



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

**CRIMINAL APPEAL No. 0019 of 2023
SCA No. 0001 of 2022**

BETWEEN:

ORLANDO ASHBURN KNIGHT

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. Jonathon Hughes of Samson Law for the Appellant
Mr. Alexander Barbour of the ODPP for the Respondent**

Heard:

10 November 2023

JUDGMENT

Transcript of oral judgment 10 November Approved for Release 30 May 2024

GOLDRING, JA (President)

1. In this proposed second appeal against sentence, the Applicant seeks an extension of time. As

long ago as the 28th of October 2021, he pleaded guilty before the Magistrate's Court sitting in Cayman Brac to two offences of dwelling house burglary. On the 16th of December of that year, the magistrate, Ms. McFarlane, sentenced him to imprisonment for 14 months. On the 26th of August 2022, the Honourable Justice Richards KC dismissed his appeal against sentence. He now seeks a further appeal.

2. In her characteristically clear way, Justice Richards set out the facts and issues in the appeal. We can do no better than refer to her summary.

"There was no dispute as to the facts. The premises are adjoining residential properties which are owned by the victim and her husband. It is their usual practice to reside part of the year overseas and part in Cayman Brac. They were both off the island at the material time. The defendant was resident across the road from the properties and was their neighbour. He knew that they were away from home. 47 items were taken from the properties, mostly of low value. The most expensive item was a GPS device valued at \$500. A number of the items were of sentimental value, for example, a quilt with the photographs of the victim's family members on it. After the victim returned to the island some time in December 2020, she saw the Appellant with an item which she recognized as belonging to her. As a result, a search warrant was executed in the house and some of the stolen items were recovered."

3. The learned judge continued:

"In sentencing, the magistrate considered the victim impact report dated the 9th of December, 2021. The victim is 80 years old and, an excerpt from the victim impact report is included in the sentencing reasons...

...The magistrate noted that the Appellant was nearly 47 years old and he has 39 previous convictions; the majority of these are for dishonesty and theft offences. The most recent convictions are in 2011 for similar offences for which he was sentenced for a total of two years' imprisonment."

4. Justice Richards referred to the assessment of the probation officer that there was a very high risk of reoffending given what was said to be his "compulsion to steal." She referred to his failure to follow through many opportunities for rehabilitation.
5. Before the magistrate, it was agreed that under the Sentencing Guidelines the culpability of the Applicant fell within category A for offences of burglary. The magistrate assessed the level of harm as being between categories 1 and 2: although the items taken were of relatively low value, they included items of sentimental value. The magistrate concluded that the starting point was 5 years' custody and reduced it to reflect the plea of guilty.
6. In shortly put submissions, it is said the concession made below was wrong; that there were no targeting so as to bring the offending within category A. It was an opportunistic offence. The Magistrate's starting point was too high.
7. We do not agree. It seems to us, as Justice Richards concluded, the magistrate was entitled to take the starting point she did: she was entitled to regard the premises as having been deliberately targeted by the Applicant. We do not accept, as was submitted in the written Grounds of Appeal, that the targeting has to be based upon the victim's vulnerability or the offender's hostility due to disability, race or sexual orientation.
8. Neither do we accept a further submission that due to the low value of the goods stolen the level of harm did not justify a finding that the offending fell above category 1. In our view, the Magistrate was entitled to have regard to what was said in the victim impact statement about the sentimental value of the property stolen and to place the offending between categories 1 and 2.
9. Finally, we do not accept, as was argued in the written Grounds of Appeal, that the magistrate was not entitled to have regard to the previous convictions because they had been "expunged" within the terms of the Criminal Records Spent Convictions Act (2018 Revision). As Mr. Hughes on behalf of the Applicant rightly conceded, that was a misconceived submission and we need say no more about it.

10. In the result, we unable to conclude this sentence was manifestly excessive. We refuse the application to extend time.