

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 8/16

IND 75/2015

C05572/2015

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and

Michael Bush

Appellant

BEFORE:

**The Rt Hon Sir Bernard Rix, Justice of Appeal
The Hon John Martin QC, Justice of Appeal
The Hon Sir George Newman, Justice of Appeal**

Appearances: Nicole Tyson-Petit for DPP/Appellant in person.

JUDGMENT

Revised from transcript of oral judgment given on 4 November, 2016 and Approved
Released 5 January, 2017

NEWMAN, JA

This appellant has appeared in person today to urge upon the court that there should be a reduction in the sentence he received on the third of February 2016 in respect of an offence of robbery, committed on the ninth of September 2015.

The facts are very short. This appellant was in company with another man, who is not before the court, but who by his appearance, appeared older than Mr. Bush. At the date of the offence the appellant was 17 years old. He was sentenced to three years imprisonment for his participation in the events.

The appellant was willingly involved, he and the other man travelled on his motorcycle or scooter to a small grocery store in West Bay at about 5:10 in the evening. Both of them, on arrival entered the store with the intention of committing a robbery. It follows that the participation of this appellant was not confined to being the getaway driver. He entered the store and, as we have seen from the photographs which have been

produced to this court, although not wearing a mask he was wearing a scooter or motorbike helmet with a bandanna over his face.

There was an imitation firearm used, but it is clear from the photograph that it was not this appellant who had the firearm. An offence of robbery of this sort, even where the amount gained is undetermined, is a very serious one. It is very serious also for the consequences it brings upon a 17-year-old young man, of no previous conviction, who is induced or persuaded or encouraged, however it may be, to give in to what may have been some sort of influence of the older man. But he went and was participating in a serious offence for which the guidelines suggest a stiff level of sentencing.

The sentencing approach of the judge was to start with the guidelines indicating this to be a category 2 offence, with a range of some seven to 14 years imprisonment. The judge took the starting point at the bottom of that range of seven years. He then increased that sentence by six months, because of the use of disguises and the circumstances of the offence. He was correct to do so.

The judge did not forget the age of the appellant. He was fully aware, as we are satisfied, of all the relevant mitigating factors, and he had in mind as a guideline the view expressed by this court in the case of Haylock. In that case the court suggested a three-year sentence of imprisonment was appropriate — not on exactly identical facts, you rarely get those, but on facts which were very similar to those in the present case. On this basis the judge reached the conclusion that three years was the appropriate sentence for this young man. He allowed a full discount for the guilty plea. It was wholly appropriate for it to be given. But if followed mathematically it would not lead to the three years he imposed. Thus, there is an indication that the judge had in mind to reduce the sentence further out of mercy and because of the age of the offender.

In order for this court to interfere, it is a firm principle that there must be something manifestly excessive about the sentence. Now, within any sentencing exercise involving an assessment and the exercise of a discretion to be made by a judge there may be differences which may arise in the resulting level of sentence, thus the need for the firm principle and the equally established principle that this court should not tinker with sentencing.

For all those reasons, I am satisfied and we are satisfied that whatever may be said in favour of this appellant — and there was a fair degree to be said in his favour — it was nevertheless an appropriate and merciful sentence for the judge to pass, but this court dismisses the appeal against the sentence of three years.

RIX JA: Thank you. The appeal is dismissed. Mr. Bush, thank you for your assistance.

MS. PETIT: I'm obliged, My Lord.

THE COURT: Ms. Petit, thank you.