

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3 **IND. NO: 14 of 2022**



6 **THE QUEEN**

7
8 **V.**

9
10 **SHIMARONA ANTHONY PETRIE**
11

12
13 **Appearances:** **Ms. Hema Soondarsingh for the Prosecution**

14 **Mr. Keith Myers for the Defence**

15 **Before:** **Justice Cheryll Richards Q.C.**

16 **Submissions on Sentencing:** **12th August 2022**

17 **Sentence Judgment:** **19th August 2022**
18
19
20

21 ***HEADNOTE***

22 *Criminal Law – Cayman Islands Sentencing Guidelines, Burglary, Principles on*
23 *Sentencing*
24
25
26
27



SENTENCE JUDGMENT

1. The defendant Shimarona Petrie is before the Court for sentencing in respect of a single count of burglary contrary to s.243 (1) of the *Penal Code* (2022 Revision). The particulars are that he “on the 15th day of February 2022 entered a dwelling building namely Apartment 2, 24A Pasture Drive, Grand Cayman as a trespasser with intent to steal therein”.
2. The defendant was arraigned on the 4th March 2022 which was his first appearance before the Grand Court. He entered a plea of not guilty. The trial commenced on the 25th July 2022 and continued through to the 27th July 2022. After the close of the prosecution’s case, the giving of evidence on his own case and just before closing speeches, the defendant entered a plea of guilty. The jury was directed to and returned a formal verdict of guilty.
3. The Prosecution has provided a summary of facts.
4. On the 14th of February 2022, the victim Anthony Cunningham secured his home at the above address and retired to bed with his wife and two young children. The home is a small one-bedroom apartment with a rear door and front door. The open living room area had been retrofitted to include a bedroom for the children.
5. Mr. Cunningham was awakened at about 2:30 in the early morning, by the sound of wind entering the apartment. He got up from the bedroom and found the rear door of the apartment to be wide open. He locked the door and went into the living room area to check on the children. He noticed an individual bent over by the sofa chair. On the chair was his wife’s handbag which had been left there when she went to bed.
6. Mr. Cunningham attempted to hold on to the individual who moved away and went towards the locked rear door. The individual did not go through that doorway but turned back and went towards the front door. There was a tussle between the two and

1 the individual was able to break the chain lock on the front door, to open that door and
2 to go through it.

3
4 7. Mrs. Cunningham was awakened by the sounds of the altercation, and saw her husband
5 struggling with a strange man. She raised an alarm and screamed out for help. When
6 the intruder went through the front door, Mr. Cunningham gave chase and the intruder
7 jumped over the northern perimeter fence and escaped.

8
9 8. After the intruder's departure, Mrs. Cunningham's purse which had been in her
10 handbag on the sofa, was found on the floor of the passage area leading to the rear door.
11 There were items such as coins, which had come out of the purse and were scattered
12 on the floor. Nothing appeared to be missing.

13
14 9. Shortly after the incident, the defendant called 911. A transcript of that call was
15 tendered as an exhibit during the trial and in part this is what he said:

16
17 *"I just did something wrong and I'm just giving in myself.*

18 *I just did something wrong and I'm very sorry about it, so I'm just calling.*

19 *I don't know what to do right now.*

20 *I did something wrong. ...I never do this in all my life.*

21 *I'm going to just serve the consequences.*

22 *I don't want to be in this type of trouble."*



23
24 10. The defendant could be heard crying on the phone call to 911. He kept repeating that
25 he had done something 'terribly wrong' and that he had hurt two persons terribly. He
26 said that he is so sorry to that lady and that man. He said that he did not know what to
27 do. He told the 911 operator that he had done that about an hour ago, that he is in trouble
28 with the law, and this could cause him to go to jail. He said that he is sorry and that he
29 did not hurt the persons physically, 'like damage them'. He said that he just wanted to
30 walk out to the Bodden Town Police Station and give himself up. He said that he did
31 not know what came over him. He said that he is not in want or in need so why did he
32 do it. He told the 911 operator where he was and where it had happened. He said that

1 it was not forced entry. He was asked whether he had taken anything from the location
2 and he said that he attempted to. He said that the door was open. He said that he did
3 not know ‘the nerves that got into him’, to go into the people’s house. He told the
4 operator where he was, that he was right there standing.

5
6 11. Police Constables Olivia Samuels and Andre Johnson attended the apartment of the
7 victim at about 3:15 in the early morning. While they were there, they were contacted
8 by the 911 operator and directed to the address of the defendant who was then still on
9 the phone to 911. The defendant was arrested.

10
11 12. PC Wanda Sue Nixon carried out a search of the area just outside the victim’s apartment
12 and found a key fob lying on the ground. That key fob was the key for a burgundy
13 Toyota Passo motor vehicle, registration 207 093. The vehicle was parked on the road
14 next to an adjoining premises. Further inquiries indicated that the owners of the vehicle
15 had lent the vehicle to the defendant for two days starting on the 14th February 2022.

16
17 13. The defendant was interviewed under caution in the presence of his attorney on the 19th
18 February 2022. This was after he was examined and found by a doctor to be fit to be
19 interviewed.

20
21 14. A transcript of that interview was tendered into evidence at the trial. The Court takes
22 note of what was said by the defendant in that interview. In part the defendant said that
23 he had the ‘intention to head to the gas station’ namely ‘On the Run’. He said that when
24 he went through the bush after leaving the victim’s apartment and reached the car, he
25 realised that he did not have the car key. He went home and used his phone and called
26 911. He repeated what he had said to the 911 operator. He said that he did not break in
27 as if he was in need or short of anything. He said that if he got the chance to pay the
28 penalty or to apologise to the persons, he would do that. He again repeated the
29 circumstances of his entry into the premises of the victim.

30
31 15. At trial the defendant gave evidence that he had been at home and was having a bad
32 headache. He left home to try to get some tablets at the ‘On the Run’ Gas Station.

1 While travelling there he remembered a female friend who lived nearby on Pasture
2 Drive. He said that he had not seen the person for about six months. He was not sure
3 where her apartment was. He went around to the back of the premises because he had
4 cut a line stick for her some time ago and he wanted to see if he could see the stick and
5 recognize the apartment. While there, he saw a light on, in the victim's apartment and
6 thought that this was the apartment of his friend who might have been up to get her
7 children ready for school.

8
9 16. He entered the apartment, realised it was a stranger's apartment and left. He stopped
10 outside and went back inside because he really wanted a tablet for his headache. He
11 said that he took up the handbag or purse out of the handbag from the couch and he had
12 it in his hand when the householder came at him.

13
14 17. In cross-examination he said that he knew that he did not have permission to be in the
15 apartment, that the apartment was that of a stranger and not that of his friend. He also
16 said that if he had found a tablet, he would have taken it and left, if he had not been
17 interrupted by the householder. He agreed that in the 911 call he had admitted to
18 breaking into someone's apartment.

19 **REPORTS**



20 18. Defence Counsel was asked specifically and directly whether he sought a Social
21 Inquiry Report in respect of the defendant. Defence Counsel indicated that he did not
22 wish to have one. Counsel said that he would be able to provide all the relevant
23 information to the Court in respect of this defendant. Defence Counsel said further that
24 the Court had ordered a psychiatric report prior to the trial and that this provides
25 sufficient information about the defendant in order to allow for his circumstances to be
26 properly placed before the Court for this sentencing exercise.

27
28 19. The psychiatric report of Dr. Arline McGill is dated 14th June 2022. It states that the
29 defendant has a significant history of traumatic injury in his childhood as well as violent
30 incidents of head injury in his adolescence. The defendant reported suffering from
31 headaches frequently and has a history of suicide attempts. He grew up in an

1 atmosphere of conflict between his mother and step-father. He provided to the Doctor
2 a history which is suggestive to her of dyslexia and of prominent symptoms of moderate
3 obsessive compulsive disorder. His history also suggests depression with anxiety and
4 prominent features of attention dysregulation. The Doctor says that he experienced
5 several social dislocations in his childhood which contribute to his psychological
6 vulnerabilities.

7
8 20. On mental status examination, his psycho-motor activity was otherwise normal
9 although his gait was awkward. He displayed the capability to follow requests and was
10 cooperative. He was alert, could state his full name but he was only partially oriented
11 in time. The Doctor found his speech to be normal in rate and volume but monotonous
12 and hesitant as if he had to think carefully about the question to answer it.

13
14 21. The defendant is described as having good short term memory recall but his long term
15 recall was patchy. He remembered the injury to his right fronto-temporal area in 2006.
16 His information processing was concrete. His screening forms indicated occasional
17 suicidal thoughts although he denied current suicidality. His reasoning was simple but
18 within normal limits and his attention and concentration were intact. His thought
19 processes were said to be sometimes tangential but he was easily re-directed. His
20 history, says the Doctor, and current thought processes suggest post traumatic sequelae
21 and brain injury sequelae. He reported to the doctor that he was prone to headaches
22 three or more times a month and shocking pains to the back of his head and in the
23 temporal region which woke him up at night and that he usually took over the counter
24 medication for the headaches.

25
26 22. The Doctor concludes:



27 *“Despite his neuro-psychiatric limitations, Mr. Petrie can relate events*
28 *surrounding the incident if he is approached with patience. He can also direct his*
29 *attorney and can understand the process in Court. He may have some difficulty*
30 *with processing information but he is able to provide testimony. He is therefore fit*
31 *to plea.”*



1 **ANTECEDENT HISTORY**

2 23. The defendant has no previous convictions.

3 **MAXIMUM PENALTIES**

4 24. The maximum sentence for the offence of burglary is fourteen years imprisonment.

5 **THE SUBMISSIONS**

6 25. Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for the
7 offence of burglary and drew comparisons with the *United Kingdom Sentencing*
8 *Guidelines*. The prosecution submitted that under the *Cayman Islands Sentencing*
9 *Guidelines* the offending is a Category 1 Harm and Culpability B with a starting point
10 of five years and a range of sentencing of three to seven years in custody.

11
12 26. As to culpability, the prosecution submitted that the defendant has a mental disorder or
13 learning disability which seems to be linked to the commission of the offence.
14 Alternatively, that this is a mitigating factor which may reduce the starting point for
15 the offence.

16
17 27. The aggravating factors were submitted to be the timing of the offence, it having been
18 committed at night, the fight with the householder and the fact that children were at
19 home.

20
21 28. Prosecuting Counsel drew the Court’s attention to two cases as relevant sentencing
22 authorities. Firstly, the case of *R v. Myles*¹. In this case, the defendant was found guilty
23 of burglary. He and another person had entered the house of the complainant in the
24 middle of the night, awakened her in her bedroom and demanded that she open her
25 safe. Items of value including credit cards, jewelry and drivers’ licenses were stolen.
26 The intruders left the house when the alarm went off. The defendant had a number of
27 previous convictions for burglary and aggravated burglary. He received a sentence of

¹ 2011 (2) CILR Note 11

1 seven years imprisonment with time spent in custody to be taken into consideration.
2 The dicta of Lord Bingham, Chief Justice in the case of *R v. Brewster*² was applied.

3
4 29. The aggravating factors in that case were considered to be, that the burglary took place
5 in the early hours of the morning, the defendant stayed in the dwelling house after
6 discovering that the owner was present, the items stolen were valuable and the burglary
7 was highly planned.

8
9 30. The second case drawn to the Court's attention is the case of *R v. Wright*³. In that case
10 the defendant Wright was found guilty of criminal damage and burglary. He and
11 another person had carried out a burglary on a grocery store in the early hours of the
12 morning using a stolen truck. They caused damage totaling \$23,000.00. The defendant
13 was sentenced to four years imprisonment for criminal damage and four years for
14 burglary.

15
16 **DEFENCE SUBMISSIONS**



17
18 31. Defence Counsel submitted that the instant offence is an offence of Category 1 Harm
19 and Lesser Culpability.

20
21 32. In mitigation defence Counsel submitted that the offence is peculiar. The defendant has
22 never committed any offence before. He went to college in Jamaica and has never been
23 in trouble in that country. He knows his mother but does not know his father or any
24 other siblings. He has no close family ties other than his mother. He came to the
25 Cayman Islands when his mother was working here. His mother has now returned to
26 Jamaica.

27
28 33. Counsel said that about ten years ago the defendant was the victim of a major assault.
29 He was hit with a metal bar to his head and was kicked and punched. He was in a
30 coma for a while and spent many weeks in hospital. It took him a couple years to

² [1998] 1 Cr App Rep 220

³ 2011 (2) CILR Note 5.

1 recover. He gets headaches every now and again. These are ‘blinding’ headaches which
2 hurt his eyes and cause him extreme pain in the front of his head. These do not cause
3 him to become violent or to experience ‘black outs’. Counsel said that the incident has
4 not affected the defendant to the degree that he cannot think. Counsel also said that the
5 defendant appreciates and knows right from wrong as can be heard on the 911
6 recording.

7
8 34. Counsel said that this is a bizarre case from beginning to end. At times the defendant
9 is like a child and is vulnerable. Sometimes he feels very alone here. It is very hard to
10 talk to people. Counsel said that the defendant is willing and able to work with
11 authorities and probation and to undertake whatever course is provided to him.

12
13 35. Counsel said that on the 911 call the defendant is remorseful and crying. His thinking
14 let him down. His thought process is not always clear, and he does not always think
15 things through. Counsel posed this question, once he realised that he was in the wrong
16 house why did he go back? Counsel said that fortunately no one was hurt, and nothing
17 was taken.

18
19 36. Counsel submitted that this is an exceptional and unusual case and asked the Court to
20 show as much compassion as can be shown. This is not an individual who is a perpetual
21 criminal. He made wrong choices and is trying to be honest. Counsel said that the Court
22 has seen and heard him. He acted like a child at times in the way he responded to
23 questions. He is a man of limited education but knows right from wrong and through
24 Counsel, he is apologising to the Court and to the family of the victim. He hopes that
25 in time the family will forgive him. He is hoping for a suspended sentence so that he
26 can work and re-engage in the community.



27 **IMPACT OF GUILTY PLEA**

28 37. The prosecution submits that in accordance with the *Cayman Islands Sentencing*
29 *Guidelines 2015* the defendant should only benefit from a one tenth discount. Defence
30 Counsel submitted that while the trial had started one would ask for some discount.



1 **THE SENTENCE**

2 38. Under the *Cayman Islands Sentencing Guidelines*⁴ with respect to burglary in a
3 dwelling, there are two levels of culpability. None of the factors under Higher
4 Culpability appear to apply to this case. The offence appears to have been committed
5 on impulse.

6
7 39. The Court concludes that this is an offence of Lesser Culpability. The Court would
8 also have categorised this as one of Lesser Culpability given the submissions of both
9 Counsel as to the defendant’s possible mental issues as supported by the psychiatric
10 report of Dr. McGill.

11
12 40. As to Harm, the factors under Category 1 of the *Guidelines* are:-

- 13
14 i. Theft of/damage to property causing a significant degree of loss to the victim
15 (whether economic, sentimental or personal value).
16 ii. Soiling, ransacking or vandalism of property.
17 iii. Victim on premises (or returns to premises) while offender present.
18 iv. Trauma to the victim, beyond the normal inevitable consequence of intrusion
19 and theft.
20 v. Violence used or threatened against victim.
21 vi. Context of general public disorder.

22
23 41. Under Category 2, the factors are:

- 24
25 i. Nothing stolen or only property of very low value to the victim (whether
26 economic, sentimental or personal).
27 ii. Limited damage or disturbance to property.

28

⁴ Revised June 2021



- 1 42. In this case nothing was stolen and there was limited damage or disturbance to the
2 property. The only damage was the broken lock on the front door. Thus, there are two
3 factors in the lesser category.
4
- 5 43. However, the victim was present on the premises. The defendant was well aware that
6 persons were on the premises when he re-entered. At page 19 of his interview transcript
7 he says that he saw a female and a child on the bed in the room. Secondly, there was a
8 fight with the householder. There are thus one, possibly two factors which would serve
9 to place this offence in the higher category. In the general *Guidelines*, under the
10 heading of factors indicating more than usual degree of harm, is the fact of the presence
11 of others especially children.
12
- 13 44. The Court concludes that this is properly an offence which is somewhere between
14 Category 2 and Category 1 Harm and is possibly at the lower end of Category 1.
15
- 16 45. For an offence of Category 1 Harm and Lesser Culpability, the starting point is five
17 years custody. As the presence of others including children and the fight with the
18 householder are properly reflected in this categorisation, the Court does not consider
19 these to be aggravating factors as this may well be double counting.
20
- 21 46. The timing of the offence is properly an aggravating factor. This was at night, when
22 all persons should be able to sleep safely in their homes secured from intruders. The
23 early hours of the morning is a time of particular vulnerability for householders. From
24 a starting point of five years or sixty months, the sentence is increased to one of sixty-
25 three months.
26
- 27 47. In mitigation, the Court takes into account the defendant's particular circumstances. He
28 is thirty-seven years old. He is a man of good character with no previous convictions.
29 This offence is entirely out of character for him. He is deeply remorseful as evidenced
30 by his 911 call and apologises through his Counsel. He has been the victim of a serious
31 assault which continues to affect him medically. His medical issues are detailed in the
32 psychiatric report. Incarceration in this country will affect him more than others, in



1 that, he has no family here and already expresses feelings of being alone. He is simple
2 and child-like in his thinking and this was evident in the course of the giving of his
3 evidence. In all the circumstances, all the mitigating factors taken together serve to
4 reduce the sentence by twenty-one months.

5
6 48. With respect to reduction for a guilty plea, the *Cayman Islands Sentencing*
7 *Guidelines*⁵ provides as follows:

8 *“The level of reduction should reflect the stage at which the offender indicated a*
9 *willingness to admit guilt to the offence for which he is eventually sentenced:*

10 *i. the largest recommended reduction will not normally be given unless the*
11 *offender indicated willingness to admit guilt at the first reasonable*
12 *opportunity; when this occurs will vary from case to case;*

13
14 *ii. where the admission of guilt comes later than the first reasonable*
15 *opportunity, the reduction for guilty plea will normally be less than one*
16 *third;*

17
18 *iii. where the plea of guilty comes very late, it is still appropriate to give some*
19 *reduction;*

20
21 *iv. if after pleading guilty there is a Newton hearing and the offender’s version*
22 *of the circumstances of the offence is rejected, this should be taken into*
23 *account in determining the level of reduction;*

24
25 *v. if the not guilty plea was entered and maintained for tactical reasons (such*
26 *as to retain privileges whilst on remand), a late guilty plea should attract*
27 *very little, if any, discount.”*
28

⁵ October 2015, paragraph 10



- 1 49. In this case the guilty plea came at the latest possible stage. The trial before a jury had
2 almost reached conclusion. The defendant is given the recommended discount which
3 is set out in the *Guidelines* of one tenth (1/10th). This reduces the sentence by four
4 months and two weeks to one of thirty-seven months for a sentence of three years and
5 one month.
- 6
- 7 50. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims
8 of sentencing, assessing the seriousness of an offence, the custody threshold and the
9 principle of proportionality. The Court reminds itself of this guidance including that
10 in sentencing an offender, the Court has to balance a number of competing interests
11 and objectives and to tailor the punishment to the individual circumstances of the
12 offender while ensuring that it is in line with the seriousness of the offence. The Court
13 should consider which of the aims which govern the sentencing process will be best
14 served by the sentence to be passed. The aims which are set out in the *Alternative*
15 *Sentencing Act 2008* include deterrence, punishment, rehabilitation and restitution.
- 16
- 17 51. The *Guidelines* also provide that a custodial sentence should not be passed unless the
18 offence is so serious that no other sentence can be justified for the offence. Custody
19 should be reserved for the most serious offences. Even where the custody threshold is
20 passed, custody can still be avoided in light of personal mitigation or if there is suitable
21 community intervention which would meet the aims of punishment and rehabilitation.
- 22
- 23 52. In considering whether the custody threshold has been passed in this case, consideration
24 has been given to the personal circumstances of the defendant and to whether there is
25 suitable community intervention which would provide a sufficient restriction by way
26 of punishment while addressing rehabilitation issues.
- 27
- 28 53. The serious nature of the offence in this case is an important factor. This is an offence
29 which was committed at night while the householders and their children were sleeping.
30 It was in the early hours of the morning. The defendant on his own account, in re-
31 entering the home, his re-entry was deliberate. The defendant knew that he was in a
32 stranger's home. He knew that he did not have permission to enter that home or to take

1 anything out of that home. He knew immediately that he was wrong to have done what
2 he did. The reason which he gives that this was a search for tablets is no excuse and
3 cannot be condoned. While he is said to be simple, he is some thirty seven years old
4 and he is a working man.

5
6 54. It is the view of this Court that the custody threshold is firmly passed and that
7 consideration of his personal circumstances is already given in the extensive discount
8 which has been applied in mitigation. There is nothing further in those circumstances
9 which suggests that immediate custody is unavoidable. The sentence is therefore three
10 years and one month with time served to be deducted.

11 **Dated this the 19th day of August 2022**



12
13
14 **Honourable Justice Cheryll Richards Q.C.**
15 **Judge of the Grand Court**