

**IN THE CAYMAN ISLANDS COURT OF APPEAL  
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS CRIMINAL  
DIVISION**

**CRIMINAL APPEAL 6 of 2020**  
IND 33/2019  
SC#0842/2019

BETWEEN:

**RYAN EBANKS**

**Appellant**



**- and -**

**Her Majesty the Queen**

**Respondent**

BEFORE:

**The Rt. Hon Sir John Goldring, President  
The Hon. Sir Richard Field, Justice of Appeal  
The Hon. C Dennis Morrison, Justice of Appeal**

Date of Hearing: 4<sup>th</sup> September 2020

Appearances: Mr. Keith Myers for the Appellant  
Mr. Greg Walcolm, Office of the DPP for the Respondent

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**JUDGMENT**

Transcript of oral judgment dated 4<sup>th</sup> September 2020

Approved for Release 28<sup>th</sup> October 2020

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**GOLDRING, Pres:**

**Introduction**

1. On 18 December 2019, following a plea of guilty to aggravated burglary, the Applicant, who is a 57-year-old man with 40 previous convictions, was sentenced by Acting Justice Dobbs to 10 years' imprisonment. He seeks leave to appeal against that sentence.

### **The facts**

2. The victim of the robbery was 78-year-old man, Mr Raybe Hydes, who lived alone on West Bay Road. He was a sick man, undergoing treatment. On the evening of 9 March 2019, Mr Hydes had been at home watching television. He fell asleep on the sofa. He next recalled being awoken by a loud noise like a bomb. That was the Applicant smashing the front door with a concrete block. His face was covered by a handkerchief. He had Mr Hydes' machete in his hand. It had been by the front door. The Applicant demanded jewellery, specifically, a bag containing the jewellery. Mr Hydes, who unsurprisingly was disorientated, told the Applicant it was on the dining room table. On seeing it was not, the Applicant chopped at Mr Hydes' head with the machete. Mr Hydes raised his hand to protect his head. He received injuries to his left hand. The Applicant took the watch and phone from the dining room table and dragged Mr Hydes back into the house. Mr Hydes grabbed his machete, which was by the door, and tried to defend himself. A struggle ensued. The Applicant disarmed Mr Hydes and threw away the machete. He dragged Mr Hydes outside again in an attempt to find the jewellery. When Mr Hydes tried to escape, he was dragged back inside and hit again, this time to the right side of the body. Mr Hydes retreated to his bedroom until the house was quiet. He then went to his nephew's home across the road and the police were called.
3. Mr Hydes was taken to hospital. There was considerable blood at the scene. Mr Hydes suffered a number of serious injuries. They included a 7cm wound on the scalp, a skull fracture, a laceration to the scalp, frontal contusion, an injury to the left elbow, an incised wound to the right arm, a compound fracture of the mid shaft of the humerus, muscle laceration and abrasions on the knees.
4. When the police arrived, they found Mr Hydes suffering from serious injuries. Certain personal items were missing. They included several items of jewellery, two watches, three bracelets, two necklaces and three rings. They were all in his motor vehicle which was parked in the yard. His Samsung phone and a watch were on the dining room table.
5. The police had received information that the Applicant had been spotted lurking in the area of Mr Hydes' gate just before the incident. The Applicant was arrested. When interviewed, he made no comment. His DNA was on the cement block found at the scene, on the machete, and Mr Hydes' blood was on his shoes.

### **The victim impact statement**

6. There was a victim impact statement which had been prepared by Mr Hydes' daughter. The Applicant takes issue with that statement. He submits it contains a number of falsehoods and has resulted in him being sentenced more harshly than otherwise he would have been. In particular, it refers to Mr Hydes undergoing surgery, to having a metal rod in his right arm, which it is said he cannot use and to his children having to assist Mr Hydes with his living. It also describes him being paranoid about sudden noises in his home: that he had been changed.

### **Previous convictions**

7. As to the Applicant's 40 previous convictions, the judge mentioned those which were more recent and relevant. On 13 March 2012, for robbery and possession of an imitation firearm with intent, he was sentenced to 15 years' imprisonment, subsequently reduced on appeal to 10. On 23 May of that year, for an offence of assault occasioning actual bodily harm, he was imprisoned for three months. On 9 August 2016, for a similar offence, he was imprisoned for six months.

### **The social inquiry report**

8. In the social inquiry report, the probation officer expressed the view that the Applicant had little genuine remorse or guilt for his actions. He displayed no victim empathy. His risk of re-offending was assessed as "very high".

### **The psychiatric report**

9. Although there was a psychiatric report, which we have now had and seen and read, it was not before the judge. The Applicant, at that stage, was representing himself.

### **The judge's sentencing remarks**

10. In what seem to us exemplary sentencing remarks, the judge set out the basis of the sentence which she was passing. She said that it was an extremely grave offence with significant aggravating features. Referring to the Cayman Islands Sentencing Guidelines, she stated that as far as culpability was concerned, the offence fell into the higher range, namely Category A. That was because there was produced and used a weapon to inflict violence. The use of force was significant. The offence fell into Category 1. There was serious physical harm to the victim in his home. Moreover, there was the additional element of the victim being in the premises.
11. The judge took as a starting point 7 years with a range of 5 to 14. She said a significant uplift was

required for the fact this was an aggravated form of burglary. She said that the court did not need a psychological report to know that the incident must have had a significant emotional/psychological effect on this vulnerable old man. She said the victim impact statement gave some insight into that aspect. She took as a starting point 11 years. She set out as aggravating features the fact that the victim was vulnerable by virtue of age and health, that the Applicant knew that he was an elderly man, living alone. He knew too about the jewellery bag and targeted Mr Hydes. The offence was committed at night. The Applicant was under the influence of drink and drugs. He sought to conceal his identity.

12. The judge referred to the previous convictions, the failure to respond to previous sentences, the fact, as she stated, that this offence was very prevalent in the jurisdiction and was having a significant impact on people's lives. She took, in all the circumstances, a starting point of 16 years.
13. The judge said she did not accept that there was genuine remorse or that the offence was unplanned. She did accept, on the basis of the Crown's acceptance, that the Applicant, although causing serious bodily harm, did not intend to inflict it, and she accepted that the value of the property taken was low, given that the Applicant did not discover the bag with the jewellery which he was seeking. She gave small credit for the mitigation, bringing the figure of 16 years down to 15.
14. The judge then carefully set out why, in her view, the Applicant was entitled to full credit for his plea of guilty. That reduced the sentence to one of ten years.

### **The grounds of appeal**

15. Mr Myers, on the Applicant's behalf, makes a number of points.
16. He submits that the judge should not have taken account of the prevalence of such robberies in Cayman. Reliance is placed on the English decision of *Bondzie* (2016) 1 WLR 2004. He submits that the psychiatric report, which the judge did not have, provides some mitigation. He in particular refers to the paragraphs which reference the difficulties the Applicant had in his upbringing. We note the report also refers to the post-traumatic stress disorder from which the author says the Applicant suffers. Mr Myers submits that the starting point the judge took was too high, that, furthermore, the judge made in effect two uplifts: first, to reflect the aggravation from simple burglary to aggravated and, second, a further aggravation of the aggravated burglary.

17. Mr Myers submits, on specific instructions, that the victim impact statement was inaccurate and misleading. Moreover, it was not prepared in accordance with the law of the Cayman Islands because it had been prepared by the daughter.

**Our view**

18. In our judgment, the sentence imposed by the learned judge was not arguably manifestly excessive.

19. First, while the reference by the judge to the prevalence of such offending was plainly peripheral to the sentence imposed, in a small jurisdiction such as the Cayman Islands, it is not appropriate to apply the case of *Bondzie*.: see the observations of this court in paragraph 115 of *Ramoon and Douglas*, Cayman Islands Appeal Reports at 34 and 35 of 2016.

20. Second, it does not seem to us that the psychiatric report begins to render the sentence manifestly excessive.

21. Third, we do not accept that the judge was not entitled to rely upon this victim impact statement. It was submitted by the prosecution and prepared on behalf of the victim: see s.53(1) and s.53(2) of the *Alternative Sentencing Law (2008 Revision)*. We do not accept that such a statement must invariably be written by the victim personally. There will inevitably be cases in which a victim may not be able to prepare such a statement and/or in which better and more detailed information may be obtained from someone other than the victim.

22. That said, in this case, it seems to us self-evident that this elderly man inevitably suffered very significantly as a result of such a horrific and violent offence as occurred.

23. Finally, the judge was, in our view, plainly entitled to impose the uplifts which she did, for the reasons which she so carefully explained.

24. In the circumstances, we refuse leave to appeal.