IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0047 + 104/2019

THE QUEEN

v.

JJM

Appearances:	**Mrs. Nicole Petit for the Crown**
	Mr. Rupert Wheeler of Samson Law for the Defendant
Before:	**Dame Linda Dobbs (Acting Judge)**
Sentence Hearing:	**31st October, 29th November & 12th December 2019**
Oral Delivery of Decision:	**18th December 2019**

HEADNOTE

Criminal Law – Aggravated Burglary – Attempted Burglary *– Guilty pleas – Aggravating Factors – Mitigating Factors - Sentencing Guidelines – Defendant's age.*

SENTENCE JUDGMENT

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INTRODUCTION

1. The Defendant falls to be sentenced for two offences as follows:

   i. First Offence: Aggravated Burglary - contained in Indictment 47 of 2019 dated the 20th day of June 2019; and

   ii. Second Offence: Attempted Burglary – contained in Indictment 104 of 2019 dated the 27th day of November 2019.

2. The Defendant, who was 16 years of age at the time of the first offence, pleaded guilty on 16th July 2019 to the single count of Aggravated Burglary contrary to s.244(1) of the ***Penal Code*** (2019 Revision) contained on Indictment 47 of 2019.

REPORTING RESTRICTIONS

3. At the time of committing this offence of Aggravated Burglary on the 6th day of March 2019 the Defendant, who was born in September 2002, was under the age of 17 years, and therefore is deemed to have committed the offence whilst a "young person" pursuant to s.2 of the ***Youth Justice Law (2019 Revision)*** which states:

> "…"*young person" means … a person under the age of seventeen."*

Therefore, at that age, s.12 of the ***Youth Justice Law*** which deals with "Reporting Restrictions" for a "young person" would have wholly applied to this Defendant. Section 12 states:

> *"12. (1) In relation to any proceedings in any court, such court may direct that -*
>
> *(a) no published report of or comment on the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any young person concerned in the proceedings, either as*

being the person by, against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and

(b) no picture shall be published as being or including a picture of any young person so concerned in the proceedings.

(2) Whoever publishes any matter in contravention of subsection (1), is guilty of an offence and liable on summary conviction, in respect of each such offence, to a fine of five thousand dollars or to imprisonment for six months."

4. At the time of Sentencing today, the 18th day of December 2019, the defendant attained 17 years of age approximately three months prior to today's date. Even though s.12 of the ***Youth Justice Law*** does not specifically extend the "Reporting Restrictions" to where the offender committed the offence whilst a young person but is being sentenced after the age of 17, the Court herein directs that Reporting Restrictions[1] be extended to this Defendant's identity.

FACTS FOR THE OFFENCE OF AGGRAVATED BURGLARY

5. The summary of the facts presented to the court can be shortly stated.

6. Armed with a gun on the night of 8th March 2018 – whether imitation or real it is not possible to say – together with one other, the Defendant broke into Mr Ebanks', the Defendant's uncle's home, by kicking the door in. The Defendant pointed the gun at his uncle and demanded money. The uncle describes his nephew as being very aggressive and said that he feared for his life. A struggle ensued and Mr Ebanks armed himself with a machete. However, Mr Ebanks was hit on the arm and the intruders escaped.

7. On arrest the Defendant made no comment in interview.

[1] On the 26th July 2019, when this Defendant was arraigned before Chapple J., (Actg.) the court also ordered no reporting of the identity of this Defendant.

8. At the hearing last week, the court discovered that the incident took place at the home of Mr Ebanks' 93-year-old mother whom he would visit nightly – a fact about which the defendant must have been aware. This casts a very different light on the offence.

DEFENDANT'S BACKGROUND

9. A probation report (Social Inquiry Report (SIR)) from David Hunter dated 30th October 2019 sets out this defendant's background. He has lived in the past in a property where the wider family lived. The officer describes the family as dysfunctional. The Defendant has from an early age showed learning delay; has fitted the profile of a student with mood disorder and ADHD; has received counselling in 2012, and, in 2015 was treated for anxiety and mood instability.

10. The Defendant has largely been looked after by his aunt and grandmother as his mother has been unfit to do so being a recovering drug addict. He has served 2 spells at the Bonaventure Boys Home due to his delinquent behaviour.

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11. His schooling has been sporadic - with poor attendance and behavioural problems. He has poor social skills - leading to some students keeping out of his way.

12. He left school in April 2019 and had a couple of spells as a labourer on construction sites with a relative.

13. The Defendant has a history of ganja use from the age of 11 and he is well known to the Department of Children and Family Services (DCFS).

14. According to SIR, the Defendant has constantly breached his bail conditions and committed further offences whilst on bail. He has failed to attend any sessions arranged with his psychologist.

15. The original recommendation from the Probation Officer was that the Defendant be placed on a Youth Rehabilitation Order (YRO) with conditions regarding drugs counselling, attending sessions with the psychologist and complying with the rules of the Bonaventure Boys Home.

FURTHER OFFENCES

16. Things have moved on however. First of all the defendant is not now eligible to be accepted at the Boys Home.

17. Secondly and importantly, he has committed further offences whilst on bail despite being a given a chance on the 31st October to show that he could obtain and hold down job and not get into trouble.

18. There is now an updated report before the court dated 25th November 2019. It sets out that the Defendant has pending matters in the Summary Court. He has pleaded guilty to some of them. They include: possession of cocaine; possession with intent to supply cocaine which was found on his arrest for the aggravated burglary; handling stolen goods; possession and selling of ganja committed in September 2019 when he was on bail.

FACTS FOR THE OFFENCE OF ATTEMPTED BURGLARY

19. On 5th November 2019 the Defendant was arrested for the offence of Attempted Burglary. He was remanded in custody following his arrest. He has now pleaded guilty before this court to that offence which involved attempting to access the premises of a cousin in order to steal some tobacco.

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OPTIONS FOR ACCOMMODATION

20. The recommendation of the social worker at the hearing of 31st October was for a Suspended Sentence Supervision Order (SSSO). That was because a relative had originally said she would host the Defendant. Once she found out how many charges there were against him, she withdrew her offer.

21. Probation services have been unable to find suitable accommodation and have pursued all options.

22. A list, entitled "Chronology of Contacts" has been provided to the court. This list includes persons the Probation Officer, Mr. Hunter, has visited and spoken with relating to accommodations for the Defendant. It includes various members of the family who offered accommodations and then changed their minds.

23. Today, yet again, there is another suggestion before the Court: It is that the defendant's stepfather would be prepared to accommodate the Defendant but he (the stepfather) asks for time to make plans. Therefore the Defendant asks the Court to adjourn, yet again, to give him another chance to find accommodations. It is pertinent to note that this gentleman (the stepfather) was approached in the past and declined.

24. There is a history of the family changing their minds, where they have said yes, then said no, then said yes, and then said no. Given the observations by the social worker as to the family, generally, it seems to me that placement with the family members is not appropriate for the Defendant. And, in any event, it seems that the social worker has come to the end of the road, because no recommendations are now made to the court.

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DEFENDANT'S ANTECEDENTS

25. This defendant has many previous convictions dating back to 2014 - mainly connected with ganja, but also failing to surrender, theft handling and giving false particulars to the police. He has been fined and has been subject to probation orders and SSSOs.

DEFENCE SUBMISSIONS

26. In a very full and detailed defence sentencing note prepared by Mr Wheeler in readiness for the hearing on 31st October, he submits that, despite the recent developments, the Defendant should be sentenced to a Suspended Sentence Supervision Order (SSSO) for the following reasons:

i. Strong personal mitigation because of his upbringing and back ground;

ii. The offending being on the lower scale of gravity by reference to the UK Children guideline;

iii. The inevitable negative impact of custody which is discouraged for someone of the defendant's age;

iv. The possibility of a suspended sentence in light of the guidelines when all the mitigating factors are taken into account.

27. Mr Wheeler submits, relying on the case of ***Wright***[2] that because the defendant was 16 years of age at the time of the offence, but has now crossed the age barrier for sentencing – the court should use the sentence it would have passed at the date of the offence as the starting point for the sentence, because, in particular, considerations for

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sentencing young offenders would still apply – namely the emphasis on rehabilitation and the acceptance that youths are less responsible for their actions than adults.

28. So far as mitigation is concerned – Mr Wheeler relies on the Defendant's difficult upbringing, including, a lack of stable or effective parenting; his significant learning delay; the fact that when afforded the opportunity of one to one learning he performed better and that he obtained some plumbing work.

29. Mr. Wheeler submitted that the mitigating factors as under the ***Sentencing Children and Young People – Definitive Guideline***, are:

i. No previous relevant findings of guilt;

ii. Remorse;

iii. Unstable upbringing;

iv. Learning disabilities or mental health concerns;

v. Limited understanding of the effect on victims;

vi. Limited education and work.

THE LAW ON SENTENCING

30. The ***Cayman Islands Sentencing Guidelines*** whilst dealing with the substantive offences do not yet give guidance on the approach to the sentencing of young offenders.

31. Recourse is to be had therefore to the Sentencing Council of England and Wales – ***Sentencing Children and Young People – Definitive Guideline***. The following principles are pertinent:

i. That the court should have regard to the aim of the youth justice system – prevention of youth offending and the welfare of the young person;

ii. The seriousness of the offence will be the starting point but the approach should be individualistic and focussed on the child or young person as opposed to offence-focussed and consideration should be given to the effect of the sentence on the child or young person;

iii. Custodial sentences should always be the last resort;

iv. Encouraging young people to take responsibility for their actions and promotion of re-integration into society rather than punishment should be important;

v. It is important to bear in mind factors which may diminish the culpability of the young person.

vi. Young people should be given an opportunity if possible to address their behaviour

vii. The court should be alert to mental health and vulnerabilities issues and the offence considered in light of them.

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SENTENCE

32. The ***Cayman Islands Sentencing Guidelines*** provide the approach to sentencing in such cases.

33. They make clear that burglary will usually merit a custodial sentence unless there are exceptional circumstances.

34. This case involves burglary of a dwelling. There are three levels of seriousness.

35. Counsel on both sides agree that this case falls into the bracket of medium culpability – that is the threat of use of a firearm. So far as harm is concerned, again both parties agree that this in category 2.

36. The starting point is 4 years' custody, with a sentencing range of 2 to 6 years. However because this is an Aggravated Burglary, the guidelines state that the starting point should be higher in light of the increased maximum and to be considerable where significant physical or psychological injury or other significant trauma is inflicted within a home.

Aggravating and mitigating circumstances

37. The Crown did not suggest that there are any aggravating factors other than the recent offence of attempted burglary committed on 5th November.

38. However, as we now know there was an extremely elderly and vulnerable person at the home, her home, and the offence was committed at night.

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39. So far as mitigation is concerned the most powerful one (not including the early plea of guilty) is the age of this defendant - 16 at the time of the offence, and now 17 years old.

40. He has some mental issues but, because he has not attended the offered support from the psychologist, the court has no in-depth insight into any condition he may have.

41. There is no doubt however that he has suffered from a very poor upbringing - living in what has been described as a dysfunctional family.

42. He has worked sporadically and Ray Doxey, the previous employer, states that he will give the Defendant work so long as he pulls his boot straps up and is reliable.

43. I have a letter from the Defendant dated 25th November 2019 setting out how his background had led him into trouble. Being remanded in custody has opened his eyes and led him to decide that he does not want to continue on his previous path. He apologises to the victims of his crimes and asks for forgiveness and one more chance. I have a further letter from the Defendant dated 9th December in which similar sentiments are expressed. I am urged to accept the sentiments as genuine remorse.

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44. Finally there is his plea of guilty at the earliest opportunity for which full credit is due.

45. I have to sentence for two offences.

46. This means that there is now the aggravating factor of committing a similar offence on bail, full-well knowing that he was in peril of a custodial sentence on the Aggravated Burglary alone. Whilst on bail was his chance to prove to the court that the chance was worth taking.

47. I take a starting point of 4 years' custody, which needs to be increased to take into account the uplift for an aggravated night-time burglary, but, there is also the aggravating factor of the recent attempted burglary.

48. Given his age, the court has to make a reduction for the defendant's youth.

49. Having adjusted both upwards and downwards, the starting point will be five years.

50. A significant reduction is made for mitigation – reducing the figure to 3 ½ years. With full credit for the pleas of guilty, this results in a sentence of 2 years 4 months.

51. The court was informed today that the Defendant has spent 179 days on 12 hour electronic curfew. Credit will be given for 90 days which brings the sentence to just over 2 years and one month.

52. The court has thought long and hard about this case and whether the sentence should be further reduced to allow for consideration of a Suspended Sentence Supervision Order.

53. The defendant's offending history is at the lower end, connected to the use of drugs and he has been out of trouble for some time. But against the mitigation, is the fact that the defendant knew that he was in danger of a custodial sentence and needed to prove himself on bail. Sadly, he committed another offence only a few days after his court hearing when he was also on bail for other offences.

54. Importantly there is no support package offered by the Probation service - no doubt, in light of the previous failures.

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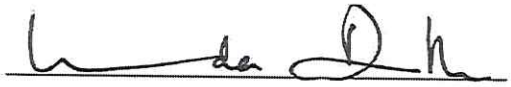
55. The effect of an SSSO would be that the defendant would be released with no suitable place of residence and no support package. That is not in the interests of the Defendant and is certainly not in the public interest. It is not possible to justify such an order in the circumstances.

56. The least sentence I can pass for the Aggravated Burglary, taking into account everything that has been said so ably on the defendant's behalf, is one of 2 years 4 months' imprisonment, less the 90 days credit for the curfew, that is, 2 years' and one month imprisonment.

57. For the Attempted Burglary, there will be a sentence of 9 months' imprisonment, to run concurrently. Time spent in custody will count towards the sentence.

Dated this the 18th December 2019



Dame Linda Dobbs
Acting Judge of the Grand Court