

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 28/2017

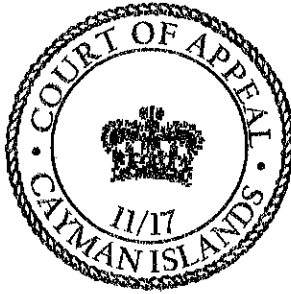
IND.55/15

SC#04718/15

BETWEEN:

ANDRE ANTONIO CHASE

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: **Wednesday, 31 October 2018**

Appearances: Mr. J Furniss, Attorney-at-Law for the Appellant
 Mr. S Wainwright for the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 31 October 2018

Approved for Release 22 January 2019

MOSES, J.A.

1. This an application for permission to appeal by Andre Chase who appeared before Mr. Justice Mettyear for sentence on 28 September 2016 following a very serious case of aggravated burglary and rape on 23 July 2015.
2. These offences took place in the course of what was rightfully described by the Crown as a "*campaign of burglary*" committed on residential premises where, fortunately, the

occupants in July of 2015 were not in their houses but most unfortunately, Kathy Neilson was.

3. The applicant entered her premises and, as the judge described it, was there subjected to a horrific attack. The applicant had a rope with which he tried to strangle her. He then forced her to take her clothes off - with the aid of a knife - raped her and then compelled her to go into a shower to wash herself. But, fortunately, there was still found traces of his rape on her which enabled him to be traced.
4. Not content with raping her, he burgled her premises and beat her. She therefore had not only the humiliation but the suffering of this sustained act of violence.
5. As we have noted, he committed this offence during the course of a series of other burglaries. The judge imposed a sentence of 13 years' imprisonment for the rape and concurrently with that, ten years' imprisonment for the aggravated burglary.
6. There is no application for leave to appeal against those sentences and the court has been assisted, as has this applicant, by Mr. Furniss who has made it clear that there couldn't and is no complaint against the judge's approach and decision as to sentence for those terrible offences.
7. The only question that arises is in relation to the four burglaries and one attempted burglary that was part of the series of offences. As the judge rightly pointed out, they would normally have attracted a substantial sentence but, having regard to the length of time this young man might otherwise serve in prison, he made all the sentences concurrent to one year imprisonment to run consecutive to the 13 years for the rape and aggravated burglary.
8. It is submitted that they should have been made concurrent so that there would have been a 13 year sentence in all.
9. In addition, we have before us written submissions from this applicant who makes clear his remorse; says that he is profiting from his time in prison to reform and learn lessons

and speaks of his mental difficulties at the time, partly as a result of the drugs with which he was provided. There was reference by the judge to a mental health problem.

10. This is of serious concern because he is only 23 and yet he has a serious, and as the judge rightly described it, worrying record with previous convictions for violence, threatening violence, consumption of ganja and actual bodily harm, threats to cause serious harm in 2013, and in 2014 assault occasioning actual bodily harm and common assault.
11. Clearly it is sensible that everyone should consider, so far as possible, how a young man with such serious offences of violence came to be committed and can be prevented in the future by consideration of his mental condition and we are pleased to hear that steps are being taken in prison in relation to the courses of which this applicant is undergoing.
12. Our concern, however, is whether there is any possible argument that the totality of these sentences was manifestly excessive. Our description of the facts of this case and the surrounding circumstances of the other burglaries, we hope, demonstrate how there could be no possible complaint about the totality of these sentences and, in those circumstances, the application for leave to appeal against the sentences is refused.

