



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

4 **INDICTMENT NOs: 60 and 74 of 2021**  
5  
6  
7

8  
9 **THE QUEEN**

10  
11 **V.**  
12

13 **TYREE JADEN WELCOME**  
14  
15

16 **Appearances:** **Mr. Kenneth Ferguson, of the Office of the Director of Public**  
17 **Prosecutions for the Prosecution**

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

20 **Before:** **The Hon. Justice Cheryll Richards QC**

21 **Submissions Heard:** **4<sup>th</sup> August 2022**  
22

23 **Sentence Judgment:** **26<sup>th</sup> August 2022**  
24  
25

26 **HEADNOTE**

27 *Criminal Law – Sentencing, Robbery contrary to s.242 of the Penal Code (2019 Revision),*  
28 *Possession of an Imitation Firearm with Intent to Resist Arrest contrary to s.18 (6) of the*  
29 *Firearms Act (2008 Revision), Application of the Cayman Islands Sentencing Guidelines for*  
30 *Robbery, United Kingdom Sentencing Council Guidelines on firearm offences.*  
31  
32



## SENTENCE JUDGMENT

1  
2  
3 1. The defendant is before the Court for sentencing in respect of two Indictments and two  
4 scheduled offences. On the 30<sup>th</sup> March 2022 he was convicted after trial by jury on  
5 Indictment 60 of 2021 of a single count of Robbery contrary to s.242 (1) of the *Penal*  
6 *Code* (2019 Revision). The particulars of the amended Indictment are that he together  
7 with persons unknown, on the 14<sup>th</sup> day of September 2021 at McKays Store, Walton  
8 Plaza, 48 Eastern Avenue, George Town, Grand Cayman, Cayman Islands stole between  
9 \$1200.00 and \$1500.00 belonging to Michael Ebanks and immediately before or at the  
10 time of doing so, and in order to do so put Michael Ebanks in fear of being then and  
11 there subjected to force. The maximum penalty for this offence is life imprisonment.

12  
13 2. In respect of Indictment 74 of 2021, the defendant is to be sentenced for the offence of  
14 Possession of an Imitation Firearm with Intent to Resist Arrest contrary to s.18(6) of the  
15 *Firearms Act* (2008 Revision). The particulars of the offence are that he on the 27<sup>th</sup> day  
16 of July 2021, in the vicinity of Eastern Avenue, George Town, Grand Cayman, Cayman  
17 Islands, had in his possession an imitation firearm with intent to resist arrest. The  
18 maximum sentence for this offence is a fine of \$100,000.00 and or imprisonment for 20  
19 years.

20  
21 3. The defendant first appeared before the Grand Court on this Indictment on the 12<sup>th</sup>  
22 November 2021. On the 10<sup>th</sup> December 2021, he pleaded not guilty, and a trial date was  
23 set. Before the commencement of the trial, the defendant asked to be re-pleaded and  
24 entered a plea of guilty.

### **SUMMARY OF FACTS – INDICTMENT 60 OF 2021**

25  
26  
27  
28 4. The robbery occurred on the 14<sup>th</sup> September 2021. At trial the prosecution's case was  
29 that at 3:10pm in the afternoon, the defendant entered the store of the victim, Michael  
30 Ebanks, McKays Clothing and Variety Store at Walton Center, Eastern Avenue in



1 George Town. The victim has known the defendant from his childhood. The defendant  
2 was in the store for a short time and left without buying anything.

3  
4 5. The victim's evidence is that the defendant returned about ten minutes later together  
5 with another man. The victim let them in using the buzzer to the door. The second man  
6 stood with his body halfway in the doorway. The defendant entered, went behind the  
7 victim and said to him, "*Big man all we come for is the money*". The defendant pulled  
8 a machete out of his pants waist and held it up. The victim threw a pouch in which he  
9 had between \$1,200.00 and \$1,500.00 to the defendant. The defendant and the other  
10 man left the store with the pouch with the money.

11  
12 6. At the time of this robbery, the defendant had been on bail from the Summary Court for  
13 some charges. One of these was the charge of Possession of an Imitation Firearm with  
14 Intent to Resist Arrest. As part of his bail conditions, he had been fitted with an  
15 Electronic Monitoring Device (EMD). That device placed him in the vicinity of the  
16 Walton Center at the material time.

17  
18 **SUMMARY OF FACTS – INDICTMENT 74 OF 2021**

19  
20 7. The prosecution has provided a summary of facts in respect of Indictment 74 of 2021.

21  
22 8. About four months earlier on the 27<sup>th</sup> July 2021 at 8:15 pm, armed police officers  
23 attended the parking lot of a small business on Eastern Avenue, Young World Fashions  
24 (now re-named Caymart Hair and Beauty Supply). They did so following a report from  
25 an off duty officer that two men were in a vehicle and were behaving suspiciously.

26  
27 9. Upon their arrival at the scene two men were seen seated in the front seats of a blue  
28 BMW motor vehicle registration no.175 750. The officers gave instructions to the men  
29 to switch off the engine, place their hands outside the vehicle and exit the vehicle. The  
30 person in the passenger seat complied. The defendant did not. He ran and as he did so,



1 PC Hunte and other officers saw what appeared to be a black handgun in his right hand.  
2 PC Hunte shouted, “Gun”.

3  
4 10. A search of the vehicle revealed cocaine and ganja. A rose gold iPhone was found in  
5 the parking lot on the ground in the vicinity of where the car was parked and a black  
6 iPhone in the front passenger seat. The Cayman Islands driver’s license of the defendant  
7 was also found in the vehicle. The vehicle had been rented by him on the 26<sup>th</sup> June 2021  
8 from one Robert Robinson. The defendant turned himself in to the Police on the 4<sup>th</sup>  
9 August 2021. He was arrested on suspicion of committing the offence of possession of  
10 an unlicensed firearm.

11  
12 11. He was interviewed under caution the following day in the presence of his attorney. He  
13 provided a prepared statement in which he denied having any firearm or imitation  
14 firearm. He said he ran because when the police arrived, he had a small package of ganja.  
15 He admitted that the cocaine and ganja found in the vehicle belonged to him and that  
16 his phone had fallen from his hand as he ran.

17  
18 12. The rose gold iPhone was analysed by the police Intelligence Analyst Joanne Delaney.  
19 It was found to be attributable to the defendant and to contain a number of WhatsApp  
20 conversations. In particular a conversation between the defendant and a person whose  
21 name appeared in the phone as “Gully”.

22  
23 13. On the 26<sup>th</sup> July 2021 at 19:22:08 pm, the phone of Gully sent a message to the  
24 defendant’s phone “*Man dem rally on me today had to move up*”. The replies from the  
25 defendant’s phone included, “*Must want me rally with the bulldog on them*”.

26  
27 14. At 19:24:02 pm, the defendant’s phone sent an image of an apparent firearm before  
28 saying, “*Just know say they nay saying bounce fam*”, and other messages “*We ready for*  
29 *anything. You know this fam, don’t even gotta?? that; These some serious time fam so*  
30 *you know you can’t make nothing stop ya bread flow.*”



1 15. The image of the firearm and messages were received in evidence as an exhibit for the  
2 purpose of this sentence hearing. According to Ms. Delaney, the image of the firearm  
3 has written on the side, “CZ 75D Compact CAL 9 Luger’. She stated that this marking  
4 is identified as resembling the CZ (Czech Republic) firearm range.

5  
6 16. These messages were sent and received about twenty-four hours before the defendant  
7 was seen running from the parked vehicle with what appeared to be a firearm in his  
8 hand.

9  
10 **ANTECEDENT HISTORY**

11  
12 17. The defendant has three previous convictions. He is twenty-three years old. The  
13 convictions are all dated 18<sup>th</sup> December 2018. They are for Possession of a Prohibited  
14 Weapon for which he was sentenced to a community service order for 40 hours and two  
15 offences of Failing to Surrender to Custody for which he received a fine of \$25.00 or  
16 one-day imprisonment.

17  
18 18. The charge relative to the Possession of Prohibited Weapon has been produced from the  
19 Court’s records together with a Summary of Facts. The weapon is a flick knife. On the  
20 22<sup>nd</sup> December 2017, the defendant was stopped while he was driving a motor vehicle  
21 along Sound Way in George Town. This was because of the heavy tint on the vehicle.  
22 Inside the vehicle, he had in his pocket a silver flick knife. He said that he had this for  
23 his protection from possible harm from others and that he sometimes used it for work.

24  
25 **SOCIAL INQUIRY REPORT**

26  
27 19. The Department of Community Rehabilitation (DCR) has provided a Social Inquiry  
28 Report (“SIR”) with respect to the defendant which is dated 9<sup>th</sup> June 2022.



1     20.     The SIR states that during his childhood, he was exposed to an abusive relationship and  
2           to the use of drugs which likely caused him to act out at school and abuse drugs. He  
3           began using ganja at thirteen years old and at fourteen or fifteen it became a daily habit.  
4           At sixteen years old, he regularly drank alcohol heavily in the mornings. The Probation  
5           Officer also indicates that there is a pattern of offending with relation to driving  
6           offences.

7  
8     21.     The defendant spoke to the Probation Officer about having anti-social peers in his  
9           community in the period leading up to his arrest. This led to him engaging in day  
10          drinking and doing drugs.

11  
12    22.     While he is said to be no longer using drugs since being on remand, the Officer notes  
13          that there is evidence of his continued involvement. This is because in February 2022  
14          he received an adjudication from the Prison relevant to retrieving drugs from the roof of  
15          the Prison which had been thrown over the prison wall. In relation to this adjudication,  
16          he was found guilty and lost twenty-one days earnings as a result. There was a second  
17          adjudication relative to an attempted fight in respect of which he was cautioned. It is  
18          noted that he works two jobs at the prison as a Food Orderly and Wing Cleaner.

19  
20    23.     One community member who has known the defendant from childhood describes him  
21          as active, caring, giving and a kindhearted person.

22  
23    24.     At the time of the robbery, the defendant was unemployed and in receipt of a small  
24          government stipend which on his account to the Probation Officer was insufficient to  
25          cover more than his basic living costs.

26  
27    25.     The defendant was assessed using the LS/CMI instrument. His overall risk of re-  
28          offending was assessed as “Very High” with one of the eight criminogenic factors in the  
29          Very High category and five in the High category.



1 **VICTIM IMPACT REPORT**  
2

3 26. The DCR has also provided a Victim Impact Report dated 21<sup>st</sup> June 2022 in respect of  
4 the victim. Under Impact of the Offence, the Probation Officer records that the victim  
5 stated that the money which was stolen was not insured so that the loss was permanent.  
6 He had to close the store after the robbery and there was the potential loss of earnings.  
7 There was unplanned expenditure to install Closed Circuit Television (CCTV) to give  
8 him more of a sense of security.  
9

10 27. The victim reported being traumatised by the incident. He said: -  
11

12 *“Afterwards I was thinking he (the Offender) could have chopped me. Persons*  
13 *would have come and found me in a pool of blood. I was reflecting that you can*  
14 *know someone and talk good with them and they still can take your life. If he had*  
15 *come there and said Mr. Mickey I want a cigarette but I don’t have the money I*  
16 *would have given it to him, or if he had asked me to buy him a plate of food I would*  
17 *have. I was shocked in the moment that the offence was taking place, knowing that*  
18 *I know him and he would take away my property.”*  
19

20 28. Under the heading, Assessment /Evaluation, the Officer stated: -  
21

22 *“Based on the available information it would appear that the Offender’s actions*  
23 *significantly impacted Mr. Ebanks at the financial and emotional levels. Mr.*  
24 *Ebanks lost a substantial amount of money for a small business operator,*  
25 *especially during a time when the economy was still experiencing the effects of the*  
26 *pandemic and many small businesses were operating at a loss.”*  
27  
28  
29  
30



1 **THE SUBMISSIONS - ROBBERY**

2  
3 29. The prosecution submitted that the offending involved a robbery of a small commercial  
4 business which businesses are particularly vulnerable on this Island and is one in which  
5 a machete was used.

6  
7 30. Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* and  
8 submitted that the offence is one of Medium Culpability because a weapon was used to  
9 threaten violence.

10  
11 31. Counsel submitted also that the victim was traumatised and that it may be fairly said  
12 that psychological harm was done above that which is inherent in the robbery. The  
13 offence is thus one of Culpability B and Category 2 Harm with a starting point of 5 years  
14 imprisonment and a range of sentence of 4 to 8 years.

15  
16 32. Counsel referred the Court to the judgment of the Cayman Islands Court of Appeal  
17 (CICA) in the case of *R v. Michael Bush*<sup>1</sup>. The appellant was sentenced in respect of a  
18 robbery of a small grocery store in West Bay. This was committed when he was  
19 seventeen years old. He had no previous convictions. He was in the company of another  
20 man who had an imitation firearm. A sentence of 3 years imprisonment imposed on his  
21 guilty plea was upheld on appeal as not being manifestly excessive.

22  
23 33. Counsel submitted that in the instant case, the defendant was twenty-one years old at  
24 the time of the offence, his offending should attract a sentence significantly more than  
25 a sentence of 3 years after a trial.

26  
27 34. Defence Counsel submitted that this is a Culpability B offence and Category 3 Harm. It  
28 is accepted that it is Culpability B or Medium Culpability because of the use of a  
29 weapon. It is not accepted that the harm is at the level of Category 2. It is said that there  
30 is no evidence of physical or psychological harm that is over and above the level of harm

---

<sup>1</sup> CICA Crim. App. 8/16, Unreported Judgment dated 5<sup>th</sup> January 2017  
220826 R v Tyree Jaden Welcome: Ind. 60 &74 of 2021. Coram Richards J, QC - Sentence Judgment



1 inherent in this offence. Counsel thus argues that this would be a 2-year starting point  
2 with a range of sentence of 18 months to 3 ½ years.

3  
4 35. Both Counsel subsequently provided cases in respect of the issue of whether harm  
5 outside the inherent nature of the offence was caused. This Court is grateful to Counsel  
6 for their research.

7  
8 36. The defence referred to the case of *R v Jones (Reece Dylan)*<sup>2</sup>. In that case the English  
9 Court of Appeal considered that the information in the victim impact report was no more  
10 than an understandable emotional response and the immediate fears of someone who  
11 had been the victim in the robbery. It was not a reliable indication as to whether the  
12 harm was likely to be longstanding. The defence also referred to the case of *Christine*  
13 *Rae Smith v R*<sup>3</sup>.

14  
15 37. The prosecution drew the Court's attention to the cases of *R. v Adrian Gea and*  
16 *Madeinys Ebanks-Pol*<sup>4</sup> and *R. v Azeem Delano Barton*<sup>5</sup>.

17  
18 38. The Court notes that in both of the latter cases there was specific evidence as to the level  
19 of impact on the victim.  
20

## 21 AGGRAVATING FACTORS

22  
23 39. The prosecution submitted that the aggravating factors are: -

- 24  
25 i. That the defendant was on Summary Court bail and wearing an EMD at  
26 the time of the offence.  
27 ii. Violence was threatened when the defendant lifted the machete.

---

<sup>2</sup> [2021] 1 Crim App. R. (5) 36.

<sup>3</sup> CICA Crim. App. 15/2017, Unreported Judgment dated 31<sup>st</sup> July 2018

<sup>4</sup> Grand Court Unreported Judgment in Ind.109 and 110 of 2016 dated 22<sup>nd</sup> June 2018

<sup>5</sup> Grand Court Unreported Judgment in Ind.27 of 2018 dated 1<sup>st</sup> November 2018

220826 R v Tyree Jaden Welcome: Ind. 60 &74 of 2021. Coram Richards J, QC - Sentence Judgment



1                   iii. There is evidence of a degree of planning, the defendant having attended  
2                   the premises about ten minutes before the robbery was committed.

3                   iv. The vulnerability of small commercial premises.  
4

5           40. Defence Counsel accepts that the fact that the robbery was committed whilst the  
6           defendant was on bail for the earlier offences is an aggravating factor.  
7

#### 8   **THE SUBMISSIONS - POSSESSION OF IMITATION FIREARM** 9

10          41. In respect of the second offence the prosecution submitted that in the absence of offence  
11           specific guidelines in the Cayman Islands regard may be had to the *United Kingdom*  
12           *Sentencing Council Guidelines* on firearm offences. These relate to s.17(1) of the  
13           *Firearms Act 1968* which is in similar terms to the offence in the Cayman Islands. That  
14           *Act* provides: -  
15

16                           *“It is an offence for a person to make or attempt to make any use whatsoever of a*  
17                           *firearm or imitation firearm with intent to resist arrest or prevent the lawful arrest*  
18                           *of themselves or any other person.”*  
19

20          42. It is submitted that under the *Guidelines*, this offence would fall within Category 3  
21           Culpability and Category 3 Harm with a starting point of 1 year custody and a range of  
22           sentence of a high-level community order to 2 years custody.  
23

24          43. The aggravating factor is said to be that the firearm has never been recovered.  
25

26          44. Counsel also referred to the Grand Court judgment in the case of *R v Johnathon*  
27           *(Jonathan) Samuel Welcome*<sup>6</sup> and submitted that the offending has passed the custody  
28           threshold and that subject to any personal circumstances that this Court may consider,  
29           an immediate custodial sentence is warranted. Counsel submitted also that the

---

<sup>6</sup> Ind. 57 of 2016 dated  
220826 R v Tyree Jaden Welcome: Ind. 60 &74 of 2021. Coram Richards J, QC - Sentence Judgment



1 WhatsApp messages between the offender and the person with the identifier “Gully”  
2 and the image of a real Czech Republic made 9mm firearm strongly suggests that this  
3 offender has close connection with real firearms.

4  
5 45. Defence Counsel agreed with the categorisation that this is one of Lower Culpability  
6 and Category 3 Harm. Defence Counsel asked the Court to note that the item seen in the  
7 hand of the defendant was not pointed at anyone and not used during the commission of  
8 an “active offence”.

9  
10 46. Counsel submitted that the case of *Welcome* is extremely different from this case and  
11 that the previous convictions of that defendant would have been a significant factor in  
12 that case. This defendant has no previous convictions of a similar nature.

#### 13 14 **SUBMISSIONS IN MITIGATION**

15  
16 47. In mitigation Defence Counsel points to the SIR which indicates that the defendant has  
17 been engaged in various jobs since leaving high school. When he committed these  
18 offences, he was trying to start a removal business.

19  
20 48. He is said to have a good work ethic and good personal qualities. He has in the past  
21 responded well to supervision in the community.

22  
23 49. Counsel submitted that the defendant has no previous convictions of a similar nature  
24 and that he is twenty-two years of age. The Court is asked to consider the totality  
25 principle and to impose concurrent sentences.

#### 26 27 **THE SENTENCE**

28  
29 50. The offence of robbery is agreed to be of Medium Culpability. Following review of the  
30 cited cases and considering the particular circumstances of the victim as set out in the  
31 VIR, this Court accepts the submissions of the defence that the Harm is at the level of



1 Category 3. No physical harm was caused to the victim and evidence as to the extent of  
2 any psychological harm is limited. The VIR does not provide any detail as to whether  
3 there is ongoing psychological impact on the victim.  
4

5 51. From a starting point of 3 years, the Court takes into account the fact that the offence  
6 was committed while the defendant was on Court bail for the offence of Possession of  
7 an Imitation Firearm and was wearing an EMD. It is the view of the Court that this is a  
8 significant aggravating factor. From a starting point of 3 years the sentence is increased  
9 to one of 4 years.

10  
11 52. In mitigation the Court takes into account all that has been said and written in favour of  
12 the defendant. This includes his age; he was twenty-two years old at the material time.  
13 His previous convictions are not of a similar nature. There were childhood difficulties  
14 with respect to the stability of his home. He has some good personal qualities and is  
15 described as having a strong work ethic. He is currently employed at the Prison in two  
16 areas. When these are taken all together the sentence is reduced by 6 months to one of  
17 3 years and 6 months.  
18

19 53. With respect to the offence of Possession of an Imitation Firearm the Court asks itself  
20 the questions as suggested in the case of *R v Avis*<sup>7</sup>. In that case the English Court of  
21 Appeal stated that the appropriate level of sentence for a firearm offence will depend on  
22 all the facts and circumstances relevant to the offence and the offender. It will usually  
23 be appropriate for the sentencing court to ask itself a series of questions: -  
24

25 i) “What sort of weapon is involved?”  
26

27 *Genuine firearms are more dangerous than imitation firearms. Loaded*  
28 *firearms are more dangerous than unloaded firearms. Unloaded firearms*  
29 *for which ammunition is available are more dangerous than firearms for*

---

<sup>7</sup> [1998] 1 Cr. App. R. 420  
220826 R v Tyree Jaden Welcome: Ind. 60 &74 of 2021. Coram Richards J, QC - Sentence Judgment



1                    *which no ammunition is available. Possession of a firearm which has no*  
2                    *lawful use such as a sawn-off shot gun will be viewed even more seriously*  
3                    *than possession of a firearm which is capable of lawful use.*

4  
5                    ii)    *What if any use has been made of the firearm?*

6  
7                    iii)   *With what intention, if any, did the defendant possess or use the firearm?*

8  
9                    iv)   *What is the defendant's record?*

10  
11                   *The seriousness of any firearm offence is increased if the offender has an*  
12                   *established record of committing firearm offences or crimes of violence.”*

13  
14                   54.    In applying the discussed principles to the instant case, the four questions to be  
15                   considered are:

16  
17                   i.    *What sort of weapon is involved in this case?*

18                   a.    It is an imitation firearm.

19  
20                   ii.   *What if any use has been made of the firearm?*

21                   a.    It was carried to a public place.

22  
23                   iii.   *With what intention if any did the Defendant possess or use the firearm?*

24                   a.    The defendant has pleaded guilty to possession with intent to resist arrest.

25  
26                   iv.   *What is the Defendant's record?*

27                   a.    The defendant is a person with one previous conviction which is not of a  
28                   similar nature.



1 55. The Grand Court in the case of cited case of *Welcome* while noting the paucity of cases  
2 for standalone offences of Possession of Imitation Firearms in this jurisdiction and in  
3 the United Kingdom said this: -

4  
5 *“Things have moved on since 2010. Gun crime is the scourge of the Caribbean.  
6 The Cayman Islands has not escaped that trend. Gun crime has risen in the  
7 intervening period and is becoming a serious problem here.”*<sup>8</sup>

8  
9 *“Mrs. Bodden, Counsel for the Defendant, has submitted that when looking at the  
10 UK cases, cognizance has to be taken of the fact that the maximum sentences in  
11 the UK are higher for the equivalent offence. That is correct. However, the  
12 imposition of the tough mandatory minimum in the Cayman Islands demonstrates  
13 that these offences are taken extremely seriously and are indeed higher than the  
14 mandatory minima in the UK.”*<sup>9</sup>

15  
16 *“In my judgment, there has to be some correlation between sentences for a real  
17 firearm and an imitation one under the section. Despite Lord Bingham’s measured  
18 words, there is a strong message about the seriousness of cases involving imitation  
19 firearms. In this case, the officers were clearly concerned for their safety, taking  
20 cover where they could; the two members of the public must have been petrified.”*<sup>10</sup>

21  
22 56. Having regard to the different mandatory minimum in the Cayman Islands, the Court  
23 adopted a starting point of 5 years with respect to the offence. The Court said this: -

24  
25 *“24. Applying the questions set out in Avis: The court is concerned with an  
26 imitation firearm. Although the maximum sentence under s.18 is the  
27 same whether the firearm is imitation or real, commonsense  
28 dictates that the fact that the gun is an imitation one is a highly*

---

<sup>8</sup> Paragraph 23

<sup>9</sup> Paragraph 27

<sup>10</sup> Paragraph 28

220826 R v Tyree Jaden Welcome: Ind. 60 &74 of 2021. Coram Richards J, QC - Sentence Judgment



1                    *relevant factor. If the gun in question had been a real firearm under the*  
2                    *section, the mandatory minimum sentence of 10 years imprisonment,*  
3                    *unless exceptional circumstances pertained would follow conviction.*  
4                    *However, the fact that the gun was an imitation one does not take the*  
5                    *offence out of the clearly serious category which Parliament*  
6                    *intended, not least because as Lord Bingham in the case of **Bentham***  
7                    *(supra) at paragraph 6 said:*

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

15  
16        57.        This Court would respectfully adopt the approach of the learned Judge in the case of  
17                    **Welcome**. Given the nature of the offending in the instant case and the way the imitation  
18                    firearm was used, there is distinction to be drawn between the two cases. Consequently,  
19                    this Court will adopt a lower starting point of 3 years.

20  
21        58.        This offence was committed while the defendant was in public at night. These factors  
22                    serve to increase the sentence to one of 3 years and 6 months.

23  
24        59.        In mitigation the Court takes into account all that has been said in favour of the  
25                    defendant as set out above. The sentence is therefore reduced to 3 years.

26  
27        60.        The plea was offered after a trial date was set. The recommended discount is 25% or 9  
28                    months for a total of 2 years and 3 months (27 months).



1       61.     The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims  
2       of sentencing, assessing the seriousness of an offence, the custody threshold and the  
3       principle of proportionality. The Court reminds itself of this guidance including that in  
4       sentencing an offender, the Court has to balance a number of competing interests and  
5       objectives and to tailor the punishment to the individual circumstances of the offender  
6       while ensuring that it is in line with the seriousness of the offence. The Court should  
7       consider which of the aims which govern the sentencing process will be best served by  
8       the sentence to be passed. The aims which are set out in the *Alternative Sentencing Act*  
9       2008 include deterrence, punishment, rehabilitation and restitution. The Guidelines also  
10      provide that a custodial sentence should not be passed unless the offence is so serious  
11      that no other sentence can be justified for the offence. Custody should be reserved for  
12      the most serious offences. Even where the custody threshold is passed, custody can still  
13      be avoided in light of personal mitigation or if there is suitable community intervention  
14      which would meet the aims of punishment and rehabilitation.

15  
16      62.     In this case, the defendant robbed the victim of cash after visiting the store ten minutes  
17      earlier, there was clearly an element of planning. The victim was placed in fear by the  
18      use of a machete. This was a small business when then had to undergo the cost of  
19      additional security measures in addition to the loss suffered. The offence was committed  
20      while the defendant was on an EMD and on Court bail. The offence is serious and clearly  
21      passes the custody threshold.

22  
23      63.     In respect of the second offence, the possession of the imitation firearm was clearly  
24      deliberate as evidenced by the messages. It was in a public place at night and the Officers  
25      must have by their shouts believed that it was a genuine firearm. The offence is serious  
26      and clearly passes the custody threshold.

27  
28  
29  
30  
31



1 64. The defendant is assessed as being at high risk of re-offending and unfortunately has  
2 continued to re-offend while in Prison. The custody threshold is firmly passed and there  
3 are no circumstances which make a sentence of immediate imprisonment unavoidable  
4 in respect of both offences.

5  
6 **TOTALITY**

7  
8 65. Paragraph 6 of the *Cayman Islands Sentencing Guidelines* with respect to concurrent  
9 and consecutive sentences provides as follows: -

10  
11 ***“6.1 Concurrent Sentences***

12 *It is wrong in principle to impose sentences to run consecutively where*  
13 *those offences, though distinct in law, arose out of a single act so that the*  
14 *overall criminality for the offender can be represented by concurrent*  
15 *sentences.*

16 *Concurrent sentences will ordinarily be appropriate where:*

17 *Offences arise out of a related incident or facts.*

18 *There is a series of offences of the same or similar kind especially*  
19 *when committed against the same victim.*

20 *Where concurrent sentence are passed, the sentence should reflect*  
21 *the overall criminality involved. The sentence should be*  
22 *appropriately aggravated by the presence of the associated*  
23 *offences and thus the court may increase sentence for the principal*  
24 *offence to reflect the gravity of conduct:*

25  
26 ***6.2 Consecutive Sentences***

27 *Consecutive sentences will ordinarily be appropriate where:*

28 *Offences arise out of unrelated facts or incidents.*



1                    *Offences are of the same or similar kind but where the overall*  
2                    *criminality will not sufficiently be reflected by concurrent*  
3                    *sentences for example:*

4                    *Where offences are committed against different victims.*

5                    *Where sexual offences or domestic violence are committed*  
6                    *against the same individual.*

7                    *Where the offender commits the same or similar offence*  
8                    *after being arrested for the original offence.”*

9  
10        66.        In this case, the Court considers that these are two separate and distinct offences which  
11                    arise out of unrelated facts. Indeed, the second offence of Robbery was committed after  
12                    the defendant was arrested for the first offence of Possession of Imitation Firearm. This  
13                    Court does not consider that the overall criminality will sufficiently be reflected by  
14                    concurrent sentences.

15  
16        67.        The Court will however be mindful of the principle of totality. Consequently, only one  
17                    half or 13 months of the sentence for the offence of Possession of Imitation Firearm will  
18                    run consecutively to the sentence for Robbery for a total sentence of 4 years and 9  
19                    months.

20  
21        68.        In respect of the two section 88 offences to which the defendant has pleaded guilty  
22                    before this Court. For the offence of Possession of Ganja, the sentence is two weeks  
23                    imprisonment.

24  
25        69.        For the offence of Possession of Cocaine, the sentence is one month imprisonment. As  
26                    these offences clearly arise out of the same circumstances as the Possession of Imitation  
27                    Firearm, the sentences for these offences are to run concurrently.

1 70. Any time served is to be deducted. The drugs are ordered forfeited to the Crown to be  
2 destroyed.

3

4 **Dated this the 26<sup>th</sup> day of August 2022**

A handwritten signature in blue ink, consisting of a series of connected loops and curves, positioned to the right of the number 5.

5

6 **The Hon. Justice Cheryll Richards QC**  
7 **Judge of the Grand Court**