beach some meters  
23           away. The defendant has no previous convictions or offences recorded against him. He  
24           was previously a man of good character.
- 25
- 26           34. In mitigation, Counsel submitted that the defendant had a difficult childhood, he has  
27           suffered from a deadly disease. He has been bullied as a child, has been forced to grow

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<sup>5</sup> [2005] 1 Cr. App. R.(S) 75

<sup>6</sup> CICA 10/2017, unreported Judgment dated 22<sup>nd</sup> October 2018

1 up without his parents but has still managed to achieve some level of academics and  
2 held a number of jobs at the age of twenty-one.

3  
4 35. Counsel said that the defendant is prepared to abide by the conditions that the Probation  
5 Officer has recommended as an option. The defendant has spent over 176 days in  
6 custody. It has been harder for him than anything he can imagine in his often-tortured  
7 mind. He has suffered being bullied even in prison. He seeks a chance to redeem  
8 himself and get back to his life. His family continues to be supportive and willing to  
9 assist him. The Court is urged to give him, and his family that opportunity and consider  
10 a suspended sentence with conditions.



11  
12 **THE SENTENCE**

13  
14 36. The offending was plainly serious in nature. It is a robbery of a small commercial  
15 enterprise which involved the deliberate attempt to cause the cashier to believe that the  
16 defendant was in possession of a firearm. The custody threshold is passed.

17  
18 37. It is accepted that the offence of Robbery falls into Category 3 C under the *Guidelines*.

19  
20 38. From a starting point of one year custody the offence is aggravated by the fact that it  
21 was committed at night, a circumstance which would have increased the level of fear  
22 in the victim. This was a public place, and the defendant attempted to conceal and  
23 deflect attention from himself on the arrival of the police. Additionally, the offence  
24 was clearly committed while under the influence of alcohol or drugs. All the  
25 circumstances taken together serve to increase the sentence to one of 24 months  
26 imprisonment.

27  
28 39. In mitigation the Court takes into account the defendant's young age, the fact that he  
29 has no previous convictions and is of good character, his personal circumstances to

1 include his troubled childhood, his genuine remorse and significantly his mental health  
2 issues. These serve to reduce the sentence by 8 months to one of 16 months  
3 imprisonment.

4  
5 40. The defendant is given full credit for his guilty plea of one third which further reduces  
6 the sentence to one of 10 months imprisonment.

7  
8 41. With respect to Count 2 the Court has considered the relevant questions as set out in  
9 the case of *R v Avis*<sup>7</sup>: -

10  
11 i. What sort of weapon is involved in this case? It is an imitation firearm.

12  
13 ii. What use if any was made of it? It was not brandished or pulled whilst in  
14 the presence of the victim. The victim says that the defendant placed his  
15 hand into his pocket.

16  
17 iii. With what intention did the defendant possess the imitation firearm? Clearly  
18 it was to instill fear into the mind of the victim.

19  
20 iv. What is the defendant's record? He has no previous convictions for offences  
21 of a similar nature.

22  
23 42. The Court has regard to the case of *R v Jonathan Welcome* and to the reasoning set out  
24 in the judgment of the Court in the case of *R v Kevin Kumar Walters* and adopts a  
25 starting point of 30 months imprisonment.  
26



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<sup>7</sup> [1998] 1 Cr. App. R. 420



- 1 43. The aggravating factors which are taken into account are the attempt at concealment of  
2 the firearm and the other three factors mentioned above for a total of 42 months  
3 imprisonment.
- 4  
5 44. In mitigation all the circumstances outlined above serve to reduce his sentence by 14  
6 months to one of 28 months.
- 7  
8 45. The defendant is given full credit for his guilty plea, further reducing his sentence to  
9 one of 19 months imprisonment.
- 10  
11 46. The offending arose out of the same set of circumstances and thus the sentences are to  
12 run concurrently. Time served is to be taken into account.
- 13  
14 47. Given his personal circumstances, a sentence of immediate custody is not completely  
15 unavoidable.
- 16  
17 48. The aims of sentencing in this case must include punishment, deterrence and  
18 rehabilitation. The defendant requires supervision and assistance to ensure that he takes  
19 his medication on time and does not use illegal substances and alcohol.
- 20  
21 49. Consequently, one half of the sentences in each case is to be served immediately, which  
22 the Court anticipates would be the amount of time or close to the amount of time already  
23 served.
- 24  
25 50. The other half in each case is suspended for two years. This is effective upon his release  
26 from Prison.
- 27  
28 51. With respect to the half of the sentence on the charge of Possession of Imitation firearm  
29 of 9 ½ months, in addition pursuant to section 21 of the *Alternative Sentencing Act* a

1 supervision order is made for two years with the conditions as recommended by the  
2 Probation Officer:

- 3  
4 i. To comply with any Mental Health Treatment recommended.  
5 ii. Undergo assessment at the Counselling Centre (TCC) for substance abuse  
6 and to participate in any programmes, including one (1) to one (1)  
7 counselling, as recommended by his Counsellor.  
8 iii. To submit to random alcohol and drug testing.  
9 iv. To participate in any programme recommended by the assigned Probation  
10 Officer.  
11 v. To refrain from approaching within 50 yards of Mr. Limuel Reyes.  
12 vi. To refrain from having direct or indirect contact with Mr. Limuel Reyes.  
13 vii. To refrain from entering onto the premises of Mostyn's Esso & Liquor  
14 Store, at 68 Bodden Town Road, Bodden Town.

15  
16 52. The Imitation firearm is ordered forfeited to the Crown to be destroyed.

17  
18 **Dated this the 6<sup>th</sup> day of September 2024**

19 

20 **The Hon. Justice Cheryl Richards KC**  
21 **Judge of the Grand Court**