



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 21/2019

IND 44/2017

SC#03074/2017

BETWEEN:

GERADO GEORGE CONOLLY Jnr

**Appellant**

- and -

Her Majesty the Queen

**Respondent**

BEFORE:

**The Rt. Hon Sir John Goldring, President**  
**The Rt. Hon Sir Bernard Rix, Justice of Appeal**  
**The Rt. Hon Sir Alan Moses, Justice of Appeal**

Date of Hearing: 23<sup>rd</sup> November 2020

Appearances: Mr. Jonathan Hughes of Samson Law for Appellant  
Ms. Nicole Petit, Office of the DPP for the Respondent

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JUDGMENT

Transcript of oral judgment dated 23<sup>rd</sup> November 2020 and Approved for  
Release 19<sup>th</sup> April 2021

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RIX, J.A.

1. This is an application to extend time for an application for leave to appeal against sentence by Gerado George Conolly, 29 years old but 26 at the time of his offences. He was sentenced on his pleas of guilty to 9 years' imprisonment on 4 counts on an amended indictment. Those counts included one count of robbery, one count of theft, one count of possession of an unlicensed firearm and one count of damage to property. Other counts were left on the file.

2. The sentencing judge, Mr. Justice Wood, sentenced the applicant to 8 years for the robbery offence, reduced from 12 years because of a full discount for a plea of guilty, to 7 years concurrent for the firearm offence, being the minimum statutory sentence on a plea of guilty, as prescribed by section 39(2)A of the *Firearm's Law (2008 Revision)*, to 2 years concurrent for theft and to 1 year consecutive for the damage to property, namely a brand new car. All in all, a total of 9 years.
3. The essential facts are as follows. At approximately 3 o'clock on the afternoon of Tuesday 15th of June 2017, the Royal Cayman Islands Police Service received a report via the 911 emergency center, of a robbery at Lookout Gardens Fresh Fruits and Juices Store, a small local store. The report was that a male entered the store, armed with what appeared to be a firearm and demanded that the cashier open the cash register. The cashier, Melva Legata, complied under the threat of violence, after which the robber stole an undisclosed amount of cash from the cash register.
4. Prior to exiting the store, the robber approached another person in the store, Elizabeth Stephenson, who happened to be the owner of the store, and threatened her with the object that appeared to be a firearm; demanding her cellular i-phone and the keys to her recently purchased 2017 gold coloured Ford Explorer. She also complied under the threat of violence and handed over the items. The male then left the store, making good his escape with the 2017 vehicle.
5. Armed Royal Cayman Islands Police Officers, from the Uniform Support Group responded to the call for assistance and while conducting a vehicle check in the vicinity of the Frank Sound junction, North Side, observed a similar vehicle to the one that was reported stolen, driving in the direction of East End. Before the vehicle reached the police checkpoint, it turned round and began driving towards George Town. Multiple officers pursued the vehicle, as it attempted to elude the officers by driving at excessive speed, and in a reckless manner, posing a danger to other motorists and pedestrians.
6. The vehicle eventually crashed into a light pole and came to a stop in a yard along Cliff Hill Road, in the vicinity of the Light House Restaurant. When officers approached the vehicle, the applicant surrendered himself. When arrested and cautioned, he stated, "*The*

*gun inside the car, you can't kill me in front of these Caymanians. I did the robbery. I am ready to go to jail". He was searched and a quantity of cash was recovered from his pockets. As the cash was recovered the defendant said, "Yeah, I got lots of cash, cash for days. I going to jail for 20 to 30 years but I gonna kill all you fuckers".*

7. A Scenes of Crime Officer (SOCO) attended the scene where the vehicle crashed, and a forensic examination of the scene and the vehicle was conducted. There was extensive damage to the front end of the vehicle. The vehicle was searched and a modified flare gun was recovered from the front of the passenger footwell, along with a box of .22 bullets, which ultimately turned out to be blank rounds. These were all photographed by SOCO. It should be stated that the gun was unloaded.
8. CCTV footage of the robbery was recovered from the store. The applicant could be clearly seen entering the store in a white cap and dressed in a long sleeve grey shirt with a black hood, and long jeans, carrying a green grocery bag. The object that appeared to be a firearm had a small light affixed to it.
9. On 15th June 2020, the applicant was interviewed under caution in the presence of his attorney. During the interview he was asked questions about the robbery and shown CCTV stills of the incident and photographs of the items recovered from the vehicle. He gave a no comment response to all of the questions.
10. The following day, a photospread identification procedure was conducted. The applicant was positively identified by the cashier who said she knew him as a person who lived in the neighborhood, and who would occasionally shop at the store. She explained that on the day of the incident, he visited the store on two occasions; the first time was to purchase a soda, however, because she was dealing with some deliveries, he left and returned a short time later and purchased the soda. He went outside, opened a bag, returned, jumped over the counter, put the gun to her head and told her to open the cash register. He took the cash and then the keys to the vehicle and drove off.
11. The applicant has had a checkered career with many offences to his name going back to 2009, but he has never before been to prison even if early on in his offending he received

a 2 year sentence, suspended for 2 years. His offences range from burglary and forgery to handling and possession of ganja. In 2014, and significantly, in view of his use of a firearm to commit the offences with which we are concerned today, he was sentenced for possession of a prohibited weapon. He has been given many opportunities to learn from his offending but he has not taken them. In all, there have been some 11 previous convictions plus another 11 traffic offences.

12. The Social Inquiry Report for the applicant described his difficult upbringing, his problems with managing his anger, his substance abuse which came to include cocaine, but also his acceptance of responsibility and remorse and his self-realization that, without addressing his anger deficits and substance abuse, he is at still higher risk for future problems.
13. On this application to extend time for leave to appeal some 17 months out of time, the applicant states that he was not advised of his right to appeal and that when he found out he had one, he took immediate steps to file the relevant documents and to obtain representation.
14. In the circumstances, before considering that application to extend time, we consider the merits of what would be his appeal if he were given leave to do so. On his behalf, Mr. Hughes submits that the sentence of 9 years was excessive and that the applicant ought to have received a sentence of only 8 years. Mr. Hughes submits that the gravamen of the offending is covered by the minimum sentence of 7 years for the firearms offence, and he also accepts the consecutive sentence of one further year for the damage to property offence. He submits that the robbery offence was wrongly sentenced at 8 years.
15. Mr Hughes submits that the judge wrongly categorised the robbery, in effect (albeit not in terms), under the Cayman Islands Guidelines for robbery as a category 2A, that is A, the highest level for culpability, and 2, the medium level for harm. Whereas Mr. Hughes submits that the judge ought to have placed the robbery offence in category 3A, i.e. the lowest level for harm. Indeed, Mr. Hughes correctly submits that the judge did not refer in terms to the robbery guidelines at all.

16. The difference between these categories to which Mr. Hughes has drawn our attention, is that whereas category 3A has a starting point of only 5 years, with a range of 4 to 8 years, category 2A has a starting point nearly twice as high at 9 years, with a range of 7 to 14 years. Therefore, Mr. Hughes submits, even if the offence was aggravated to the highest range point of 8 years for a category 3A offence, or even somewhat beyond that, once the one third discount for the guilty plea is taken into account, the sentence will fall below the minimum 7 year sentence on the firearm offence.
17. In this connection, as I have already mentioned, Mr. Hughes also complains that the judge made no reference to the guidelines at all and arrived at his 12 year starting point for the robbery offence without further reasoning. It is true that the judge did not refer to the robbery guidelines but neither did the applicant's counsel at sentencing. (That counsel was not Mr. Hughes). On the contrary, that counsel seemed to expect that the relevant category was category 2A, not category 3A, because mitigation was tendered by reference to another case of robbery with a firearm which the judge had recently sentenced, where the defendant had received a sentence of 10 years on a plea, i.e. a starting point of 15 years. There, however, the gun had been fired.
18. In our view, the judge was right to place this robbery offence in category 2A, partly because it involved the theft of "*high or medium value goods*", i.e. the car keys, which led directly to the taking of the new car, quite apart from cash from the till, and also because there is additional detrimental effect upon a business like a local shop, which was then suffering its second robbery attempt, plus the fact that two victims were robbed, one of them a bystander to the lady at the till.
19. Moreover, the judge was right to consider that there were a number of aggravating features. He mentioned the following: that the applicant, as he admitted, was under the influence of drugs; that the gun was used to frighten the victim – we add that that would itself bring the matter within the highest category of culpability under the guidelines, but as it is we know, from the impact statement of Ms. Legata, that the gun was actually put to her head and in such a way that she suffered a bruise to her head and she also suffered a bruise to her arm. The gun was also used to threaten Ms. Stephenson. The judge also mentioned the

gratuitous damage done to the car, and that the offences had been carried out against persons who were providing a service to the public, namely, running a local shop.

20. To these matters we would add the importance of the law in protecting small local shops, which, unlike other commercial premises, are peculiarly vulnerable to this kind of crime. We would also mention that there were not one but two separate victims to the robberies and there was also, ultimately, the reckless driving at danger to the public which resulted from the car chase.
21. On the side of mitigation, there was only the applicant's guilty plea and remorse, but we also take account of his difficult upbringing. Even so, the judge was generous in giving him a full credit for his plea, despite his no comment interview.
22. All in all, in our judgment, the judge was well entitled to raise the sentencing level within the 7 to 14 year range of the category 2A offence to 12 years from the starting point of 9 years. Indeed, even if the judge had been sentencing under the category 3A category, it would be quite wrong on the totality of all this offending, including the damage to the car, to be within the 7 years for possession of the firearm by itself.
23. All in all, we consider the judge's sentence to be well justified and we therefore refuse the application for an extension of time and the application for leave to appeal.