

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

4 **INDICTMENT NO: 1 and 39 of 2023**



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6
7
8 **R**

9
10 **V.**

11
12 **RICHARD LINCOLN REID JR.**
13
14

15 **Appearances:** **Mrs. Nicole Petit, Senior Crown Counsel, Office of the Director**
16 **of Public Prosecutions for the Prosecution**

17
18 **Mrs. Lee Halliday-Davis of Brady Attorneys-at-Law for the**
19 **Defence**
20

21
22 **Before:** **The Hon. Justice Cheryll Richards KC**
23

24 **Submissions Heard:** **2nd February 2024**
25

26 **Sentence Judgment:** **16th February 2024**
27
28
29

30 ***Criminal Law – Sentencing, Robbery contrary to s.242 of the Penal Code (2022 Revision),***
31 ***Possession of an Imitation Firearm with Intent to Commit an Offence contrary to s.18 (6) of the***
32 ***Firearms Act (2008 Revision), Application of the Cayman Islands Sentencing Guidelines, United***
33 ***Kingdom Sentencing Council Guidelines on firearm offences.***



1
2 **SENTENCE JUDGMENT**
3

- 4 1. The defendant is before the Court for sentencing following convictions after trial for ten
5 offences as set out in the Indictment.
6

7 **ROBBERY**
8

- 9 2. Counts One, Five, Seven, Eight and Nine charge the defendant with five offences of
10 Robbery. All are contrary to section 242 of the *Penal Code* (2022 Revision). They are in
11 respect of three incidents at three locations and four complainants.
12

- 13 3. The maximum sentence for this offence is life imprisonment.
14

- 15 4. **The particulars of Count One** are that he on the 8th day of December 2022 at 78 Paxton
16 Street, George Town, Grand Cayman, stole a bank card from Tammie Walton and
17 immediately before or at the time of so doing and in order to do so used force or sought
18 to put Tammie Walton in fear of being then and there subjected to force.
19

- 20 5. **The particulars of Count Five** are that he on the 8th day of December 2022, at #75
21 Devon Road, Prospect, Grand Cayman, stole \$400.00 cash from Deborah Kerr-White
22 and immediately before or at the time of so doing and in order to do so, used force or
23 sought to put Deborah Kerr-White in fear of being then and there subjected to force.
24

- 25 6. **The particulars of Count Seven** are that he on the 8th day of December 2022, at the Sky
26 Bar and Lounge, at #64 Boilers Road, George Town, Grand Cayman, stole cash
27 (approximately \$800.00) belonging to the Sky Bar and Lounge and immediately before
28 or at the time of so doing and in order to do so, used force or sought to put Linabel
29 Montero De La Cruz in fear of being then and there subjected to force.
30

1 7. **The particulars of Count Eight** are that he on the 8th day of December 2022, at the Sky
2 Bar and Lounge, at #64 Boilers Road, George Town, Grand Cayman, stole cash
3 (approximately \$100.00) belonging to Linabel Montero De La Cruz and immediately
4 before or at the time of so doing and in order to do so, used force or sought to put Linabel
5 Montero De La Cruz in fear of being then and there subjected to force.

6
7 8. **The particulars of Count Nine** are that he on the 8th day of December 2022, at the Sky
8 Bar and Lounge, at #64 Boilers Road, George Town, Grand Cayman, stole cash
9 (approximately \$210.00) belonging to Grettel Alvarez and immediately before or at the
10 time of so doing and in order to do so, used force or sought to put Grettel Alvarez in fear
11 of being then and there subjected to force.



12
13 **POSSESSION OF IMITATION FIREARM**

14
15 9. By **Counts Two, Six and Ten** the defendant is charged with three offences of Possession
16 of Imitation Firearm With Intent to Commit an Offence contrary to section 18(6) of the
17 ***Firearms Act*** (2008 Revision).

18
19 10. The maximum sentence is 20 years imprisonment and a fine of \$20,000.00.

20
21 11. **The particulars of Count Two** are that he on the 8th day of December 2022, at #78
22 Paxton Street, at George Town, Grand Cayman, had with him an imitation firearm with
23 intent to commit an offence, namely, to rob Tammie Walton.

24
25 12. **The particulars of Count Six** are that he on the 8th day of December 2022, at #75 Devon
26 Road, Prospect, Grand Cayman, had with him an imitation firearm with intent to commit
27 an offence, namely robbery.

1 13. **The particulars of Count Ten** are that he on the 8th day of December 2022, at #64
2 Boilers Road, George Town, Grand Cayman, had with him an imitation firearm with
3 intent to commit an offence, namely robbery.



4
5 **ATTEMPTED THEFT**
6

7 14. By **Counts Three and Four**, the defendant is charged with two offences of Attempted
8 Theft contrary to section 241(a) and 318 of the *Penal Code* (2022 Revision).

9
10 15. The maximum sentence is 7 years imprisonment.

11
12 16. **The particulars of Count Three** are that he on the 8th day of December 2022, at Cayman
13 National Bank, Countryside, Savannah, attempted to steal cash from a Scotiabank
14 account belonging to Tammie Walton.

15
16 17. **The particulars of Count Four** are that he on the 8th day of December 2022, at Cayman
17 National Bank, Countryside, Savannah, on an occasion other than that in Count Three,
18 attempted to steal cash from a Scotiabank account belonging to Tammie Walton.

19
20 **THE FACTS**
21

22 18. The case for the prosecution at trial was that on the night of the 8th December 2022, there
23 were three robberies of four victims at three separate locations in George Town. There
24 were also two attempts to use a bank card stolen from the last victim at an automated
25 teller machine (“ATM”) in Savannah. The defendant was identified to be the robber by
26 pieces of circumstantial evidence. At each location, the defendant had what appeared to
27 be a firearm.

28
29 19. The first robbery in time was at 7:47pm at Devon Road in Prospect outside the home of
30 Deborah Kerr-White. Cash \$400.00 was taken from her.



1
2 20. Ms. White went to the ATM at a bank in central George Town. Closed Circuit Television
3 (“CCTV”) footage showed her leaving the ATM and a car associated with the defendant
4 following her car from the bank to her home in Prospect. When she drove into her yard
5 and stopped, the defendant, wearing a mask and gloves approached her. He pointed what
6 appeared to be a gun to her right side and demanded money using expletives. He
7 threatened to shoot her if she did not hand over money. She gave him \$400.00. He ran
8 off, then ran back to her and said this is not all. By this time, she had closed and locked
9 her car door and the defendant ran away from her with the \$400.00.

10
11 21. The second robbery in time was at about 8:18pm that night inside the Sky Bar and Lounge
12 on Boilers Road in George Town. The victims at the Sky Bar and Lounge, Grettel
13 Alvarez and Linabel Montero testified that a masked person entered with what appeared
14 to be a firearm in his hand, pointed it at them and took money from the till (\$800.00) and
15 from their handbags (\$100.00 and \$210.00) and left with the money.

16
17 22. The third robbery in time was at about 8:44pm at Paxton Street off Smith Road. Ms.
18 Walton had been to the ATM at a bank by the Hurleys Roundabout. She had deposited
19 cash and then driven to her home. The defendant who was wearing a mask, approached
20 her, pointed a firearm at her and using expletives demanded money or he would shoot.
21 When she denied having money, she was requested to hand over her bank card and pin
22 number. She did so and the defendant left with the card.

23
24 23. About half an hour after that third robbery at about 9:15pm that night, the defendant
25 attempted on two occasions to use Ms. Walton’s bank card to obtain cash from an ATM
26 located in Countryside, Savannah. He was not successful because the deposit had only
27 recently been made by Ms. Walton and had not been cleared. Exhibit 29, the ATM Log
28 shows use of the card, at 9:15pm for \$1,500.00 and then \$1,000.00 and the response “No
29 funds”. CCTV footage showed the person wearing a T-shirt with letters on it. The
30 defendant’s phone when examined showed pictures of him wearing a similar shirt.

31



1 **VICTIM IMPACT REPORTS**

2
3 24. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact
4 Report (“VIR”) dated 11th December 2023 in respect of the victim Tammie Walton.

5
6 25. In a Victim Impact Statement dated 6th December 2023 attached to the VIR, Ms. Walton
7 states that she felt calm during the offence and the rest of the night. However, the next
8 day she felt as if she had gone into shock. She became extremely fearful of leaving her
9 house and going outside. She asked a relative to come to live with her for a couple months
10 as she was worried that the defendant would return and harm her. She could no longer
11 work after 5:00pm as she could not cope with being outside after dark and lost earnings
12 as a result.

13
14 26. She said that she was always looking over her shoulder wondering if he was behind her.
15 Due to her fear at night she had to seek medication. This continued for several months
16 after the incident. In addition, she describes how the offence has continued to affect her.
17 She is worried and anxious for her safety. She states that the offence has changed her
18 considerably and has had a lasting impact upon her.

19
20 27. The Probation Officer concludes that Ms. Walton was most impacted at the psychological
21 level.

22
23 28. The victim Deborah Kerr-White expressed apprehension about providing a VIR and has
24 not engaged with the Probation Officer.

25
26 29. No reports have been obtained in respect of victims Linabel Montero De La Cruz and
27 Grettel Alvarez.



1 **ANTECEDENT HISTORY**

2
3 30. The Probation Officer records that the defendant has no previous convictions as an adult.
4 However, as a youth he has a history of criminal and traffic offences. These were
5 committed between May 2019 and January 2022 and include Threats, Assaults,
6 Dangerous Driving and Driving Without Being Qualified. He was sentenced to a
7 Community Service Order in September 2022. The records of the Department of
8 Children and Family Services indicate that the defendant was not compliant with this
9 Order.

10
11 31. The instant offences were committed three months after the imposition of this Order.

12
13 **SOCIAL INQUIRY REPORT**

14
15 32. The DCR has provided a Social Inquiry Report (“SIR”) in respect of the defendant dated
16 12th December 2023. The Court has read this report in its entirety and takes into account
17 everything said therein in favour of the defendant.

18
19 33. The defendant is eighteen years old. He was seventeen years and two months old at the
20 time of the offending. He is the father of one child who is one year of age.

21
22 34. The defendant described having a good childhood, but the Probation Officer states that
23 the records indicate that the defendant was subjected to physical chastisement at a young
24 age. A parental figure was convicted of assaulting him by breaking his arm. His parents
25 separated when he was very young which caused difficulties for him. The records also
26 indicate that prior to the separation, the defendant began exhibiting problematic
27 behaviour at school. This continued and led to a medical diagnosis of Attention Deficit
28 Hyperactivity Disorder and Oppositional Defiance Disorder at the age of fourteen years.
29 He has also been diagnosed with anxiety. Efforts to assist him locally by medication and
30 ongoing treatment from a psychiatrist were not effective. There was no improvement in
31 his behaviour. Consequently, he was placed in overseas behavioural facilities in

1 September 2019. While at the first facility he assaulted staff and ran away. He was
2 transferred to a second facility. The records from that facility indicate ongoing
3 behavioural issues. These include pushing boundaries, combative and oppositional
4 behavior towards staff and peers and failing to maintain appropriate behaviour. He told
5 the Officer that while overseas he was prescribed medication which he believed was not
6 suited to him. He would hide his medication and refuse to take it.

7
8 35. He returned to the Cayman Islands after twelve months due to the Covid-19 pandemic.
9 On his return, efforts were made to enroll him in various schools but he did not engage
10 in learning. He was remanded by the Youth Court to a Boys Home in March 2021. While
11 there he participated in educational activities. Since being remanded in respect of this
12 offending he has attended educational classes at the Prison and is described as respectful
13 and interested in his education. His employment history is limited to a short-term contract
14 with a fencing company.

15
16 36. Under the heading Institutional Functioning, the Officer records that while on remand
17 the defendant has been involved in a number of altercations with other prisoners and staff
18 and as a result of this he has a charge which was pending in the Summary Court as at the
19 date of the SIR. He was offered counselling services at the Prison but disengaged shortly
20 after commencement of these.

21
22 37. The defendant was assessed using the Level of Service Case Management Inventory
23 Risk/Need Assessment Tool. His overall risk of re-offending was assessed as Very High
24 with four of the eight criminogenic factors in the Very High Category. Peers and
25 associates have been identified as a negative factor in his life.

26
27 38. The Officer notes that he has a long history of childhood behavioural issues. He has
28 demonstrated reluctance to engage with treatment interventions and the current offences
29 mark a significant escalation in the seriousness of his offending behaviour.





1 **THE SUBMISSIONS**

2
3 39. Both Counsel referred to the *Cayman Islands Sentencing Guidelines* for the offence of
4 Robbery. There is disagreement as to the level of culpability. In respect of street
5 robberies, the *Guidelines* provide: -

6
7 *Culpability - particularly demonstrated by one or more of the following:*

8
9 *A – High culpability*

- 10 • *Production and use of a weapon to inflict violence*
11 • *Production of a bladed article or firearm or imitation firearm to threaten violence*
12 • *Use of very significant force in the commission of the offence*

13
14 *B – Medium culpability*

- 15 • *Production and use of a weapon to threaten violence*
16 • *Threat of violence by a bladed article or firearm or imitation firearm (but which*
17 *is not produced)*
18 • *Other cases where characteristics for categories A or C are not present*

19
20 *C – Lesser culpability*

- 21 • *Played limited role in offence acting under the direction of others*
22 • *Involved through coercion, intimidation or exploitation*
23 • *Threat or use of minimal force*
24 • *Very little or no planning*

25
26 40. In respect of commercial robberies, the *Guidelines* provide: -

27
28 *Culpability - particularly demonstrated by one or more of the following:*

29
30 *A – High culpability*

- 31 • *Production and use of a weapon to inflict violence*

- *Production of a bladed article or firearm or imitation firearm to threaten violence*
- *Use of very significant force in the commission of the offence*



B – Medium culpability

- *Production and use of a weapon to threaten violence*
- *Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)*
- *Other cases where characteristics for categories A or C are not present C –*

Lesser culpability

- *Played limited role in offence acting under the direction of others*
- *Involved through coercion, intimidation or exploitation*
- *Threat or use of minimal force*
- *Very little or no planning*

41. With respect to the commercial robberies in this case, the prosecution submits that the culpability is high because of the use of an imitation firearm. The harm is said to be at the level of Category 3 because none of the factors in Categories 1 and 2 are present. High Culpability and Category 3 Harm would attract a starting point of 5 years custody with a range of sentence of 4 to 8 years.

42. In respect of the robberies of Deborah Kerr-White and Tammie Walton, the prosecution submits that these do not fall neatly into the category of street robberies because the defendant followed them to their homes.

43. It is submitted that were these treated as street robberies, giving the defendant the benefit of the doubt, the level of culpability is High because the defendant produced an imitation firearm in both instances and threatened violence against the victims.

- 1 44. As to the victim Walton, the prosecution submits that the Harm is at the level of Category
2 2 because of the ongoing fear for her safety. This is said to provide evidence of some
3 psychological harm caused above the level of harm which is inherent in the offence. The
4 submission is that this is an offence of High Culpability and Category 2 Harm with a
5 starting point of 5 years and a range of sentence of 3 to 8 years.
6
- 7 45. Defence Counsel agrees with the categorisation of street robberies stating that the victims
8 were not in the sanctity of their homes but outside in car parks.
9
- 10 46. Defence Counsel disagrees with the categorisation of High Culpability and submits that
11 this requires the use of very significant force and some type of violence which is not
12 present in the instant offences. It is submitted that the culpability is at the level of
13 Culpability B because there is a threat of violence and that this is a Category 3 rather than
14 Category 2 offence.
15
- 16 47. In respect of the level of Harm, Counsel submits that every robbery must carry some
17 degree of anxiety and that there is nothing in this case which is above the level of harm
18 inherent in the offence of robbery. Counsel submits that this is medium Culpability and
19 Category 3 Harm with a starting point of 3 years custody and a range of sentence of 2 to
20 5 years.
21
- 22 48. Defence Counsel submits that the commercial robbery is a high level Culpability B
23 because there was no infliction of violence, and the Harm is at the level of Category 3
24 with a starting point of 3 years.
25
- 26 49. Prosecuting Counsel drew the Court's attention to a number of cases. In *Barrett v R*¹, the
27 Cayman Islands Court of Appeal considered the applicants' appeal against a sentence of
28 12 years imprisonment for robbery and 6 years for possession of imitation firearm. These
29 sentences were imposed after a trial in the Grand Court. This was a robbery of a service
30 station at night. Cash \$450.00 had been taken following a threat to shoot.

¹ [2012] (2) CILR Note 16



1
2 50. The Appellate Court reduced the sentence of the applicant to one of 9 years imprisonment
3 on the basis that insufficient weight had been given to the fact that no violence was
4 actually used, the amount stolen was small and the robbery was of very short duration.
5

6 51. In *R v Haylock, Avila McLaughlin and Watson*², the Appellate Court referred to the
7 **Chief Justice’s Statement on Tariffs and Guidelines for Sentencing 2002** and stated that
8 in respect of a robbery for a first offence of an aggravated nature, a sentence of 8 years
9 would be imposed. The Court said that the **Guidelines** are not inflexible rules and that: -

10 *“As a starting point, those who arm themselves with weapons and undertake*
11 *premeditated robbery of small commercial premises must expect at least 5 years’*
12 *imprisonment. The court will depart from this starting point as appropriate, having*
13 *regard to both aggravating (e.g. threats with machetes) and mitigating*
14 *(e.g. teenage offenders and pleas of guilty) factors.”*
15

16 52. In the case of *Dan Davar Kelly v R*³, the appellant had been sentenced to 5 years
17 imprisonment after a trial for robbery and possession of an imitation firearm. He was
18 eighteen years old at the time of the offending. The Appellate Court said that for robbery
19 of a small commercial business an accused must expect at least 5 years imprisonment. A
20 sentence after a trial of 8 years would have been appropriate. The mitigating factors in
21 respect of the appellant included his young age, he had not been in trouble before and
22 had given considerable assistance to the police.
23

24 53. Defence Counsel notes the distinction with this case in that during that robbery the
25 appellant struck an employee over the head with a weapon which would have
26 automatically put the offence into a different bracket.
27

28 54. In *Jimmal William Facey v R*⁴, the appellant was sixteen years old at the time of the
29 commission of the two offences of robbery of a small commercial business in West Bay.

² [2011] 2 CILR Note 7

³ CICA Appeal 7/2017, Unreported Judgment dated 20th June 2019

⁴ CICA Appeal 22 and 23 of 2017, Unreported Judgment dated 30th January 2019



1 He had a difficult childhood, a learning disorder, Attention Deficit Disorder and other
2 problems which had gone untreated. The trial Judge in applying the *United Kingdom*
3 *Sentencing Council Guidelines* adopted a starting point of 16 years and discounted this
4 by one half in light of the defendant's age, for a final sentence of 8 years. Defence
5 Counsel in the instant case points out that the appellant committed the offences while he
6 was on an electronic monitor, thus he had been on bail at the time of the commission of
7 the offences.



8
9 **SUBMISSIONS IN MITIGATION**

10
11 55. Defence Counsel submits that a significant factor in mitigation has to be the age of this
12 defendant. He was seventeen years and a few months at the material time. He is lacking
13 in maturity.

14
15 56. Counsel referred to the *United Kingdom Sentencing Council Guidelines* and submitted
16 that a non-custodial sentence may be most suitable in this case. There was little force and
17 a long period in custody would leave the defendant open to be influenced by older
18 inmates. There is also the consideration of the conditions in which he will be kept. He
19 has been in custody for some eighteen months. Up until he was eighteen years old in
20 September of this year he was in almost isolation. It was very difficult for him. He is now
21 in the general prison population.

22
23 57. Counsel pointed to the defendant's difficult circumstances as outlined in the SIR, the
24 divorce of his parents when he was ten years old, the violence and physical abuse of him
25 in the home, his Attention Deficit Disorder and other diagnoses. Having returned to the
26 Island because of COVID-19 he has not had therapy. Counsel said that there is no
27 suggestion that the custody threshold has not been passed but there can be no
28 rehabilitation without treatment for his disorders.

29
30 58. Counsel asked the Court to consider a sentence of partial custody and the other part under
31 intensive treatment. Counsel also asked the Court to note the defendant's time in custody,

1 his age, his diagnoses and the reason that he was sent off Island in relation to therapeutic
2 treatment.



3
4 **THE SENTENCE**

5
6 59. This Court has kept at the forefront of its mind the young age of the defendant at the time
7 of the offending.

8
9 60. It is noted that although he was technically not a young person for the purpose of the
10 *Youth Justice Act* (2021 Revision), he was only two months over his seventeenth
11 birthday. The Court has reviewed the provisions of that *Act* and of the First Schedule in
12 particular. There is a general restriction on custodial sentences for young persons unless
13 the Court is of the opinion that none of the other methods of dealing with a young
14 offender are appropriate. Paragraph 6 of the Schedule provides: -

15
16 *“Qualifications for custodial sentence under paragraph 3*

17 *6. (1) A court may not pass a sentence of detention under paragraph 3 unless it is*
18 *satisfied—*

19 *a) that the circumstances, including the nature and the gravity of the offence, are*
20 *such that if the offender were aged seventeen or over the court would pass a*
21 *sentence of imprisonment; and*

22 *b) that the offender qualified for a custodial sentence.*

23 *(2) An offender qualifies for a custodial sentence if—*

24 *(a) he has a history of failure to respond to non-custodial penalties and is unable*
25 *or unwilling to respond to them;*

26 *(b) only a custodial sentence would be adequate to protect the public from serious*
27 *harm from that person; or*

28 *(c) the offence of which that person has been found guilty was so serious that a non-*
29 *custodial sentence for it cannot be justified.*

1 (3) Where any court passes a sentence of detention under paragraph 3 it shall be
2 its duty —
3 (a) to state in open court that it is satisfied that that person qualified for a custodial
4 sentence under one or more of the subsubparagraphs of subparagraph (2), the
5 subsubparagraph or subsubparagraphs in question and why it is so satisfied; and
6 b) to explain to the offender in open court and in ordinary language why it is
7 passing a custodial sentence on that person.”



8
9 **USE OF IMITATION FIREARM**

10
11 61. The Court accepts that under the **Guidelines** the offences in Count Five and Count One
12 may be appropriately characterised as street robberies. High culpability is indicated by
13 one of three factors. One of these is production of an imitation firearm to threaten
14 violence. Medium culpability refers to production of other weapons other than an
15 imitation firearm.

16
17 62. By their very nature imitation firearms have the appearance of real firearms and the effect
18 is to strike fear at the highest level into the victims. In the case of *R v Johnathon*
19 *(Jonathan) Samuel Welcome*⁵, the Grand Court (Dobbs J.) stated: -

20
21 *“Applying the questions set out in Avis: The court is concerned with an imitation*
22 *firearm. Although the maximum sentence under s.18 is the same whether the firearm is*
23 *imitation or real, commonsense dictates that the fact that the gun is an imitation one is*
24 *a highly relevant factor. If the gun in question had been a real firearm under the section,*
25 *the mandatory minimum sentence of 10 years’ imprisonment, unless exceptional*
26 *circumstances pertained would follow conviction. However, the fact that the gun was*
27 *an imitation one does not take the offence out of the clearly serious category which*

⁵ Grand Court Indictment No: 0057/2016 - Unreported 15th December 2016

1 *Parliament intended, not least because as Lord Bingham in the case of **Bentham***
2 *(supra) at paragraph 6 said:*

3
4 *“While an imitation firearm lacks the capacity of a real loaded firearm to*
5 *kill or injure, it has much the same capacity to frighten and enforce*
6 *compliance, not least because many imitations are almost indistinguishable*
7 *from the real thing and those threatened have little opportunity or*
8 *inclination to examine the nature of the weapon used.””*

9
10 63. The Court considers that the offending in the instant case is plainly one of High
11 Culpability because of the production of an imitation firearm.

12
13 **COUNTS SEVEN, EIGHT AND NINE - VICTIMS AT SKY BAR AND LOUNGE**

14
15 64. There are two victims from the Sky Bar and Lounge. Under the **Guidelines** this is a
16 commercial robbery. This is an offence of High Culpability given the use of an imitation
17 firearm to threaten violence. The Harm is at the level of Category 3 because factors in
18 Categories 1 and 2 are not present. The starting point is 5 years custody with a range of
19 sentence of 4 to 8 years custody.

20
21 65. This is the most serious offence involving multiple victims. From a starting point of 5
22 years custody, the offending is aggravated by the fact that there were multiple victims
23 including victims at other locations. The sentence is therefore increased from 5 years to
24 7 years (84 months).

25
26 66. Consideration is given to the fact that the defendant was subject to a Community Service
27 Order at the time of the offending, but no additional sentence is imposed in respect of
28 this factor. That order was imposed when he was a young person.



1 67. In mitigation, the Court takes into account everything said and written in favour of the
2 defendant, in particular the defendant's young age and lack of maturity. This is a
3 significant factor which serves to reduce the sentence by 18 months to one of 66 months.
4

5 68. The Court also takes into account the additional mitigation of the defendants' difficult
6 circumstances as highlighted in the SIR, the divorce of his parents when he was ten years
7 old, the violence and physical abuse of him in the home, his Attention Deficit Disorder
8 and other diagnoses, the fact that he is the father of a young child and the impact of likely
9 incarceration upon him. All these serve to further reduce the sentence by an additional 6
10 months to one of 60 months imprisonment.
11

12 **COUNT FIVE - VICTIM DEBORAH KERR-WHITE**
13



14 69. **In relation to Count Five**, for the reasons set out above the production of the imitation
15 firearm places the offending in Count 1 into the category of High Culpability. There is
16 no Victim Impact Statement from Deborah Kerr-White and no evidence of psychological
17 harm. It is accepted that this falls into Category 3 Harm. The starting point is 4 years or
18 48 months. This is reduced for youth and lack of maturity by 14 months to 37 months
19 and by reason of other mitigation by a further 6 months to 31 months imprisonment.
20

21 **COUNT ONE - VICTIM TAMMIE WALTON**
22

23 70. **In relation to Count One**, for the reasons set out above the production of the imitation
24 firearm places the offending into the category of High Culpability. There is a Victim
25 Impact Statement which indicates ongoing psychological effect. This has continued for
26 more than a year after the offence. This appears to be above the level of harm inherent in
27 the offence. The Harm is at the level of Category 2. The starting point is 5 years custody
28 or 60 months with a sentence range of 3 to 8 years. The sentence is reduced from the
29 starting point for youth and lack of maturity by 14 months to 46 months and by reason
30 of other mitigation by a further 6 months to 40 months imprisonment.
31



1 **COUNTS TWO, SIX AND TEN - POSSESSION OF IMITATION FIREARM**

2
3 71. For the offences of Possession of Imitation Firearm, the Court is mindful of the case of
4 ***R v Avis***⁶ which sets out a number of questions which should be considered when
5 sentencing in a firearms case:

- 6 a. What sort of weapon is involved?
7 b. What use, if any, was made of the firearm?
8 c. With what intention, if any, did the defendant possess the firearm?
9 d. What is the defendant's record?

10
11 72. In this case this was an imitation firearm which was used to effect robberies. The
12 defendant possessed the firearm with the intention to use it to frighten the victims in the
13 course of robberies.

14
15 73. In each case considering that the possession is treated as an aggravating factor in the
16 robberies and is not a standalone offence, a sentence of 30 months imprisonment is
17 imposed on each but is to run concurrently to the sentences for the offences of Robbery.

18
19 **COUNTS THREE AND FOUR – ATTEMPTED THEFT**

20
21 74. The sentence for each offence of Attempted Theft is 12 months imprisonment.

22
23 75. Considering the principle of totality, the sentences on all the offences are to run
24 concurrently with the proposed total sentence being 60 months imprisonment.

25
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⁶ [1998] 1 Cr. App. R. 420



1 **CONCLUSION**

2
3 76. The Court has considered whether this proposed sentence is proportionate to the
4 offending. A small business was robbed at gun point and victims identified and targeted
5 from their use of ATMs. This was multiple offending over a course of hours. While no
6 violence was meted out to the victims and small amounts were taken, the use of the
7 imitation firearm and the threats in one case to shoot the victim's head off must have
8 struck untold fear into the minds of the victims. To be followed home and approached in
9 one's yard in the dark must have been terrifying. This was a persistent and prolonged
10 effort to obtain money. The offending is serious.

11
12 77. The custody threshold is firmly passed.

13
14 78. The SIR provides a detailed history of the defendant, and the efforts made to treat and
15 rehabilitate him. He is not assisted by his home life where as Defence Counsel submitted
16 he can do no wrong for one parent and it is noted that for the other parent his activities
17 such as kicking chickens are described as youthful exuberance.

18
19 79. Defence Counsel's submission that a full or partial community sentence for the defendant
20 has been considered. The Court notes that efforts to assist him locally with treatment have
21 failed. Overseas placements for treatment seemingly were not effective and he appears
22 to have fought hard against these. Efforts to place him in learning institutions since his
23 return from overseas have all failed in part because he did not engage. He was on a
24 community order and was non-compliant at the time of this offending. The reality is that
25 there can be little confidence that he will be willing to and will engage and comply with
26 a community sentence. There is a history of non-compliance.

27
28 80. The Probation Officer describes him as being at very high risk of reoffending. This Court
29 has considered whether other methods of sentencing are appropriate given his age and
30 the concern for his welfare and rehabilitative needs. The conclusion is that focusing on
31 him as an individual, no other sentence other than one of custody would be appropriate.
32

1 81. This is a case where not only must he be protected from himself, but society must be
2 protected from serious harm from him. A non-custodial sentence cannot be justified for
3 such serious offences as these.

4
5 82. The sentence is therefore 60 months imprisonment with all the other sentences to run
6 concurrently. While in prison he is to receive the recommended rehabilitative treatment.

7
8 83. Time served is to be taken into account.

9

10 **Dated this the 16th day of February 2024**

A handwritten signature in blue ink, consisting of a series of connected, fluid strokes that form a stylized, somewhat abstract shape.

11

12 **The Hon. Justice Cheryll Richards KC**
13 **Judge of the Grand Court**