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7 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
8 **CRIMINAL SIDE**

9 **INDICTMENT NO: 102 of 2022**

10
11 **HIS MAJESTY THE KING**

12
13 **-V-**

14
15 **ALVIN SHAQUILLE EBANKS**

16
17 **Appearances:** **Mr. Scott Wainwright for Crown**
18 **Mr. Keith Myers for the Defendant**
19 **Defendant (via Zoom link)**

20
21 **Before:** **Hon. Justice Marlene I. Carter (Actg.)**

22 **Date of Conviction:** **17 March 2023**

23 **Date of Sentence:** **31 May 2023**
24
25

26 **HEADNOTE**

27 *Criminal Law- Sentence- Robbery- Possession of Imitation Firearm- Concurrent sentence*
28

29 **SENTENCE JUDGMENT**

30 ***Facts***

- 31 1. On the 17th of March 2023, following a trial in the Grand Court, this defendant was convicted of
32 two offences:



- 1 (i) Robbery, contrary to section 242 of the Penal Code (2022 Revision).
- 2 (ii) Possession of an imitation firearm with intent to commit an offence, namely robbery,
- 3 contrary to section 18(6) of the Firearms Law (2008 Revision).

4
5 2. The jury accepted that two robbers went to the Hell Gas Station on the 5th of December 2022. One
6 of the robbers remained in the getaway vehicle while the other entered the Gas Station. The
7 defendant was found to be the robber who entered the Gas Station and demanded cash from the
8 cashier. During the robbery the defendant was masked and in possession of an imitation firearm.
9 During the robbery the defendant assaulted the cashier. The cashier was struck several times with
10 the imitation firearm resulting in minor injuries to his ear and knuckles.

11
12 3. The defendant was identified by DNA and other evidence as being the robber.
13

14 ***The offence: Commercial Robbery***

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16 4. Counsel for the prosecution submits that for the purposes of the Cayman Islands Sentencing
17 Guidelines as they relate to commercial robbery, this is an offence which falls into Category A2.
18 The prosecution submits that Culpability is at Category A based on the production and use of a
19 weapon to threaten and inflict violence.

20
21 5. It is further submitted that Harm is at category 2 since there was some physical harm inflicted on
22 the victim above the level of harm inherent in this offence.

23
24 6. Category A2 offences of robbery have a starting point of nine years custody with a sentencing range
25 of seven to fourteen years custody. Counsel for the defendant agrees with the categorisation
26 suggested by the prosecution.

27
28 7. The prosecution submit that the following are additional aggravating features:

29
30 i) Attempts to destroy/dispose of evidence – the vehicle used in robbery was burnt out, the
31 packaging for the imitation firearm was partially burnt and items of clothing worn during
32 the robbery were disposed of/concealed in a nearby lot.

33
34 ii) Attempts were made to disguise/conceal identity – both assailants were wearing
35 balaclavas/face coverings during the robbery.



1
2 iii) This defendant played a leading role in a group activity – the prosecution contend that the
3 two robbers constitute a small group, that this was not an offence committed by one
4 offender acting alone. The defendant entered the Gas Station and robbed the cashier
5 whilst his accomplice was merely a lookout/getaway driver.

6
7 8. Regarding the aggravating factors suggested above, Counsel for the defendant submitted that the
8 court should not find that the defendant played a leading role in a group activity, that the evidence
9 presented at trial did not support this submission and further that while the vehicle used in the
10 robbery was found burnt out there was no direct evidence of the defendant’s involvement in the
11 attempted destruction of the vehicle. I am satisfied that the evidence presented at trial does support
12 the defendant having played a leading role in the robbery and while there is no direct evidence of
13 the defendant having attempted to destroy the getaway vehicle, this was clearly an attempt to
14 destroy evidence associated with the robbery.

15
16 9. The defendant committed the offences for which he has been found guilty during the currency of a
17 suspended sentence. The defendant was sentenced in September 2021 for 3 counts of Assault
18 Occasioning Actual Bodily Harm and received a sentence of 10 months’ imprisonment, suspended
19 for 2 years, 3 months of which was to be served immediately. There remained an unexpired 9
20 months of the suspended period when the instant offence was committed. I consider this breach of
21 the suspended sentence order an aggravating factor in this case.

22
23 10. The defendant’s previous conviction record is another relevant aggravating factor. The Defendant
24 has 19 previous convictions. Significantly, he received a sentence of 2 years and 8 months
25 imprisonment for robbery in June 2015 and has convictions for similar offences involving
26 deprivation of property including theft, burglary, and 4 convictions for handling stolen goods.

27
28 11. No mitigating factors have been advanced for the court’s consideration.
29

30 ***The Offence: Possession of an imitation firearm with intent to commit an offence***

31
32 12. Section 18(6) of the Firearms Law, 2011 states that a person convicted of the offence of possession
33 of an imitation firearm is liable on conviction to a fine of one hundred thousand dollars and to
34 imprisonment for twenty years.
35



1 13. There are no sentencing guidelines in the Cayman Islands for this particular offence. There are few
2 cases in which an imitation firearm has been used to commit burglary or robbery.

3
4 14. It has been the practice in this jurisdiction to draw a distinction between a defendant found guilty
5 of the possession of a firearm and the possession of an imitation firearm. Consequently, although
6 Section 39 of the Firearms Law prescribes a mandatory minimum sentence for possession of a
7 firearm which applies equally to offences involving an imitation firearm, the approach in this
8 jurisdiction has been to apply a sentence below the mandatory minimum in relation to offences
9 involving imitation firearms based on the nature of the firearm involved.

10
11 15. Counsel for the Crown agreed with the court that the tariff may be between 3-5 years for this
12 offence. Counsel submitted that as the conduct in Count Two is an integral part of the conduct on
13 Count One, the sentence on Count Two may be ordered to run concurrently to the sentence on
14 Count One.

15
16 16. The court has considered the case of *Avis*¹ in seeking to arrive at the appropriate sentence. Applying
17 the approach in that case: the offence relates to an imitation firearm. The firearm was brandished
18 during the robbery and was used to intimidate and to injure. The defendant played a leading role
19 in the robbery. He entered the gas station and demanded the cash while armed with the imitation
20 firearm. The defendant has a previous conviction for robbery.

21

22 ***The Social Inquiry Report***

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24 17. On the date of conviction, the court ordered that a Social Inquiry Report (SIR) be prepared in
25 respect of the defendant to aid the sentencing exercise. The probation office has reported that on
26 25th April 2023 the defendant declined to engage with the SIR process. The defendant gave no
27 specific reason for his refusal to engage other than not wanting to. He indicated that he would like
28 the court to have sight of an SIR prepared in a previous case. This report is dated 1st February 2021.
29 For non-compliance with the court's order, this court is well within its discretion to ignore any
30 report regarding the defendant. However, I have had sight of the February 1st report to glean
31 something of the defendant's background.

32

¹ [1998] 1 Cr.App.R. 420, CA



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2 18. The report noted that the defendant was adopted at birth. He was raised with his adoptive parents'
3 five biological children, until the age of fourteen. Although he was raised by his foster parents, his
4 biological mother was integral in his life. The defendant is himself the father of two children.

5
6 19. The defendant attended Cayman Academy and the John Gray High School, leaving the latter in
7 year 9 as he was expelled for fighting. That was the extent of his formal education.

8
9 20. At the time of the report in February 2021, the defendant was assessed using the LS/CMI Risk/Need
10 Assessment Tool. His overall risk of re-offending was assessed as "Very High" due to
11 criminogenic factors: Companions; Criminal History, Educational/Employment, Pro-Criminal
12 Attitude/Orientation; Anti-Social Pattern.

13
14 21. The defendant's refusal to participate in the preparation of a Social Inquiry Report deprives the
15 court of any consideration of his present attitude towards these offences. It may be that such may
16 be implied or inferred from the defendant's refusal to engage with the process. However, I make
17 no such inference.

18
19 ***The Victim Impact Report***

20 A Victim Impact Report (VIR) was also before the court. The cashier at the Hell Gas Station was
21 interviewed. He expressed a lack of interest in participating in a fulsome VIR. He stated that he
22 has "*put everything behind him*" and did not want to go through having to recall the events that
23 transpired during the offence or the impact those events had on him. The victim was probed as to
24 whether the offence influenced his decision to resign from that employment. He stated that it did
25 not.

26 ***The sentence of the court***

27 22. Based on the foregoing, the sentence of the court is as follows. For the offence of robbery, adopting
28 a starting point of 9 years custody the starting point will be increased to 12 years custody to take
29 into account the aggravating factors as outlined above as well as the court's consideration regarding
30 the principle of totality.

31
32 23. Counsel for the defendant urged the court to consider that there is only a presumption of activation
33 of a suspended sentence order. He submitted that the court should not activate the remaining portion



1 of the suspended sentence where the defendant had not committed any further offence
2 approximately one year and three months into the period of suspension. The defendant was subject
3 to a further 9 months of the suspended period when the instant offence was committed. He
4 submitted that the court should have in mind the principle of totality in determining whether in all
5 the circumstances the suspended sentence should be activated in this case.

6
7 24. I make no order to activate the term of 7 months which is the remaining term of the suspended
8 sentence, albeit that this court would have been entitled, in its discretion, to do so and to order such
9 sentence run consecutive to the sentences for the instant offences. Instead, as outlined above, the
10 fact of the instant offences being committed during the currency of the suspended sentence is
11 instead considered a significant aggravating factor on sentence.

12
13 25. For the offence of possession of an imitation firearm with intent to commit an offence, I take as my
14 starting point a sentence of 3 1/2 years imprisonment. I consider the aggravating factors as outlined
15 above. I find that the appropriate sentence is 4 years imprisonment. This sentence will run
16 concurrent to the sentence for robbery it being, as the Crown submits, "*an integral part of the*
17 *conduct*" for that offence.

18
19 26. The sentence of the court is therefore as follows:


20
21 Count 1: Robbery

22 12 years imprisonment

23 Count 2: Possession of an imitation firearm with intent to commit an offence, namely robbery.

24 4 years imprisonment concurrent to the sentence on count 1.

25 Time in custody to be deducted.
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27 
28 Justice Marlene I. Carter
29 Judge of the Grand Court (Actg.)
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